REPORT OF THE

PUBLIC ACCOUNTS COMMITTEE

ON

THE REPORTS OF THE DIRECTOR OF AUDIT

ON

THE ACCOUNTS OF THE GOVERNMENT OF

THE HONG KONG SPECIAL ADMINISTRATIVE REGION

FOR THE YEAR ENDED

31 MARCH 2001

AND THE RESULTS OF

VALUE FOR MONEY AUDITS (Report No. 37)

AND

SUPPLEMENTAL REPORTS ON

REPORT NOS. 35 AND 36 OF THE DIRECTOR OF AUDIT

ON

THE RESULTS OF

VALUE FOR MONEY AUDITS

February 2002

P.A.C. Report No. 37

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I. INTRODUCTION

The Establishment of the Committee The Public Accounts Committee are established under Rule 72 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region, a copy of which is attached in ***Appendix 1*** to this Report.

2. **Membership of the Committee** The following Members are appointed by the President under Rule 72(3) of the Rules of Procedure to serve on the Committee:

Chairman	The Hon Eric LI Ka-cheung, JP
Deputy Chairman	The Hon Emily LAU Wai-hing, JP
Members	Dr the Hon David CHU Yu-lin, JP The Hon Fred LI Wah-ming, JP The Hon LAU Kong-wah The Hon Abraham SHEK Lai-him, JP The Hon Tommy CHEUNG Yu-yan, JP
Clerk	Ms Miranda HON Lut-fo
Legal Adviser	Mr Jimmy MA Yiu-tim, JP

II. PROCEDURE

The Committee's Procedure The practice and procedure, as determined by the Committee in accordance with Rule 72 of the Rules of Procedure, are as follows:

(a) the public officers called before the Committee in accordance with Rule 72 of the Rules of Procedure, shall normally be the Controlling Officers of the Heads of Revenue or Expenditure to which the Director of Audit has referred in his Report except where the matter under consideration affects more than one such Head or involves a question of policy or of principle in which case the relevant Bureau Secretary of the Government or other appropriate officers shall be called. Appearance before the Committee shall be a personal responsibility of the public officer called and whilst he may be accompanied by members of his staff to assist him with points of detail, the responsibility for the information or the production of records or documents required by the Committee shall rest with him alone;

(b) where any matter referred to in the Director of Audit's Report on the accounts of the Government relates to the affairs of an organisation subvented by the Government, the person normally required to appear before the Committee shall be the Controlling Officer of the vote from which the relevant subvention has been paid, but the Committee shall not preclude the calling of a representative of the subvented body concerned where it is considered that such a representative can assist the Committee in its deliberations;

(c) the Director of Audit and the Secretary for the Treasury shall be called upon to assist the Committee when Controlling Officers or other persons are providing information or explanations to the Committee;

(d) the Committee shall take evidence from any parties outside the civil service and the subvented sector before making reference to them in a report;

(e) the Committee shall not normally make recommendations on a case on the basis solely of the Director of Audit's presentation;

(f) the Committee shall not allow written submissions from Controlling Officers other than as an adjunct to their personal appearance before the Committee; and

(g) the Committee shall hold informal consultations with the Director of Audit from time to time, so that the Committee can suggest fruitful areas for value for money study by the Director of Audit.

2. **The Committee's Report** This Report by the Public Accounts Committee corresponds with the Reports of the Director of Audit on:

- the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2001; and

- the results of value for money audits (Report No. 37),

which were tabled in the Legislative Council on 21 November 2001. Value for money audits are conducted in accordance with the guidelines and procedures set out in the Paper on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits' which was tabled in the Provisional Legislative Council on 11 February 1998. A copy of the Paper is attached in ***Appendix 2***.

3. This Report also contains the Public Accounts Committee's supplemental reports on three chapters in Report Nos. 35 and 36 of the Director of Audit on the results of value for money audits which were tabled in the Legislative Council on 15 November 2000 and 25 April 2001 respectively. The Committee's Report Nos. 35 and 36 were tabled in the Legislative Council on 14 February 2001 and 4 July 2001 respectively.

4. In addition, this Report takes stock of the progress of the action taken by the Administration on the recommendations made in the Committee's Reports Nos. 34 and 35 and offers the Committee's views on the action taken. These are detailed in Sections III to IV of this Report.

5. **The Government's Response** The Government's response to the Committee's Report is contained in the Government Minute, which comments as appropriate on the Committee's conclusions and recommendations, indicates what action the Government proposes to take to rectify any irregularities which have been brought to notice by the Committee or by the Director of Audit and, if necessary, explains why it does not intend to take action. It is the Government's stated intention that the Government Minute should be laid on the table of the Legislative Council within three months of the laying of the Report of the Committee to which it relates.

III. REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON REPORT NO. 34 OF THE DIRECTOR OF AUDIT ON THE RESULTS OF VALUE FOR MONEY AUDITS

Laying of the Report Report No. 34 of the Director of Audit on the results of value for money audits was laid in the Legislative Council on 29 March 2000. The Committee's subsequent Report (Report No. 34) was tabled on 21 June 2000, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 34 was laid in the Legislative Council on 18 October 2000. A progress report on matters outstanding in the Government Minute was issued on 31 October 2001. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 12 below.

3. **Services provided by the Official Receiver's Office** (Chapter 1 of Part VI of P.A.C. Report No. 34). The Committee were informed that:

General

- in order to assist the Official Receiver to establish an effective management control system, the Official Receiver's Office (ORO) had deployed in June 2000 an Administrative Officer Staff Grade B to take up a new post of Administrator in the ORO. The ORO had extended the post on a supernumerary basis to December 2002. The Task Force set up in the ORO to oversee the implementation of the recommendations in the Report of the Committee and the Director of Audit's Report was conducting a comprehensive review of the practices and procedures in the administration of insolvency cases. It had introduced a number of new improvement measures in areas such as distribution of dividend, closing summary cases without dividend, release of the Official Receiver as trustee/liquidator, preliminary examination of bankrupt and processing consumer credit bankruptcy cases. So far, these measures had achieved satisfactory results. The ORO expected that the comprehensive review would be completed in the next nine months;

Monitoring of staff workload

- the Official Receiver fully appreciated the importance of monitoring the performance of the staff in the ORO and was of the view that setting performance targets and quality management were effective means to do so;

- towards this end, the ORO had conducted a time study in August 2000 which was a limited survey based on staff's recollection of their experience to speedily assess the average time required for processing different categories of insolvent cases. The performance targets initially set in April 2000 for processing different categories of cases, e.g. 12 months for closing summary cases without distribution, were still valid pro tem;

- to further review the existing performance standards and targets, the ORO had conducted in mid-September 2000 a detailed one-off exercise for six months to require all officers handling insolvency cases to record the time they spent on processing insolvency cases. The data collected again would help to establish the average time needed in respect of the different processes in administering insolvency cases. The ORO was now analysing the data collected. Such data together with those collected from the time study conducted in August 2000 would enable the ORO to establish additional performance and productivity targets;

- in June 2001, the ORO put in place a quality management arrangement (previously known as internal auditing arrangement). Chief Insolvency Officers (CIOs) in the ORO acted as quality managers to conduct random checks of 5% of the insolvency cases. To enhance objectivity and to lend credibility to this arrangement, the CIOs only checked cases handled by the teams other than their own. Such peer review, which was additional to the day-to-day supervision of work provided by team leaders, provided an independent mechanism to ensure the quality of the services delivered and that the guidelines and the instructions were appropriately applied;

- regarding the Committee's comment that the requirement to complete time record sheets had not been followed by the case IOs, the ORO clarified that the requirement for the completion of "time sheet" was introduced in 1997 and this was applicable to cases with assets of $50,000 or less. The purpose then was to ensure that staff would not spend more than the benchmark hours on cases with little or no assets. Following a review of the position, the ORO considered that it would be more productive to monitor performance via setting performance targets and introducing quality management arrangement mentioned above rather than by filling in time sheets or setting up a time-recording system;

- in the majority of cases, filling in time sheets was not relevant for billing of fees in the ORO because the ORO levied charges according to the statutory scale of fees. In the few cases where the Official Receiver's costs were charged on a time basis (for example in situations where the Official Receiver acted as provisional liquidator), ORO staff were required to fill in time sheets;

- as regards those cases revealed by the Director of Audit's Report whereby the contents of the technical circulars were not being complied with, the ORO considered that no further action was warranted as there had been a misunderstanding in the past between the ORO management and IOs over the purpose of the technical circulars. The ORO had now completed the review of the mechanism and the enforcement of the technical circulars. All CIOs in charge of case management teams had been reminded that it was important to ensure that the contents of each and every technical circular were explained to their supporting staff and complied with;

Audit's follow-up review of monitoring of staff workload

- at the Committee's invitation, Audit conducted a follow-up review on the ORO, having regard to the weaknesses identified in the existing management control system and the extensive improvement required. Audit conducted a follow-up review. Audit had the following observations:

  (a) in April 2000, performance pledges were established by the ORO for closing a summary case without distribution within 12 months, and making a distribution of dividend to creditors within nine months from the date when a case had a cash balance of $100,000 or more. In addition, time targets ranging from 12 to 24 months were introduced for completing different types of insolvency cases. The case IOs' performance was regularly reviewed by senior officers of the Case Management Division (CMD) by reference to the performance pledges and time targets;

  (b) in August 2000, the ORO conducted a study on the time required for processing different types of insolvency cases. In addition, the ORO staff were required under a one-off time-recording exercise to complete time sheets for the period from 15 September 2000 to 19 March 2001 with a view to collecting data on the time spent on individual categories of work and cases;

  (c) in June 2001, the ORO established a quality management assessment scheme. Under this scheme, the CIOs, acting as quality managers, were required to conduct random checks on 5% of the cases in order to ensure that guidelines and instructions were followed and that the quality of service delivered was of a consistently high standard. For cases where the Official Receiver acted as a provisional liquidator, time records were maintained to record chargeable time for the work done; and

(d) the ORO was analysing the data collected from the one-off time-recording exercise for the period from 15 September 2000 to 19 March 2001, together with the data gathered from the time study in August 2000. When the results were available, the ORO would review the existing performance targets and establish new performance and productivity targets;

- in Audit's view, the ORO had made satisfactory progress in rectifying the weaknesses identified in the Director of Audit's Report No. 34;

Ascertaining and realisation of assets of insolvent estates

- the ORO had now established a reporting system whereby the findings of Preliminary Investigation of insolvency as regards the assets of insolvent estates were forwarded to the subject case officers and team leaders for follow-up action. To enhance monitoring, a summary report on all cases was prepared on a monthly basis and circulated to the directorate officers at the ORO;

- the Working Group set up to review the guidelines on writing-off debts had completed its work and submitted a report to the Task Force. The Task Force would consider the Working Group's report and recommendations once it had completed the more pressing review of priority procedures in the administration of insolvency cases. The ORO estimated that the subject could be dealt with in the fourth quarter of 2001;

- due to a substantial increase in the number of insolvency cases, in particular, bankruptcy cases, the ORO had decided to contract out more winding-up cases to enable a more efficient deployment of resources. A contracting-out exercise for summary winding-up cases had been conducted in June 2001 and as a result, the ORO would now handle only a small number of winding-up cases. In view of this development, the ORO had decided that there was no need for the long-term appointment of a book debit collection agent upon the expiry of the contract of the current book debt collection agent in May 2001. Yet the contract had been extended for three months to August 2001 to cover debt collection work in respect of the residual winding-up cases which the ORO had to handle. Thereafter, the ORO would directly handle debt collection functions;

Distribution of realised assets and law enforcement

- in October 2000, the Administration had reported that there were five outstanding cases which were more than three years old. The ORO had further distributed dividend in three cases and two cases were still outstanding pending resolution of various issues. As for those cases between one and three years old, the ORO had already made payment. For those 121 cases which were less than one year old and where dividend could be paid, the ORO had made all payments by January 2001. Following clearance of the backlog, the ORO had been making payments of dividend in cases where the asset balance allowed within nine months as pledged. From February to July 2001, payments had been made in 119 cases. The achievement rate was 96%. There were five outstanding cases due to the need to resolve various issues before payment could be made;

- in order to assist the staff to better manage their time and work, the ORO had further introduced a second level of time targets for the major processes within the pledged nine-month period. For example, for bankruptcy cases, the case officer was allowed a maximum of three months and the Dividend Unit a maximum of six months. Supervision had also been strengthened through close monitoring by the CIOs of each team. Moreover, the Assistant Official Receiver reviewed progress at the monthly meeting of the CMD;

- having had the experience of adopting $100,000 and nine months as the benchmarks for distribution of dividends for some time, the ORO would review the subject to examine whether different benchmarks should be set for creditors' and debtors' petitions and the time-frame for making a distribution. The ORO would consult the ORO Services Advisory Committee later in 2001;

- as for law enforcement, prosecution actions took place where there was prima facie evidence of a breach of the law. Moreover, the ORO, under the fiat from the Department of Justice (D of J), must follow the prosecution policy laid down by the D of J. Hence, it was not appropriate to pre-determine the number of prosecution cases as a basis for monitoring the performance and productivity of the Legal Services Division. Notwithstanding these constraints, the one-off time-recording exercise mentioned above covered the Legal Services Division as well. The ORO would consider setting appropriate performance and productivity targets for this Division;

Performance measurement and service delivery

- during April 2000 to June 2001, there were 3,409 summary cases with insufficient assets for distribution. Of these, 3,044 cases (89.3%) were closed within the target performance pledge of 12 months. The outstanding cases involved more complicated issues which required more time to resolve. The ORO would continue to monitor the cases and ensure that the pledge was achieved;

- following the installation of two computer terminals at the public reception area of the ORO for bankruptcy and winding-up searches, the ORO had introduced a new batch service for bulk searches in May 2001;

Employment of private insolvency practitioners (PIPs) to handle insolvency cases

- after the award of contracts for summary liquidation cases to five tenderers in October 2000, the ORO had revised the pre-qualification criteria to allow members of the Law Society of Hong Kong and the Hong Kong Institute of Company Secretaries (in addition to those of the Hong Kong Society of Accountants) to submit tenders so as to enlarge the pool of eligible bidders. The ORO had conducted a tender exercise in June 2001 for summary liquidation cases. The cases were divided into two lots — one lot in groups of 90 and the other in groups of 20. This arrangement enabled the smaller firms with insolvency experience to participate in the exercise and make bids for the small group of cases;

Monitoring of the performance of PIPs and their fees

- a set of guidelines for the PIPs had been drawn up jointly by the ORO and the Hong Kong Society of Accountants and the Official Receiver was seeking the views of the company judge;

Fees charged by the ORO

- the ORO would look into the issues of cost-recovery rate, the fee structure and fees to be charged in relation to insolvency cases under the consultancy study on the role of the Official Receiver; and

Review of practices and procedures of the ORO

- the Task Force was continuing with its review of the practices and procedures relating to the administration of insolvency cases with a view to streamlining, simplifying and updating all the work procedures. The Administration had appointed a consultant in mid-March 2001 to conduct a fundamental review of the role of the Official Receiver in the provision of insolvency administration services. The consultancy study was expected to be completed in 14 months' time. Steady progress had been made.

Further developments

4. Noting that there had been a substantial increase in the number of winding-up and bankruptcy cases in Hong Kong, the Committee enquired whether the situation had resulted in a backlog of cases to be handled by the ORO and if so, what the number of backlog cases and the measures taken by the ORO to clear the backlog were.

5. The **Official Receiver**, in his letter of 4 January 2002 in ***Appendix 3***, informed the Committee that:

- the number of insolvency cases in Hong Kong had been on the upward trend since 1999 and had increased very substantially in recent months. The total number of new cases for 2001 was 10,217. This represented an increase of 85% over 2000 and 164% over 1999. At the end of 2001, the provisional figure for the total number of active cases was 13,079, representing an increase of 64% over that of 2000 and 112% over that of 1999;

- in view of this very substantial increase in the caseload for the ORO on the one hand and the Government's policy to contain the size of the civil service and to enhance productivity on the other, the ORO was taking the following measures to deal with the huge caseload:

  (a) contracting out of cases: In addition to the employment of PIPs to handle non-summary liquidation cases, the ORO had also been contracting out summary liquidation cases to the private sector since June 2001. However, the same arrangement could not be applied to bankruptcy cases because the ORO did not have the authority to do so under the Bankruptcy Ordinance;

(b) review and streamlining of procedures: In order to expedite the processing of insolvency cases, the Task Force had been conducting a comprehensive review of the practices and procedures in the administration of insolvency cases, with a view to streamlining and simplifying further the procedures as far as possible;

(c) introduction of fast track procedure: Since February 2001, the ORO had introduced a new fast track procedure. It aimed to deal with Debtors' Petition of Bankruptcy cases with mainly consumer credit liability which had no prospect of any distribution of dividend. Under this procedure, the ORO could deal with all duties required of a trustee in the administration of property within, approximately, six months from the date of the Bankruptcy Order; and

(d) employment of temporary staff: Temporary staff would be employed to help the ORO cope with the very substantial increase in workload. The ORO was seeking funds to employ temporary staff in the coming few months to help ease the burden; and

- the ORO had been closely monitoring the situation to ensure that in spite of the substantial increase in workload, the efficiency of the Office and the quality of the services would to be maintained. All performance pledges including the targets of the distributing dividend within nine months and closing cases without dividend within 12 months would continue to be adhered to.

6. The Committee wish to be kept informed of further developments on the subject, including the outcome of the Task Force's comprehensive review of the practices and procedures in the administration of insolvency cases and the outcome of the consultancy study and the issues of cost-recovery rate, the fee structure and fees to be charged in relation to insolvency cases.

7. **Management of outdoor road maintenance staff** (Chapter 2 of Part VI of P.A.C. Report No. 34). The Committee were informed that:

Monitoring of outdoor staff

- the Working Group chaired by the Deputy Director of the Highways Department (HyD) had developed an initial set of productivity standards for outdoor staff carrying out road maintenance and utility duties. An independent management consultant had just reviewed this set of standards.

After considering the consultant's final recommendations, the HyD would identify ways to make measurable improvements in productivity and human resources management;

- in February 2001, the HyD had been accredited four ISO 9001:2000 certificates covering all activities of the department. With the full implementation of the quality management system, working procedures, quality requirements and performance objectives, all departmental functions were subject to regular internal and external quality audit. The four certificates were merged into one in May 2001;

- the HyD issued the Guidance Notes on Audit Inspection of Utility Site in April 2001. At the end of 2000, it held refresher course for newly appointed Works Supervisors to ensure that new recruits were familiar with the quality requirements of the HyD;

Management of the Direct Labour Force (DLF)

- the whole DLF had been disbanded in January 2001. All the road maintenance works previously carried out by the DLF was taken over by maintenance contractors;

- among the 89 DLF staff, 41 had retired either through the Voluntary Retirement Scheme or normal retirement, and 48 were redeployed to other sections of the HyD and to the Government Land Transport Agency;

Management of overtime work

- all HyD offices were now strictly evaluating the operational need and demand for overtime work. The HyD had established proper recording and control systems for staff taking time-off in lieu. The HyD's senior management also regularly reviewed and monitored the management of overtime work. A new Highways Department Establishment Circular, which incorporated the latest changes in control and administration of overtime as announced in Civil Service Bureau Circular No. 18/2000, had been issued;

- the overtime allowance paid from April 2000 to March 2001 was $9.15 million, which was about 29% of the $31.14 million paid during the same period in 1999;

Senior management responsibility

- the HyD had taken disciplinary and advisory actions against the eight supervisory staff concerned in October 2000 for not supervising their staff properly. In response to the Committee's enquiries, the **Acting Director of Highways** advised, in his letter of 31 December 2001, in ***Appendix 4***, of the grades and ranks of these supervisory staff and the specific actions taken against them, as follows:

  (a) a verbal warning had been issued to one Chief Technical Officer (Construction) of the Inspector of Works Grade;

  (b) an advisory letter had been issued to one Senior Engineer of the Engineer Grade; and

  (c) advisory letters had been issued respectively to two Chief Technical Officers (Construction), one Senior Inspector of Works, one Inspector of Works and two Assistant Inspector of Works of the Inspector of Works Grade; and

An incentive scheme as additional means to publicise road defect/complaint system

- after the 24-hour Complaint Hotline had been widely publicised on radio programmes and through the Announcement of Public Interest, there had been a noticeable increase in the number of telephone complaints. In view of this, the HyD considered that it was not necessary to set up an incentive scheme.

8. The Committee express doubts, in view of the mild actions taken against the eight supervisory staff concerned, about their effectiveness in reflecting the Administration's determination to hold senior management accountable for their failure to perform their duties properly. The Committee also wish to be kept informed of the HyD's progress of setting productivity standards for its outdoor road maintenance staff.

