

**Panel on Financial Affairs**

**(Extract)**

**Minutes of meeting  
held on Monday, 6 June 2005 at 9:00 pm  
in the Chamber of the Legislative Council Building**

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**VI. Proposal to write off a judgement debt**

(LC Paper No. CB(1)1678/04-05(06) — Paper provided by the Administration)

Briefing by the Administration

55. At the invitation of the Chairman, the Deputy Director of Government Logistics (DD/GL) briefed members on the Administration's proposal to write off an irrecoverable debt owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department) to conduct commercial disposal of unserviceable or obsolete government stores and confiscated goods. He highlighted the following points:

- (a) The irrecoverable debt amounted to \$16,797,419.83 was owed to the Government by the Hong Kong Auctioneers and Estate Agency Ltd. (HKAEAL). The amount comprised 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;
- (b) HKAEAL had been GSD's contracted auctioneer for the sale of unserviceable or obsolete government stores and confiscated goods since the 1970s. 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. 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;

- (c) 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 amounts. After making several repayments totalling \$6 million towards the debt, HKAEAL and the MD were unable to deliver further. The Administration instituted legal proceedings in the High Court for recovery of the remaining amount. In November 1999, the Court ordered that HKAEAL and its MD 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;
- (d) Due to failure of HKAEAL to settle the judgement debt ordered by the Court, a winding-up order was then made against the company in June 2000. The Official Receiver (OR) was appointed liquidator. Meanwhile, however, the MD left Hong Kong in February 2000 and had not returned since then. Upon the application of the OR, a Warrant of Arrest against the MD was granted by the Court in June 2000;
- (e) 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 OR 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;
- (f) GSD had conducted internal investigation into the case. The Independent Commission Against Corruption (ICAC) 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. Formal disciplinary proceedings were instituted against a Senior Accounting Officer (SAO) and several other officers involved in the case. The relevant officers were punished having regard to the division of responsibilities and the degree of their involvement in the matter; and

- (g) For cases not involving fraud or negligence, the Financial Secretary (FS) was 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 might only exercise his power of write-off subject to such conditions, exceptions and limitations the Finance Committee (FC) of the LegCo might specify. 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 was required. The Administration intended to seek FC's approval for writing off the debt at its meeting on 24 June 2005.

### Discussion

#### *Actions taken to recover the outstanding payments*

56. Mr Albert HO pointed out that HKAEAL was the trustee for the auction proceeds and that the case involved theft of public moneys by the company, which was a criminal offence. He enquired why GSD had not referred the case to the Police when the default payment was discovered in August 1998.

57. DD/GL believed that the prime concern of GSD in August 1998 was to recover the default payment from HKAEAL as soon as possible. Indeed, GSD, after consulting the Department of Justice (DoJ), had negotiated with the company and subsequently concluded with its MD a Deed of Settlement in March 1999 for full settlement of the outstanding amounts in accordance with a schedule. However, after making payments totaling \$6 million, the auctioneer and the MD failed to deliver further. GSD through DoJ then instituted legal proceedings in the High Court for recovery of the remaining amount.

58. Mr Albert HO and Mr Ronny TONG were not satisfied with the Administration's response. They requested the Administration to confirm whether GSD had, before reaching the Deed of Settlement with the MD in March 1999, consulted DoJ on whether the default in payment by HKAEAL involved any criminal offence, and whether criminal proceedings should be instituted against the company or its MD. In this connection, Mr TONG requested the Administration to provide the advice given by DoJ on the matter. If GSD had not consulted DoJ, the Administration was requested to provide the reasons for having not done so.

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59. Mr Ronny TONG pointed out that while HKAEAL had collected the auction proceeds for the Government, the proceeds were assets of the Government and not the company. Any proceeds owed by the company to the Government should be regarded as a liability of the company or its directors including its MD both under common law as well as under the Companies Ordinance (Cap. 32), instead of a debt. In this connection, whether the auctioneer had gone into liquidation was irrelevant because the Government was not its creditor. Mr TONG opined that 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 had been exhausted. If the MD 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. Mr TONG further requested the Administration to provide the advice given by DoJ on its legal rights. If GSD had not consulted DoJ in this regard, the Administration was requested to provide the reasons for having not done so. DD/GL undertook to provide written response to Mr TONG's views and questions mentioned above.

