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## INFORMATION NOTE

### Authority for Write-off

#### 1. Background

1.1 At its meeting held on 2 December 2011, the Finance Committee ("FC") considered the Administration's proposal to write-off a HK\$17 million irrecoverable debt owed to the Government. Members noted that the Financial Secretary ("FS") must obtain approval from FC for authorizing any write-off of public moneys involving fraud or negligence exceeding HK\$500,000. The FC Chairman asked the Research Division ("RD") of the Legislative Council Secretariat to prepare an information note with possible input from the Administration on the background leading to the imposition of conditions from FC to FS in exercising the authority to write-off.

1.2 This information note provides information on the historical development of the authority for write-off such as the delegation limits, the levels of delegated powers, the conditions and limitations on the write-off powers delegated to departments, and the cases requiring FC's consideration.

#### 2. Legislative provision and Administration's arrangement regarding the authority for write-off

##### Legislative provision

2.1 Section 38(1) of the *Public Finance Ordinance (PFO)*, Cap. 2, provides, inter alia, that FS may:

- (a) abandon, remit or waive any claims by or on behalf of the Government;
- (b) write-off arrears of revenue;
- (c) write-off losses or deficiencies of public moneys, stamps, securities or stores; and

- (d) write-off condemned, unserviceable or obsolete stores or other movable property belonging to or provided by the Government.

The term "public moneys" in 38(1)(c) means (a) the general revenue; (b) any moneys which are accounted for in the books or records of account of the Director of Accounting Services; and (c) any other moneys which the Chief Executive may declare in writing to be public moneys for the purposes of *PFO*.

2.2 Section 38(1A) states that in any case involving fraud or negligence, FS may only exercise the powers under section 38(1) subject to any conditions, exceptions or limitations FC may specify. However, *PFO* does not specify a numerical limit of the amount that FS can authorize at one time in case of write-off involving fraud or negligence. The current limit was specified by FC in 1989. Basically, FS could authorize write-offs of any amount under section 38(1), but if fraud or negligence was involved, he could only exercise the power subject to conditions, exceptions and limitation specified by FC.

### Administration's arrangement

2.3 With regard to losses arising from theft or suspected theft, the Administration has set the condition that such losses are to be treated for the purpose of write-off as cases involving fraud or negligence on the part of a public officer. Application for write-off must be made in accordance with *Financial and Accounting Regulation 135*<sup>1</sup> to the Secretary for Financial Services and the Treasury. In other words, under such arrangement, government departments are not empowered to write-off losses arising from theft or suspected theft.

2.4 However, there may be minor losses with small amount of money lost. For administrative convenience, the Administration has adopted the approach of seeking FC's approval of setting a maximum limit<sup>2</sup> which excludes the requirement of treating losses arising from theft as losses involving fraud or negligence on the part of a public officer. Following investigation within the department concerned, such losses are authorized to be written-off departmentally.

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<sup>1</sup> The *Regulation* states that except where powers have been delegated to departmental level, application for write-off must be made to the Secretary for Financial Services and the Treasury copied to the Director of Accounting Services and the Director of Audit in each case.

<sup>2</sup> FC approved the limit setting at HK\$500 in July 1985, HK\$2,000 in July 1986 and HK\$50,000 in July 1989. Since then, such limit has not been adjusted for some 20 years.

### **3. Historical development of the authority for write-off**

#### Cases involving fraud or negligence

##### *Finance Committee meeting held on 11 May 1983*

3.1 The discussion about the conditions, exceptions and limitations for write-off may be dated back to the 1980s. To implement section 38 of *PFO* enacted on 1 April 1983, the Administration proposed at the FC meeting held on 11 May 1983 that, in any one case of loss or in respect of any one cause of loss, where fraud or negligence on the part of a public officer was involved, write-off of public moneys or valuables in excess of HK\$250,000 had to be referred to FC for approval. However, the rationale of setting a limit of HK\$250,000 was not given.

3.2 In cases of public moneys or valuables up to HK\$250,000, the Administration proposed that FS (including the then Deputy Financial Secretary) was empowered to write-off the losses. According to the Administration, this proposed arrangement ensured that senior government staff paid personal attention to those cases. In the end, FC approved the proposal.