9. **The administration of the Judiciary** (Chapter 3 of Part VI of P.A.C. Report No. 34). The Committee were informed that:

Court waiting time

- the civil jurisdictional limit of the District Court had been increased to $600,000 with effect from 1 September 2000. The number of civil cases filed at the High Court had shown a slight decrease from a monthly average of 2,446 to 2,379 during the first six months of 2001. As such, the Judiciary did not expect to have significant improvements to the waiting time for High Court civil cases in the short term. Meanwhile, the Automated Leadership Resource Tool (a management information system) would be implemented in early 2002;

Review of the financial limits of the civil jurisdiction of courts

- the increase in the civil jurisdictional limit of the District Court from $120,000 to $600,000 had taken effect on 1 September 2000. The Judiciary was committed to reviewing this limit in two years' time after its implementation, with a view to ascertaining if there was a case for a further increase to $1 million;

- during the period between 1 September 2000 and 31 July 2001, the number of civil actions filed in the District Court (excluding the cases filed by the Inland Revenue Department) had increased by 38% as compared with that in the corresponding period in the previous year. The full impact of these increases would be felt towards the end of 2001 or early 2002 when the cases proceeded to trial;

Labour Tribunal

- for the first seven months of 2001, there had been 5,648 cases filed in the Labour Tribunal, representing only a very slight decrease of 2.9% over the same period in the previous year. As the caseload was still heavy, the Judiciary was considering the operation of an additional court in October 2001 to relieve the workload;

- the Judiciary considered that the appointment register was still a good mechanism to ensure that claimants were properly served on a day-to-day basis. The Judiciary did not think that this was the opportune time to dispense with it. The Judiciary would keep the situation under review;

Minor Employment Claims Adjudication Board (MECAB)

- having reviewed the movement of average wage rates since 1997, the Commissioner for Labour advised that she had no plan to revise the financial limit of MECAB at present. However, she would continue to keep the situation under review;

Court sitting hours

- the Judiciary Administrator considered that court sitting hours were not appropriate indicators of court performance. Instead, he considered that court waiting time, when related to volume and complexity of caseload as well as judicial resources available, was a better overall indicator. Meanwhile, the review on the basis of measuring court waiting hours for High Court cases had been completed, and the Judiciary was consulting Court User Committees on the findings;

Building courtrooms of mixed sizes

- the new Fanling Magistrates' Courts Building, which was scheduled for completion by the end of November 2001, would be provided with courtrooms in three sizes of 220 m^2, 200 m^2 and 145 m^2. The Judiciary had consulted the Architectural Services Department on the technical feasibility of constructing courtrooms of mixed and/or variable sizes in the new court buildings. In view of the requirement to provide separate access to courtrooms for Judges, the public and defendants, the Judiciary Administrator considered that it was not technically feasible to apply the concept universally;

User satisfaction surveys on court services

- the Judiciary had recently conducted a user satisfaction survey on the services provided by the magistrates' courts. A report was being compiled and the Judiciary would report the outcome later; and

Court Reporter Grade

- the Judiciary had commenced an overall review of the Court Reporter Grade following the smooth implementation of voluntary retirement and redeployment to new functions. The Judiciary would report the outcome of the review later.

Further developments

10. Regarding the caseload of the Labour Tribunal, the Committee enquired:

- about the reduction of waiting time that had been achieved and the current waiting time for labour tribunal cases; and

- whether an additional court had been established in October 2001 as scheduled.

11. In his letter of 4 January 2002, in ***Appendix 5***, the **Judiciary Administrator** informed the Committee that:

- for the year 2001, there were 10,450 cases filed in the Labour Tribunal, representing an increase of 8.7% over the 9,611 cases in 2000. The bulk of the increase was recorded in the latter part of 2001. To relieve the heavy workload, the Labour Tribunal had deployed resources to turn a night curt into a day court from 8 October 2001. The Labour Tribunal now operated 13 day courts, two night courts and one Saturday (morning) court;

- in early October 2001, the waiting time from appointment to filing was 14 days and that from filing to first hearing was 26 days. At the end of December 2001, the corresponding waiting times were 15 days and 23 days respectively; and

- the operation of one additional day court had improved the waiting times. The Judiciary was monitoring the situation closely and would consider the feasibility of introducing further relieve measures if necessary.

12. The Committee wish to be kept informed of further progress on this subject.

IV. REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON THE REPORTS OF THE DIRECTOR OF AUDIT ON THE ACCOUNTS OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE YEAR ENDED 31 MARCH 2000 AND THE RESULTS OF VALUE FOR MONEY AUDITS (REPORT NO. 35)

Laying of the Report The Director of Audit's Report on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2000 and the Report on the results of value for money audits were laid in the Legislative Council on 15 November 2000. The Committee's subsequent Report (Report No. 35) was tabled on 14 February 2001, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 35 was laid in the Legislative Council on 16 May 2001. A progress report on matters outstanding in the Government Minute was issued on 31 October 2001. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 77 below.

3. **Management services in public rental housing estates** (4 - 5 of Part III of P.A.C. Report No. 35). The Committee were informed that:

Review on the refurbishment process

- the duration for refurbishment of vacant flats had been substantially shortened from 144 days to around 50 to 60 days in 2000-01. Even with seasonal fluctuation of demand, the Housing Department (HD) had managed to complete the work within this level. There was not much scope for further reduction at this stage;

Handing over hawker control duties in public housing estates to the Food and Environmental Hygiene Department (FEHD)

- with the implementation of the Tenants Purchase Scheme (TPS) and gradual outsourcing of estate management and maintenance services, hawker control had been integrated into the day-to-day estate management routine, thereby containing the demand for services of the Mobile Operations Unit (MOU), and correspondingly the Unit's staffing requirements. Meanwhile, the HD was still considering the feasibility of transferring to the FEHD the enforcement duties against persistent hawker problems in public housing estates having regard to possible staffing and administrative implications;

Review of staff requirements of the MOU teams

- the HD expected that the review of the MOU staff requirements would be completed by the end of 2001;

Review of the manning scales and redeployment of Workmen II, Estate Artisans and Estate Assistants

- as at July 2001, 44 Estate Assistants had been redeployed to 26 estates with security systems upgraded to Grade A to replace the Tower Guard Supervisors and Guard Controllers provided by security contractors. The HD would continue to roll out the Grade A security systems and to arrange similar staff redeployment as appropriate. It would also monitor the impact of outsourcing estate management and maintenance services and the associated Voluntary Departure Scheme (VDS) on staffing requirements;

Review on the new staffing complement in the TPS estates

- starting from October 2000, the HD had implemented a new management model for the TPS estates and public rental housing estates managed by private Property Services Companies/Management Buy-out Companies. Tenancy matters and residual property management functions were handled by the District Tenancy Management Offices (DTMOs). As at July 2001, the HD had set up 16 DTMOs. The staffing complement for these offices would be adjusted having regard to actual workload. The HD expected that there would be notional manpower savings in the region of 30% through this new management model;

Review of the staffing structure of HD

- in the light of the recommendations put forward by the consultant commissioned to study the streamlining of the HD's organisational structure, the HD had:

  (a) simplified the public rental housing application process;

  (b) divided allocation and marketing services for rental flats and sales schemes;

  (c) compressed reporting lines from three to two levels. Units responsible for property management, tenancy management and works all reported directly to the headquarters; and

(d) started a review of the performance evaluation of contractors with a view to enhancing works quality;

Study of the Task Force on the recommendations of the consultancy report on increasing private sector involvement in estate management and maintenance services

- the Phased Service Transfer (PST) of Estate Management and Maintenance Services continued to roll out smoothly. Of the 16 contracts to be let under the initial programme, 12 had already commenced. Tenders for the last batch of four contracts had also been awarded in September 2001 for commencement at the end of 2001. Since the implementation of the VDS in March 2000, the HD had received over 3,370 applications. At present, more than 1,300 housing staff had left the civil service under the Scheme;

- the HD had conducted a review of the initial PST programme in May 2001 with a view to mapping out the pace of future service transfer. Having considered the views expressed by the industry, the HD staff and residents and other relevant factors, the Housing Authority, at its meeting on 26 July 2001, had approved a further transfer of about 180,000 public rental housing units to the programme by 2003-04, subject to the actual number of staff leaving under the VDS; and

- the HD would closely monitor the situation and regularly report progress to the Housing Authority. The HD expected that the first batch of contracts under the newly endorsed PST programme would be tendered in November 2001.

4. The Committee noted the progress of the various courses of action taken by the HD, and that positive measures had been and would continue to be taken to address the issues relating to the management services in public rental housing estates.

5. **Control of obscene and indecent articles by the Television and Entertainment Licensing Authority** (6 - 7 of Part III of P.A.C. Report No. 35). The Committee were informed that:

- the fieldwork of the public opinion survey had been completed and the Television and Entertainment Licensing Authority (TELA) was considering the draft study report. The TELA expected to announce the results before the end of 2001; and

- as regards the 2000 Review of the Control of Obscene and Indecent Articles Ordinance (COIAO), the TELA was considering whether and, if so, how to revise the policy proposals, having regard to the public comments received in the consultation exercise.

6. The Committee wish to be kept informed of the results of the public opinion survey commissioned by the TELA, and the policy proposals and the legislative amendments after the completion of the 2000 Review of the COIAO.

7. **The Administration of the Comprehensive Social Security Assistance and Social Security Allowance Schemes** (8 - 9 of Part III of P.A.C. Report No. 35). The Committee were informed that:

Review of the effectiveness of the efforts to combat welfare fraud

- on the prevention and detection of social security fraud cases, there were two Special Investigation Teams (SITs) in the Social Welfare Department (SWD). One was mainly responsible for carrying out in-depth investigation into cases where fraud was suspected, while the other was mainly responsible for conducting random checks on cases;

- the scope of work of the two SITs had been expanded significantly since 1999. It included setting up a Report Fraud Hotline, increasing the number of random checks on high risk cases, and handling suspected fraud cases matched with other government departments and organisations. To enhance the efficiency and effectiveness in fraud investigation, the SITs had adopted a one-stop service model since May 2000 by taking over the investigation of all suspected fraud cases referred by the Social Security Field Units and those reported to the Hotline;

- the SWD had recently completed an evaluation of the one-stop service model. The evaluation showed that the model proved to be highly effective and an improvement on previous arrangements. As a result of the SWD's strengthened efforts to combat welfare fraud, the number of fraud cases established had increased significantly from 88 cases involving $1 million of

overpayment in 1998-99 to 332 cases involving $7 million in 2000-01. The SWD would continue its efforts to prevent fraud and abuse to safeguard public expenditure;

Progress of the implementation of risk management in the SWD's business operations

- following the completion of the scoping study on risk management, the SWD had commissioned a consultancy firm to carry out a full-scale risk management study on social security schemes for six months starting from June 2001. Upon completion of the study, the SWD would consider adopting a risk management approach in the administration of the social security schemes based on the recommendations of the study; and

Special functions in the Computerised Social Security System (CSSS) to keep track of and report unusual and frequent claims for special grants by individual beneficiaries under the Comprehensive Social Security Allowance Scheme

- the CSSS contractors had already developed the above special functions in the CSSS.

8. The Committee wish to be kept informed of the SWD's progress of adopting a risk management approach in the administration of the social security schemes.

9. **Services provided by the Social Welfare Department for offenders and children/juveniles in need of care or protection** (12 - 13 of Part III of P.A.C. Report No. 35). The Committee were informed that:

Action taken by the Social Welfare Department (SWD), in collaboration with the Security Bureau (SB), to improve the operation and usefulness of the Integrated Law and Order Statistical System (ILOSS)

- the SWD was redeveloping the ILOSS and would implement the new system in 2003;

- with the implementation of improved measures on record processing by the SWD, the percentages of unmatched records for 1998 and 1999 remained at a relatively low level of 5% and 7% respectively;

Progress of making more use of the ILOSS data and the reconviction rate of offenders for the assessment of the effectiveness of the SWD's services for offenders

- the SWD would continue to regularly make use of the relevant data provided by the SB to analyse the profiles of offenders and the effectiveness of the SWD's services for offenders;

Progress made in comparing the success rates of various services for offenders, taking into account the difference in the client groups, the emphasis and the objectives of the services

- data collected through the questionnaires by the SWD for measuring service effectiveness returned by parents during the period between October 2000 and March 2001 indicated that around 90% of the parents found that there were positive changes in the behaviour of their children after receiving residential training. As compared to the data collected during the period between April and September 2000, it showed an increase of 10%. The SWD would conduct regular analysis on parents' feedback so as to monitor the service effectiveness of the homes;

Results of the Government Property Agency (GPA) review to explore the redevelopment opportunities of sites occupied by the SWD's residential homes

- the Hong Kong Human Rights Monitor (HKHRM) had conducted a study on the correctional/residential homes of the SWD in 2000 and made a presentation at the meeting of the Legislative Council Panel on Welfare Services on 9 July 2001. The HKHRM commented that other than considering the profitable development opportunities of the sites of the homes, the SWD should focus on the needs and welfare of the residents, facilities and training programmes of the homes. The SWD was developing plans to maximise the use of the sites of existing homes taking into consideration the comments made by the HKHRM.

Progress of implementing the measures proposed in the Management Services Agency (MSA) and the GPA reviews

- since September 2001, while keeping close liaison with the Education Department (ED) for the secondment of Education Officers, the SWD had appointed re-graded Assistant Education Officers. The SWD would implement the new teaching staff provision in accordance with the adjusted capacities to tie in with the re-grading exercise; and

- on 16 May 2001, the Unit for the Disabled was transferred from the Ma Tau Wei Girls' Home (MTWGH) to the Wing Lung Bank Golden Jubilee Sheltered Workshop and Hostel. On 22 May 2001, the girls' remand section of the Begonia Road Juvenile Home was merged with the MTWGH. The SWD considered that the moves had provided greater flexibility in staff deployment in these homes.

Further developments

10. The Committee noted that the SWD was mapping out strategies to maximise the use of the sites occupied by its existing residential homes to see if it was possible to release some prime sites for other development. As more than two years had lapsed since the matter was examined by the Committee, the Committee asked whether the SWD had worked out the strategies already and what the current plan for redeveloping the sites occupied by the SWD's residential homes was.

11. The Committee also asked whether the implementation of the recommendations of the MSA review had resulted in the reduction of staff and, if so, what the number of staff reduced was.

12. In response to the Committee's enquiries, the Director of Social Welfare provided, in her letter of 31 December 2001 in ***Appendix 6***, a progress report on maximising site potential of the SWD's existing residential homes and implementation of the recommendations of the MSA.

13. In the light of the progress report, the Committee further asked:

- whether, regarding the redevelopment of the sites occupied by the SWD's existing residential homes, a definite strategy could be worked out in six

months' time and, if not, what the estimated time-frame for reaching a decision was; and

- the unit costs of the SWD's residential services for juveniles and young offenders at present and those in the past two years.

14. In her letter of 15 January 2002, in ***Appendix 7***, the **Director of Social Welfare** provided the unit costs of the SWD's residential services. She further stated that she would accord her personal attention to the redevelopment of the sites occupied by the SWD's existing homes, with an aim of coming up with some departmental proposals within six months' time. The SWD's in-house architectural section would assist in assessing the technical feasibility of any such proposals. However, as definite plans of redevelopment involved policy, land use and resource implications that required input from other authorities, the SWD could not commit to a firm time-frame for definite and workable proposals at this stage. She would keep the Legislative Council informed of the progress made.

15. The Committee wish to be kept informed of the SWD's strategy for redeveloping the sites occupied by its existing residential homes.

16. **Acceleration of works in the Strategic Sewage Disposal Scheme Stage I** (3 - 4 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the works under the Strategic Sewage Disposal Scheme (now renamed as Harbour Area Treatment Scheme (HATS)) Stage I had been substantially completed, except for the construction of the linings of the deep shafts leading to the sewage tunnels;

- the lining construction for all the six sewage tunnels (with a total length of 23.6 kilometres) had been completed. Apart from the tunnels, the project also required the construction of 10 deep shafts with depths varying from 80 metres to 150 metres (total length of lining about 1,300 metres) to convey sewage from the ground surface to the sewage tunnels. The linings of the deep shafts at Tseung Kwan O, Kwun Tong (two out of three shafts), To Kwa Wan, Kwai Chung and Stonecutters Island had been completed. The linings of deep shafts at Chai Wan, Shau Kei Wan, Kwun Tong (the remaining shaft) and Tsing Yi were in the final stage of construction;

- the HATS Stage I system was planned to be commissioned by the end of 2001 as scheduled; and

- in September 2001, the Government and the Contractor of the two forfeited tunnel contracts reached an agreement to resolve all disputes relating to the two contracts.

Further developments

17. In response to the Committee's request, the **Director of Audit** provided, vide his letter of 27 December 2001 in ***Appendix 8***, the latest financial position of the HATS Stage I, and a breakdown of the expenditure for the sewage collection tunnels.

18. In the light of the additional information, the Committee enquired whether it was true that there had been no budget overrun in respect of the tunnelling projects and, if so, whether the Administration had applied for excess fund for the projects in the first place.

19. The **Director of Audit**, in his letter of 14 January 2002 in ***Appendix 9***, informed the Committee that:

- the Administration estimated that, as a result of the forfeiture of the tunnelling contracts, additional works expenditure of $1,300 million had been incurred. Audit noted that, in 1997, 1998 and 2000, the Administration had indeed sought additional funding from the Finance Committee to cover expected increases in works expenditure;

- as a result of the additional funding, the total approved estimate for the tunnelling projects had been increased to $3,426 million. According to the Works Bureau, the latest estimate of the final total expenditure was $3,295 million (i.e. about 96% of the total approved funding), of which $2,985 million had been paid as at 30 November 2001; and

- it should be noted that additional funds had been approved on three occasions and there were no budget overruns during the course of the project. As for the future, given the total approved funding of $3,426 million and based on the latest forecast of the Works Bureau, it was unlikely that there would be any budget overrun. Furthermore, as additional funds had been sought and approved, it would appear that excess funds had not been applied for the projects in the first place.

20. The Committee wish to be kept informed of the progress of the remaining works of the HATS Stage I.

21. **Beneficial use of construction waste for reclamation** (7 - 8 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- based on the Civil Engineering Department's (CED's) records, local construction activities for the first three quarters of 2001 had produced about 10.2 million tonnes of construction and demolition (C&D) materials, 3% more than that for the same period in 2000. Of these, about 83% or 8.5 million tonnes of inert C&D materials had been reused. The reuse rate had improved by more than 3% compared with the 7.9 million tonnes of C&D materials reused in the first three quarters of 2000;

- during the period mentioned in the above paragraph, inert C&D materials had mainly been reused in four reclamation projects — Tseung Kwan O Town Centre Reclamation Phase 3 Stage 2, Pak Shek Kok, Tung Chung Development Phase 3A, and Tuen Mun Area 38 Reclamation Stage 2. Together with other committed Category A reclamation projects including Yam O Public Transport Interchange Reclamation and North Tsing Yi Reclamation, there should be sufficient public filling capacity to accommodate all the inert C&D materials produced up till mid-2002. To address the short-term mismatch between supply and demand for public fill beyond mid-2002, the Administration was planning to set up temporary "fill banks" at Tseung Kwan O Area 137 and Tuen Mun Area 38;

- in addition to the temporary sorting facility at Tseung Kwan O Area 137 commissioned in August 2000, the Administration had established a similar facility at Tuen Mun Area 38 in August 2001 to recover suitable inert materials for reuse. In March 2001, the CED commissioned a study to examine the economic viability of recycling inert C&D materials. The financial feasibility and traffic and environmental impact of establishing a temporary recycling plant at Kai Tak would also be examined. The final report was expected to be available later in 2001. The Administration would continue to experiment with the use of recycled aggregates in public works projects and it planned to establish a temporary recycling facility in Tuen Mun in 2002;

- in May 2001, the CED commenced a study on the long-term arrangements to accommodate inert C&D materials. The study aimed to, among other things, examine the pros and cons, as well as the overall environmental benefits and

impacts of different accommodation arrangements. The Administration would also examine the feasibility of setting up long-term sorting and recycling facilities in Tseung Kwan O Area 137 and Tuen Mun Area 38 and their associated impacts;

- the five temporary public filling barging points established at Sai Ying Pun, Quarry Bay, Tseung Kwan O Area 137, Shatin Area 47B and Tuen Mun Area 38 continued to provide convenient outlets for public fill and minimise its disposal at landfills. The Administration had deferred the consultation with the Southern District Council on the implementation of a barging point at Ap Lei Chau, pending a review on the requirements for long-term barging points on Hong Kong Island; and

- the Administration was working on the details of the landfill charging scheme and would report to Legislative Council later in 2001.

22. The Committee wish to be kept informed of the progress of the Administration's measures to promote reduction, reuse and recycle of C&D materials.

23. **Part I: Inspections of places of public assembly by the regional offices and Part II: Revision of fees and charges** (9 - 10 of Part IV of P.A.C. Report No. 35). The Committee were informed that, for the purpose of reviewing the licence fees of the food and trade licences, the Food and Environmental Hygiene Department (FEHD) was obtaining the relevant information to ascertain the cost of services incurred by the Buildings Department (BD). The FEHD still expected to complete the fee review by the end of 2001.

24. The Committee wish to be kept informed of the progress of introducing a charging system for recovering the cost of the services provided by the BD for restaurant licensing.

25. **Chemical Waste Treatment Centre** (11 - 12 of Part IV of P.A.C. Report No. 35). The Committee were informed that the Administration was studying the details of the latest proposal from the operator of the Chemical Waste Treatment Centre (CWTC) and would recommend the way forward shortly.

26. The Committee wish to be kept informed of the outcome of the Administration's negotiation with the operator of the CWTC.

27. **The provision of government wholesale food markets** (13 - 14 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the Administration had proposed possible options for using the Phase I and Phase II sites of the Cheung Sha Wan Wholesale Food Market Complex (CSWWMC) and was working out cost and benefit analyses of these possible options in consultation with the departments and bureaux concerned. The Administration would continue to keep the Legislative Council Panel on Food Safety and Environmental Hygiene informed of the development;

- of the 29 trade offices in the CSWWMC Phase I, 23 had been leased to market traders or allocated to government departments. The Agriculture, Fisheries and Conservation Department and the Government Agency Property would continue their efforts to put the remaining six vacant trade offices to use; and

- the Government was still considering the comments received from the public consultation exercise on the Western District Development Strategy.

