

**For discussion
on 7 November 2011**

**Legislative Council Panel on Financial Affairs
Report on Write-off of a Judgment Debt**

Purpose

This paper consults Members on a proposal to write off an irrecoverable debt of \$17.03 million, inclusive of costs of action and interest, owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department (GLD)) for the disposal of unserviceable or obsolete government stores and confiscated goods. Subject to Members' views, we will seek the approval of the Finance Committee ("FC") to write off the debt as soon as practicable.

Background

2. Further to the Panel consultation in June 2005, we last consulted the Panel in June 2008 on a proposal to write off the debt in question owed to the Government by the Hong Kong Auctioneers & Estate Agency Ltd. ("HKAEAL"). HKAEAL had been the contracted auctioneer of GSD for the disposal of unserviceable or obsolete government stores and confiscated goods since the 1970s until 31 August 1998. The present debt case occurred in HKAEAL's last contract with the Government for the period from 1 April 1996 to 31 August 1998 ("the 1996 Contract"). A copy of the last Panel paper LC Paper No. CB(1)1771/07-08(05) is at Annex. A brief summary of the case and the remedial actions taken are set out below.

The Debt Case

3. Since the 1970s HKAEAL had been awarded with a contract through competitive bidding every two years to conduct auctions for the sale of unserviceable or obsolete government stores and confiscated goods and to

collect the proceeds for the Government. Except for some delays in payments of the auction proceeds to Government, HKAEAL's performance had been satisfactory under the contracts predating the 1996 Contract. Of the 58 auctions conducted during the contract period of the 1996 Contract, HKAEAL had only reimbursed 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. This problem, however, was not brought to the attention of GSD's senior management until after the 1996 Contract had expired.

4. GSD took immediate action to recover the debt. Eventually, after much negotiation and considerable efforts, a Deed of Settlement was concluded with HKAEAL's Managing Director on 31 March 1999 with a schedule of payment for full settlement of the outstanding amounts. Unfortunately, GSD only received several payments totaling \$6 million towards the debt, after which no further payments were received. GSD, through the Department of Justice ("D of J"), instituted legal proceedings against HKAEAL and the Managing Director for recovery of the remaining amount. In November 1999, the Court ordered that judgment be entered for the Secretary for Justice ("the Plaintiff") against HKAEAL and its Managing Director and that HKAEAL and the Managing Director should pay the Plaintiff the sum of \$10,742,838.17 plus interest from the date of judgment. The Court also awarded costs to the Government.

5. HKAEAL and the Managing Director failed to settle the judgment debt ordered by the Court. In June 2000, the Court made a winding-up order against HKAEAL. The Official Receiver was appointed liquidator. As the Managing Director had left Hong Kong in February 2000, D of J, representing GSD, was unable to petition for bankruptcy against him at the time^{Note 1}. Upon the Managing Director's return to Hong Kong in April 2007, 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 and the Court granted a Bankruptcy Order with costs against the Managing Director. Subsequently, D of J filed Proofs of Debt with the Official Receiver for the judgment debt plus costs of action and interest

^{Note 1} D of J issued a statutory demand pursuant to section 6A(1)(a) of the Bankruptcy Ordinance (Cap. 6) against the Managing Director in March 2000. However, D of J was unable to serve the documents on the Managing Director personally. Investigations revealed that he had left Hong Kong since 4 February 2000. D of J was therefore unable to petition bankruptcy against the Managing Director at the time.

calculated up to 5 September 2007, and the said sums together with the cost of the bankruptcy proceedings amounted to \$17,025,082.44.

Remedial Actions Taken

6. To forestall recurrence of such incidents, GSD had taken various improvement measures to guard against late payments. Under the contract commencing from September 1998 with the new contractor, the auctioneer was required to advise the department of the gross auction value within one working day after the auction date, based on which demand notes would immediately be issued to the auctioneer for the gross sale proceeds. For the two-year contract commencing September 2000, tighter controls over the receipt of auction proceeds were introduced. There was no late payment by the auctioneer since September 1998. To further strengthen controls, GSD (now GLD) has revamped the contract service mode since November 2002 - the auctioneer is hired to provide the professional service of conducting the auction only, while GLD collects auction proceeds direct from successful bidders. Successful bidders are required to pay the proceeds directly to the Government on the auction day. A release note for collecting the goods successfully bid for will only be issued to the successful bidders upon confirmation of receipt of the proceeds or upon clearance of the cheque. The arrangements have worked satisfactorily.

Investigations and Disciplinary Actions Taken

7. In parallel with the actions taken to recover the debt, GSD had conducted internal investigation into the case. The Independent Commission Against Corruption was also invited to look into the possibility of corruption. These investigations completed in June 2001 indicated that the case did not involve fraud or corruption but there were inadequacies in the performance of some staff in performing their duties. Disciplinary actions were then taken against several staff who were involved in the case. Please refer to paragraph 9 of Annex A to the paper at Annex for details.

8. In the light of Members' advice at the Panel meeting in June 2005, GLD referred the case to the Police to establish whether other criminal offences might have been committed by HKAEAL or its Managing Director. The Police informed GLD in July 2007 that there was insufficient evidence to support a charge against any person.

June 2008 Panel Meeting

9. At the Panel meeting in June 2008, Members noted the latest position of the case and the Administration's intention to write off the debt after expiry of the relevant Bankruptcy Order in September 2011 for prudence and in view of the amount of money involved. Members asked the Administration to keep track of the development and seek the FC's agreement to write off the debt where appropriate.