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60. Given that the liquidation process in respect of HKAEAL had yet to be fully concluded, Miss Mandy TAM and Mr CHAN Kam-lam questioned whether it was appropriate to write off the debt at this stage. With the discharge of the Warrant of Arrest against the MD in March 2004, Mr CHAN was concerned whether the MD might return to Hong Kong and would be free from any liability (criminal or civil) for the case, and whether the Administration would conclude the case after seeking FC's approval to write off the debt and take no further action to recover the proceeds. In this connection, Mr CHAN requested the Administration to confirm what other legal actions the Administration would take to recover the proceeds, and if the MD was subsequently located in other jurisdictions, whether the Administration would make arrangement to extradite the MD back to Hong Kong.

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61. DD/GL advised that the Administration had conducted investigations and searches to locate the MD and to search for his assets in countries where he had previous connections. However, all these efforts were in vain. The Administration had sought the OR's view on whether there would be assets from HKAEAL to satisfy the debt. As the OR had confirmed in writing that it was unlikely that any dividends would be paid, the Administration considered that the debt had become irrecoverable and therefore proposed to write it off. As regards concern about the discharge of Warrant of Arrest against the MD, DD/GL said that it was a decision made by the Court. He undertook to provide written response to members' concerns raised in paragraph 60 above.

62. The Chairman enquired whether the proposed amount of debt to be written off should include interest (\$5,869,619.66 calculated up to 24 June 2005). In response, the Deputy Secretary for Financial Services and the Treasury (Treasury)<sup>3</sup> (DS/FST(T)<sup>3</sup>) said that the amount of debt owed by HKAEAL to the Government was calculated in accordance with the terms of the contract entered with the auctioneer. The amount, which included the default proceeds, interest and costs of action, was a debt outstanding to the Government.

*Remedial actions taken and responsibilities of the staff concerned*

63. Mr Albert HO, Ms Emily LAU and Mr LEE Cheuk-yan were concerned whether there were loopholes in the accounting procedures relating to sale of government properties by auction and the requirements for GSD's staff to report to the senior management on the collection of proceeds from the auctioneer. They opined that there should be rules and procedures for the staff to report the payment of auction proceeds to the senior management and for the latter to monitor the payment situation of the auctioneer.

64. On the arrangement for collection of proceeds from HKAEAL, DD/GL said that according to the contract between GSD and the company made in 1996, the latter was required to collect the auction proceeds from successful bidders for the Government and reimbursed the sum after deducting the expenses incurred in an auction within 14 days after the auction. As regards concern about the reporting requirements on HKAEAL's payment of proceeds, DD/GL said that disciplinary proceedings against the SAO involved in the case revealed that he had not complied with the requirements of ensuring prompt collection of proceeds from the company and reporting late payments to the senior management of GSD.

65. Ms Emily LAU enquired about the details of the internal investigation conducted by the Administration on the case, including the responsibilities of the senior management of the GSD, and the disciplinary actions taken against the staff concerned.

66. DD/GL responded that formal disciplinary proceedings were instituted against the SAO who 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.

67. Upon further enquiry by Ms Emily LAU, DD/GL advised that the range of punishment that might be imposed under formal disciplinary action included reprimand, severe reprimand, financial penalty, reduction in rank, compulsory retirement, and dismissal. The disciplinary proceedings on the case had been undertaken in accordance with the established disciplinary procedures for the civil service. During the process, the staff concerned had been given opportunities to make representation on the misconduct they alleged to have committed and the right of appeal against the disciplinary decisions taken on them. The formal disciplinary proceedings had taken about a year to complete. DD/GL confirmed that the staff concerned had not appealed against the disciplinary actions and that all the actions had been implemented after the proceedings were concluded in May 2002.