28. The Committee wish to be kept informed of:

- the progress of the development of the CSWWMC Phase II project;

- the improvement in the utilisation of trade offices and ancillary facilities in the existing wholesale food market complexes; and

- the progress of exploring the possibility of maximising the utilisation of the Western Wholesale Food Market site.

29. **Departmental quarters for the disciplined services** (15 - 16 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

Police leased quarters

- the Government Property Agency (GPA) and the Hong Kong Police Force (HKPF) had further reduced the number of leased quarters retained by the

HKPF from 28 to 27 since February 2001. They would continue their effort in this respect;

Criteria for allocation of departmental quarters (DQs)

- the GPA had agreed with relevant bureaux on most of the proposed amendments to the Accommodation Regulations (ARs) regarding the eligibility criteria for and classification of DQs. The amendments would be promulgated once ready; and

Review of the grading of DQs

- the GPA had commenced the consultation with the relevant staff consultative committees on the findings of the review in September 2001.

Further developments

30. The Committee noted that five years had lapsed since the issues regarding the eligibility criteria for and classification of DQs and the review of the grading of DQs were examined by them, but the issues had still not been concluded. As such, the Committee asked about the reasons for taking so long to address these issues, particularly the reasons for not commencing the consultation on the findings of the review until September 2001. The **Government Property Administrator** explained in her letter of 11 January 2002, in ***Appendix 10***, that:

Review of the grading of DQs

- the initial review of the grading of DQ stock had started in mid-1996. It was a time-consuming task which included collecting relevant rental evidence, identifying reference units, inspecting most major developments externally and internally if possible, provided it would not cause inconvenience to the occupants. Where applicable, the GPA made adjustments for individual units taking into account any special circumstances of particular development or units. Altogether rental values had been assigned to approximately 24,000 flats at some 480 quarters locations throughout the territory. The assessment methodology took into account the construction and size standards introduced in 1996 for new construction after consultation with relevant bureaux and the management of disciplined service departments. It also had regard to common sizes of new purchases made in the 1990s;

- rental value bands had been devised for each grade for broad districts. The grades of DQs were then determined taking into account where the rental values of the quarters fell. To ensure that DQs were correctly graded, units falling in the margin of the value bands were re-checked;

- following consultation with and/or taking into account of the comments from the Security Bureau (SB), the Finance Bureau (FB) and the Civil Service Bureau (CSB) on the review report, the results of the review were presented to the staff side and departmental management of the disciplined services in July 1998. There were many adverse comments. In the main, there were concerns about assessment methodology, implementation arrangement, upgrading in the grades with no material improvement in the quality of existing DQs, aggravation of DQs shortage due to possible mismatch in demand and supply, relevance of rental reference given the change in market conditions, worsening of staff benefits, increase in rental burden due to change in grading. Staff felt that the principles for the grading review should only apply to newly constructed or newly acquired DQs;

- the review was redone and completed in mid-2000 taking into account comments received where appropriate. Following consultation with the FB, further updating in early 2001 and consultation with the SB, the GPA presented the review methodology and results to the Disciplined Services Consultative Committee (DSCC) and the Police Force Council (PFC) in September and October 2001 respectively;

- at the suggestion of the DSCC and the PFC, the GPA held a separate forum with the staff side representatives in November 2001, explaining principles and criteria of the updated review in detail and inviting comments from the representatives. The GPA was awaiting consolidated representations from the staff side of all concerned departments and would carefully consider them on receipt;

- the review of the grading of DQs involved not just professional valuation of rental value but staff relations and morale issues as well. Extensive staff consultation and coordination within the Administration were necessary to take the matter forward. The GPA would continue to take forward the review in consultation with the relevant bureaux, departments and staff. The GPA would work towards an Administration position on issues raised by the staff sides before reverting back to them;

Eligibility criteria for and classification of DQs

- disciplined service departments now promulgatd as a matter of course the eligibility criteria, that is, only married officers were eligible to apply for DQs, in their Quartering Circulars and internal manuals;

- from monthly returns submitted by concerned departments to the GPA, it was noted that there had been no new allocations to ineligible officers and the cases noted by the Director of Audit and the Committee had long been rectified. There were cases in which officers after moving into a DQ became "unmarried" as a result of matrimonial breakup. These cases were monitored closely with a view to recovering the quarter early subject to short-term extension to alleviate hardship. The effect of these measures and provisions was that the concern of occupation of DQs by ineligible officers had now been addressed; and

- in line with the Committee's recommendation, proposed changes to the ARs had been formulated to more clearly classify and define DQs, in particular to more clearly define "operational quarters". The opportunity had also been taken to review the ARs on quarters generally and in the context of the whole ARs. The FB, the SB and the CSB were consulted on the proposed revised ARs on quarters. Subject to further refinement and consultation with departments, the GPA should be able to finalise the text for promulgation.

31. The Committee wish to:

- express dismay that the issues regarding the eligibility criteria for and classification of DQs and the review of the grading of DQs have still not been satisfactorily concluded, five years after the issues were first raised in the Director of Audit's Report No. 27 of October 1996; and

- urge the Administration to expedite action to conclude the outstanding issues as soon as possible.

32. **Monitoring of charities: fund-raising and tax allowances** (17 - 18 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the Social Welfare Department (SWD) continued to work closely with the Health and Welfare Bureau and other departments with a view to finalising administrative measures to enhance the accountability and transparency of charitable fund-raising activities; and

- the SWD was working with the Hong Kong Society of Accountants to prepare a practice note on auditing of charitable fund-raising activities other than flag day accounts.

33. The Committee wish to:

- remind the Secretary for Health and Welfare to keep in view the need for legislative amendments to enhance the accountability and transparency of charitable fund-raising activities; and

- be kept informed of further development on the subject.

34. **The monitoring and control of air pollution** (19 - 20 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

Air Quality Objectives (AQOs)

- the United States and European Union were reviewing their current AQOs and planned to complete their reviews by around 2002-03. The findings of these reviews were important references for Hong Kong. The Administration would take into account these findings in reviewing the way forward for Hong Kong's AQOs;

- the Hong Kong and Guangdong joint-study on air quality in the Pearl River Delta Region had completed data collection in March 2001 and was analysing the data. The Administration would discuss with the Guangdong Provincial Government practicable improvement measures in the light of the study findings;

Cleaner vehicle diesel

- there was a steady supply of Ultra Low Sulphur Diesel (ULSD) since its introduction to Hong Kong in July 2000. It had become effectively the only motor diesel now available at petrol filling stations in Hong Kong. As such, the Administration planned to make ULSD the statutory standard for motor diesel and would introduce the necessary legislative amendments into the Legislative Council during the 2001-02 legislative session. The Administration was reviewing the need for further restricting the amount of diesel that could be carried into Hong Kong from the Mainland by cross-boundary vehicles in the light of the effectiveness of the existing control over use of illicit fuel;

Reducing reliance on diesel vehicles

- to encourage early replacement of existing diesel taxis, a one-off grant of $40,000 had been provided to each diesel taxi owner when his taxi was replaced by a Liquefied Petroleum Gas (LPG) taxi since August 2000. As at the end of June 2001, over 11,000 of the 18,000 taxis were running on LPG. Currently, about 1,000 taxis were being replaced monthly. Thirteen LPG filling stations were in operation, including five dedicated ones. Four more dedicated LPG filling stations were being constructed and would come into operation by the end of 2001. More petrol filling stations would be retrofitted with LPG facilities within 2001. The Administration's target remained to provide adequate LPG filling capacity for the entire taxi fleet by the end of 2001;

- the Administration had completed the trial of LPG and electric light buses in January 2001. The trial monitoring committee submitted a trial report in June 2001. The Administration was considering the way forward in the light of the findings of the trial, feedback received from members of the trade and the public, and other relevant factors; and

Vehicle emission inspection and maintenance programme

- the Administration had implemented various measures in 2000 to enable and encourage vehicle owners to better maintain their vehicles to avoid excessive emissions. The results were reflected in the decreasing trend of smoky vehicles spotted by the Environmental Protection Department since mid-2000 and the sharp reduction in the number of fixed penalty tickets issued to repeated smoky vehicle offenders since January 2001.

35. The Committee wish to be kept informed of the progress and outcome of the various measures being implemented by the Administration.

36. **Urban Council public markets** (21 - 22 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the Administration had included the Central Market site in the Application List of the 2001-02 Land Sale Programme announced on 12 February 2001. The earliest date for the site to be available for sale by application was March 2002; and

- the Administration would determine the actual available date having regard to various relevant factors, including the time required for site preparation work prior to putting up the site for sale.

37. The Committee wish to be kept informed of the proposed sale of the Central Market site.

38. **Relocation of the General Post Office** (23 - 24 of Part IV of P.A.C. Report No. 35). The Committee were informed that the Administration was proceeding with the project to reprovision the General Post Office (GPO) Headquarters and Sorting Centre to a new site in Chai Wan. The Administration would arrange to reprovision the GPO Counter/Post Office Box Section in a commercial development in Central at a date to synchronise with the release date of the GPO site. According to the latest plans, the earliest possible completion date for the reclamation works was 2007. The Administration would keep under review the date required for the release of the GPO site.

39. The Committee wish to be kept informed of further development on the subject.

40. **Recoverability of the outstanding advances to the UNHCR** (25 - 26 of Part IV of P.A.C. Report No. 35). The Committee were informed that as at 30 September 2001, the amount of the outstanding advances to the UNHCR remained at $1,162 million. The Administration had been pressing the UNHCR to repay the outstanding advances and to continue to appeal to the international community for funds in order to fully settle the amount. The UNHCR had, on various occasions, said that it was facing financial difficulties. Since 1998, the Administration had not received any repayment of the outstanding advances from the UNHCR. The Administration would continue with efforts to pursue the early repayment of the outstanding advances.

41. The Committee wish to be kept informed of the results of the action taken by the Administration in:

- pressing the UNHCR to fully repay as soon as possible the outstanding advances to the Government of the Hong Kong Special Administration Region (HKSAR); and

- appealing to the international community to make donations to the UNHCR earmarked for repaying the Government of the HKSAR the outstanding advances.

42. **Footbridge connections between five commercial buildings in the Central District** (27 - 28 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the owner of Building II was continuing discussions with the owner of Building I on the construction of Footbridge A. Matters that needed to be resolved included the design of the footbridge and its connection point, maintenance responsibilities and consultation with the tenants, etc. Once the connection point at Building I was agreed and the related issues resolved, the owner of Building II would prepare the building plans and submit them to the Buildings Department for approval; and

- Footbridges B and C had been open to the public since 2000. To improve the pedestrian environment further, the Government was examining the feasibility of implementing more pedestrian schemes in Central. As regards the underground pedestrian network along Queen's Road Central, the Government remained of the view that the construction phase of such a network would cause very serious disruption to the heavy vehicular and pedestrian traffic and business establishments in the heart of the Central District. The Government would continue to search for other viable solutions.

Further developments

43. Regarding the underground pedestrian network, the Committee asked about the efforts that the Administration had made to explore the proposal and whether the proposal had already been abandoned.

44. The Committee also asked:

- whether the Administration had vigorously pursued the construction of Footbridge A and what the current progress was; and

- whether the Administration had decided not to pursue the construction of Footbridge D and, if so, what the reasons were.

45. The **Secretary for Planning and Lands**, in his letter of 14 January 2002 in ***Appendix 11***, informed the Committee that:

- to improve the pedestrian flow in the Central District, the Government had comprehensively examined the possibility of introducing pedestrianisation schemes in the area. The Government was now considering the implementation of such schemes for the more crowded parts in the District. If implemented, these schemes would go a long way in facilitating pedestrian movements;

- as regards the proposed underground pedestrian network in the District, the Government remained of the view that the construction of the network would unavoidably cause much disruption to the traffic flow and business establishments in the District and there were no ready solutions. The Government would not pursue this idea further;

- the Administration had been pursuing the construction of Footbridge A with the owners of Buildings I and II. The owner of Building II had accepted responsibility to construct the Footbridge. The owners of the two Buildings had engaged in direct dialogues on the construction of the Footbridge. The owner of Building I had passed the preferred connection point of the Footbridge to the owner of Building II for consideration. However, this proposal was not acceptable to the owner of Building II who had counter-proposed another option for the owner of Building I to consider. The Administration would closely monitor the progress of the matter. In this respect, the Lands Department and the Buildings Department would render their assistance, within their scope of responsibilities, to the owners of the buildings concerned; and

- the position of Footbridge D was different from Footbridge A. The owner of Building II was obliged under the land lease condition to construct Footbridge A. However, there were no contractual obligations under the relevant leases for the owners of Building I and Building IV to construct a footbridge connecting the two buildings. As such, the Administration could

not require the owners of the buildings to construct a footbridge between Building I and Building IV.

46. The Committee wish to be kept informed of the progress of the negotiation between the owners of the Buildings I and II sites for the provision of Footbridge A.

47. **Information technology projects, staff productivity and central registration of documents** (31 - 32 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the Land Registry (LR) had reduced its permanent posts and contract/temporary posts by 65 and 8 respectively since the publication of the Committee's Report No. 31 in February 1999. It now had only 559 permanent and 41 non-civil-service contract staff;

- there had been a significant improvement in the average staff output of the LR. The average output in 1998 (from January 1998 to September 1998) was 13.7 deeds per man-day. The standard productivity level adopted by the LR was 15 deeds per man-day. The current productivity exceeded this level by as much as 50%. The LR would continue to monitor staff productivity;

- the tender for the development of the Integrated Registration Information System (IRIS) to replace the existing database and to support centralised registration services had been closed on 20 April 2001. The LR was evaluating the tenders. In view of the complexity of the project requirements, the LR had engaged an external consultant to assist in the technical assessment. The tender evaluation exercise would be completed by the end of 2001; and

- the LR would implement the IRIS project in two phases. Implementation of the first phase relating to central registration required passage of the Land Registration (Amendment) Bill and that for the second phase on title registration, passage of the proposed Land Titles Bill. The Administration had introduced the Land Registration (Amendment) Bill into the Legislative Council in January 2001. The Administration was now carrying out consultation on the Land Titles Bill which would be introduced into the Legislative Council in 2002. The Administration expected that Phase I of the IRIS could be delivered within 21 months from the date the contract was awarded.

48. The Committee wish to be kept informed of the progress of the implementation of the IRIS.

49. **The use of energy-efficient air-conditioning systems in Hong Kong (**35 - 36 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

- the consultancy studies for the territory-wide implementation of water-cooled air-conditioning system (WACS) and for the implementation of a District Cooling Scheme (DCS) in the South East Kowloon Development were in progress and would be completed by the end of 2001 and early 2002 respectively. The Electrical and Mechanical Services Department (EMSD) was preparing to commission another consultancy study on the implementation of the DCS in the Wan Chai and Causeway Bay areas to start in December 2001. The Administration would work out the way forward based on the findings of these studies;

- in June 2000, an inter-departmental working group launched a pilot scheme under which non-domestic buildings in six selected areas were allowed to use fresh water for evaporative cooling in air-conditioning systems. Subsequent to a review, the group included 11 additional areas in the scheme in June 2001. Seven applications had been approved in principle, covering about 267,000 m^2 of non-domestic floor areas with an estimated annual saving of 3.4 million kilowatt-hours of energy;

- in the course of its routine inspections of consumers' water supply systems, the Water Supplies Department (WSD) would report to the EMSD on any recent installation or removal of cooling towers found for subsequent monitoring. The EMSD would include such installations in its inspection programme of cooling towers and in the promotion of their proper maintenance. The WSD would also relay the information to the Buildings Department (BD) for appropriate actions regarding those cooling towers which were suspected to rest on unsafe structures;

- to further ensure the proper operation and maintenance of cooling towers, the EMSD had appointed a contractor to inspect about 12,000 existing cooling towers and collect water samples from them for testing. The first phase of the work, which started in September 2001, would take 12 months to complete. During this period, the EMSD would identify those cooling towers that were in severe conditions and advise the owners of the ways to rectify them. In the second phase, the EMSD would carry out follow-up inspections on these cooling towers to ascertain whether the conditions had been improved or whether further actions were necessary;

- the BD was currently conducting an annual large-scale clearance exercise to remove potentially dangerous and unauthorised appendages, including cooling towers supporting structures on the external walls of about 550 selected buildings. It had issued statutory orders to the owners concerned to remove them. In the event of default, the BD would take prosecution actions against the owners or remove the structures at the owners' costs. The clearance operations would likely be completed around the end of 2001. The BD was stepping up the removal work, and would increase the number of target buildings in the next round of clearance exercise to about 1,050; and

- the Administration would keep the Committee informed of the findings of the consultancy studies on the implementation of WACS and the DCS, the proposals for the relaxation of the use of fresh water for WACS in non-domestic developments, and the way forward for ensuring the proper design, operation and maintenance of cooling towers for the prevention of Legionnaires' Disease.

Further developments

50. Regarding the applications for the use of fresh water for evaporative cooling in air-conditioning systems, the Committee enquired about:

- the number of applications being processed by the Administration; and

- the number of applications which had been rejected and the follow-up actions taken on such cases.

51. In his letter of 3 January 2002, in ***Appendix 12***, the **Director of Water Supplies** stated that up to 2 January 2002, the WSD had processed eight applications under the Pilot Scheme. Out of these eight applications, only one application was rejected by the WSD on the ground that the submitted vertical plumbing line diagram (VPLD) did not comply with the WSD's requirements. The applicant had been advised to revise the VPLD and re-submit it to the WSD for consideration.

52. In response to the Committee's enquiry about the present position of the clearance exercise to remove potentially dangerous and unauthorised appendages, the **Director of Buildings** informed the Committee in his letter of 3 January 2002, in ***Appendix 13***, that the BD had, in September 2000, commenced the large-scale clearance exercise to remove potentially dangerous and unauthorised appendages on the external

walls of about 550 buildings. The operation had been progressing smoothly according to schedule. Up to now, some 14,000 items of appendages, including cooling tower supporting structures, had been removed voluntarily. Prosecution of defaulters for non-compliance with removal orders would begin after giving them the necessary warning. As a regular feature to implement the BD's enforcement strategy, the next round of clearance operations had already started in the last quarter of 2001, targeting more than 1,000 buildings. It was estimated that over 400 potentially dangerous cooling tower supporting frameworks erected outside of those commercial or industrial buildings would be removed.

53. As regards the inspection of about 12,000 existing cooling towers and the collection of water samples from them for testing, the Committee asked:

- when the whole process of inspection of cooling towers was expected to be completed; and

- about the results of the testing of the water samples and whether the samples concerned had indicated any problems associated with the Legionnaires' Disease case recently occurred in Kowloon Bay.

54. In his letter of 4 January 2002, in ***Appendix 14***, the **Director of Electrical and Mechanical Services** informed the Committee that:

- the EMSD had started in October 2001 to inspect existing cooling towers, including water sampling, in order to appraise the operating conditions of the existing freshwater cooling towers in various locations. This first phase of work would be completed in October 2002. For cooling towers identified with operation and maintenance problems, their owners would be approached and be advised to take appropriate corrective action promptly. The second phase of work was to review the conditions of cooling towers identified for corrective actions and to determine whether further corrective actions were required. The whole process would be completed by December 2003; and

- the results of the testing of the water samples collected during the investigation of the Legionnaires' Disease case in Kowloon Bay indicated that there was no evidence in association with the legionella organisms in the cooling towers with the reported case.

55. The Committee wish to be kept informed of further development on the subject.

56. **Management of on-street parking spaces and parking facilities** (37 - 38 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

Metering of on-street parking spaces

- the programme of installing additional parking meters in the urban areas and New Towns was making good progress. The Transport Department (TD) had installed some 2,000 meters between March 2000 and September 2001;

Extension of meter operations to Sundays and public holidays

- the programme to extend meter operations to Sundays and public holidays had been completed ahead of schedule in July 2001;

Parking spaces for motorcycles

- the TD had introduced daily motorcycle parking at its 13 multi-storey car parks as from 1 August 2000. Having adjusted the operating hours of the Day Pass and Night Pass Scheme in response to users' feedback and lowered the charges in January 2001, the patronage had improved. The TD would continue to publicise the scheme through various channels;

Electronic parking devices

- the trial of Mondex and Visa Cash cards for use on parking meters ended in March 2001. Results so far suggested that the two smart cards were technically feasible as a payment option subject to minor adjustments;

- the TD had carried out a six-month trial of Octopus cards for payment of parking meter fees from November 2000. Five meter suppliers and Creative Star Limited participated in the trial involving four types each of multi-bay and single-bay meters. The trial had been extended by four months to mid-September 2001 to further test the performance of the meters and Octopus readers under hot and humid weather conditions;

- the TD would evaluate the results of both trials and decide on the best option for upgrading the parking meters to accept suitable reloadable smart cards before the end of 2001;

Contract for the management of parking meters

- the new two-year parking meter management contract had commenced on 20 September 2001. The TD had reviewed in particular the revenue-sharing structure and scope of the management contract and had incorporated measures under the new contract to safeguard the Government's interests; and

Special parking facilities

- taking into account the latest planning data released by the Planning Department in June 2001, the TD expected that the preliminary findings of the Second Parking Demand Study relating to parking standards would be available by the end of 2001.