Debt Recovery Actions Taken and Latest Position

10. When ordering a judgment be entered against HKAEAL and the Managing Director for the debt in November 1999 (please see paragraph 4 above), the Court also granted an order of inquiry to trace the proceeds of the auctions. Based on the affirmation filed by Managing Director with the Court in January 2000, there was no evidence showing that the auction proceeds were used to purchase any assets and no assets could be identified for the purpose of tracing.

11. Notwithstanding that D of J was unable to petition bankruptcy against the Managing Director in early 2000 (please see paragraph 5 above), searches had been conducted on assets (e.g. landed properties) of the Managing Director and investigation agents had been engaged to conduct searches in 2000, 2001 and 2002 on the whereabouts of the Managing Director, and his assets in Hong Kong and the countries where he had previous connections. However, all these debt recovery attempts were futile.

12. With regard to the liquidation of HKAEAL, the company was wound up in June 2000. While the Official Receiver has not yet applied to the Court for an order releasing him as the liquidator^{Note 2}, the Official Receiver confirmed in October 2002 that there was zero balance in the estate of

Note 2 The Official Receiver has not yet applied to the Court for release under section 205 of the Companies Ordinance because the liquidation process has not been completed. The Official Receiver is still in the course of handling the consignment goods held by HKAEAL on behalf of their beneficial owners the identity of whom could not be found so far. The Official Receiver may need to seek direction from the Court in handling such consignment goods. Until all the consignment goods are either returned to the respective owners or disposed of, the liquidation process cannot be finalised. Even if the consignment goods are sold, the sale proceeds will not form part of the assets of HKAEAL.

HKAEAL and that it was unlikely that there would be a dividend payment.

13. With regard to the bankruptcy order granted against the Managing Director in September 2007, the Official Receiver confirmed in September 2011 that the Managing Director was discharged from bankruptcy in September 2011 and that there is no likelihood of dividend distribution to creditors, including the Government. According to the Bankruptcy Ordinance, the discharge of a person from a Bankruptcy Order releases him from all bankruptcy debts. Thus the Managing Director is now released from all bankruptcy debts, including the judgment debt in question. The Administration cannot take any action to recover any proved debt after the said discharge. The Annual Statements of Earnings and Property Acquired of the Managing Director prepared in accordance with the Bankruptcy Ordinance during the 4-year bankruptcy period did not show any income or property of the Managing Director that could satisfy the judgment debt or any part thereof.

14. In light of the debt recovery actions taken and the latest developments, after consulting D of J, we consider that all possible legal means to recover the debt have been exhausted in this case. The separate processes of the liquidation of HKAEAL and the bankruptcy of the Managing Director have not led to any dividends that can be distributed to the Government. It is ascertained that the debt owed by HKAEAL and the Managing Director is irrecoverable and consideration could be given to writing off the debt.

15. The total amount to be written off is \$17,025,082.44, broken down as follows :

<i>Item</i>	<i>\$</i>
Judgment sum	10,742,838.17
Costs of action and bankruptcy proceedings	244,315.55
Interest calculated up to 5 September 2007	6,042,928.72
Less contract deposit retained	(5,000.00)
Total :	17,025,082.44

Proposal

16. For cases not involving fraud or negligence, the Financial Secretary

("FS") is empowered under section 38 of the Public Finance Ordinance (Cap. 2) to write off losses of public moneys, stores, etc. without financial limit. For cases involving fraud or negligence, FS may only exercise his power of write-off subject to such conditions, exceptions and limitations FC may specify. If fraud or negligence is involved, the current limit of delegated authority is \$500,000 in each case, or in respect of any one cause. Since the current case involves negligence of some GSD staff as set out in paragraph 7 above and the amount exceeds the financial limit, we propose to seek approval from FC to write off the irrecoverable debt. Subject to Members' views, we will seek FC's approval for writing off the debt as soon as practicable.

Advice sought

17. We welcome Members' views on the above proposal.

Financial Services and the Treasury Bureau
October 2011

CB(1)1771/07-08(05)

**For discussion
on 10 June 2008**

**Legislative Council Panel on Financial Affairs
Report on Write-off of a Judgement Debt**

Purpose

This paper seeks to consult Members again on the matter of a debt of \$17,025,082.44^{Note 1} (inclusive of costs of action and interest calculated up to 5 September 2007^{Note 2}) owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department (GLD)) for the disposal of unserviceable or obsolete government stores and confiscated goods.

Background

2. We last consulted the Panel on 6 June 2005 on a proposal to write off a debt of \$16.8 million (as at 24 June 2005)^{Note 3} owed to the Government by the Hong Kong Auctioneers & Estate Agency Ltd. (the auctioneer), who had been the contracted auctioneer of GSD for the disposal of unserviceable or obsolete government stores and confiscated goods since 1970s. Its last contract with the Government, and also the contract which gives rise to the present debt case, covers the period from 1 April 1996 to 31 August 1998 (the 1996 Contract). A copy of the relevant Panel paper reference LC Paper No. CB(1)1678/04-05(06) and a copy of our supplementary reply dated 12 July 2005 are at Annexes A and B for Members' reference. Members advised that the Panel should further discuss the proposal in due course after the Administration had provided the following supplementary information -

Note 1: The amount represents 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 at \$6,042,928.72 less a contract deposit of \$5,000.00.