##### *Finance Committee meeting held on 19 July 1989*

3.3 The Administration invited FC to approve a revised limit of financial powers at the meeting held on 19 July 1989, where the Administration proposed that FS could authorize write-offs up to HK\$500,000 (to double the amount from HK\$250,000) to restore the real value<sup>3</sup> and make further changes unnecessary for the next few years. In other words, in any one case of loss or in respect of any one cause of loss, where fraud or negligence is on the part of a public officer, FS would have to obtain the decision of FC as to the conditions, exceptions or limitations by which to write-off public moneys or valuables exceeding HK\$500,000.

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<sup>3</sup> For reference, the Hong Kong economy experienced high inflation in the 1980s. Between 1983 and 1989, the accumulated inflation rate reached 43%.

3.4 Under section 38(2) of *PFO*, FS may in writing delegate to any public officer any of the powers conferred upon him by section 38(1) subject to such conditions, exceptions and limitations as are specified in the delegation. For any case of loss amounting to not more than HK\$500,000, where FS can authorize the write-off, the delegation of authority within the Administration was set out in the FC paper<sup>4</sup>: Secretary for the Treasury can authorize write-offs up to HK\$500,000 (increased from HK\$250,000), Principal Assistant Financial Secretary, up to HK\$250,000 and Assistant Financial Secretary up to HK\$100,000).

3.5 The limits were subsequently endorsed by FC. Since then, the Administration's maximum limit of write-off in each case (i.e. HK\$500,000) has remained unchanged.

#### *Finance Committee meeting held on 2 December 2011*

3.6 At the meeting held on 2 December 2011, the Administration sought FC's approval to write-off a debt amounting to about HK\$17 million owed to the Government by the Hong Kong Auctioneers & Estate Agency Ltd. ("HKAEAL"). Since government staff negligence was found involved in this debt case and the amount exceeded the specified financial limit, the approval from FC for FS to write-off the amount of irrecoverable debt would be required.

3.7 In the course of discussions, a member asked the Administration to provide the details of write-off cases that require FC's consideration. He also raised the concern that the current limitation of amount of public moneys, etc., that FS can write-off (i.e. HK\$500,000) was determined more than 20 years ago, FC should discuss whether the conditions, etc., associated with FS's authority should be revised.

3.8 With regard to the details of cases that require FC's consideration for write-off, the information provided by the Administration indicates that in the four terms of LegCo (i.e. between 1998 and 2012 legislative years), the HKAEAL case was the only incident. There are unlikely any requests for write-off by FC within this legislative year.

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<sup>4</sup> Legislative Council (1989).

3.9 The Administration also provided the number of approved write-off cases involving fraud or negligence. Under section 38 of *PFO*, the Administration approved a total of 26 write-off cases involving fraud or negligence (totalling about HK\$300,000) in financial year 2009-2010 and 15 cases (about HK\$150,000) in financial year 2010-2011. However, the Administration had not provided details of those cases.<sup>5</sup>

#### Cases not involving fraud or negligence

3.10 FS is authorized to write-off losses not involving fraud or negligence. The levels at which write-off powers have been delegated by FS to departments and the conditions and limitations to those powers imposed by FS are set out in *Financial Circulars*. The initial levels of delegated powers and their subsequent adjustments are provided below.

#### *Financial Circular No. 17/83 issued in May 1983*

3.11 As for Heads of Departments and their deputies/assistants (of D2 or DJL2 rank and above), the levels of delegated powers were HK\$20,000 and HK\$5,000 respectively. For losses in excess of the limit of HK\$20,000 in each case, application for write-off had to be made in accordance with *Financial and Accounting Regulation 135* to the Secretary for Financial Services and the Treasury for approval.

#### *Financial Circular No. 11/86 issued in August 1986*

3.12 The Administration adjusted the levels of delegated powers of write-off in each case in August 1986. The limit for Heads of Departments was HK\$50,000 (increased from HK\$20,000), and their deputies/assistants (of D2 or DJL2 rank and above) was HK\$10,000 (increased from HK\$5,000). In addition, for losses in excess of HK\$50,000 in each case, application for write-off had to be made to the Secretary for Financial Services and the Treasury for approval.

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<sup>5</sup> Financial Services and the Treasury Bureau (2011b).

*Financial Circular No. 14/89 issued in July 1989*

3.13 The Administration increased the levels of delegated powers of write-off five times in each case in July 1989. However, the basis of the adjustment had not been explained.