Further developments

57. On the trial of Mondex and Visa Cash cards for use on parking meters, and the trial of Octopus cards for payment of parking meter fees, the Committee asked about the latest position of the TD's evaluation and its decision on the way forward.

58. The Committee also asked about the details of the measures included in the new parking meter management contract.

59. In his letter of 4 January 2002, in ***Appendix 15***, the **Commissioner for Transport** informed the Committee that:

Trials of reloadable cards

- the TD had undertaken trials on the three multi-purpose stored value cards approved by the Hong Kong Monetary Authority between March 2000 and September 2001 as follows:

  (a) Purse cards : About 1,400 meters were converted to accept Mondex or Visa Cash cards in addition to e-Park cards. The one year trial had been completed in March 2001; and

(b) Octopus card : A trial was made with 200 Octopus only parking meters that were provided by 5 different meter manufacturers between November 2000 and September 2001;

- the TD had reviewed the trial results in consultation with the Electrical and Mechanical Services Department. All three electronic payment cards were found to be technically satisfactory, performing well in an outdoor, offline and unattended environment. For the purse card cum e-Park card meters, the utilisation of purse cards was very low, accounting for only 2% of the total transactions. This was mainly attributed to the low card circulation with only around 200,000 cards in use for each of the two purse cards. For the Octopus only parking meters, they were highly utilised and were generally acceptable to the users;

- after the trial, the TD had invited the card service providers to make an expression of interest if they were interested in providing clearing house and associated services for the future parking meters. By the closing date on 15 October 2001, only Creative Star Ltd. made a positive response for the Octopus card. As for purse cards, the TD understood from the service providers that they would not be looking to expand their business;

- the TD had been advised that some credit cards were introducing off-line payment facilities for transaction of small value, i.e. not exceeding $200. These services provided equal convenience as the cardholders could make payment by simply inserting their credit cards through the slot of a terminal without the requirement to sign the paid slips. It was understood that these new products would soon emerge as a replacement of e-purse cards. It was technically feasible to incorporate credit cards with facilities for off-line transactions in the new meter design. The TD therefore planned to replace the existing meters with new meters that accepted Octopus and credit cards. Subject to approval of funding by the Finance Committee in early 2002, the TD would conduct tender exercises to select the meter supplier and the card service providers, with a view to awarding contracts in mid-2002;

New parking meter management contract

- to safeguard the Government's interest, the TD had reviewed the 2-tier revenue sharing formula for the parking meter management contract, and introduced new provisions in the new contract which commenced on 20 September 2001;

- in the new contract, the 2-tier revenue sharing formula had been refined to incorporate an additional revenue sharing percentage that would apply to the portion of the revenue that arose from parking meter fee increase after the commencement of contract, with the contractor's share of meter revenue being capped at a level that reflected the additional responsibilities for the contractor. The purpose was to prevent any windfall profit to the management contractor arising from a meter fee increase;

- the new management contract was granted under an open tender programme. Apart from inviting applications for the tender in the Government Gazette, the TD had issued invitations to various relevant companies and organisations. The trials with Mondex, Visa Cash and Octopus cards on parking meters had also promoted interest in bidding for tender. The TD had received three highly competitive bids for the tender; and

- the TD had not splitted the management contract on this occasion. It granted one meter management contract. As the new contract was only a two-year contract, splitting it into two new contracts would lead to less favourable financial bids to the Government because of high initial set up costs to the contractors and the short contract period. The TD was planning to replace the existing meters with meters accepting reloadable smart cards starting from 2002-03. As such, it would further review the tender terms, including the number of contracts, for the management of the new parking meters in due course.

60. The Committee wish to be kept informed of further development on the subject.

61. **Administration of allowances in the civil service** (39 - 40 of Part IV of P.A.C. Report No. 35). The Committee were informed that:

Policy and review mechanism

- the Civil Service Bureau (CSB) was studying the review recommendations of the Standing Commission on Civil Service Salaries and Conditions of Service (Standing Commission) and the Standing Committee on Disciplined Services Salaries and Conditions of Service on the job-related allowances provided for civil servants and would consult the staff side in due course;

Duty mileage allowance

- the CSB was reviewing the provision of duty mileage allowance as well as the formula for determining its rates; and

Dialect allowance

- the CSB and the respective heads of grades were examining the allowance in the light of the recommendations of the Standing Commission on its review of job-related allowances.

62. The Committee wish to be kept informed of the outcome of the consultation with the staff side and the Administration's decision on the way forward.

63. **Review of the financial reporting of the Government** (43 - 44 of Part IV of P.A.C. Report No. 35). The Committee were informed that on 7 May 2001, the Secretary for the Treasury briefed the Legislative Council Panel on Financial Affairs on the report of the Task Force on Review of Government's Financial Reporting Policy and the recommendations to publish a set of Annual Accounts of the Government on an accrual basis in addition to the existing one on cash accounting convention. On the same day, the Government published the report of the Task Force for public consultation. The consultation ended on 30 June 2001. The Task Force was studying the views and comments collected.

64. The Committee wish to be kept informed of further progress of the Task Force's study and the actions taken on this subject.

65. **Water purchased from Guangdong Province** (5 - 6 of Part V of P.A.C. Report No. 35). The Committee were informed that:

Further efforts to incorporate more favourable terms in future water supply agreements, including medium to long-term flexible supply arrangements

- the Administration had continued to request the Guangdong Authority to further reduce the annual supply quantity in 2001 and beyond. Because of heavy rainfall during the wet season in 2001, the storage levels of the local reservoirs were high. However, the Guangdong Authority had only agreed to reduce the supply rate by not more than 10% due to their operational

constraints. Under these circumstances, the Administration had discharged unneeded Dongjiang water to Shenzhen River in a controlled manner at the reception point of Muk Wu Pumping Station so as to save pumping energy on the Hong Kong side. The Administration estimated that a total of about $10 million pumping cost could be saved in 2001;

- the Administration would continue its utmost effort to negotiate with the Guangdong Authority for medium and long-term flexible supply arrangements and would consolidate the experience for more favourable terms to be incorporated in future supply agreements;

The progress of the measures taken to ensure that the quality of water supplied to Hong Kong meets the 1988 Environmental Quality Standard for Surface Water

- according to the Guangdong Authority, the quality of Dongjiang water at the intake point had always complied with the Environmental Quality Standard for Surface Water, Type II Standard of GB3838-88 and the Guangdong Authority would endeavour its utmost effort in ensuring compliance. The construction of the closed aqueduct was in good progress for completion in 2003. The Administration anticipated that when the closed aqueduct was fully commissioned, the quality of Dongjiang water delivered to Hong Kong would be as good as that at the intake point. The Administration would liaise with the Guangdong Authority to explore the early completion of some critical sections of the closed aqueduct so as to achieve early improvement on water quality;

- the Administration would continue to monitor closely the quality of Dongjiang water received at the Hong Kong's reception point at Muk Wu and request the Guangdong Authority to take prompt actions when there was any deterioration in water quality;

The outcome of the consultancy study on alternative sources of water supply

- the feasibility studies on the desalination of seawater, recycling of wastewater and expansion of Hong Kong's water catchment areas were in progress. There was indication that the cost of desalination was dropping as new technologies emerged. Recycling wastewater for non-potable uses might be possible. The cost-effectiveness of expanding the catchment areas and reservoirs was also being looked into by the Administration. These studies were scheduled to be completed by the end of 2001;

The progress of action plans formulated to improve the quality of Dongjiang water at the Joint Working Group on Sustainable Development and Environmental Protection

- the Dongjiang Water Quality Protection Special Panel under the Joint Working Group on Sustainable Development and Environmental Protection held its third meeting in June 2001. The Administration reiterated the importance of further improvement in Dongjiang water quality and the need to increase the openness and transparency of the water quality data. Towards this end, the Guangdong Authority had started to implement the "Comprehensive Wastewater Management Scheme for the Catchment of Shima River", including the following:

  (a) management of the scattered point sources of pollution from industrial and catering activities, stipulating that sewage could not be discharged unless meeting the specified standard. Efforts were being stepped up to strictly enforce the requirement;

  (b) the government authorities in Guangdong at all levels were required by the Guangdong Provincial Government to reserve additional funds each year for the prevention and management of water pollution. The funds were mainly used for treatment of sewage and cleaning up of streamcourses;

  (c) prohibition against the approval of establishment of heavily polluting and high discharge industrial or agricultural activities along the Dongshen Water Supply System;

  (d) development of effective initiatives to prevent pollution caused by the discharge of surface pollutants into the streamcourses; and

  (e) comprehensive demolition of livestock farms;

- with the agreement of the Guangdong Authority, the data on the quality of Dongjiang water at a major monitoring station near Taiyuan Pumping Station had been published at the Water Supplies Department's (WSD's) web site in May 2001. The information would be updated annually. The Administration would continue to discuss with the Guangdong Authority for the release of more Dongjiang water quality data; and

- the Dongjiang Water Quality Protection Special Panel would continue to closely monitor the quality of the Dongjiang water and discuss improvement measures by the Guangdong Authority, including the implementation of the closed aqueduct. The Special Panel would also explore possible measures to help expediting the implementation of the sewage infrastructure in Guangdong.

Further developments

66. The Committee asked when the results of the feasibility studies on the desalination of seawater, recycling of wastewater and expansion of Hong Kong's water catchement areas would be available. The **Secretary for Works**, in his letter of 2 January 2002, in ***Appendix 16***, informed the Committee that the studies were now at the final stage. At present, the Administration was trying to get more costing information to draw up the final recommendation. It should be in a position to advise the Committee of the final recommendation of the studies around March or April 2002.

67. The Committee wish to be kept informed of:

- the Administration's further efforts to incorporate more favourable terms in future water supply agreements, including medium to long-term flexible supply arrangements;

- the progress of the measures taken, including the commissioning of the closed aqueduct and its critical sections, to ensure the quality of water supplied to Hong Kong meets the 1988 Environmental Quality Standard for Surface Water;

- the outcome of discussion with the Guangdong Authority for the release of more Dongjiang water quality data;

- the actions taken by the Dongjiang Water Quality Protection Special Panel to closely monitor the quality of the Dongjiang water and discuss improvement measures by the Guangdong Authority;

- the monitoring actions taken by the Administration with regard to the quality of Dongjiang water received at the Hong Kong's reception point at Muk Wu; and

- the results of the feasibility studies on alternative sources of water supply for Hong Kong.

68. **The use of employers' returns and notifications for assessing and collecting salaries tax** (Chapter 3 of Part VIII of P.A.C. Report No. 35). The Committee were informed that:

- the Inland Revenue Department's (IRD's) ad hoc committee had made the following progress:

Implementing cost-effective procedures for examining employers' returns

Random checks of employers' returns against relevant information in financial statements submitted for profits tax purposes

- the IRD had included in its field audit programme specific guidelines for its field auditors requiring them to strengthen their checking of employees' income as reported in employers' returns against relevant information given in the financial statements submitted by the employers for profits tax purposes. Field auditors had to examine the business' staff records and to reconcile the amount of remuneration charged in the accounts with the total amount of remuneration reported in the employers' returns to ensure that the information given in various returns tallied with each other;

Taking penalty action against those employers who fail to comply with the requirements of notification or withholding money under section 52 of the Inland Revenue Ordinance

Taking vigorous actions against employers proven to have failed to comply with the requirements of notification or withholding money

- the IRD continued to take vigorous action against employers who had failed to comply with the requirements of notification or withholding of money without reasonable excuse. To step up enforcement and enhance deterrent effect, the IRD had revised the criteria for imposing compound penalties for non-compliance cases in August 2001. Since that time, the IRD had been issuing compound offers or initiating prosecution action in all non-compliance cases, except where the employer had committed the offence for the first time and the tax involved did not exceed $20,000. In the latter cases, warning letters were issued;

Strengthening publicity and education on employers

- in May 2001, the IRD published and distributed a new information leaflet to explain employers' statutory requirements relating to employers' notifications and withholding of money from employees as well as the penalties for non-compliance. The information leaflet was made available at the relevant offices of the Immigration Department (Imm D);

Reviewing the relevant procedures with a view to shortening substantially the time taken to obtain a departure prevention direction from a District Judge

Taking expeditious action to recover tax

- the Imm D was enhancing its computer system for early provision to the IRD of information relating to tax defaulters. The enhancement was expected to be completed by the end of 2001;

Considering proposing legislative amendments that would empower the IRD to require employees in high-risk groups to purchase interest-bearing tax reserve certificates as income is earned in order to provide security for the payment of tax

Seeking legal advice on human rights aspects of various legislative proposals for securing payment of tax

- the IRD had sought legal advice from the Department of Justice on the human rights implications of the proposal to introduce legislative amendments to compulsorily require non-permanent residents, being considered high-risk taxpayers, to purchase interest-bearing tax reserve certificates as income was earned in order to provide security for the payment of tax. The Department of Justice had advised that the proposed broad-brush approach to classify non-permanent residents as "high-risk" taxpayers and to apply to them a less favourable tax collection mechanism was arbitrary because there was no evidence to conclude that all non-permanent residents were tax defaulters. The proposal was therefore discriminatory on the ground of resident status unless there was justification that the difference in the proposed treatment was based on reasonable and objective criteria, i.e. the measure was a reasonable and proportionate means to serve a legitimate need. Having considered the case of the IRD, the Department of Justice was of the view that the proposal was neither rational nor proportionate to meet the need of revenue protection. In the light of the

legal advice, the IRD was inclined not to propose special legislative or administrative measures on the so-called "high-risk" taxpayers;

- the IRD had instead stepped up efforts against employers contravening sections 52(5), 52(6) and 52(7) of the Inland Revenue Ordinance, which required them to notify the IRD of impending cessation of employment or departure from Hong Kong of their employees, and of withholding money in impending cessation-and-departure cases. The IRD would continue to explore if there were other viable options;

- upon the Committee's enquiry about the viable options considered by the IRD, the **Acting Commissioner of Inland Revenue**, advised the Committee, in his letter of 3 January 2002, in ***Appendix 17***, that:

  (a) the Department of Justice had advised previously that the proposal of applying special collection mechanism to non-permanent residents would be neither rational nor proportionate to meet the need to protect the revenue. Having regard to such advice, the IRD was exploring the possibility of restricting the target taxpayers to a more focused group. The IRD would report progress in this respect in due course; and

  (b) in the period from April to November 2001, penalty action had been taken, in the form of the issuing compound offers or warning letters, against 267 employers contravening sections 52(5), (6) and (7) of the Inland Revenue Ordinance. Sections 52(5) and (6) stipulated the requirements of notifying the IRD of impending cessation of employment and departure from Hong Kong respectively, while section 52(7) stated the requirement of withholding money in impending cessation-and-departure cases. Furthermore, an employer had been prosecuted for failure to comply with section 52(5) of the Ordinance in November 2001. He was convicted and fined. In December 2001, another employer was convicted for failure to comply with sections 52(6) and (7) of the Ordinance and fined. Continuous efforts were being made to identify appropriate cases for prosecution so as to create a deterrent effect; and

Follow-up actions on omissions of the relevant government departments

- the Commissioner of Correctional Services, the Director of Education, the Director of Environmental Protection and the Director of Fire Services had looked into the cases of incorrect coding of taxable earnings. They did not consider that there was gross negligence on the part of the individual officers involved. The departments were mindful of the importance of correct

coding at the payment processing input stage and would ensure that all taxable earnings were reported to the IRD in the employers' returns.

69. The Committee wish to be kept informed of the IRD's proposals for securing payment of tax.

70. **Interdiction of government officers** (Chapter 4 of Part VIII of P.A.C. Report No. 35). The Committee were informed that:

Profile and duration of interdiction cases

- in mid-2001, the Civil Service Bureau (CSB) had reviewed the overall effectiveness of the new disciplinary mechanism introduced in April 2000. Under the new mechanism, all formal disciplinary cases (other than those involving officers subject to provisions in the disciplined services legislation) were processed centrally by the Secretariat on Civil Service Discipline (SCSD);

- in the past, disciplinary cases requiring a hearing took on average seven to 18 months to complete (or one to nine months for those not requiring a hearing) depending on the circumstances of individual cases. The review showed that, under the SCSD, cases could be processed more expeditiously whilst upholding the principles of natural justice. The processing time for cases requiring a hearing had been shortened by more than 30% or three months in some instances, and many cases could be completed within six to 12 months. For cases not requiring a hearing, action on a majority of them could be completed within five months. These improvements were attributable mainly to the fact that the procedures had been streamlined and that the cases were handled by a dedicated pool of officers with the right experience or training;

- the Administration was exploring further scope to streamline the procedures and would introduce further measures to expedite action, where appropriate;

Review of the disciplinary procedures practised in the Hong Kong Police Force (HKPF) and other disciplined services

- on top of its current manual on discipline matters, the HKPF had developed a guide which was available via its intranet to assist all parties involved in the disciplinary process. In addition, it was developing a supplementary information package containing the HKPF's policies on discipline, legal advice and judicial review judgements as an added resource to members of the HKPF;

- as part of its efforts to streamline the disciplinary process, the HKPF had since September 2000 implemented a one-year pilot scheme under which serious or complex cases were handled centrally by a Police Force Discipline Adjudication Unit. The HKPF had completed the review on the efficacy of this scheme in September 2001;

- to undertake a more comprehensive review of the discipline system in the HKPF, a steering group had recently been formed to oversee the review. The review would examine various aspects of the system. The staff side would be involved in the process. The Administration would keep the Committee informed of the outcome of the review in due course;

- the other disciplined services departments had also taken actions to review their disciplinary procedures in the light of present-day circumstances. For example, the Customs and Excise Department promulgated a set of streamlined disciplinary procedures in June 2001 as well as revised guidelines for adjudicators in disciplinary proceedings. Apart from making minor adjustments to update the existing departmental instructions, the Fire Services Department had since April 2001 engaged legal experts to provide training for officers involved in the conduct of disciplinary proceedings;

Withholding of salary during interdiction

- with effect from June 2001, the HKPF had implemented new procedures whereby the salary of interdicted police officers might be withheld under certain circumstances. This brought the practice in the HKPF in line with that for the rest of the civil service. Under the new arrangement, the Commissioner of Police would decide the percentage of salary, not being more than one half, to be withheld in each case after taking into account the public interest and the personal circumstances of the interdicted officer;

Granting of annual increments to officers on interdiction

- the Administration had issued clear rules on freezing an interdicted officer's claim to earn increment from the date on which he was charged with a criminal or disciplinary offence that might lead to his removal from the service. The Administration would forfeit any increment thus withheld if he ultimately received a punishment of dismissal or compulsory retirement. The new arrangement had already taken effect from 1 April 2001;

Consistency in policy and practice

- given the nature of their duties, staff in the disciplined services departments were vested with powers to enforce the law. The standards of discipline required of them were different from those applicable to civilian staff. To ensure that the head of a disciplined services department could take swift and resolute disciplinary action against staff misconduct when such action was called for, the "rank-and-file" staff as well as officers of certain ranks (such as officers up to the rank of Chief Inspector of Police in the HKPF, or Chief Officer in the Correctional Services Department) in these departments were subject to disciplinary provisions prescribed in the relevant disciplined services legislation. These provisions were by design different from those in the Public Service (Administration) Order (PS(A)O) which applied to the rest of the civil service;

- the disciplined services legislation empowered the head of a disciplined services department or his delegate to award a wide range of punishment against a rank-and-file staff member, including dismissal, without recourse to a higher authority. On the other hand, if the staff member felt aggrieved and lodged an appeal, the punishment awarded (other than severe reprimand, reprimand or warning) would be suspended pending the result of the appeal. Hence, for a rank-and-file staff member who had been interdicted on half-pay prior to the award of punishment and who faced a punishment of removal from the service, he would continue to be interdicted on half-pay pending the result of his appeal;

- for those staff in the "officer" ranks subject to the disciplinary provisions in the relevant disciplined services legislation, the authority to punish them by way of removal from the service was not vested in the head of department. The head of department made a recommendation to the Chief Executive who was the ultimate authority to award such a punishment (with the exception of the Secretary for Security who was the punishment authority under the Government Flying Service (Discipline) Regulation — Cap. 322). If an

officer felt aggrieved by the punishment awarded, he might make representations to the Chief Executive under section 20 of the PS(A)O, like a civilian officer who had been awarded a punishment by the Chief Executive (or his delegate) pursuant to provisions in the PS(A)O. Whilst the PS(A)O did not provide for the suspension of punishment when an officer exercised his right to make representations to the Chief Executive, there were other safeguards. These included express provisions which required the disciplinary authority to consult the Public Service Commission before the award of punishment;

- the CSB had consulted the Security Bureau and the disciplined services departments to consider amending the disciplined services legislation with a view to bringing about consistency with the rest of the civil service. The consensus was that there was no need to change the provisions on suspension of punishment during the appeal period. Pertinent considerations were:

  (a) the disciplinary mechanism applicable to the rank-and-file staff in the disciplined services departments was by design different from that for the rest of the civil service;

  (b) suspension of punishment formed an integral part of the provisions for appeal open to a rank-and-file staff member in the disciplined services departments. When viewed against the powers that had been vested in the head of a disciplined services department (including the power to punish a rank-and-file staff member by dismissal, without recourse to higher authority), the relevant provisions did not seem to be unfair or less than equitable; and

  (c) the number of appeals had not been significant. In the past two and a half years, there were on average about ten cases per year where rank-and-file staff in the disciplined services departments appealed against the punishment of removal from the service;

- the issue of amending section 37(4) of the Police Force Ordinance (Cap. 232) to stop the salary of an interdicted officer with effect from the date of conviction (as opposed to the following day) would be considered by the steering group who oversaw the review of the discipline system in the HKPF. The Administration would keep the Committee informed of the outcome in due course; and

Monitoring of interdiction cases by the CSB

- the CSB had developed an electronic management information system dedicated to capturing, in a secure manner, confidential information on disciplinary cases involving interdiction. By easing retrieval of data, it helped facilitate effective monitoring and any subsequent review of policy and practice. The system had been in operation since September 2001.