Note 2: According to the Bankruptcy Ordinance, interest is not provable in respect of any period after commencement of the bankruptcy. 5 September 2007 was the date on which a Bankruptcy Order was granted against the Managing Director of the auctioneer.

Note 3: Originally the plan was to submit the proposal to the Finance Committee on 24 June 2005. The amount therefore reflected the judgement debt plus costs and interest up to 24 June 2005.

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- (a) reasons for not consulting the Department of Justice (D of J) on whether the default in proceeds payment by the auctioneer involved any criminal offences, and whether criminal proceedings should be instituted against the auctioneer or its Managing Director; and
- (b) further information on the internal investigation conducted, including -
 - (i) the reports of the internal investigation conducted;
 - (ii) the dates on which the disciplinary proceedings commenced and were concluded; and
 - (iii) the outcome of the investigation of the responsibilities of the senior management of GSD in the case, in particular the responsibilities of the then Director, Deputy Director and the immediate supervisor of the Senior Accounting Officer concerned.

Response to Outstanding Issues

Further Information on Criminal Investigations

3. As reported to Members in 2005, GSD had referred the case to the Independent Commission Against Corruption (ICAC). ICAC's investigations had found that the case did not involve fraud or corruption, but there were possible misconduct and/or negligence of duty on the part of the GSD staff concerned. Apart from this referral to the ICAC, at that time GSD focused on its internal investigation of the responsibilities of relevant officers in relation to the case, and actions to seek to recover the outstanding debts. In connection with the recovery actions, GSD, through a Deed of Settlement agreed with the Managing Director, received payments totalling \$6 million from the Managing Director. GSD did not refer the case to the Police for investigation into other possible criminal offences because there had been no indications that such other offences might be involved.

4. In line with some Members' advice at the Panel meeting in June 2005, GLD referred the case to the Police in July 2005 for investigation to establish whether other criminal offences might have been committed by the auctioneer or its Managing Director. The Police informed GLD on 18 April 2007 that their investigation had been

completed and that there was insufficient evidence to support a charge against any person.

5. On 20 April 2007, it came to the attention of the Government that the Managing Director had returned to Hong Kong. Apart from taking other action to recover the debt, GLD also informed the Police of the presence of the Managing Director in Hong Kong. After re-examining the case, the Police informed GLD on 9 July 2007 that there was insufficient evidence to charge any person after serious consideration of the evidence obtained and that there would be no prosecution.

Further Information on Internal Investigation

Release of Internal Investigation Reports and Dates on Which Disciplinary Proceedings Commenced and were Concluded

6. The purposes of the internal investigation were to ascertain if any of the officers involved in managing the 1996 Contract had failed to discharge their duties properly; and the responsibilities and accountability of individual officers concerned in relation to the default in payment proceeds.

7. It is an established practice of the Government not to comment on details of individual disciplinary cases. In this particular case, we have provided the Panel with information on the investigation findings and the disciplinary actions taken, including the division of work and the extent of involvement of the officers concerned, and the punishments inflicted (with dates) on them (see Annex B). We do not have anything further to supplement from the staff discipline angle.

The Responsibility of Senior Management in the 1996 Contract

8. The collection of the auction proceeds from the auctioneer and the monitoring of the contractor's performance are day-to-day operations of the front-line staff and their immediate supervisor.

9. Channels and mechanisms for reporting any irregularities or problems encountered to the senior management are well established. Apart from the normal channel of reporting to the senior management irregularities or problems encountered through file submissions, it was an established practice of GSD to hold senior staff meetings regularly during which members could present and discuss issues of concern and complex matters which required the attention of the senior management. The

Senior Accounting Officer, who was head of the Accounts Section and who reported directly to the Deputy Director, was one of the members of the meeting.

10. It was unfortunate that the Senior Accounting Officer responsible for overseeing the collection of auction proceeds from the auctioneer had failed to take appropriate action when there were delays in payment in the 1996 Contract. Neither had he drawn the attention of the senior management to the late payment position nor to the extent of the amount involved during the contract period. Furthermore, the Accounts Section should have reported the outstanding amount in an annual return of arrears of revenue in accordance with section 415 of the Financial and Accounting Regulations.

11. As reported previously, disciplinary action had already been taken against those officers (including the Senior Accounting Officer) who should be held responsible for the failure to supervise the 1996 Contract in accordance with the established civil service disciplinary mechanism.

12. As soon as the late payment situation was made known to the senior management of GSD, immediate action had been taken to recover the outstanding payments and to formulate improvement measures. The latter includes -

- (a) requiring the subject officers to submit to the senior management on a quarterly basis all arrears of revenue, in addition to the annual return as required in the Financial and Accounting Regulations;
- (b) conducting comprehensive reviews of the accounting procedures relevant to the sale of government properties by auction; and
- (c) revamping the auction procedures by imposing tighter control over the receipt of revenue from auctions (see paragraph 10 of Annex A).

13. The information outlined in paragraph 12 above shows that the senior management of GSD, i.e. the Director and the Deputy Director at the material time, had immediately taken steps to recover the debt and to prevent recurrence as soon as the issue was brought to their attention.

Latest Position

14. On 20 April 2007, D of J received information on the re-entry of the Managing Director of the auctioneer into Hong Kong since his departure in February 2000. 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^{Note 4}. 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 Official Receiver was the appointed trustee. D of J filed with the Official Receiver 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 Official Receiver.