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68. Ms Emily LAU and Mr LEE Cheuk-yan expressed concern about the role and responsibilities of the senior management of GSD in the case, including the then Director, Deputy Director of GSD and the immediate supervisor of the SAO concerned. They were concerned whether there were 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. They requested the Administration to provide information in this regard, as well as the date on which the problem was brought to the attention of the senior management, the reasons for the senior management being not able to identify the problem before then, and the remedial actions taken by the senior management for the case since the default was brought to its attention in 1998.

69. DD/GL said that the internal investigation on the case revealed that the default in payment involved proceeds from 15 auctions conducted by HKAEAL during the period from January to August 1998. DD/GL pointed out that according to the procedures in 1998, the Accounts Section of GSD, headed by the SAO concerned, was responsible for receiving payments from auctioneers. There were rules for the Accounts Section to ensure prompt collection of the proceeds and report problem of collection to the senior management. Indeed in 1996, the Accounts Section introduced a late payment clause to impose interest charge on the auctioneer's outstanding proceeds which had not been paid to the Government within 14 days of the relevant auctions. The SAO 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. There had been no report of any problem in collection of proceeds before the late payment situation was

brought to the attention of the senior management after the expiry of the contract with the auctioneer on 31 August 1998. DD/GL added that HKAEAL had been GSD's contracted auctioneer since the 1970s and that its performance had been satisfactory. This might have influenced the concerned SAO in handling the late payment problem. DD/GL advised that after the case was brought to the attention of GSD's senior management, they had taken immediate action to try to recover the debt, including referral of the case to DoJ for assessment and recovery action, to conduct internal investigation and to implement a number of measures to forestall recurrence. Both the internal investigation and the investigation undertaken by the ICAC on the case did not reveal any problem relating to the senior management.

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70. Mr LEE Cheuk-yan and Ms Emily LAU were not convinced of the Administration's response which implied that the senior management of GSD had no responsibility for the case. They requested the Administration to address their concerns and questions raised in paragraph 68, and confirm whether the Administration considered that there were inadequacies in the senior management in handling the case. Ms LAU further requested the Administration to provide the report of the internal investigation on the case, including the report(s) of the disciplinary proceedings taken against the civil servants involved in the case, the dates on which the disciplinary proceedings commenced and concluded, and the outcome of the investigation on 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 SAO concerned. DD/GL responded that as the internal investigation report involved personal data of the officers concerned, the Administration would consider to what extent the report could be disclosed.

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71. Miss Mandy TAM enquired about the measures taken by the Administration to improve the existing arrangement relating to sale of government properties by auction and whether it would consider inviting the Director of Audit to recommend on improvement measures.

72. DD/GL advised that to avoid recurrence of the case, GSD had taken various improvement measures to guard against late payments. Between 1998 and 2002, the auctioneer was required to advise GSD 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 had taken over the auction

function since November 2002. The auctions were now held with an auctioneer hired to provide the professional service of conducting the auction only. The auctioneer was no longer responsible for collecting any auction proceeds from the successful bidders who were required to pay the proceeds directly to the Government by 4:30 p.m. on the auction day. A release note was only issued to the successful bidders upon confirmation of receipt of the proceeds or upon clearance of the cheque.

*Follow-up actions*

73. Ms Emily LAU considered that the Administration had not provided sufficient information on the case for members to consider the proposal of writing off the judgement debt. She urged the Administration to withhold its plan of submitting the proposal to the FC on 24 June 2005 and requested the Administration to provide information addressing members' questions and concerns raised at the meeting. Members agreed that the Panel should further discuss the proposal in due course after the Administration had provided the supplementary information.

74. Responding to Ms Emily LAU's enquiry, DS/FST(T)3 confirmed that there was no urgency for the Administration to write off the debt.

*(Post-meeting note: The Administration was invited to provide information requested by members in paragraphs 58, 60, 68 and 70 above and to respond to members' views and questions in paragraph 59 above.)*

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