71. The Committee wish to be kept informed of further development on the subject, including the profile and duration of interdiction cases, the outcome of the review of the HKPF's pilot scheme of centrally handling serious or complex cases by a Police Force Discipline Adjudication Unit, the comprehensive review of the discipline system in the HKPF and the issue of amending section 37(4) of the Police Force Ordinance.

72. **Employees Retraining Scheme** (Chapter 5 of Part VIII of P.A.C. Report No. 35). The Committee were informed that:

Objective criteria for job placement rates

- while the Employees Retraining Board (ERB) had decided to retain its existing definitions for "job placement", it had undertaken to pay more attention to the job retention rates of placed retrainees. The Education and Manpower Bureau (EMB) and the ERB had agreed on an additional performance indicator of 60% retention rate for six months after placement of retrainees;

- since April 2001, the ERB had begun conducting regular quarterly job retention surveys. So far, three retention surveys (including pilot surveys) had been conducted. The surveys had consistently indicated that more than 80% of placed retrainees had been in their jobs for over one month and the latest survey showed that 74.8% of placed retrainees had stayed in their employment six months after placement;

Monitoring of training bodies

- the ERB had introduced additional measures to ensure the quality of retraining delivered by the training bodies. A specific Course Advisory Team on Computer and IT-related courses had been set up and, subject to review, other advisory teams for different major course types would also be set up. Comprising experienced professionals in the relevant fields, these

Course Advisory Teams conducted surprise visits to the training bodies. The ERB had recruited two additional executive staff to improve management audits of the accounting and course delivery functions of the training bodies. They assumed duty in mid-August and would visit more frequently the training bodies for monitoring purposes;

Effectiveness of retraining programmes

- the course standardisation exercise for 18 major retraining courses had been completed and training bodies were piloting standardised programmes. A review would be conducted by the end of 2001. More Course Steering Groups would also be set up with a view to standardising other retraining courses, e.g. Putonghua courses;

- with regard to the development of a common assessment and competency certification, a task group, comprising the ERB staff and representatives of training bodies, had been set up to conduct a pilot exercise for the domestic helper retraining courses. The group had identified major areas for assessment and formulated a uniform standard for various skills requirements. Retrainees who passed the assessment tests would be issued a competency card to enhance their recognition by employers;

- the first user-opinion survey covering over 4,000 retrainees and over 1,500 user employers was conducted by the University of Hong Kong Policy 21 Ltd. and its report had been published in April 2001. Over 90% of retrainees and employers expressed their satisfaction with the retraining courses and the quality of retrainees respectively. The ERB would conduct similar independent surveys regularly;

Admission criteria

- the Administration had commissioned a consultancy firm to undertake a review of the organisational set-up for vocational training and retraining in Hong Kong. The review was scheduled for completion by the end of 2001. The Administration would take into account the outcome of this review in examining the functions of the ERB and its target customers;

Competitive tendering system for appointing training bodies

- the ERB had found the Indicative Common Unit Cost System, which was implemented in 2000-01, satisfactory and effective. Furthermore, with the completion of the course standardisation exercise, the ERB had reduced the

cost variations among training bodies due to variations in course contents and duration;

- to increase competition among the training bodies, the ERB introduced a new Annual Budgeting Mechanism which took effect in 2001-02. Under the system, training bodies were invited to submit annual budget proposals for retraining programmes prior to the commencement of the financial year. The ERB would allocate its planned retraining places and annual budget, based on objective factors which included past retraining capacity of individual training bodies and their unit cost level, site audit findings, ratio of full-time programmes and past performance including placement rates and feedback from retrainees and employers. The annual allocation plan served as an initial indication of the ERB's funding for each training body. Actual funding would be considered and allocated on a quarterly basis subject to evaluation of performance of the training bodies and market demand. The ERB would first review the effectiveness of this modified competitive tendering system by the end of 2001, before exploring the need as well as the feasibility of introducing a full-blown competitive tendering system in the long term;

Ancillary management improvement measures

- the ERB had reviewed the permitted frequency for retrainees to attend full-time courses. At present, retrainees would only be allowed to enrol in up to two full-time courses (of duration longer than one week) with retraining allowance in a one-year period. The ERB would further impose an additional admission rule that no enrolment in more than four full-time courses with retraining allowance payable would be allowed within any three-year period. This additional restriction, which would come into effect by early 2002 upon the completion of the enhanced computer programme, might help prevent abuses of retraining services;

- the Social Welfare Department (SWD) had enhanced its computer system to perform data matching with the ERB starting from August 2001. The ERB would pass the information on retraining allowances payable to retrainees to the SWD on a quarterly basis, with a view to facilitating the identification of anomalies, i.e. retrainees receiving both the retraining allowance and the Comprehensive Social Security Assistance allowance at the same time;

Forecasts of job vacancies on a regular basis

- the Research and Development Department of the ERB studied manpower trends in the economy through analysing published statistics and information from various sources, including the Census and Statistics Department , Labour Department (LD), the press and the ERB itself. Analyses of job vacancies categorised into different occupations and industries which were advertised in major local newspapers were conducted on a quarterly basis. Statistics related to the top ten categories of job vacancies registered with the LD and the ERB One-stop Service hotline were also compiled on a monthly basis. Such reports helped establish a database on the short and medium term trend of manpower and training needs in different sectors and industries. The ERB was also planning to commission an independent research institute to conduct comprehensive manpower surveys and forecasts to further ensure that course provision would meet market demand;

Coordination of efforts in promotion, research and development of different training bodies

- a Research and Development Working Group, comprising the ERB staff and representatives from the major training bodies, was formed in early 1999. The Working Group had stepped up the coordination efforts. It had met more regularly to exchange views on planning and conducting labour market research and ad hoc surveys as well as exchanging latest labour market information. The ERB also regularly distributed relevant study reports including those on job vacancies and labour market information to more than 50 training bodies for their reference; and

- the ERB conducted a range of activities to promote and advertise retraining courses. These activities included publishing a quarterly booklet which was available at over 110 retraining centres. The booklet gave details of all retraining courses provided. The ERB organised promotion campaigns jointly with the training bodies to publicise retraining courses and services and provided guidelines to the training bodies on effective advertisement of courses.

73. The Committee wish to be kept informed of the action taken by the ERB to ensure that the premises on which retraining courses are conducted meet the loading, design, structural and fire safety standards of the Government, and further development on the subject.

74. **Comprehensive Redevelopment Programme of the Housing Authority** (Chapter 7 of Part VIII of P.A.C. Report No. 35). The Committee were informed that:

Housing resources

- the Housing Department (HD) had continued to monitor closely the letting of vacant flats in the reception estates for Comprehensive Redevelopment Programme (CRP). The departmental working group set up for the purpose since 1999 had been effective in ensuring prompt letting. The status of the vacant flats had been reported to the Rental Housing Committee (RHC) on a regular basis. The latest report had been considered and endorsed by the RHC in May 2001 without comment;

Delays of CRP projects

- the HD supported the need to adhere to the time target in the CRP and to deal promptly with eviction of unauthorised residents upon detection. The HD had strengthened monitoring of these aspects through regular Redevelopment Monitoring Meetings. In the current financial year, four CRP projects involving 6,000 households and 14,600 persons were promptly completed as at the end of July 2001, while progress was on schedule in another nine projects with evacuation day before the end of March 2002 which included 20,000 households;

- under the CRP, which started in 1988-89 for completion by 2005-06, over 50 public housing estates with 566 blocks were involved. The programme spanned 18 years and involves 190,000 households. Up to the end of July 2001, 481 (85%) of the 566 blocks had been cleared and the population rehoused so far reached 530,000 persons. The remaining 85 blocks were scheduled for clearance in the next four years. The CRP was progressing on schedule and was now in its final stages;

Vacancy of new flats in reception estates and CRP flats

- the RHC considered the Director of Audit's Report No. 35 at its meeting on 1 March 2001. While agreeing to review regularly the desirability of letting vacant flats pending redevelopment on a short-term basis to eligible applicants, the RHC considered that such an arrangement was impracticable on both operational and financial grounds for the time being. The RHC considered that the current arrangement for the pre-development transfer and freezing of vacant flats in CRP estates should be maintained to reduce rehousing demand upon clearance, and that the scope would be limited for

further condensing the five-month lead time between completion of the reception estate and the clearance date; and

Maintenance of tenancy information

- tenancy information of all public housing flats under the first cycle of Biennial Declaration had been verified.

Further developments

75. Noting that the HD had taken steps to let the vacant flats in CRP blocks to overcrowded families in the same phase of the CRP projects, so as to make better use of the flats, the Committee asked about the number of vacant flats that had been let under such an arrangement so far.

76. In his letter of 4 January 2002, in ***Appendix 18***, the **Director of Housing** informed the Committee that:

- since July 2000, 273 vacant flats in the following on-going CRP estates had been let to overcrowded families:

Lower Ngau Tau Kok I & II Estate	100
Sau Mau Ping (Phase 13) Estate	133
Wong Chuk Hang Estate	40

- as 12 CRP projects had been completed during the 2001-02 financial year with clearance dates falling between April and November 2001 involving 21,646 households in 50 blocks, figures on letting of flats to overcrowded families in these blocks were not available upon deletion of the housing stock.

77. The Committee noted the progress of the various courses of action taken by the Housing Authority and the HD.

V. COMMITTEE PROCEEDINGS

Consideration of the Director of Audit's Reports tabled in the Legislative Council on 21 November 2001 As in previous years, the Committee did not consider it necessary to investigate in detail every observation contained in the Director of Audit's Report. The Committee have therefore only selected those chapters in the Director of Audit's Report No. 37 which, in their view, referred to more serious irregularities or shortcomings. It is the investigation of those chapters which constitutes the bulk of this Report.

2. **Meetings** The Committee held a total of 18 meetings and 13 public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of 53 witnesses, including 8 Bureau Secretaries and 16 Heads of Department. The names of the witnesses are listed in ***Appendix 19*** to this Report. A copy of the Deputy Chairman's Introductory Remarks at the first public hearing on 3 December 2001 is in ***Appendix 20***.

3. **Arrangement of the Report** The evidence of the witnesses who appeared before the Committee, and the Committee's specific conclusions and recommendations, based on the evidence and on their deliberations on the relevant chapters of the Director of Audit's Reports, are set out in Chapters 1 to 11 below.

4. A verbatim transcript of the Committee's public proceedings will be available in the Library of the Legislative Council and on the Council's Internet Home Page for inspection by the public.

5. **Acknowledgements** The Committee wish to record their appreciation of the co-operative approach adopted by all the persons who were invited to give evidence. In addition, the Committee are grateful for the assistance and constructive advice given by the Secretary for the Treasury, the Legal Adviser and the Clerk. The Committee also wish to thank the Director of Audit for the objective and professional manner in which he completed his Reports, and for the many services which he and his staff have rendered to the Committee throughout their deliberations.

VI. OBSERVATIONS OF THE PUBLIC ACCOUNTS COMMITTEE ON THE REPORT OF THE DIRECTOR OF AUDIT ON THE ACCOUNTS OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE YEAR ENDED 31 MARCH 2001

The Committee noted the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2001.

2. The Committee's enquiries on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2001 and the additional information provided by the **Secretary for the Treasury** vide her letter of 28 December 2001, in ***Appendix 21***, are set out in the ensuing paragraphs.

General Revenue Account

Note 6(i). Advances - Expenditure on Vietnamese migrants

3. The Committee enquired when, regarding the sum of $1,161,991,000 which was the expenditure on Vietnamese migrants, the Government could remove its remark that "the full recovery of the amount due is doubtful".

4. The **Secretary for the Treasury** replied that:

- the United Nations High Commissioner for Refugees (UNHCR) relied almost exclusively on voluntary contributions from donor governments to fund its global programmes. Without a steady source of income, it had been facing significant deficits for several years and was suffering a shortfall of US$20 million against its 2001 budget. In fact, several emergency operations remained under-funded; and

- unless the UNHCR's financial position improved, the Administration was not optimistic that any repayment would be forthcoming in the foreseeable future. On the other hand, so long as there remained a chance of full or partial recovery, the Administration did not think it prudent to write off the advanced amount. In line with an earlier recommendation of the Committee, the Administration would continue to press the UNHCR for early repayment.

5. The Committee also asked for the procedures involved if the Government was to write off the amount. The **Secretary for the Treasury** advised that:

- section 38 of the Public Finance Ordinance (Cap. 2) set out the authority of the Financial Secretary, and that of public officers acting under delegated authority, in respect of write-offs. The procedures were set out in Financial and Accounting Regulations 130, 135 and 140, and Standing Accounting Instructions 195, 200 and 205; and

- in the hypothetical case that the amount owed by the UNHCR to the Government was to be written off, and assuming that the case did not involve fraud or negligence (in which case the Finance Committee's approval was required for write-offs exceeding $500,000), the Secretary for Security as the Controlling Officer would have to make an application to the Secretary for the Treasury, giving full justifications of why she thought the amount owed by the UNHCR was not recoverable. The application, and the decision of the Secretary for the Treasury on the application, would be copied to the Director of Audit.

Note 6(ii). Advances - Advances for Tsing Ma Control Area (TMCA)

6. The Committee requested the reasons for the significant variance between the toll revenue and related receipts collected, and the TMCA operator's remuneration.

7. The **Secretary for the Treasury** explained that:

- the Administration estimated that, prior to the opening of the airport at Chek Lap Kok and in the initial period after airport opening, traffic on the TMCA would not be sufficient to produce toll revenue that would cover payments to the TMCA operator in full. Accordingly, an advance account was created to meet the temporary shortfall between the toll revenue and related receipts collected on the one hand, and the amount of monthly remuneration and reimbursement due to the operator on the other. The Administration envisaged that the temporary shortfall would be met from the toll revenue and related receipts in excess of the operator's remuneration and reimbursements when the traffic picked up over a period of time after airport opening;

- the balance of the Advance Account grew as the aggregate toll revenue collected between May 1997 and March 2001 fell short of the amount of remuneration and reimbursements payable to the TMCA operator during the period. This was attributable to the following reasons:

  (a) the original traffic forecast of the TMCA, made before 1997 when the economy was thriving, was based on a higher growth assumption. The actual volume of traffic turned out to be lower;

(b) the proposed toll level was reduced by half on the Legislative Council's advice and had not been revised since the opening of the TMCA;

(c) the delay in the opening of the new airport and the unforeseen economic downturn in recent years had further affected the revenue of the TMCA; and

(d) for the first management contract awarded after open tendering, the operator's management fee was based on a much higher assumed throughput; and

- after the expiration of the first four-year management contract in May 2001 and upon open tendering, the Administration had secured a 25% reduction in the TMCA operator's management fee for the second six-year contract. With the reduction in the operator's remuneration, the Administration anticipated that the balance in the Advance Account would be reduced to $278 million in March 2002 and would run down gradually.

8. The Committee also asked:

- what the possible impact of the opening of Route 10 on the projected toll revenue of the TMCA would be, as the amount of advances for the TMCA was huge and on the increase (from $227,033,000 as at 31 March 2000 to $295,010,000 as at 31 March 2001) and as it was the Government's intention now to implement the Route 10 project;

- about the time schedule for clearing this Advance Account; and

- whether the Administration could assure the Committee that this Advance Account could indeed be cleared by the excess of the toll revenue over the operator's remuneration.

9. The **Secretary for the Treasury** replied that the Administration was committed to clearing the Advance Account in good time. According to the latest traffic pattern, it foresaw that the Advance Account could be cleared by 2006. This projection would not be affected by the opening of Route 10 which, according to present planning, was tentatively scheduled for completion in 2008.

Note 12. Revenue - Head 9 "Loans, Reimbursements, Contributions and Other Receipts"

10. The Committee asked whether and how the description of this revenue head could be improved so as to enable users of the financial statement to readily understand its components.

11. The **Secretary for the Treasury** advised that, as in the case of other revenue heads, the description for Head 9 was a general description which aimed to set out the major components of the Head rather than to account for each and every revenue item under this Head. The details were set out in the "Supporting Statements of the General Revenue Account - Statement of Revenue Analysis By Head for 2000-01" on pages 118 and 119 of the Treasury's "Accounts of the Government for the year ended 31 March 2001".

Note 13. Expenditure - Head 146 "Government Secretariat: Education and Manpower Bureau"

12. The Committee requested the reasons for the significant variance between the original estimate of $125,013,000 and the actual expenditure of $337,119,000.

13. The **Secretary for the Treasury** explained that the variance of $212,106,000 was mainly due to the one-off grant of $200,000,000 to the Language Fund (approved by the Finance Committee on 23 February 2001 vide FCR(2000-01)74), which had not been budgeted for in the original approved estimates.

Note 13. Expenditure - Head 90 "Labour Department"

14. The Committee queried the 9.3% variance between the original estimate of $752,051,000 and the actual expenditure of $822,245,000, particularly having regard to the Government's initiative to implement the Enhanced Productivity Programme and the fact that the actual expenditure of most government departments was less than the original estimate.

15. The **Secretary for the Treasury** explained that the 9.3% variance between the original approved estimate and the actual expenditure under Head 90 Labour Department was mainly attributable to:

- the additional expenditure of $37,966,000 for the Youth Pre-employment Training Programme and $3,563,000 for enhancing the Labour Department's employment-related services, both of which had not been provided for in the original estimate, as follows:

  (a) on 26 May 2000, the Finance Committee approved a new commitment of $246 million under Head 90 "Labour Department" for implementing the Youth Pre-employment Training Programme. The project "Enhancement of Labour Department's Employment-related Services" was a new commitment approved under delegated authority. It included the provision of information technology facilities for improved efficiency, production of information kits to facilitate employment matching and provision of improved facilities for use by job seekers; and

  (b) both commitments were new initiatives approved after the approval of the original estimates and the variance reflected the actual expenditure incurred on these two commitments in 2000-01;

- increased expenditure of $25,016,000 on Personal Emoluments. This was due to increased salary requirements resulting from officers promoted in 2000-01, filling of existing vacancies and payment of salary to officers taking final leave upon their retirement under the Voluntary Retirement Scheme, partly offset by reduction in the requirements for Allowances and Job-related Allowances; and

- increased expenditure of $4,054,000 under General Departmental Expenses. This was incurred mainly for the procurement of additional office equipment and upgrading of the computer systems/equipment, and for a four-year service level agreement with the Electrical and Mechanical Services Trading Fund.

Capital Works Reserve Fund

Note 7. Revenue - Land premium

16. The Committee requested the reasons for the significant variance between the original estimate of $42,349,847,000 and the actual revenue of $29,530,715,000.

17. The **Secretary for the Treasury** explained that the variance between the original approved estimate and the actual outturn was mainly attributable to the following reasons:

- the sentiment in the property market was generally weak between April 2000 and March 2001 and this resulted in much fewer than anticipated settlements made in respect of land exchanges and lease modifications;

- some of the sites originally included in the scheduled tender programme were transferred to the Application List, but no application for these sites was received. There was only one site successfully drawn from the Application List and sold; and

- the lowering in property prices adversely affected the land premium amounts eventually realised.

Loan Fund

Expenditure

18. The Committee enquired whether future loan payments could be reduced in view of the loan payments of $5,310,015,000 and the deficit of $1,698,217,000 recorded in 2000-01.

19. The **Secretary for the Treasury** advised that:

- loans made under the Loan Fund were for schemes approved by the Finance Committee. They were mainly housing assistance loans and student loans. Loans were granted to applicants who met the eligibility criteria under the different approved loan schemes. Receipts of the Loan Fund comprised mainly loan repayments and appropriation from General Revenue; and

- the Loan Fund recorded a deficit in 2000-01 because there was no appropriation from General Revenue in that year in view of the projected Fund balance at year end. The Administration would ensure that there was sufficient balance in the Fund to meet ongoing commitments.

Chapter 1

Construction of two bridges

Introduction

The Highways Department (HyD) awarded two contracts (Contract A and Contract B) for the construction of two bridges, Bridge A and Bridge B[1]. During the construction of the bridges, disputes arose between the HyD and the respective contractors (Contractor A and Contractor B). In the event, the HyD had to make additional payments to the contractors. Audit conducted a review on the construction of the two bridges to ascertain:

- why payments had been made to settle the contractors' claims;
- whether there were lessons to be learnt; and
- whether there was room for improvement in project planning and contract administration.

2. In November 2000, the Committee decided to hold a public hearing on this subject. In response to the Committee's invitation to attend the public hearing, **Mr LO Yiu-ching, Director of Highways**, in his letter of 24 November 2000 in ***Appendix 22***, requested a session in camera. He stated that:

- the Government had a contractual duty to honour the confidentiality provision of the construction contracts to avoid making public sensitive materials provided by the contractors of the two bridges during the dispute resolution process. While the HyD was accountable and answerable to the public for taxpayer's money spent under the contracts, it should make its best endeavour to honour the commercial confidentiality and other contractual provisions to retain its credibility and the trust of its contracting parties;
- the issue of confidentiality of contract information had been examined by the Department of Justice in the context of the privacy of contract, the confidential nature of the mediation and arbitration processes, common law requirements and the Personal Data (Privacy) Ordinance. The Department had concluded that disclosure of information provided by the contractors might contravene the confidentiality provision under the contracts; and

[1] The Secretary for Works has now informed the Committee that Bridge A and Bridge B are the Kap Shui Mun Bridge and the Ting Kau Bridge respectively.