15. The Official Receiver had conducted an investigation into the Managing Director's financial position and advised that the Managing Director was currently 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 Official Receiver 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^{Note 5}.

16. The Official Receiver 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 auctioneer, the Official Receiver had not yet applied to the Court for release of the liquidationship but considered it unlikely that there would be any dividend for distribution.

Note 4: D of J issued a statutory demand pursuant to section 6A(1)(a) of the Bankruptcy Ordinance (Cap. 6) against the Managing Director in March 2000. However, D of J was unable to serve the documents personally on the Managing Director because investigations revealed that he had left Hong Kong since 4 February 2000. D of J was therefore unable to petition bankruptcy against the Managing Director at that time.

Note 5: There is no reciprocal arrangement between Hong Kong and Thailand to enable the enforcement in Thailand of judgments given in Hong Kong.

Way Forward

17. At this point it seems unlikely that the separate processes of the liquidation of the auctioneer and the bankruptcy of the Managing Director will lead to dividends that can be distributed to the Government. We have considered the possibility of writing off the debt now but are inclined to write off the debt after expiry of the relevant Bankruptcy Order for prudence and in view of the amount of money involved.

Advice Sought

18. Subject to Members' agreement, we will review the matter after expiry of the relevant Bankruptcy Order to ascertain whether the debt is irrecoverable and to seek FC's agreement to write off the debt where appropriate.

Financial Services and the Treasury Bureau
June 2008

LC Paper No. CB(1)1678/04-05(06)

**For discussion
on 6 June 2005**

Legislative Council Panel on Financial Affairs

Write-off of a Judgement Debt

Purpose

The purpose of this paper is to consult Members on a proposal to write off an irrecoverable debt of \$16,797,419.83, inclusive of costs of action and interest calculated up to 24 June 2005^{Note}, owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department (GLD)) to conduct commercial disposal of unserviceable or obsolete government stores and confiscated goods.

Background

2. A debt of \$16,797,419.83 owed to the Government by the Hong Kong Auctioneers and Estate Agency Ltd. (HKAEAL), a wound up company, has been found to be irrecoverable. The amount comprises a judgement sum of \$10,742,838.17, being principally the default payments of sale proceeds from disposal of unserviceable or obsolete government stores and confiscated goods, costs of action and interest of \$6,059,581.66, calculated up to 24 June 2005, less \$5,000 in contract deposit.

Justification

Contract for provision of auctioneer service

3. Since the 1970s, through repeated success in competitive bidding organised every two years, HKAEAL had been GSD's contracted auctioneer for the sale of unserviceable or obsolete government stores and confiscated goods. In 1996, HKAEAL was again awarded a contract for providing the service for two years from 1 April 1996 to 31 March 1998. The contract was subsequently extended for five months and expired on 31 August 1998.

^{Note} As we plan to submit the proposal of write-off to the Finance Committee (FC) for consideration on 24 June 2005, the amount of interest is calculated up to the same date.

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4. In accordance with the contract, HKAEAL was to conduct the auctions and to collect the proceeds for the Government. Except for some delays in payments of the auction proceeds to Government, HKAEAL's performance had been satisfactory. To protect the Government's interest and to address the late payment problem, GSD tightened the terms of the contract in 1996 by introducing a late payment clause. This imposed on the company an interest charge of 1% above the prime rate on all outstanding amounts which had not been paid to the Government within 14 days of the relevant auctions.

Default in payment

5. 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. This problem, however, was not brought to the attention of GSD's senior management until after the end of the contract.

Actions taken to recover the outstanding payments

6. GSD took immediate action to recover the debt. It had several meetings with the Managing Director of HKAEAL both to press for payment and to assess HKAEAL's and its Managing Director's financial situation. Eventually, after much negotiations and efforts, a Deed of Settlement was concluded with the Managing Director on 31 March 1999 with a schedule of payment for full settlement of the outstanding amounts. Unfortunately, after making the initial several payments totalling \$6 million towards the debt, the company and the Managing Director were unable to deliver further. In the circumstances, GSD, through the Department of Justice, instituted legal proceedings in the High Court for recovery of the remaining amount. In November 1999, the Court ordered that HKAEAL and its Managing Director paid the Government the sum of \$10,742,838.17 plus interest from the date of judgement. The Court also awarded costs to the Government.

7. Despite the court order, HKAEAL failed to settle the judgement debt ordered by the Court. In June 2000, a winding-up order was then made against HKAEAL. The Official Receiver was appointed liquidator. Meanwhile, however, the Managing Director left Hong Kong in February 2000 and has not returned since then. Upon the application of the Official Receiver, a Warrant of Arrest against the Managing Director was granted by the Court in June 2000. In addition, investigations and searches were made

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to locate the Managing Director and to search his assets in countries where he had previous connections. Unfortunately, all these attempts were futile and the Warrant of Arrest was discharged in March 2004. While the liquidation process has yet to be fully concluded, the Official Receiver has advised that it is unlikely that any dividends would be paid. We therefore consider that the debt has become irrecoverable and should be written off.

Internal investigation and disciplinary actions taken

8. In parallel with the actions taken to recover the debt, GSD has conducted internal investigation into the case. The Independent Commission Against Corruption was also invited to look into the possibility of corruption. These investigations revealed that the case did not involve fraud or corruption but there were inadequacies in the performance of some staff in performing their duties.