3.14 As for Heads of Departments and their deputies/assistants (of D2 or DJL2 rank and above), the adjusted levels were HK\$250,000 (increased from HK\$50,000) and HK\$50,000 (increased from HK\$10,000) respectively. For losses in excess of HK\$250,000 in each case, application for write-off had to be made to the Secretary for Financial Services and the Treasury for approval.

*Financial Circular No. 4/97 issued in January 1997*

3.15 The Administration approved further extension of the authority delegated to departments to approve write-off of losses or deficiencies of stores in cases not involving fraud or negligence on the part of a public officer to Departmental Secretaries ranked at or above Point 45 of the Master Pay Scale in January 1997. The levels of delegated powers to handle write-offs in each case or in respect of any one cause were as follows:

- (a) Departmental Secretaries ranked at or above Point 45 of the Master Pay Scale: up to HK\$5,000 for losses and deficiency of stores. Controlling Officers who wished to obtain approval for designated officers of equivalent rank in the department, other than the Departmental Secretary, to exercise the delegated power might seek the Secretary for the Treasury's approval of such further delegation on a case-by-case basis. All such requests should be addressed to the Tender Division of Finance Branch<sup>6</sup>;
- (b) Deputy/Assistant Heads of Departments/Bureau of D2/DL2 rank and above: up to HK\$50,000 (remained unchanged); and
- (c) Heads of Departments (irrespective of rank): up to HK\$250,000 (remained unchanged).

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<sup>6</sup> This arrangement has not been changed since then.

*Financial Circular No. 6/2000 issued in June 2000*

3.16 The Administration issued the *Financial Circular No. 6/2000* in June 2000 setting out the current levels of write-off powers delegated to departments in each case or in respect of any one cause:

- (a) Departmental Secretaries ranked at or above Point 45 of the Master Pay Scale: up to HK\$5,000 for losses and deficiency of stores (remained unchanged);
- (b) Directorate officers of D1/DL1 rank: up to HK\$20,000;
- (c) Deputy/Assistant Heads of Department/Bureaux of D2/DL2 rank and above: up to HK\$100,000 (increased from HK\$50,000); and
- (d) Heads of Departments/Controlling Officers (irrespective of rank): up to HK\$500,000 (increased from 250,000).

Losses arising from theft or suspected theft*Finance Committee meeting held on 11 May 1983*

3.17 On 11 May 1983, FC approved a condition that write-off of losses involving fraud or negligence should not be delegated below Deputy Financial Secretary level. Per the *Financial Circular 19/83* issued in June 1983, the Administration required that any loss arising from theft or suspected theft was to be treated for the purpose of write-off as a loss involving fraud or negligence on the part of a public officer. As stated in paragraph 2.3 above, at the time, government departments would not be allowed to write-off losses arising from theft or suspected theft.

*Finance Committee meeting held on 10 July 1985*

3.18 At the FC meeting held on 10 July 1985, the Administration sought the approval of a proposal which excluded the losses arising from theft or suspected theft not exceeding HK\$500 from the general requirement that they be treated for the purposes of write-off as fraud or negligence on the part of a public officer. This meant that such losses might be investigated and written-off departmentally by a Deputy or Assistant Head of Department without the need for a second extensive enquiry by the Secretary for the Treasury, a procedure which was considered unwarranted where the loss was comparatively small. The proposal was approved by FC.

*Finance Committee meeting held on 23 July 1986*

3.19 FC approved an increase in the limit not exceeding which losses would be investigated and might be written-off departmentally from HK\$500 to HK\$2,000 at its meeting held on 23 July 1986.

*Finance Committee meeting held on 19 July 1989*

3.20 At the FC meeting held on 19 July 1989, the Administration sought the approval of raising the limit of write-off departmentally from HK\$2,000 to HK\$50,000, an increase of 25 times, in each case or in respect of any one cause, provided that an investigation had been conducted within the department concerned. The Administration stated that the increase in limit was to restore the real value and make further changes unnecessary for the next few years.

3.21 The levels of delegated powers were also set out:

- (a) Deputy/Assistant Heads of Departments/Bureaux of D2/DL2 rank and above: up to HK\$10,000 (increased from HK\$2,000);
- (b) Heads of Departments/Bureaux or Controlling Officers (irrespective of rank): up to HK\$50,000.

For losses arising from theft or suspected theft in excess of HK\$50,000 in each case, application for write-off should be made to the Secretary for Financial Services and the Treasury for approval.



3.22 In the end, FC approved the proposal of raising the limit to HK\$50,000. Since then, such limit remained unchanged.

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