- the HyD had attempted to obtain the consent of the contractors to disclose some, if not all, of the sensitive materials. Both contractors were reluctant to agree any such disclosure. The HyD understood that there were still outstanding disputes yet to be resolved between the contractors and their subcontractors and consultants. Releasing any sensitive materials unilaterally by the Government to the public domain would unfairly jeopardise the position of the contracting parties.

3. To consider the Director of Highways' request, the Committee sought additional information from the Administration, including detailed justifications for making the request and information relevant to the examination of the Audit Report. Eventually, the Committee held a public hearing to receive further evidence from the witnesses on 1 March 2001. After considering the evidence taken, the Committee decided to allow the Administration another six months to provide the additional information sought. Subsequently, the Administration provided the Committee with the names of the bridges and the additional payments made in settlement of the disputes relating to Bridge A and Bridge B.

Written evidence obtained by the Committee prior to the public hearing

4. Following receipt of the Director of Highways' initial request for the hearing to be held in camera, the Committee asked:

- whether the settlement sums mentioned in paragraphs 2.8 and 3.11 of the Audit Report were material relative to the original tender sums;

- what the names of Contractors A and B and the two bridges were;

- what the nature and present position of the outstanding disputes relating to the construction of the two bridges were, and whether there was a legal time limit within which the parties concerned had to resolve the disputes; and

- whether the intellectual property rights in the design and processes related to the construction of the bridges were now owned by the Government as the Employer of the contractors.

Construction of two bridges

5. In his letter of 4 December 2000, in ***Appendix 23***, the **Director of Highways** informed the Committee that:

- the settlement sum for the disputes was 1.5% of the original tender price for one bridge and 7.7% for the other. However, the Government, being one of the contracting parties bound by the confidentiality provision, was unable to disclose in public the identity of the contractors and the names of the two bridges;

- the contract for Bridge A had been finalised and certified completed, including all contractual disputes between the Government and the main contractor. The final account of Contract B, including all disputes, had also been agreed with the contractor. However, the maintenance certificate had not yet been issued to Contractor B as there were still a few minor defects that needed to be rectified and the contractor had undertaken to do so. In other words, the contract had not yet been fully completed. There were also disputes between the main contractors and their design consultants and the Government played no part in the dispute resolution process. The disputes were being resolved in accordance with the provisions of the contract between the main contractors and their consultants;

- generally speaking, there was no time limit within which the parties had to resolve contractual disputes if they were not satisfied with the outcome of the more expeditious resolution methods such as mediation or adjudication, and resorted to arbitration or court proceedings. However, under the Limitation Ordinance, an action under a contract could not be brought after the expiration of 12 years from the date on which the cause of action accrued for a contract under seal; and

- in general, the Government owned the intellectual property rights in the design and processes related to the construction of the bridges apart from the design of some proprietary electrical and mechanical systems including the associated software installations.

6. The Committee noted that the dispute resolution process between the Government and the contractors had already concluded and that the parties to the contracts should have been aware that information relating to expenditures incurred under the contracts would have to be reported to the Legislative Council under the Council's normal processes of financial reporting and scrutiny of public expenditure. The Committee therefore asked why the Director of Highways still considered it justifiable to claim that disclosure of contract information provided by the contractors might contravene the confidentiality provision under the contracts.

Construction of two bridges

7. The **Director of Highways** explained, in his letter of 4 December 2000, that:

- although the disputes between the Government and the contractors of the two bridges had all been resolved, both contractors still had unresolved disputes with their design consultants. If the settled amounts and the grounds for settlement between the Government and the contractors were released before the contractors were able to resolve their disputes with their consultants, the contractual positions of the contractors might be jeopardised; and

- the HyD fully appreciated the need to be answerable to the Legislative Council on the money spent under the contracts, and it was fully prepared to justify the basis on which the disputes were resolved, provided this did not put it in breach of the Government's contractual obligations.

8. The Committee further asked about the specific nature of the information relating to the two contracts which, in the Government's view, should not be released to the public domain in view of its contractual obligation, and the basis of the Government's view that such information should not be disclosed.

9. In his letter of 8 January 2001, in ***Appendix 24***, the **Director of Highways** stated that:

- all information provided by the contractor to the Government for the purpose of the contract was protected under the confidentiality clause. This included, inter alia, commercial information provided by the contractor; the views expressed by the Government, the contractor and their legal advisers in particular on liability issues during a negotiation or dispute resolution process; and details of the settlement; and

- in recommending that such information on the two bridges should not be released to the public domain, the HyD had taken the following factors into consideration:

  (a) the potential damage to the image and credibility of the Government in the international construction industry for not observing a well recognised provision in a commercial contract;

  (b) it had been a protracted and arduous process to resolve the contractual disputes between the Government and the main contractors. It would be unfortunate if taxpayer's money had to be drained into another round

of unnecessary civil proceedings taken by the contractors against the Government for failure to observe the confidentiality provision of the construction contracts;

(c) there were unresolved disputes among the main contractors, their design consultants and other design firms. The design consultants did not know the terms and conditions of the settlement between the Government and the main contractors, which invariably involved a lot of give and take from both sides. The outcome of the negotiation among the main contractors and their consulting firms could be prejudiced if the Government, without the agreement of the parties to whom the information related, disclosed unilaterally details of the settlement with the main contractors and the information provided by the main contractors during the dispute resolution process; and

(d) contractors of on-going contracts might be less willing to enter into negotiation or have frank discussions in the mediation process with the Government, knowing that confidential information supplied by them might be subsequently divulged.

10. Regarding the provision for confidentiality of information included in the bridge contracts, the Committee enquired:

- whether the other government capital works contracts covered in the Director of Audit's previous reports were subject to the same confidentiality provision as in the bridge contracts and why the Administration had not requested a hearing in camera in respect of those contracts when the relevant Audit Reports were considered by the Committee;

- whether the confidentiality provision in the bridge contracts was common in other capital works contracts of the Government, and whether the clause was drafted in accordance with internationally accepted practices; and

- about the respective roles of those government departments involved in setting the terms of the provisions.

11. In his letters of 4 December 2000 and 8 January 2001, in ***Appendices 23 and 24*** respectively, the **Director of Highways** stated that:

- the confidentiality obligation was provided in the terms of the contract, and in the Hong Kong Government Mediation Rules which expressly stated that mediation was a private and confidential matter between the parties to the contract. Thus, the Government, as a party to the contract, was inextricably bound;

- the other government capital works contracts covered in the Director of Audit's previous reports and considered by the Committee were subject to similar provision for confidentiality of information current at the time of the respective contracts. In this particular case the Government, having carefully reviewed the weight and the potential impact of various factors, considered that it was appropriate to make a request for a hearing in camera. No such requests were made for the other contracts because less focus was placed on the issue previously;

- the provision for confidentiality of information had been a standard provision in the Hong Kong Government General Conditions of Contract for Civil Engineering Works for many years and had been endorsed by the Hong Kong Construction Association. It was not a negotiated term with the contractors; and

- the provision for confidentiality of information used in the capital works contracts of the Government were common in international contracts. This was because companies generally preferred to conduct their business confidentially and this applied particularly when they became involved in contractual disputes. These provisions only reinforced the common law duty of confidence. In other words, even if there was not an express confidential provision included in the contract document, the contracting parties still owed an implied duty of confidence to each other not to disclose confidential information passed to each other under an obligation of confidence.

Evidence taken at the public hearing and thereafter

12. Having examined the information provided by the Administration in writing, the Committee held a public hearing on 1 March 2001. The evidence taken at the public hearing and thereafter is summarised in the ensuing paragraphs.

Construction of two bridges

13. At the outset, the Committee enquired about the current position of the disputes between the two contractors and their subcontractors and design consultants. **Mr LEE Shing-see, Secretary for Works**, replied that according to the contractors, the disputes were still outstanding.

14. The Committee referred to paragraph 1.7 of the Audit Report which stated that Audit had excluded the relevant information (i.e. detailed information relating to the contractors, the dispute resolution processes and the settlement sums) from the Report, and was only able to disclose in the Report general information about the contract administration of the construction of Bridge A and Bridge B. The Committee pointed out that the inadequate information contained in the Audit Report had impeded the execution of their duty to consider the Audit Report. They asked about the circumstances in which the Administration would be prepared to make the relevant information available.

15. The **Secretary for Works** responded that:

- the Government had considered whether to disclose the information from a number of different perspectives. First, the Government had to live up to the spirit of the contracts. Second, the Government had to evaluate whether disclosure of the information would prejudice the interests of the Government and the contractors; and

- as there were still outstanding disputes between the contractors and their subcontractors, if the Government were to disclose the information, it would be unfair to the contracting parties.

16. Since the contracts between the Government and the contractors had been completed and all related claims settled, and as the public had the right to know how public funds had been spent, the Committee queried whether the Administration, in choosing not to disclose the information, had acted against public interest.

17. As regards the settlement sum for the disputes which was 1.5% of the original tender price for one bridge and 7.7% for the other, the Committee asked whether the amount was unprecedented in absolute terms.

18. The **Secretary for Works** said that:

- whether an amount was huge or not was relative. For government works contract, it was more meaningful to look at the percentage of the settlement sum relative to the total contract sum. The percentage in this case was not staggering; and

- there was a confidentiality provision in the contracts and the Government had to abide by the spirit of the contracts. It was not up to him alone to decide whether the Government was acting against public interest.

19. The **Director of Highways** supplemented that:

- it was normal to encounter disputes in the course of implementing a contract whereby compensation had to be paid. For a small contract, the compensation sum would be smaller. On the other hand, a big contract would give rise to a bigger sum. Therefore, the normal yardstick for assessing whether an amount claimed by the contractor was reasonable was the percentage of the amount relative to the contract sum. The percentages of 1.5% and 7.7% were considered to be within reasonable and normal bounds; and

- when the Administration sought the Finance Committee's approval for project estimates, contingencies amounting to about 10% of the project cost was usually factored in. In case there were unforeseen circumstances in the course of the contract, the additional expenses incurred would be met by the contingencies, although not all the contingencies would be spent on settling disputes.

20. The Committee asked whether it was possible for the Administration to disclose the total amount of the settlement sums in respect of the two bridges. In response, the **Director of Highways** said that there was no reason for him to withhold such information as this would not contravene the confidentiality provision. The total settlement sum was $157 million.

21. The Committee noted from paragraphs 2.8 and 3.11 of the Audit Report that the HyD, after obtaining the Secretary for the Treasury's approval, had accepted the settlement proposals and made additional payments to the two contractors. The Committee asked:

- why the Secretary for the Treasury's approval was required for accepting the two commercial settlements; and

- about the justifications for the Secretary for the Treasury giving the approval.

22. **Miss Elizabeth TSE, Deputy Secretary for the Treasury**, explained that:

- in accordance with Stores and Procurement Regulation 520(c), any variation to a contract which would increase the original value of the contract or any value in the contract sums had to be approved by the appropriate authority, subject to funds being available. In the two cases in question, the relevant authority was the Secretary for the Treasury;

- in these particular cases, the Secretary for the Treasury had considered, amongst other factors, the merits of the contractors' claims, the HyD's assessment of the potential risk exposure for the Government, and the advice of the Government's legal counsel on the potential legal liabilities and costs involved if the disputes or claims were to be resolved through arbitration rather than by a commercial settlement;

- having regard to these relevant factors, the Secretary for the Treasury accepted the Director of Highways' recommendation that a commercial settlement would be beneficial to the Government. Accordingly, the Secretary for the Treasury approved the two settlements as proposed by the Director of Highways; and

- in terms of absolute value, the sum of $157 million was not uncommon.

23. The Committee noted that as both bridges were completed within budget, there was no need for the Administration to seek the Finance Committee's approval for additional funding to settle the contractors' claims. However, in cases where the approved project estimates were exceeded, the Administration had to seek additional funding approval from the Finance Committee. The Committee questioned how, as the confidentiality provision was very restrictive and prohibited the disclosure of detailed contract information, the Administration could justify its application for additional funding approval in case of cost overrun.

24. The Committee further pointed out that under the confidentiality clause, it was the information provided by the contractors to the Government, including the information relating to the dispute resolution processes, which could not be disclosed. However, the names of the two bridges were not information provided by the contractors. Rather, it was in the public domain that the bridges in question were two out of the three landmark bridges in Hong Kong, i.e. Kap Shui Mun Bridge, Tsing Ma Bridge and Ting Kau Bridge. Under the circumstances, the Committee queried why even the names of the bridges could not be made public.

25. The **Secretary for Works** responded that:

- normally, when additional funding had to be sought due to claims or when the approved budget was exceeded, the relevant information would be included in the papers to the Public Works Subcommittee. While detailed information relating to the claim or the arbitration might not be included, the claim amount would definitely be stated. However, the amount stated would only be an estimate, not the actual amount; and

- under the provision for confidentiality of information, all information provided by the contractor to the Government should be kept confidential. Such information included commercial information and information provided during the dispute resolution process and the settlement details. If the Government were to disclose such information, it had to obtain the consent of the contractor. In making application for supplementary funding approval, the Government would have to go through this procedure of obtaining the contractor's consent before disclosing the information.

26. Disputing the Secretary for Works' claim that the contractor's consent had to be sought before the names of the bridges and the settlement sums could be disclosed, the Committee queried how the disclosure of such information could jeopardise the contractors' position in their disputes with their subcontractors and consultants.

27. The **Director of Highways** explained that:

- the Audit Report revealed a lot of information on the disputes between the Government and the contractors as well as the resolution of the disputes. In addition, he had already disclosed the respective percentages of the settlement sums relative to the tender prices of the two contracts. If the names of the bridges or the contractors were also disclosed, even though the actual

settlement sums were not divulged, it would be very easy to guess which two of the three bridges were the subject of the discussion and what the respective settlement sums were;

- as there were still unresolved disputes among the main contractors, their consultants and subcontractors, disclosing the settlement sums would inevitably prejudice the outcome of their negotiation; and

- actually, before attending the public hearing, he had written to the two main contractors stating that the HyD had the duty to make available all information and asked if they had any objection. Both contractors replied that they were reluctant to disclose the information at this stage because that would prejudice the resolution of the disputes between them and their consultants and subcontractors.

28. The Committee considered the existing arrangement highly unsatisfactory because the initiative to disclose information or not rested entirely with the contractors. When additional funding approval had to be sought from the Finance Committee, the contractors might allow the Administration to disclose more information. Otherwise, they would not give their consent even when the contracts had completed as in the present case. As the Administration claimed that it was the existing wording of the confidentiality provision in government capital works contracts which had handicapped the Administration's ability to disclose relevant contract information to the Legislative Council, the Committee asked whether the Administration would consider amending the confidentiality provision, such as by setting a time limit after which the Government could disclose the information, so as to build in more flexibility in the contracts in future.

29. The Committee further asked whether the Administration would consider abolishing the arrangement of including contingencies in project estimates, so that it would have to seek the Legislative Council's approval whenever there was budget overrun and the contractor would then give consent to the disclosure of information.

30. The **Secretary for Works** and the **Director of Highways** said that:

- normally contractors would agree to the disclosure of more information if, in the course of a contract, the Administration had to seek additional funding from the Public Works Subcommittee or the Finance Committee as a result of budget overrun. However, even so, the information to be disclosed would be limited to that relating to the claims, not the whole contract;

- in commercial society under the rule of law, it was natural that, in making decisions on such matter, commercial organisations had to take care of the interests of their shareholders. As the Government had entered into contracts with commercial organisations, it had to abide by the contracts;

- the Administration reviewed the terms of government works contracts from time to time to ascertain if amendments were necessary. The confidentiality clause would also be reviewed. Actually, the provision for confidentiality of information had been a standard provision in government works contracts for many years and it had not inhibited the work of government departments. Such clauses were also common in commercial contracts and international contracts. Not only the Government, but also the contractors were bound by the confidentiality provision. In other words, the clause protected the contractors as well as the Government;

- in the formulation of any contract provision, the overriding principle was fairness. If the Government unilaterally requested the inclusion of an unfair clause, the clause would not stand legally. In reviewing the contract terms, the Administration had to strike a balance between the need to protect the interests of the Government and the interests of the other contracting party. The Administration would also pay due regard to public interest, including the right to know on the part of members of the public; and

- in the light of experience, the contingencies in project estimates were necessary for most projects. In fact, Hong Kong was well-known for its sound contract administration. In many other countries, it was quite common to have significant cost overruns. While there were also cost overruns in Hong Kong from time to time, the percentage of the overrun was smaller.

31. With reference to the reply that the confidentiality provision had been in use for many years, the Committee asked whether such a clause had created similar problems to Audit in the past.

32. **Mr Dominic CHAN Yin-tat, Director of Audit**, replied that:

- Audit had had similar experience in the past. However, the situation was not as restrictive as in the present case in which Audit could not divulge a lot of information; and

- the arrangements for the bridge contracts in question were special because both contracts were design-and-build contracts for which the contractors had provided a lot of information. For other government works contracts, the contractors were only required to carry out works that had been fully designed by a works department or its consultants.

33. The **Secretary for Works** added that the Government had had experience with design-and-build contracts in the past. In the present case, difficulties arose because there were still outstanding disputes between the main contractors and the subcontractors. From past experience, when the disputes were settled, the main contractors would not object to the disclosure of information by the Government.

34. The Committee were aware that the Administration had disclosed the relevant information to Audit although the contractors' had expressed their reluctance to the disclosure. The Committee queried whether it was in fact the Director of Highways who had the ultimate authority to decide on the disclosure of information. The Committee also asked whether the Administration worried that without the confidentiality provision, there might not be any tenderers for government contracts in future.

35. The **Director of Highways** explained that:

- he was answerable to the Legislative Council and the Director of Audit for the public money spent on the bridge contracts. That was the reason why he requested a hearing in camera. While he was most willing to reveal all relevant information to the Committee in public, under the contract he had the responsibility to ask for the contractors' consent as to whether this was the right time to do so; and

- when the disputes were over, he believed that the contractors would probably be willing to make the information available to the public because the projects were financed by public funds. By then, the Government's duty to be accountable to taxpayers would be more important than its duty under commercial contracts.

36. The Committee wondered whether, in the present case, the Administration had attached more importance to commercial interest than to public interest. The Committee further asked about the specific nature of the public interest that the Administration had taken into account in deciding whether or not the revelant information could be revealed.

37. The **Secretary for Works** stated in his letter of 23 March 2001, in ***Appendix 25***, that:

- maintaining the creditability of the Government and protecting its image by observing every provision of a commercial contract signed by the Government was in itself an important public interest consideration. The Government had taken this and other aspects of public interest into account in deciding what contract information could be disclosed; and

- on the very basis of public interest, the Government had not impeded the conduct of the audit process, nor had it withheld any of the contract information from the Audit Commission. The Government considered that sufficient information had been included into the Audit Report to enable a fair and comprehensive assessment of the issues examined in the Report.

38. To ascertain the extent to which the Administration perceived itself as being bound by its contractual obligation, the Committee asked:

- whether the Administration was prepared to disclose all relevant information at a hearing held in camera;

- in case the contractor only had an unresolved dispute over a sum of small value with its subcontractors and was unable to settle it in ten years, whether it was still true that the information could not be disclosed until the dispute had been settled;

- given that the Government played no part in the resolution of the disputes between the contractors and their subcontractors, whether it had to rely on the contractors' good faith to inform it of the resolution progress; and

- whether the Administration would consider it reasonable if the Committee allowed it one year to obtain the contractors' consent to disclose the information.

39. The **Director of Highways** and the **Secretary for Works** replied that:

- the Administration would give all information to the Committee at a hearing in camera. It would also explain to the Committee the possible impact of divulging the information unilaterally. If the Committee chose to disclose the information, it would be up to the Committee;

- if a contractor was not cooperative, the matter could indeed drag on for a long time. In the circumstances, the HyD would ask the contractor for the reason for not being able to settle the disputes expeditiously. The HyD would follow up the matter until consent was given. The contractor might eventually be willing to give consent if the resolution progressed well. On the other hand, if the contractor was still not willing to give consent after a long time, the HyD would assess the position of disputes outstanding and might take the risk of disclosing the information unilaterally. However, there would indeed be practical difficulty in judging when such a step should be taken as the HyD had to rely on the information provided by the contractor about the progress of resolution of the disputes; and

- it was difficult to tell whether one year would be a reasonable time-frame because the disputes were not between the Government and the contractors, but between the contractors and their subcontractors. Actually, it was quite common for the arbitration process to last for three or four years. If the Committee allowed the Administration a year to obtain the contractors' consent, the HyD would make the best effort to negotiate with the contractors during the period.

40. According to the Director of Highways' letter of 8 January 2001, in ***Appendix 24***, other government works contracts covered in previous Audit Reports were subject to the confidentiality provision similar to the bridge contracts. The Administration had not requested hearings in camera in respect of those projects because less focus was placed on the issue previously. As such, the Committee wondered if the Administration had in fact contravened the confidentiality provision in the past. They further queried, in case there were claims or irregularities in future projects, whether this clause would inhibit the disclosure of relevant information by the Administration.