9. Formal disciplinary proceedings were instituted against a Senior Accounting Officer. He was punished with a severe reprimand, together with a fine equivalent to reduction in salary by two increments for 12 months and a caution of removal from the service in the event of further misconduct. In addition, several other officers who were involved, namely, one Accounting Officer I, one Principal Supplies Officer, two Chief Supplies Officers and one Senior Supplies Officer were given either verbal or written warnings having regard to the division of responsibilities and the degree of their involvement in the matter.

Remedial actions taken

10. To forestall recurrence, GSD has taken various improvement measures to guard against late payments. Between 1998 and 2002, the auctioneer was required to advise the department of the gross auction value not later than one working day after the auction date, based on which the Accounts Section would immediately issue demand notes to the auctioneer for the gross sale proceeds. Demand notes outstanding by the due dates, if any, were immediately reported to the senior management and warning letters would be issued to the auctioneer in the event of late payments which could lead to termination of contract. No late payments by the auctioneer were found ever since. To further strengthen controls, GSD (now GLD) has taken over the auction function since November 2002. The auctions are now held 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 is only issued to the successful bidders upon

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confirmation of receipt of the proceeds or upon clearance of the cheque. The arrangements are considered satisfactory.

Proposal

11. The total amount proposed to be written off is \$16,797,419.83, broken down as follows-

<i>Item</i>	<i>\$</i>
Judgement sum	10,742,838.17
Costs of action	189,962.00
Interest calculated from date of judgement up to 24 June 2005	5,869,619.66
Less contract deposit retained	(5,000)
Total:	16,797,419.83

12. For cases not involving fraud or negligence, the Financial Secretary (FS) is empowered under section 38 of the Public Finance Ordinance (Cap. 2) to write off losses of public moneys, stores, etc. without financial limit. For cases involving fraud or negligence, FS may only exercise his power of write-off subject to such conditions, exceptions and limitations FC may specify. The current limit of delegated authority is \$500,000 in each case, or in respect of any one cause. Since staff negligence is involved in the current case (paragraphs 8 and 9 above) and the amount exceeds the financial limit, we need the approval from FC to write off the irrecoverable debt. Accordingly, we intend to seek FC approval for writing off the debt at its meeting on 24 June 2005.

Advice sought

13. We welcome Members' views on the above proposal.

Financial Services and the Treasury Bureau
May 2005

財經事務及庫務局
(庫務科)

香港下亞厘畢道
中區政府合署



FINANCIAL SERVICES AND THE
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12 July 2005

Clerk to LegCo Panel on Financial Affairs
Legislative Council
3/F, Citibank Tower
3 Garden Road
Central
Hong Kong
(Attn : Ms Connie Szeto)

Dear Ms Szeto,

**Panel on Financial Affairs
Follow-up to meeting on 6 June 2005**

I refer to your letter of 21 June 2005 conveying Members' request for supplementary information on our proposal to write off a judgement debt.

The information requested is in the attached note prepared by the Director of Government Logistics. I should be grateful if you could forward it to Members for their information.

Yours sincerely,

(Miss Amy Tse)

for Secretary for Financial Services and the Treasury

c.c. Hon Bernard Chan, JP
Chairman, LegCo Panel on Financial Affairs

Director of Government Logistics
(Attn: Mr Tommy Yuen)

Proposal to write off a judgement debt

6(a) Actions taken to recover the outstanding payment

- (i) *Please confirm whether GSD has, before reaching a Deed of Settlement with the Managing Director (MD) of the auctioneer on 31 March 1999, consulted the Department of Justice (DoJ) on whether the default in proceeds payment by the auctioneer involves any criminal offence, and whether criminal proceedings should be instituted against the auctioneer or its MD. In this connection –*
- *if GSD has consulted DoJ, please provide the advice given by DoJ;*
 - *if GSD has not consulted DoJ, please provide the reasons for having not done so.*

GSD did not consult DoJ on whether the default in proceeds payment by the auctioneer involved any criminal offence. Instead, the case was reported direct to the ICAC for investigation. However, ICAC's investigation, which was completed in March 2000 did not reveal any evidence of fraud or corruption, and no criminal proceedings were subsequently taken.

- (ii) *Please respond to a member's views and question, as follows-*
- *while the auctioneer has collected the auction proceeds for the Government, the proceeds are assets of the Government and not the auctioneer. Any proceeds owed by the auctioneer to the Government should be regarded as a liability of the auctioneer or its directors including its MD both under common law as well as under the Companies Ordinance, instead of a debt. In this connection, whether the auctioneer has gone into liquidation is irrelevant because the Government is not its creditor;*
 - *the Government should take appropriate actions (including legal actions) to recover the proceeds, and should not seek approval to write off the sum involved unless all possible means have been exhausted;*
 - *if the MD of the auctioneer took away the proceeds, he should be held liable for the offence. The Government should pursue its tracing claim to recover the proceeds from the directors including its MD and consider whether criminal proceedings should be instituted against him; and*
 - *in this connection, if GSD has consulted DoJ on its legal*

rights, please provide the advice given by DoJ. If not, please provide the reasons for having not done so.

