

財 經 事 務 及 庫 務 局
(庫 務 科)



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FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)

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25 January 2010

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

Dear *Miranda*,

**Report of the Director of Audit on the Accounts of the
Government of the Hong Kong Special Administrative Region
for the year ended 31 March 2009**

I refer to your letter dated 13 January 2010 on the Accounts of the HKSAR Government for the year ended 31 March 2009. The information as requested by the Public Accounts Committee is provided in the Appendix.

If you need any clarification, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elsie Yuen', written over a faint circular stamp.

(Ms Elsie Yuen)
for Secretary for Financial Services
and the Treasury

Encl.

c.c. Director of Accounting Services (Attn : Ms Candy Chu)

Appendix

Supplementary Information

**in Response to PAC's Enquiry on the
Accounts of the HKSAR Government for the year ended 31 March 2009**

General Revenue Account

**Loss of Cash and Valuables due to Theft, Fraud or Negligence
(p. 123 of the Government Accounts)**

(A) Cases brought forward from previous years

Government Logistics Department – Irrecoverable debt (\$17,025,082.44)^{Note}

- (a) Whether any review on the internal control has been carried out; if so, what are the improvement measures that will be/have been put in place and if not, why not?

The debt in question was owed to the Government by the Managing Director of Hong Kong Auctioneers and Estate Agency Ltd. (HKAEAL) hired by the former Government Supplies Department (GSD) (now Government Logistics Department) for the disposal of unserviceable or obsolete government stores and confiscated goods. To forestall recurrence of Government not being able to recover auction proceeds from hired auctioneers, GSD took various improvement measures to guard against late payments by hired auctioneers between 1998 and 2002. No late payments by auctioneers were found subsequently. To further strengthen controls, GSD changed the auction arrangement in November 2002. The auctions have since been held in-house with an auctioneer hired to provide the professional service of conducting the auction only. The auctioneer is no longer responsible for collecting any auction proceeds from the successful bidders who are required to pay the proceeds directly to the Government by 4:30 p.m. on the auction day. A release note will be issued to the successful bidders only upon confirmation of receipt of the proceeds or upon clearance of the cheque. The arrangements have worked well so far.

- (b) Whether any recovery action has been taken; if so, what are the progress and if not, why not?

Immediately after the senior management of GSD became aware of the case

^{Note} The irrecoverable debt amount of \$17,025,082.44 is the total of a judgement sum at \$10,742,838.17, cost of action at \$244,315.55, and interest calculated up to 5 September 2007 (the date on which a Bankruptcy Order was granted against the Managing Director of the HKAEAL) at \$6,042,928.72 less a contract deposit of \$5,000.

in September 1998, they had taken action to recover the debt and, after much effort, reached an agreement in March 1999 with the Managing Director of HKAEAL with a schedule of payment for full settlement of outstanding amounts. Unfortunately, despite the signing of a Deed of Settlement, the Managing Director had only been able to pay up to a total of \$6 million towards the debt. In the circumstances, GSD, through the Department of Justice (D of J), petitioned the High Court in October 1999. In November 1999, the Court ruled that the auctioneer and its Managing Director should pay Government the sum of \$10,742,838.17 plus interest from the date of judgement. The Court also awarded costs to Government and ordered an inquiry to trace the proceeds of the auctions. The inquiry revealed that there was no property purchased or acquired with the use of the Government's money.

However, the Managing Director of HKAEAL left Hong Kong in February 2000. In June 2000, a winding-up order was made against HKAEAL and the Official Receiver (OR) was appointed liquidator.

On 20 April 2007, D of J received information on the re-entry of the Managing Director into Hong Kong. D of J took immediate legal action to recover the debt, including applying for examination of the Managing Director as to his assets and petitioning for bankruptcy against the Managing Director. A hearing on the bankruptcy petition was held on 5 September 2007. As a result, the Court granted a Bankruptcy Order with costs against the Managing Director. The OR was the appointed trustee. D of J filed with the OR on 17 October 2007 and 1 November 2007 a Proof of Debt respectively for the judgement debt plus interest awarded by the Court pursuant to the Judgement made in 1999 and for the costs and interest so incurred for sharing of dividends, if any, resulting from the realisation of the Managing Director's assets by the OR.

The OR had conducted an investigation into the Managing Director's financial position and advised that the Managing Director was unemployed. Even though he had a fixed deposit of Thai Baht 1,008,569.86 (i.e. around \$244,000.00) as at 12 February 2008 with a bank in Thailand, the OR encountered difficulties in realising the said amount for the bankruptcy estate as the money was deposited in a bank which is outside the jurisdiction of Hong Kong.

The OR advised D of J in February 2008 that the bankrupt, i.e. the Managing Director, had no assets to settle the debt owing to the Government. With regard to the winding up of the HKAEAL, the OR had not yet applied to the Court for release of the liquidationship but considered it unlikely that there would be any dividends for distribution.

We reported the above recovery actions at the meeting of the Legislative Council Panel on Financial Affairs on 30 June 2008. We also informed

Members that the Administration would review the matter after expiry of the relevant Bankruptcy Order in 2011 to ascertain whether the debt is irrecoverable and to seek the agreement of the Finance Committee to write off the debt where appropriate.

Department of Health – Embezzlement by staff (\$13,710,000)

- (c) Whether there were preventive controls and if there were, why those controls were not effective?

There are preventive controls clearly set out in various government-wide regulations and instructions for bureaux and departments to comply with. The occurrence of the embezzlement case was a calculated act by the perpetrator who made use of falsified documents, coupled with failure in upholding the above regulations and instructions by his supervisors.