41. The **Director of Highways** clarified that:

- the projects covered in the previous Audit reports were probably clear-cut with no outstanding disputes, so less focus was placed on the confidentiality clause in those contracts. The Administration had to judge on a case by case basis. Other government departments should have also considered their duty of confidence. Perhaps they decided to disclose the information because they judged that the Government would not be put in a disadvantageous position even if they did so; and

- in the present case, there were two outstanding disputes. As the contractors were still negotiating with the subcontractors, if the Government disclosed the contract information in public unilaterally, the contractors might take legal actions against the Government. In view of the possible consequences, the HyD decided that it would be more appropriate to wait until the disputes were resolved. Thus, a request for a hearing in camera was put up.

42. In the light of the Director of Highways' response, it appeared to the Committee that as long as there were outstanding disputes, whether between the Government and the main contractors or between the main contractors and their subcontractors, the Administration would not be prepared to disclose the contract information. They were concerned that while this appeared to be the criterion adopted by the Administration for determining whether or not requests for disclosure of contract information could be entertained, it was not specified in the contract.

43. The **Secretary for Works**' letter of 23 March 2001 also explained that:

- the existence or otherwise of any unresolved contractual disputes (including disputes between the main contractors and their sub-contractors) was one of the considerations in determining whether information relating to government capital works contracts could be released to the public domain; and

- it was a contractual requirement that contract information could only be used for the purpose of executing the contract. The Government and the contractors were obliged not to disclose any information relating to a contract without the express agreement of the party furnishing the information. They had also the obligation to honour the confidentiality provisions of the dispute resolution rules. The fact that there were unresolved disputes between the contractor and his sub-contractors or design consultants only made it even more difficult for the Government to obtain the contractor's agreement to disclosure.

44. On the question of amending the confidentiality provision, the Committee asked:

- whether the Administration considered it feasible to set a time limit after which relevant contract information could be disclosed, and to require the contractors to duly report to the Administration the details of their contractual disputes with their sub-contractors; and

- what other possible changes could be made to the confidentiality clause to enable the Administration to disclose relevant contract information in future.

45. In the same letter, the **Secretary for Works** informed the Committee that:

- the question of confidentiality involved a number of major legal and legal policy issues affecting the lawful basis upon which the Government entered into commercial contracts with outside parties. Any change to the confidentiality provision had to be carefully considered by the Government; and

- notwithstanding that the provision was a well recognised protocol in the commercial sector, the Government was prepared to conduct a thorough review of international practices on the issue of contractual confidentiality in construction contracts. If possible, the Government would, in consultation with the construction industry, consider suitable changes to the confidentiality provision, including the option of setting a limitation period on the restriction to disclose contract information. However, care would have to be taken to ensure that the impact on the position of the Government in both the construction industry and other commercial areas was minimal.

46. As the disputes between the main contractors and the subcontractors had been dragging on for several years, the Committee asked about the percentage of the disputes that was still unresolved. They also enquired about the Administration's assessment of how long it would take to settle the disputes in order that the information could be made public.

47. The **Director of Highways** replied that:

- the claims and disputes were among the main contractors and their subcontractors and design consultants. Although the Government had no part to play in the dispute resolution process, the HyD would keep on liaising with the contractors about the progress in resolving their disputes. If the contractors were still unable to settle the disputes after a reasonable period of time, the Government might consider disclosing the information unilaterally. As to the length of time that would be regarded as reasonable, it was indeed a matter of assessment and judgement; and

- it was not true that the Government could do nothing to ensure the expeditious resolution of the contractors' disputes. If the contractors still wanted to take up government works contracts in future, they would have to convince the Government that they were responsible and would try their best to expeditiously resolve contractual disputes.

48. The letter of 23 March 2001 sent by the **Secretary for Works** further added that in general, it was very difficult for the Government to tell how long it would take for contractors to resolve their disputes with their contracting partners. The time taken varied with the nature and complexity of the dispute, and with the dispute resolution procedures adopted. It would take very much longer if the contractor failed to resolve a dispute through mediation and resorted to arbitration or court proceedings.

49. The Committee were concerned that the present case would establish a precedent whereby the Administration would not disclose the relevant information of a works contract to the Legislative Council by claiming the existence of a similar confidentiality provision in the contract concerned. The Committee asked:

- about the Administration's view if the Committee were to exercise their legal power under the Legislative Council (Powers and Privileges) Ordinance to compel production of the relevant information; and

- whether the Administration, having regard to the Committee's views and public interest, would negotiate with the contractors again regarding the information which could be disclosed to the Committee at this stage, including the names of the bridges and the settlement sums, particularly given that such information was not provided by the contractors.

50. The **Secretary for Works** responded that:

- he had not sought legal advice on the position of the confidentiality provision relative to the Legislative Council's powers and privileges. He considered that if the Committee, after taking into account all possible impact and consequences, required the Administration to disclose the information because of public interest, this should prevail over commercial interest; and

- he would seek legal advice and follow up with the contractors to ascertain the information that could be disclosed.

Construction of two bridges

51. The Committee was informed by the **Secretary for Works** in his letter of 23 March 2001 that:

- the Government had obtained the agreement of Contractor A to release information in relation to the dispute concerning the provision of an additional lift opening. Bridge A is the Kap Shui Mun Bridge. Contractor A had claimed an extension of time of 124 days and an additional payment of HK$46 million, on the basis that the requirement of an additional lift opening had a time and cost impact on both the design and construction programme. The dispute was settled by an additional payment of HK$24.5 million; and

- as regards Bridge B, the contractor still refused to give his consent to disclosure of contract information. After a careful review of the materials included in the Audit Report for a second time, the Administration was unable to provide any additional information to the Committee at this stage without the express agreement of the contractor. However, sufficient information relating to the dispute had already been revealed in the Audit Report. Although the settlement sum was not information provided by the contractor to the Government, it would be a breach of the dispute resolution rules to disclose information on the settlement agreement. The Government would run the risk of the contractor taking civil action against it.

52. Noting the Secretary for Works' reply that the Administration was unable to provide the Committee with any additional information in respect of Bridge B, the Committee wrote to the Secretary for Works on 9 April 2001 informing him that:

- since it had been reported in paragraph 1.7 of the Audit Report that the information excluded from the Report was relevant information, the Committee would fail in their duties if they reported on the Audit Report without having considered the additional information being sought unless there were compelling public interest reasons not to do so;

- although such information had been provided to the Audit Commission when it was compiling the Report, it was not relevant when considering how best the Committee should discharge their function of reporting on the Audit Report. It was also not relevant that the Administration held the view that sufficient information had been included in the Audit Report to enable a fair and comprehensive assessment of the issues examined in the Report. Neither of these could justify the Committee's not seeking the additional information in respect of Bridge B;

- whilst the Committee appreciated that the Administration had made efforts to seek the consent of Contractor B to the disclosure of contract information to them, they were not satisfied that the public interest considerations mentioned by the Administration should prevail over the requirement that the Committee should have access to all relevant information when considering the Audit Report; and

- the Committee considered that it would be fair and reasonable to allow the Administration another six months to provide the Committee with additional information on Bridge B. If such information was not provided by that time, the Committee would seriously consider exercising their legal power to compel production.

Recent developments

53. Upon the expiry of the six-month period, the **Secretary for Works** advised the Committee, vide his letter of 28 September 2001 in ***Appendix 26***, that:

- in anticipation of concluding the matter in so far as Bridge B was concerned, Contractor B had reluctantly given his consent to disclose the identity of the contract and the total overall amount in settlement of all claims, including the two claims examined in the Audit Report and eight minor claims; and

- Bridge B is the Ting Kau Bridge and the dispute was settled by an additional payment of HK$134 million.

54. Regarding the construction of Bridge A, the Committee noted from paragraphs 2.11 and 2.12 of the Audit Report that the Director of Highways had agreed with Audit's recommendations that:

- he should specify clearly the essential requirements in works contracts so as to avoid having to make subsequent changes after the commencement of design work and to reduce the risk of abortive work; and

- if changes were considered necessary after the commencement of the design, he should critically assess the possible effects of the changes on time and cost, and agree in advance with the contractor the extra time and cost involved before the issue of the variation order.

Construction of two bridges

55. On the construction of Bridge B, the Committee understood from paragraphs 3.13, 3.14, 3.22 and 3.23 of the Audit Report that the Director of Highways had agreed to the following recommendations that:

- if there were different acceptable design parameters applicable under different codes of practice, he should specify clearly in contracts the design parameters to be used so as to avoid disputes arising from ambiguities and different interpretations of contract requirements;

- he should stipulate clearly the criteria for determining the period allowed for design review and set sufficient milestones to control the design submission and design review process;

- he should take proactive action to specify clearly the detailed modifications required, in particular for time-critical projects, so that the design could be revised in an efficient and effective manner; and

- he should allow adequate time for the completion of the works, in particular if the works were complex.

56. In response to the Committee's enquiry about the progress of implementing the above recommendations, the **Director of Highways** informed the Committee, in his letter of 26 November 2001 in ***Appendix 27***, that:

- the Audit recommendations were contract administration procedure measures that had already been properly documented in various project administration handbooks, technical circulars and office instructions; and

- arising from the construction of the two bridges, the HyD had further strengthened its control on contract management and tender document preparation through quality audits, being a part of the quality assurance system implemented by the HyD. The quality assurance system had been accredited by the Hong Kong Quality Assurance Agency to be in full compliance with ISO 9001 since December 2000.

57. The Committee further asked whether the HyD had accepted the recommendation mentioned in paragraph 3.13(b) of the Audit Report that the Structures Design Manual for Highways and Railways be amended to specify clearly the wind load factor to be used for determining the aerodynamic effects of wind in the design of bridges.

58. In his letter of 26 November 2001, the **Director of Highways** informed the Committee that the HyD had employed a consultant to review various design codes and wind data with a view to coming up with appropriate wind load factors to be used for aerodynamic design of bridges in Hong Kong. The work would soon be completed and the new specification would be put to use in early 2002.

59. According to paragraphs 4.1 and 4.2 of the Audit Report, the Works Bureau had agreed to consider notifying all works departments of the Audit recommendations in respect of the specification of design parameters in contracts and the adequacy of contract completion time. The Committee enquired about the progress made in this regard. The **Secretary for Works**, in his letter of 27 November 2001 in ***Appendix 28***, stated that the Works Bureau had notified the works departments of the Audit findings in November 2000, requesting them to take measures to avoid a similar occurrence.

The Committee's access to documents and information in considering the Director of Audit's reports

60. Arising from the reluctance of the contractors to consent to the disclosure of the relevant contract information to the Committee, the Committee considered that there was a need to amend future General Conditions of Contract for government capital works projects so that the Administration could make the necessary disclosure to the Committee. The Committee held meetings with the Administration on the wider question of the Committee's access to documents and information in considering the Director of Audit's reports. The Committee considered that, to enable them to fully discharge their duties and report to the Legislative Council, they should have free access to all the documents which had been made available to the Director of Audit for examination. These meetings with the Administration focused on the disclosure of the following four categories of documents:

- Executive Council (ExCo) documents;

- documents of the Policy Groups of the Chief Secretary's Committee (CSC);

- documents of non-government and private-sector organisations e.g. documents which originated from such organisations, and minutes of the meetings attended by representatives of such organisations; and

- documents of organisations which no longer existed e.g. the two former municipal councils.

Construction of two bridges

61. At the meeting held on 3 October 2001, the Administration informed the Committee of its position, as follows:

- papers and minutes for ExCo and CSC Policy Groups should remain as a class confidential documents. Nevertheless, the Administration was prepared to consider the Committee's requests for access to ExCo memoranda and the CSC Policy Groups' discussion papers on a case-by-case basis, on the understanding that the Committee would treat these as confidential documents. To encourage free exchanges of view at ExCo and CSC Policy Groups, the Administration would have difficulty acceding to the request to allow the Committee access to the minutes of ExCo and CSC Policy Groups' deliberations;

- regarding documents relating to non-government and private-sector organisations, e.g. contracts, the Administration would make its best attempt to get the other party to agree to disclose relevant documents to the Legislative Council, where an existing contract had a confidentiality provision. For contracts without the confidentiality provision, the Administration, if requested, would release to the Committee the contract information as far as possible. For new contracts, especially capital works contracts, the Administration was considering the issue and would report to the Committee;

- the Administration saw practical difficulties in disclosing documents in those cases where settlement of disputes was being negotiated; and

- as regards documents of organisations which no longer existed, e.g. the minutes of meetings of such organisations if the meetings were held in camera, the Administration would consider the Committee's requests for access to such documents, having regard to whether the documents were relevant to the Committee's deliberations, and the length of time that had elapsed since the events to which the documents related.

62. The Committee did not accept the Administration's position and requested it to consider their views further, including the Committee's request that they should be put on an equal footing as the Director of Audit in gaining access to documents and information, i.e. the Administration should first allow the Committee free access to documents and then engaged in discussions regarding the disclosure of such documents in the Committee's reports.

Construction of two bridges

63. The Committee and the Administration met again on 8 November 2001. After further discussion at the meeting, the **Secretary for the Treasury** informed the Committee that:

- the Administration recognised that there was a "public interest" element in providing documents requested by the Committee to facilitate deliberation on the Director of Audit's reports. The Administration would give consideration to "public interest" in the light of the circumstances surrounding each case;

- for papers to the ExCo and the CSC or its Policy Groups, the Administration regarded them as a class "confidential" documents. Nevertheless, it agreed that it would consider, on a case-by-case basis, making such documents available on a confidential basis to the Committee upon request;

- the Administration would not disclose records of meetings of the ExCo and the CSC or its Policy Groups, in the interest of preserving free and frank exchanges by the concerned parties;

- for classified documents relating to defunct or existing third parties, the Administration would consider, on a case-by-case basis, making such documents available to the Committee upon request. Where the Administration was bound by contractual confidentiality undertakings to the concerned third parties, it would obtain the consent of the parties involved. Where the Administration had not explained to the concerned third parties that documents provided by them or involving them would be made available to the Committee upon request, it would consider obtaining the consent of the parties involved. Whether or not the documents could be de-classified upon disclosure to the Committee would depend on the circumstances of each case; and

- for works-related contracts which typically contained confidentiality provisions, the Administration intended to introduce suitable amendments to the relevant provisions for future contracts as soon as possible, following consultation with the construction industry. The new formulation, while facilitating the resolution process in the event of disputes, should avoid an increase in the costs of government works contracts, facilitate the resolution process in the event of disputes, and permit the Administration to disclose the terms of dispute settlement to the Committee upon request to facilitate the Committee's deliberations on the Director of Audit's value for money audit reports.

64. The Committee noted that the Administration had subsequently promulgated the above arrangements vide Financial Circular No. 12/2001 issued on 1 December 2001, in ***Appendix 29***.

65. Having considered the Administration's latest position, the Committee wrote to the Chief Secretary for Administration, urging him to ensure that the Administration would render full co-operation when considering the Committee's future requests for access to documents and information. The Committee stated that:

- the Committee were disappointed with the Administration's insistence that it would not disclose the records of meetings of the ExCo and the CSC or its Policy Groups without regard to the subject matter and the issues involved, and that it would not allow the Committee unrestricted access to all government documents in a manner similar to that for the Director of Audit. The Committee felt that the crux of the matter was the Administration's lack of respect for and trust in the Committee; and

- the Committee had suggested that, in order for the Administration to discharge its duty to be accountable to the Legislative Council and its committees and to live up to the spirit of maximum co-operation with the Committee, the Administration should set out the circumstances which would justify a refusal to accede to the Committee's request for provision of certain documents or information. This had not been taken on board, as the Secretary for the Treasury had said that, in processing the Committee's request for documents, the Administration would give consideration to "public interest" in the light of the circumstances surrounding each case. This fell short of the Committee's expectation that the Administration should undertake to provide any documents or information being sought unless it was clear that substantial harm to the public interest would be caused by the provision of such documents or information.

66. In his reply, the **Chief Secretary for Administration** assured the Committee that the Administration would continue to accord the Committee full respect and trust. He stated that:

- the Administration was striving to improve the flow of information between the Committee and the Administration. Despite its known reservations, the Administration had nonetheless offered to exercise additional flexibility to consider, on a case-by-case and confidential basis, responding positively to the Committee's requests for sight of papers for the ExCo, the CSC or its

Policy Groups. It was also prepared to consider sharing with the Committee, upon request, classified documents relating to defunct or existing third parties, again on a case-by-case basis;

- if, after careful consideration, the Administration felt unable to accede to the Committee's request for disclosure of certain documents, it would explain the considerations behind. The Administration would also take into account other pertinent considerations like the Administration's obligations to observe confidentiality provisions and circumstances surrounding each case with a view to best facilitating the work of the Committee;

- disclosure of records of meetings of the ExCo, the CSC or its Policy Groups would risk inhibiting frank and free exchanges and undermine the Administration's commitment to the principle of collective responsibility. The Administration was therefore unable to accede to the Committee's request on this count and continued to appeal to the Committee for understanding; and

- by virtue of the different roles and responsibilities amongst the Director of Audit, the Committee and the Administration, some differentiation in the provision of documents by the Administration to the Director of Audit and the Committee seemed logical.

67. **Conclusions and recommendations** The Committee:

The disclosure of information in the Director of Audit's Report

- express serious concern that, because of the confidentiality provisions in the General Conditions of Contract for the contracts concerned, the Director of Audit has to exclude detailed information relating to the contractors, the dispute resolution processes and the settlement sums from the Audit Report, thereby causing unnecessary delay in the Committee's work and reducing the overall usefulness and timeliness of the Audit Report;

- note that it is the Administration's intention to introduce, as soon as possible, suitable amendments to the confidentiality provisions relating to dispute resolution following consultation with the construction industry, and that it is working to agree on a new formulation which, while facilitating the resolution process in the event of disputes, will avoid an increase in the costs of the contracts and permit the Administration to disclose the terms of dispute settlement to the Committee;

- wish to be kept informed of the progress of the action taken by the Administration to address the issue;

Construction of Bridge A

- express concern that:

  (a) there was a need to make a change to the design of the lifts of the Bridge A towers after the commencement of the design work because the functional requirement of the lifts had not been defined clearly in the contract documents;

  (b) before the issue of the variation order to instruct Contractor A to design and to construct the lift openings to the lower deck, the Highways Department had not agreed with Contractor A on the additional cost and time involved in both the design and construction works; and

  (c) the Government had to make an additional payment to settle Contractor A's claim for additional costs;

- note that the Director of Highways has agreed:

  (a) to specify clearly the essential requirements in works contracts so as to avoid having to make subsequent changes after the commencement of design work and to reduce the risk of abortive work; and

  (b) if changes are considered necessary after the commencement of the design, to critically assess the possible effects of the changes on time and cost, and agree in advance with the contractor on the extra time and cost involved before the issue of the variation order;

Construction of Bridge B

- express concern that:

  (a) the wind load factors to be used in the design work of bridges had not been clearly specified in Contract B and in the "Structures Design Manual for Highways and Railways" of the Highways Department;

  (b) Contract B did not specify any particular period of time for the review of design submission; and

(c) the Highways Department had to make additional payments and to grant extensions of time to settle Contractor B's claims;

- note that the Director of Highways has agreed:

  (a) if there are different acceptable design parameters applicable under different codes of practice, to specify clearly in contracts the design parameters to be used so as to avoid disputes arising from ambiguities and different interpretations of contract requirements;

  (b) to stipulate clearly the criteria for determining the period allowed for design review and set sufficient milestones to control the design submission and design review process;

  (c) to take proactive action to specify clearly the detailed modifications required, in particular for time-critical projects, so that the design can be revised in an efficient and effective manner; and

  (d) to allow adequate time for the completion of the works, in particular where the works are complex;

- acknowledge:

  (a) the Director of Highways' statement that arising from the construction of the two bridges, the Highways Department has further strengthened its control on contract management and tender document preparation through quality audits, being a part of the quality assurance system implemented by the department;

  (b) that the Highways Department has employed a consultant to review various design codes and wind data with a view to coming up with appropriate wind load factors to be used for aerodynamic design of bridges in Hong Kong, and the new specification would be put to use in early 2002; and

  (c) that the Works Bureau has notified all works departments of Audit's recommendations in respect of the specification of design parameters in contracts and the adequacy of contract completion time, requesting them to take measures to avoid a similar occurrence; and

- wish to be kept informed of the progress of issuing the new specifications concerning wind load factors to be used in the design of bridges.

Chapter 2

Follow-up review on control of utility openings

This is the Committee's third report on the control of utility openings, after Report No. 17 of January 1992 and Report No. 24 of July 1995. In the light of the Committee's recommendations in the earlier Reports, Audit carried out a further review on the Government's efforts in enhancing the control of utility openings.

2. The Committee held three public hearings on 14 May, 17 May and 3 October 2001 to take evidence on the issues examined in the Audit Report.

3. Prior to the public hearing on 14 May 2001, the Committee invited the 11 major utility operators mentioned in paragraph 1.2 and Note 1 of the Audit Report to offer their views on the implementation of the excavation permit (EP) fee and the new penalty system, as well as the advance notification of commencement of works by EP holders. In response, the following companies provided their written representations to the Committee:

- Pacific Century CyberWorks Limited (in ***Appendix 30***);
- Hutchison Global Crossing Limited (in ***Appendix 31***);
- The Hongkong Electric Company Limited (in ***Appendix 32***);
- The Hong Kong and China Gas Company Limited (in ***Appendix 33***);
- CLP Power Hong Kong Limited (in ***Appendix 34***); and
- Hong Kong Tramways Limited (in ***Appendix 35***).