According to legal advice, the Government is a creditor of the auctioneer. Pursuant to the contract between the auctioneer and the Government, the auctioneer agreed to pay to the Government not later than 14 days from the date of each auction the net proceeds of auction and if the auctioneer failed to pay to the Government the net proceeds of each auction within 14 days from the date of auction, the Government could impose interest charge for overdue payment. In default of payment, the auctioneer had breached the contract. The Government was entitled to sue the auctioneer, being the party to the contract, on breach of contract and claim against it for loss and damages suffered as a result of the breach. In addition, the Government was entitled to sue the MD for breach of the Deed of the Settlement or the Government might sue the MD as a constructive trustee. The liability of the auctioneer and the MD is civil liability under common law, and the loss and damages (i.e. the judgement debt awarded by the Court under the Judgement dated 29 November 1999) are civil debts recoverable from the auctioneer and the MD. The judgement debt was provable in the liquidation of the auctioneer and admitted by the Official Receiver as provable debt.

As regards actions taken to recover the proceeds, it may be noted that legal proceedings were instituted by the Administration against the auctioneer and the MD on 21 October 1999 with judgement and order of inquiry for assets tracing obtained on 29 November 1999. Statutory demands for the judgement debt were issued to the auctioneer and the MD on 23 March 2000. Request was made to the Immigration Department to put the MD on the Watch List on 20 April 2000. Searches had been conducted on assets (e.g. landed properties) of the MD and investigation agents had been engaged to conduct searches in 2000, 2001 and 2002 for the whereabouts of the MD and his assets in Hong Kong and the countries where he had previous connection. The auctioneer was wound up by the Court on 14 June 2000 and proof of debt for the judgement debt was filed with the Official Receiver who also obtained a warrant of arrest against the MD on 21 June 2001.

Despite the efforts, the MD cannot be located and there is no information as to the assets of the MD for the enforcement of the debt. As informed by the Official Receiver, the auctioneer had no asset to satisfy the debt. In view of the circumstances, DoJ has confirmed that all possible legal means have been exhausted in this case. The application for write off of the debt was made on the basis that it was irrecoverable.

Tracing was indeed a remedy pleaded in the Government's claim and an order of inquiry for tracing the proceeds of the auctions was granted by the High Court on 29 November 1999. Pursuant to the order of inquiry, the MD filed an affirmation with the High Court on 11 January 2000 accounting for the proceeds of auctions. From the information provided by the MD, the auctioneer's inability to pay the proceeds to the Government was due to the substantial financial loss in its business in the years 1997, 1998 and 1999. As there is no evidence to show that the proceeds of the auctions were used to purchase any assets, no assets could be identified for the purpose of tracing.

- (iii) *With the discharge of the Warrant of Arrest against the MD of the auctioneer in March 2004, please confirm:*
- *whether the MD may return to Hong Kong and will be free from any liability (both criminal or civil) for the case; and*
 - *whether the Administration would conclude the case after seeking approval to write off the debt and take no further action to recover the proceeds.*

Since June 2000, the MD has been placed on and is still on the Watch List of the Immigration Department. He will remain on the Watch List until the Immigration Department is asked to delete his name therefrom. The writing-off of the debt and costs will not deprive the Government of its right to take appropriate legal action as it sees fit when there is further information for recovery of the debt. If the MD returns to Hong Kong, the Immigration Department will inform GLD of the same. GLD would then consider initiating action to enforce the judgement debt, such as petitioning for bankruptcy, if the limitation period for taking an action upon the judgement for the purpose of enforcement has not expired. The limitation period is 12 years from the date of the judgement but the Administration needs the leave of the Court to

execute the judgement after 6 years from the date of the judgement.

- (iv) *In connection with item (iii) above, please confirm-*
- *what other legal actions the Administration would take to recover the proceeds; and*
 - *if the MD is subsequently located in other jurisdictions, whether the Administration would make arrangement to extradite the MD back to Hong Kong.*
-

The Administration has already exhausted every possible way, including initiating legal actions against both the auctioneer and its MD, pursuing tracing with a view to identifying any assets that were purchased with the auction proceeds, arranging searches both locally and overseas on the whereabouts of the MD and his assets if any, to recover the outstanding payments. All the efforts were in vain and the Administration considered that the debt is irrecoverable.

If the MD is subsequently located in other jurisdictions, the Administration would review all relevant situations and consider taking appropriate action against him to enforce the judgement.

6(b) Internal investigation

- (i) *Please provide the report of the internal investigation conducted by the Administration on the case, including-*
- *the report(s) of the disciplinary proceedings taken against the civil servants involved in the case, including a Senior Accounting Officer, a Accounting Officer I, a Principal Supplies Officer, two Chief Supplies Officers and one Senior Supplies Officer, and the dates on which the disciplinary proceedings commenced and were concluded; and*
 - *the outcome of the investigation on the responsibilities of the senior management of the GSD in the case, in particular the responsibilities of the then Director, Deputy Director and the immediate supervisor of the Senior Accounting Officer concerned.*
-

As set out in paragraph 9 of LC Paper No. CB(1)1678/04-05(06), formal disciplinary proceedings were instituted against a Senior Accounting Officer. He was punished with a severe reprimand,

together with a fine equivalent to reduction in salary by two increments for 12 months and a caution of removal from the service in the event of further misconduct. In addition, several other officers who were involved, namely, one Accounting Officer I, one Principal Supplies Officer, two Chief Supplies Officers and one Senior Supplies Officer were given either verbal or written warnings having regard to the division of responsibilities and the degree of their involvement in the matter. A summary table on the actions taken against the officers concerned is at Annex for Members' information.