- (d) Whether any review on internal controls has been carried out; if so, what are the improvement measures that will be/have been put in place and if not, why not?

Since discovery of the embezzlement case, the Department of Health (DH) has taken immediate actions to strengthen the internal controls of the department's payment and accounting procedures and has implemented recommendations of the ICAC following a review of the case.

DH has reminded all staff in its Finance Office of the need to strictly comply with government regulations and instructions in processing payments. In particular, all officers involved in payment processing have been reminded to ensure that claims for payments are adequately supported, properly certified and correctly accounted. To this end, a comprehensive checklist on payment checking has been issued to provide practical assistance to staff in dealing with matters relating to authorisation of payment vouchers. A circular has also been issued to provide a summary of major points to be observed by budget holders and subject officers in arranging payments.

As a further safeguard, DH has introduced sample post-payment checking by budget holders on selected payments charged to their votes. Its Internal Audit Section has also revised its work plan to conduct more health checks on payment vouchers and procedures to ensure that the checks and balances are functioning as anticipated.

- (e) Whether any recovery action has been taken; if so, what is the progress and if not, why not?

According to information from the Police, there is no evidence to show that the perpetrator has any valuable assets. In order to exhaust all means in taking recovery actions against the perpetrator in respect of the embezzlement sum, the Department of Justice has been setting about proceeding with the civil procedures of instigating a civil action with the aim of successfully obtaining a judgment from the court against the perpetrator and, if so successfully obtained, will instigate bankruptcy.

Home Affairs Bureau – Embezzlement by staff (\$409,100.80)

- (f) Whether any review on internal controls has been carried out; if so, what are the improvement measures that will be/have been put in place and if not, why not?

The Home Affairs Bureau has reviewed the relevant accounting procedures and control mechanism. A circular was issued and measures such as imposing requirements for maintaining detailed transaction records and conducting more surprise checks have been put in place to tighten up controls to prevent recurrence of similar incidents.

- (g) Whether any recovery action has been taken; if so, what is the progress and if not, why not?

The Home Affairs Bureau is taking legal action to recover the loss. The Final and Interlocutory Judgment has been obtained and the next step is for the Department of Justice to apply to the Court for an assessment of damages. In order to serve the relevant notice and court documents relating to the assessment of damages application on the Defendant, we are in the process of ascertaining the latest whereabouts and correspondence address of the Defendant.

Once the said damages are assessed and a final judgment entered, enforcement action for recovery of the loss can then commence. The Department of Justice will consider every possible means of enforcement with a view to recovering the embezzlement sum and relevant loss from the perpetrator, including initiating garnishee proceedings, charging order application, writ of *fifa*, and bankruptcy petition.

(B) Cases in 2008-09

Leisure and Cultural Services Department – 2 cases of overpaid housing allowances (\$1,735,749.09)

- (h) Whether the recipients of the housing allowances were responsible for reporting the overpayments and what consequences did they face?

The recipients of the housing allowances, who were contract staff of the two Municipal Councils (Ex-Council Contract (ECC) staff) before their dissolution, were not aware of the housing allowances being overpaid until they were informed by the Leisure and Cultural Services Department (LCSD).

- (i) Whether there were loopholes in the internal procedures which caused the overpayments?
- (j) Whether there were preventive controls and if there were, why those controls were not effective?
- (k) Whether any review on internal controls has been carried out; if so, what are the improvement measures that will be/have been put in place and if not, why not?

Combined response to (i), (j) and (k) - At the material time, LCSD had put in place an established mechanism for processing the applications for housing benefits of ECC staff. The cases were discovered by LCSD during the course of an internal review of the housing benefits for staff. LCSD had conducted a detailed review of the mechanism upon the discovery of the cases. To ensure that all relevant applications would be processed in full compliance with the terms and conditions of the contracts and the established mechanism, LCSD has implemented measures such as centralising the vetting of the applications and escalating the level of approving authority for housing benefits of ECC staff .

- (l) What is the progress of recovering the outstanding amount of \$1,235,749.09 (\$1,735,749.09 less \$500,000)?

The Administration is considering the extent of liability of each of the officers involved and whether surcharges should be imposed as a result. When the above is completed, we will take appropriate follow-up action to deal with the outstanding amount according to the laid-down procedures, including seeking the approval of the Finance Committee for writing off any irrecoverable amount as necessary.

Water Supplies Department – Embezzlement by Staff (\$4,392)

- (m) Whether any review on internal controls has been carried out; if so, what are the improvement measures that will be/have been put in place and if not, why not?

WSD has reviewed the procedures on sub-imprest claims immediately following the incident and issued instructions to enhance the control including not allowing a sub-imprest holder to incur cash expenditure and claim reimbursement from the sub-imprest held by him/her and requiring the certified payment amount be stated in words in the claim form. In addition, the Internal Audit Section of the Department conducts independent checks regularly to ensure compliance of the procedures.

- (n) Whether any recovery action has been taken; if so, what is the progress and if not, why not?

The amount of \$4,392 was fully recovered in September 2009.

Note 1 : Cases less than \$1,000

- (o) It is stated in Note 1 that cases less than \$1,000 each are excluded. What were the numbers of cases involving less than \$1,000 each in each of the past five years?

The accounts related to cases less than \$1,000 each in the past five years were all settled within the financial year in question. For reference, the statistics are appended below –

<u>Financial Year</u>	<u>No. of cases</u>
2004-05	7
2005-06	6
2006-07	4
2007-08	5
2008-09	2