

For information  
on 20 March 2000

## Legislative Council Panel on Constitutional Affairs

### **AUDIT COMMISSION**

#### **Introduction**

The Legislative Council Panel on Constitutional Affairs has proposed to discuss whether the Audit Commission should become independent in order to effectively examine and audit the Government's public accounts. This paper spells out the independence of the Audit Commission under the law and clarifies the current institutional arrangements for it.

#### **Independence of the Audit Commission**

2. The Audit Commission functions independently. This is provided for in the Basic Law and the Audit Ordinance (Cap. 122).

3. Article 58 of the Basic Law provides that -

*“A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.”*

4. Section 9 of the Audit Ordinance stipulates that –

*“In the performance of his duties and the exercise of his powers under this Ordinance the Director shall not be subject to the direction or control of any other person or authority.”*

#### **Institutional Arrangements for the Audit Commission**

5. Article 48(5) of the Basic Law provides that the Director of Audit (D of A) shall be one of the principal officials to be nominated by the

Chief Executive for appointment. In accordance with Article 101 of the Basic Law, the Government of the Hong Kong Special Administrative Region (HKSAR) may employ persons meeting certain requirements to serve as public servants in government departments at all levels, including the post of D of A. Thus, D of A is a public servant serving in the HKSAR Government.

6. As stated, the Commission of Audit is established pursuant to Article 58 of the Basic Law. According to Article 60 –

***“... various bureaux, divisions and commissions shall be established in the Government of the Hong Kong Special Administrative Region”*** (our emphasis).

Accordingly, the Audit Commission is an integral part of the Government.

7. Under the Audit Ordinance, the appointment of D of A is provided for in section 3. As regards Audit Commission staff, section 10(1) of the Ordinance provides that the Chief Executive may appoint other public officers to assist the D of A in the performance of his duties and the exercise of his powers under the Ordinance. Under section 10(3) of the Ordinance –

***“the Director may delegate any of his duties and powers under the Ordinance, other than the certifying and reporting of accounts, to any public officer.”***

The Department of Justice has advised that, when discharging such delegated powers and duties, all public officers serving in the Audit Commission have the same independence as provided for the D of A under section 9(3) of the Ordinance, i.e. they are **not** subject to the direction or control of any other person or authority.

8. Auditing work within the Commission is performed by professional staff. They belong to the Auditor and Examiner grades which are exclusive to the Commission. The authority to appoint Auditors and Examiners to assist the D of A has been delegated to the Secretary for the Civil Service (for directorate appointments) and D of A, his Deputy and Assistant Directors (for non-directorate appointments). Members of these departmental grades must possess the relevant professional qualifications and working experience in the field of accountancy. Once recruited, their career

within these professional grades is exclusively within the Audit Commission. There is, therefore, no question of any apprehension about conflict of interest or fear of reprisals, which would compromise their independence in discharging their duties of auditing public accounts.

### **Performance of the Audit Commission**

9. Over the years, the Audit Commission has performed its duties independently with a high standard of professionalism. The work of the Audit Commission is fully transparent. Under section 12(1)(b) of the Audit Ordinance, D of A's reports, in respect of his examination and audit of the statements and on any matter relating to the performance of his duties and the exercise of his powers under the Ordinance, shall be submitted to the President of the Legislative Council.

### **Conclusion**

10. The independence of the Audit Commission is enshrined in the Basic Law and the Audit Ordinance. The HKSAR Government places the utmost importance on the independent functioning of the Audit Commission. We fully acknowledge that in order for the Audit Commission to discharge its duties in accordance with the law, its ability to function independently must be preserved.

11. The Auditor and Examiner grade staff responsible for auditing public accounts are authorised by statute to function independently. They are appointed exclusively to the Audit Commission, and not subject to posting elsewhere in the Civil Service. The Administration is satisfied that the established institutional arrangement continues to enable the Audit Commission to perform its duties of examining and auditing public accounts effectively and independently. We see no justification for any change to its existing set-up within the Civil Service.

Finance Bureau

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