Investigation revealed that the Senior Accounting Officer, Head of the Accounts Section of the then GSD, was primarily responsible for the failure in monitoring the receipt of the auction proceeds from HKAEAL (the auctioneer) and to apprise the senior management of the late payment situation in accordance prevailing Government regulations. Five other officers at management level were also found to have failed to take proper action in enforcing due payment or in the recovery of the outstanding payments from the auctioneer. Disciplinary actions were taken against them given their respective degree of involvement and responsibilities.

Investigation also revealed that upon awareness of the late payment situation the senior management had taken immediate action to recover the outstanding payments and to formulate improvement measures to forestall recurrence.

- (ii) *Please provide the procedures and requirements for the concerned staff to report to the senior management of GSD on the payment of auction proceeds during the period from 1996 to 1998 when the default happened.*
-

The Accounts Section was responsible for receiving payments from the auctioneer. According to section 17 of the Public Finance Ordinance, "any public officer responsible for the collection of moneys due to the Government shall collect such moneys promptly and in full unless authorized by the Director of Accounting Services or under any enactment to defer collection or to arrange collection by instalment". The Senior Accounting Officer, as head of the Accounts Section,

therefore had to ensure prompt collection of the proceeds.

If the Senior Accounting Officer or his staff was unable to collect the auction proceeds promptly, he should take action according to section 405(1) of the Financial and Accounting Regulations which states that "an officer who experiences difficulty in collecting money due to the Government, whether from public officers or others, should report the circumstances without delay to his Controlling Officer." Furthermore, the Accounts Section should include the outstanding payments in an annual return of arrears of revenue in accordance with section 415 of the Financial and Accounting Regulations.

However, the Accounts Section neither reported to the senior management the late payment situation nor included the outstanding payment in the annual returns as stipulated in the Government's regulations.

- (iii) *Please provide the date on which the default was brought to the attention of the senior management of GSD, and the reasons why the senior management was unable to identify the problem before then.*
-

At a senior staff meeting (STAM) held on 30 December 1996, the then DGS reminded all the staff present that "issues of common concern and complex matters when required the attention of the senior management should be discussed at STAM. As director, he expected staff to keep him informed of all important developments, particularly when problems had arisen affecting departmental operations or relations with other departments.... The STAM meetings provided one suitable opportunity to raise these problems and to seek early guidance on how they should be handled. Staff could also raise matters at other times, orally or by minutes".

Notwithstanding the senior management's directive, the late payment situation was not brought to the senior management's attention when measures could have been taken to address the continuation of the late payment problem during the 1996 contract and the accumulation of outstanding payments.

The late payment of auction proceeds by the auctioneer under the 1996 Contract first came to the attention of the senior management on 10 September 1998. The senior management immediately requested the relevant sections to provide additional information on the case. It was not until 11 January 1999 when the full magnitude of HKAEAL's debt, i.e. \$15.8 M inclusive of net sales proceeds and interest was identified and reported to the senior management.

- (iv) *Please set out the remedial actions taken by the senior management of GSD for the case since the default was brought to its attention in 1998.*
-

To forestall recurrence, strenuous efforts were made to guard against late payments by the new auctioneer who had taken over from the auctioneer from 1 September 1998. The measures included :

- instructing staff to bring late payment cases to the immediate attention of the senior management; and
- issuing warning letter in the event of late payment which could lead to termination of the contract.

The Treasury was also requested to recommend further improvements to the accounting procedures relevant to the sale of government properties by auction and the following measures were implemented :

- the new auctioneer was required to advise the department of the gross auction value not later than one working day after the auction date, based on which the Accounts Section would immediately issue demand notes to the new auctioneer for the gross sales proceeds; and
- demand notes outstanding by the due dates would be reported to the senior management and included in the annual returns of arrears of revenue to the Director of Accounting Services.

In the year 2000 contract for the provision of auction services, ever tighter control over the receipt of the revenue from auctions was exercised as follows:

- the new auctioneer was required to use a separate and independent bank account solely for receiving and transacting the auction

proceeds from sale of Government properties under the contract;
and

- the new auctioneer was required to pay half of gross proceeds collected from each auction into the designated bank account on the auction day while the balance should be deposited into the bank account on the following day. Interest earned on money in the designated account would accrue to the Government. Having deducted the agreed commission and payment of advertising expense, the auctioneer should transfer the net proceeds with the interest earned, if any, to the Government's account. Failure to transfer the net proceeds according to the contract term would constitute a breach of the contract which would lead to contract termination.

A general review of the auction arrangements was carried out in early 2002. As a result, the Government itself has taken over the auction function since November 2002 with a view to exercising tighter control over the auctioneering activities.

Under the new arrangements, the auctions were held in-house with new auctioneer employed to provide the professional service of conducting the auction only. The new auctioneer is no longer responsible for collecting any auction proceeds from the successful bidders. Successful bidders are required to pay the full purchase price directly to the Government's designated bank account or GLD's Shroff Office by EPS or in cash or in the form of a crossed cheque by 4.30 p.m. on the auction day. A release note with details of the items sold and the name/identity card number of the successful bidders will be issued to successful bidders only upon confirmation of receipt of the full purchase prices or upon clearance of the cheque.

In 2003, GLD conducted a further review of the new arrangements and found the process working satisfactorily. In addition, the ICAC also carried out a study in the same year on the practices and procedures of disposal of government properties by public auction. The ICAC found the arrangements generally in order but with room for improvement in respect of the control over cartel bidding during an auction and the commitment by the new auctioneer and its staff on certain ethical practices. The recommendations of the ICAC regarding cartel bidding is already implemented by revising the terms and conditions of the auction sales in December 2004. The ethical commitment by the new auctioneer is stipulated in the contract document when the contract for

employing an auctioneer to provide the professional services of conducting the auction is renewed in 2005.

- (v) *Please confirm whether the Administration considers that there were inadequacies in the senior management in handling the case.*
-

The Administration considers there were no inadequacies in the senior management in handling the case. Investigation revealed that the Senior Accounting Officer, Head of the then Accounts Section, was primarily responsible for the failure in monitoring the receipt of the auction proceeds from the auctioneer and to apprise the senior management of the late payment situation in accordance with the Government regulations.

After the case was brought to the attention of the senior management, they had taken immediate action to try to recover the debt including referring the case to the Department of Justice for assessment and recovery action and implemented a number of measures as stated in (b)(iv) above to forestall recurrence.

Annex

**Proposal to write off a judgement debt
Summary of actions taken against the officers concerned**

Officer	Summary	Action taken
Officer A A Senior Accounting Officer	✧ Officer A had overall responsibility for collection of sale proceeds in the Accounts Section. ✧ Officer A had failed to take appropriate action when there were delays in payment in the 1996 Contract. Specifically, Officer A had failed to inform the Procurement Division when the Hong Kong Auctioneers and Estate Agency Limited ("HKAEAL") failed to make payments in accordance with the relevant contract provisions on 37 occasions.	✧ Disciplinary proceedings under section 10 of the Public Service (Administration) Order ("PS(A)O") commenced on 21.6.2001. ✧ The officer was awarded a severe reprimand and a fine equivalent to reduction in salary by two increments for 12 months, with a caution of removal from service in the event of further misconduct under section 10 of the PS(A)O on 16.5.2002.

Officer	Summary	Action taken
Officer B An Accounting Officer I	<ul style="list-style-type: none">✧ Responsible to Officer A for, among others, taking follow-up actions on outstanding demand notes and conducting daily checks on monies collected. ✧ Prior to the commencement of the 1996 Contract, Officer B issued reminders to HKAEAL to chase payment of the sale proceeds, and sent minutes/memos to inform the Procurement Division of the problem of late payments for necessary follow up action. Officer B ceased to issue reminders and take other appropriate actions to urge HKAEAL for prompt payment of the sale proceeds soon after the commencement of the 1996 Contract. Officer B also ceased to notify the Procurement Division of HKAEAL's default payments. ✧ As it was considered that Officer A should be held primarily responsible for the matter, Officer B was given a verbal warning.	<ul style="list-style-type: none">✧ The officer was awarded a verbal warning on 18.3.2002.

Officer	Summary	Action taken
Officer C A Chief Supplies Officer	<ul style="list-style-type: none">✧ Officer C was the Head of the General Division which was the “user” of the 1996 Contract in that it made use of the public auction service provided by HKAEAL to dispose of unserviceable and/or surplus stores items.✧ Officer C was aware of the problem of late payments of HKAEAL, but when consulted on the latter’s performance upon the expiry of the 1996 Contract, Officer C did not take action or draw the problem to the attention of the Procurement Division. Instead, Officer C confirmed that the service of HKAEAL was satisfactory.✧ It was considered that Officer C’s passive attitude and inaction were not acceptable for an officer of his rank and experience and he was given a verbal warning.	<ul style="list-style-type: none">✧ The officer was awarded a verbal warning on 26.2.2002.
Officer D A Principal Supplies Officer	<ul style="list-style-type: none">✧ Officer D was the Head of the Procurement Division which had the overall contract management responsibility of the 1996 Contract.✧ The officer approved the first extension of the 1996 Contract without checking the payment situation.✧ It was considered that the Procurement Division should be held responsible for its inaction in safeguarding the interest of the department, given the Division’s responsibility to assess the performance of the contractor during the contract period and to verify its payment records before deciding to extend or renew the contract. Officer D, as the head of the Division, was given a verbal warning.	<ul style="list-style-type: none">✧ The officer was awarded a verbal warning on 26.2.2002.

Officer	Summary	Action taken
Officer E A Chief Supplies Officer	<ul style="list-style-type: none">✧ Officer E of the Procurement Division was the head of the buying groups and was responsible for managing the 1996 Contract. Officer E was also responsible for arranging the extension of the 1996 Contract. ✧ Officer E directed the procurement staff to proceed with the first extension of the 1996 Contract. Although aware of the late payment problem, Officer E did not check whether the late payment had been settled. ✧ It was considered that Officer E had inadequacy in discharging the duties concerned and the officer was given a written warning.	<ul style="list-style-type: none">✧ The officer was awarded a written warning on 26.2.2002.
Officer F A Senior Supplies Officer	<ul style="list-style-type: none">✧ Officer F of the Procurement Division was the contract manager of the 1996 Contract. ✧ Officer F approved the second extension of the 1996 Contract without checking whether the late payment had already been settled. ✧ It was considered that Officer F had inadequacy in discharging the duties and the officer was given a written warning.	<ul style="list-style-type: none">✧ The officer was awarded a written warning on 26.2.2002.