Evidence taken at the public hearings on 14 May and 17 May 2001

Implementation of EP fee and new penalty system

4. The Committee pointed out that as early as 1992, they had expressed concern about the increase in the number of road openings and urged the Administration to introduce measures to improve control in this aspect. In the Committee's Report No. 24, the Committee had recommended that the EP fee should be implemented as soon as possible. In the Government Minute of October 1995, the Administration had informed the Committee that it would amend the Crown Land Ordinance (now called the Land (Miscellaneous Provisions) Ordinance (LMPO)) at the earliest opportunity to provide for the charging of the EP fee. However, after a lapse of almost ten years, the Administration had still not introduced the necessary legislative amendments to the Legislative Council (LegCo).

5. The Committee further noted from paragraph 6.7 of the Audit Report that although three respective legislative slots on 16 April 1997, 28 April 1999 and 23 February 2000 had been reserved for introducing the legislative amendments, they were not used subsequently.

6. Against the above background, the Committee queried the reasons for the slow progress in implementing the EP fee and why the three opportunities were not taken up.

7. **Mr Gordon SIU, Secretary for Planning and Lands**[1], replied that as the Planning and Lands Bureau (PLB) was responsible for land policy matters, the Secretary for Planning and Lands was responsible for introducing the legislative amendments. However, the Works Bureau (WB) was the lead bureau for coordinating issues relating to road opening works.

8. As regards why the legislative slot in April 1999 was not taken up, the **Secretary for Planning and Lands** said that in 1998, Hong Kong experienced the Asian financial turmoil and a moratorium on government fees and charges was imposed. At that time, the Lands Department had considered whether to take the opportunity of amending the LMPO to also revise other charges under its purview but not related to road openings. Subsequently, in 1999, the Administration decided not to submit the revisions under the LMPO, whereas the procedure to introduce the EP fee through legislative amendments should proceed separately.

9. Referring to the Secretary for Planning and Lands' explanation for not using the legislative slot in April 1999 to introduce the EP fee scheme, the Committee noted from paragraph 6.7(b) of the Audit Report that there were no recorded reasons for not using this slot.

10. The **Secretary for Planning and Lands** said that the moratorium was a stated policy and was not recorded in the files of the PLB. As for the Lands Department's proposal to introduce legislative amendments for adjusting the levels of certain other fees, it was not recorded in the same files as the ones relating to road openings, and had not been passed to the Audit Commission.

[1] Mr Gordon SIU proceeded on pre-retirement leave from 1 July 2001.

Follow-up review on control of utility openings

11. Upon the Committee's invitation, Audit examined the file mentioned by the Secretary for Planning and Lands after the hearing. In his letter of 22 May 2001, in ***Appendix 36***, the **Director of Audit** stated that:

- there were no recorded reasons in the file for not using the legislative slot on 28 April 1999 (as mentioned in paragraph 6.7(b) of the Audit Report). However, in the file, Audit found that the then Planning, Environment and Lands Bureau was, at that time, considering a separate proposal to amend the LMPO. This proposal, which was not directly related to road openings, involved technical amendments to update the provisions on licences issued for the occupation of government land and the provisions for issuing new licences; and

- based on the additional findings, Audit believed that the legislative slot on 28 April 1999 was not used probably because the then Planning, Environment and Lands Bureau intended to process the proposal together with the road excavation legislative amendments.

12. The Director's letter therefore confirmed that no reasons had been recorded for the Administration's not using the April 1999 legislative slot to introduce the EP fee scheme.

13. The Committee noted from paragraph 6.7(a) of the Audit Report that the slot on 16 April 1997 was not used because a longer time than expected was required to clear the Draft Drafting Instructions with the Department of Justice (D of J) (formerly the Attorney General's Chambers (AGC)). The Committee questioned whether the delay was caused by problems other than drafting and whether the WB had only put forward such an excuse in order to shift the blame to the D of J.

14. **Mr LEE Shing-see, Secretary for Works** and **Mr Michael Byrne, Principal Assistant Secretary (Works)**, explained that:

- the amendment legislation was very complicated. Hence, the AGC had required more time than expected to clear the Draft Drafting Instructions; and

- the WB had passed the details of the policy proposals to the AGC. Legal clearance must be received before the WB could submit the Draft Drafting Instructions to the Law Draftsman. As these were necessary steps, there was no way the WB could expedite the legislative process.

Follow-up review on control of utility openings

15. Regarding the legislative slot on 23 February 2000, paragraph 6.7(c) of the Audit Report stated that the slot was not used because the WB had to further discuss with the utility operators. The Committee considered that the Administration should have had discussions on the proposed introduction of a charging scheme with the utility operators for a long time, as the LegCo had already expressed support for the scheme long ago and the Administration had undertaken to submit the proposal to the LegCo in 1999. The Committee therefore questioned:

- why the Administration suddenly decided not to introduce the amendments in February 2000; and

- how the Administration would handle the matter as the utility operators' opposition to the proposed EP fee was very clear.

16. The **Secretary for Works** responded that:

- the Administration had all along been discussing with the utility operators the concept and principle of charging fees for road excavation works. After formulating concrete proposals in December 1999, the WB issued a consultation paper to the utility operators on the fees to be charged. The utility operators expressed very strong views on the proposals. They also considered that there was insufficient time to study the consultation paper and requested that the consultation period be extended. As a result, in January 2000, the WB decided not to take up the February 2000 slot; and

- the Government's objective to introduce the EP fee was extremely clear and had not changed at all. The utility operators' opposition was known but the Government considered it reasonable to charge fees for utility openings. The WB would continue to work on the proposals for submission to the LegCo.

17. According to paragraph 6.8 of the Audit Report, the Administration had, for the fourth time, reserved a legislative slot on 7 February 2001 for introducing the legislative amendments. Again, the Administration failed to introduce the amendment bill to the LegCo. The Committee were concerned about the further delay and asked whether the Administration had drawn up a definite legislative timetable.

Follow-up review on control of utility openings

18. The **Secretary for Works** said that it was Government's clear policy to impose charges on utility openings. The February 2001 legislative slot was finally not taken up because the Administration wanted to have more time to consider the level of charges, particularly whether the economic cost of traffic delays caused by road openings should be factored in.

19. The Committee understood from paragraph 6.9 that the Government's objective of charging the EP fee was to recover the administrative costs based on the principle of full-cost recovery. They were puzzled by the Secretary for Works' statement that the Administration was now considering whether to factor the economic cost of the road openings in the EP fee. The Committee therefore asked:

- about the Government's latest principle for determining the level of charge and the exact meaning of economic cost; and

- taking into consideration the utility operators' view that imposition of the EP fee would not be able to reduce the number of road openings or prevent unnecessary delays in road excavation works, whether the proposed charging scheme could achieve the intended purposes.

20. The **Secretary for Works** said that:

- the Administration's proposal had been submitted to the LegCo Panel on Planning, Lands and Works in November 2000. The Administration's objective then was full-cost recovery. However, later it considered that the economic cost of the road openings should be factored in the EP fees as well. As such, the level of EP fees would be higher than as set out in the Audit Report, which was only based on the principle of full-cost recovery. The Administration was still working out the exact amount of the economic cost;

- the Administration hoped to submit the new proposals and details of the charging scheme to the Panel on Planning, Lands and Works as soon as possible. Nevertheless, the chance of introducing the amendment bill within the 2000-01 legislative session, which was due to end in July 2001, was slim. The Administration would be able to do so in the 2001-02 legislative session; and

- the Administration believed that the imposition of an EP fee charging full administrative and economic costs would provide incentive for utility operators to complete road excavation works without delay. Economic costs arose as road openings would inevitably lead to traffic congestion and traffic delays.

Follow-up review on control of utility openings

21. The Committee were concerned that the utility operators had been discussing the proposed EP fee with the Government on the understanding that the fees to be levied would be based on the principle of full-cost recovery. However, as the Government now proposed to factor in the economic costs as well, the Committee wondered whether such a change would meet even stronger objection from the utility operators and cause further delay to the introduction of the charging scheme.

22. The **Secretary for Works** said that it was indeed difficult to reach a consensus with the utility operators as they basically did not agree to a charging scheme. The WB had received feedback from the utility operators and was still working with them with a view to identifying the most appropriate proposal. The utility operators would be consulted again. After a more detailed proposal had been formulated, the WB would consult the Planning, Lands and Works Panel. He hoped that the work could be finished in the 2001-02 legislative session.

23. According to the submission from The Hongkong Electric Company Limited, the company considered that "it would not be appropriate to consider the Proposed Charging and Penalty System For Road Opening Works before the Regulatory Impact Assessment (RIA) Report is concluded." The Committee enquired whether the RIA had been completed.

24. The **Secretary for Works** and the **Principal Assistant Secretary (Works)** advised that:

- the Administration decided to conduct an RIA study on "Introduction of Permit Fee and Financial Disincentive Scheme for Road Opening Works" in May 2000 following a meeting with the Panel on Planning, Lands and Works in January 2000. The study was conducted because of the utility operators' strong objections to the proposed charging scheme. As part of the study, a workshop was organised and attended by 11 utility operators. It was clear during the workshop that the basic objective of the utility operators was to avoid the EP fee; and

- the final report of the RIA study had been submitted in September 2000. The conclusion of the study was that the Government's proposal to impose an EP fee was acceptable. There were other suggestions in the report, including that the Government should improve the administration of the EP fee by setting up a one-stop-shop system for receiving and processing applications for EPs. This was being considered.

Follow-up review on control of utility openings

25. The Committee noted from the Hutchison Global Crossing Limited's representation that about 70% of all excavation works on public roads were undertaken by government departments while only about 30% were undertaken by non-government utility operators. The Committee asked whether the ratio was correct.

26. **Mr WONG Chee-keung, Deputy Director of Highways**, replied that:

- in 2000 there were about 70,000 road openings. Non-government utility operators accounted for 37,960 whereas government departments accounted for a total of about 31,000. Out of the 31,000 openings, the Drainage Services Department and the Water Supplies Department accounted for 6,900, and the Highways Department (HyD) accounted for 25,600. Hence, the ratio between works of government and non-government utility operators was about 50:50;

- it was worth noting that the average duration of road opening works by non-government utility operators was 28 days, and the average length of road openings was 62 metres. As the pipes of the Drainage Services Department and the Water Supplies Department were larger, the average duration of road opening works by these two departments was 44 days while the average length of road opening was 29 metres; and

- as for the HyD, the average duration of road opening works was 13 days and road surface occupied by the works was usually very small. This was because if a road sign was to be erected, only a very small hole would have to be dug.

27. It appeared to the Committee that the figure of 70,000 road openings in 2000 quoted by the Deputy Director of Highways was at variance with the 43,000 openings provided in paragraph 1.2 of the Audit Report. The Committee asked about the reason for the discrepancy.

28. The **Deputy Director of Highways** clarified that:

- the numbers of road opening works undertaken by non-government utility operators and those by the Drainage Services Department and Water Supplies Department were 37,960 and 6,900 respectively, which was about 44,000 in total. The HyD's minor works were not included; and

- the figures quoted in the Audit Report were based on the data available when the Report was drafted. The figures quoted by him were the latest ones.

29. The Committee pointed out that even small holes would cause traffic delays and much inconvenience to members of the public. Noting the Administration's view that the proposed charging scheme would provide incentive to non-government utility operators to improve, the Committee enquired whether there was any incentive for the government departments to improve under the scheme.

30. The Committee further referred to the representation from the Hutchison Global Crossing Limited which stated that the private sector utility operators were treated unequally and unfairly as the proposed new system would not apply to government departments. The Committee considered it fair to penalise government departments if they breached the EP conditions, and asked whether the charging and penalty system would apply to government departments in the same way as it applied to the private sector.

31. The **Secretary for Works** said that:

- he agreed that EP fees should be charged to government departments, such as the Drainage Services Department, the Water Supplies Department and the HyD, which undertook road opening works. Hence, there would be a greater incentive for the contractors to work faster;

- very often government departments engaged contractors to carry out the works. In case the contractors breached the EP conditions, they could be penalised under the proposed system. In case a government department did not perform well as the supervisor of the works, a report could be submitted to a more senior officer to identify ways for improvement; and

- as government departments represented the Government, the WB was still seeking legal advice as regards whether the Government could prosecute itself. A proposal would be submitted to the LegCo once a decision was made.

32. Turning to the effectiveness of the proposed charging scheme, the Committee asked about the Administration's estimation of the duration of the works that could be reduced after the introduction of the EP fee.

33. The **Deputy Director of Highways** said that:

- since the Director of Audit's examination of the subject of utility openings, there had been reduction in the duration of the works in the past few years. The average duration of road opening works had been reduced from 35 days in 1998 to 26 days in 2000. As far as the private sector was concerned, the average duration was 28 days. In other words, the private sector, the Drainage Services Department and the Water Supplies Department had all been trying various means to shorten the duration of road opening works; and

- although the utility operators were already quite efficient, the EP fee could provide an extra incentive for them to make further improvements.

34. The **Secretary for Works** added that:

- as the Administration had yet to propose the EP fees, it would be difficult to assess the extent of improvement that could be brought about by the extra incentive. There was bound to be improvements, but it would be more practical to set targets or indicators after the mechanism had been put in place; and

- meanwhile, the HyD would continue to implement other measures to shorten the duration of road opening works.

35. The Committee referred to the representations from the Hutchison Global Crossing Limited and The Hongkong Electric Company Limited which stated that introducing the EP fee would result in additional costs of $10 million and $8.8 million a year for them respectively, and these costs would be transferred to the consumers. To ascertain the financial impact of the proposed EP fees on the utility operators, the Committee asked about the additional costs that would be incurred by the non-government utility operators after the implementation of the charging scheme.

36. In his letter of 30 May 2001, in ***Appendix 37***, the **Director of Highways** provided the additional costs incurred by the private utility operators, as estimated in the RIA. He also stated that the societal benefit and economic gain due to a better controlled road opening system would far outweigh any additional cost incurred by the private utility operators after implementation of the charging scheme.

37. According to paragraph 6.5(b) of the Audit Report, the maximum fine for breaching EP conditions had remained at the level of $5,000 since 1972. The Committee enquired whether any person or company had been fined so far.

38. The **Deputy Director of Highways** said that:

- because of a loophole in the existing legislation, no fine had ever been imposed by the HyD. The loophole existed because an EP was issued to the utility operator, not the contractor engaged by the company to carry out the works. As the contractor was not the permittee, it was difficult for the HyD to prosecute the contractor for breaching the EP conditions; and

- if the HyD was to prosecute the permittee instead, according to legal advice, the chance of success would be slim.

39. Noting that the loophole in the legislation had existed since 1972, the Committee queried why, after a lapse of almost 30 years, the Administration had still not plugged the loophole. Moreover, the Committee asked how, in the absence of any legal authority to take out prosecution action, the Administration could ensure the utility operators' compliance with the EP conditions.

40. The **Secretary for Works** said that one of the reasons for introducing the legislative amendments was to plug this loophole. Under the proposed system, the contractor would be deemed to be the permittee although the EP was issued to the utility operator. As such, the Administration could prosecute both the utility operator and the contractor for breaching the EP conditions.

41. **Mr R H Lloyd, Acting Director of Highways**, and the **Deputy Director of Highways** said that:

- from 1972 to 1996 the HyD did not have difficulties in enforcing the LMPO, and it had not been necessary to initiate prosecution action. If a contractor working on behalf of a utility operator was not performing well, the HyD could terminate the EP. If a utility operator, who had not performed well, applied for extension of the EP, the Department could refuse to grant extension. In future, when the utility operator applied for permits for other works, the Department could refuse to issue the permits. According to the HyD's record, there were 181, 228 and 78 cases of refusal of issuance of EPs in the years 1999, 2000 and 2001 (up to May 2001) respectively; and

- in 1996, the HyD discovered some breaches of permit conditions by utility operators. After seeking legal advice, the Administration confirmed that there was a loophole in the LMPO and thus proposed to amend the Ordinance.

42. The Committee considered that it might be too extreme to terminate or refuse to issue an EP. As the former Public Accounts Committee had urged the Administration to introduce improvement measures to control road opening works back in 1991, the HyD should have taken early action to address the issue. The Committee asked:

- whether there had been dereliction of duty on the part of the HyD management as they had not plugged the loophole in the LMPO expeditiously; and

- about the background to the seeking of legal advice in 1996.

43. **Mr Dominic CHAN Yin-tat, Director of Audit**, said that:

- as stated in paragraphs 1.6 to 1.9 of the Audit Report, the delay in implementing the EP fee was raised in the Director of Audit's Report No. 24 of March 1995. The then Public Accounts Committee had recommended that penalty should be imposed on utility operators who delayed their works without good reasons; and

- it therefore appeared that the HyD, in pursuing the Committee's recommendation, discovered that it was unable to penalise the utility operators under the existing legislation. Hence, in 1996 the HyD sought legal advice.

44. The **Deputy Director of Highways** agreed that the HyD was following up the recommendation of the Committee at that time. In his letter of 30 May 2001, the **Director of Highways** supplemented that:

- the Secretary for Works forwarded a memo in 1996 to the then AGC setting out, among others, the HyD's response to the objections raised by the utility operators to the charging and penalty system for road opening works proposed at that time; and

- the AGC's advice at that time was that it was not legally possible to prosecute a contractor under the LMPO for not complying with EP conditions in case the utility operator was the permittee. In the event that the contractor was the permittee, the utility operator could not be prosecuted under the LMPO either.

45. The Committee referred to paragraph 6.10 of the Public Accounts Committee's Report No. 17 of January 1992. It was recorded that "the Secretary for Works said that he fully appreciated the seriousness and magnitude of the problem, as indicated by the fact that there were some 47 000 road-openings in 1990 in the 1 484 kilometres of roads in Hong Kong … he was looking into ways of tightening up the excavation permit system, including the suggestion to impose penalty charges for permit extensions". The Committee pointed out that as the WB was already fully aware of the suggestion to impose penalty charges in 1992, if legal advice was to be sought, it should have been done at that time, not 1996.

46. The **Secretary for Works** responded that:

- he had not read the past record. As reported in paragraph 1.11 of the current Audit Report, in the Government Minute of October 1995, the Administration had accepted the Committee's recommendations; and

- the WB had been trying to introduce the amendment legislation into the LegCo expeditiously. Hence the WB had reserved four legislative slots, although these were subsequently not used due to different reasons. The WB hoped to introduce the amendments in the 2001-02 legislative session after it had finalised the latest proposals and consulted the utility operators and the Planning, Lands and Works Panel.

47. In response to Committee's question about the mechanism and measures in place for enforcing the EP conditions between 1972 to 1996, the **Director of Highways** stated in his letter of 30 May 2001 that:

- the mechanism and measures in place for enforcing the EP conditions remained essentially the same since 1972. They could broadly be divided into the following arrangements:

Follow-up review on control of utility openings

(a) Legislative arrangement

(i) for authorised excavation under the LMPO, over 40 standard EP conditions were in place to control road openings. Some were recapitulation of the general obligations and requirements of other relevant Ordinances and Regulations. Where the contractors employed by utility undertakings (UUs) were found in breach of this category of EP conditions, prosecution action would be initiated by the designated authority under the other respective Ordinances and Regulations;

(ii) failure to comply with EP conditions not covered by other pieces of legislation were dealt with by administrative arrangements. This was because of the complication arising from the UU employing independent contractors to carry out the construction works which rendered it difficult for HyD to prosecute either the UU or the contractors under the LMPO. The practice of having multiple tiers of sub-contractors further complicated the issue; and

(iii) regarding excavation without a valid permit, the HyD would report such cases to the Police for action to be taken as the HyD was not delegated the authority under the LMPO to prosecute;

(b) Administrative arrangements

(i) for occasional breaches of EP conditions, the HyD would issue warning letters to the UU pressing for improvement actions to be taken. For serious infringement, the HyD would take over the trench work by terminating the permit in force. For persistent poor performance, the HyD would limit the number of permits issued or even suspend issuing permits and permit extensions to the UU in default; and

(ii) for failure to comply with general and technical requirements stipulated in the permit, the HyD would refuse taking over the reinstatement works until all defective works were properly rectified. Where situations warranted, HyD would even carry out the rectification works at the UU's cost; and

(c) Collaboration arrangement

(i) Clause 5 of the standard EP conditions required the Permittees to be fully responsible for their own works. The HyD only played an auditing and monitoring role;

(ii) to promote continuous and consistent improvements among the UUs, the HyD considered that it was more effective to adopt a partnering approach. A 3-tier coordination system had been established to facilitate communication and promulgation of improvement initiatives. This system consisted of an hierarchy of standing committees comprising members of the UUs and the HyD ranging from management to operational level. The performance of the UUs was monitored by a site audit inspection system implemented by the HyD. Non-compliance statistics were regularly reviewed by these committees, and improvement measures discussed and promulgated for implementation. Poor performance would be drawn to the attention of the management level of the concerned UUs who would be required to report to the committee with improvement proposals. This monitoring and reporting mechanism provided the driving force for the UUs to improve their performance in competition with each other; and

(iii) recently, a top level advisory group on road openings, chaired personally by the Director of Highways, had been established consisting of representatives from the Legislature, UUs, contractors and concerned government departments to identify opportunities for further improvements.

48. Regarding the Committee's enquiry as to whether there had been any cases of prosecution under section 8 of the LMPO, including for breaching the EP conditions, the **Director of Highways** replied in the same letter that:

- the authorities designated under the respective pieces of legislation would initiate prosecution action. As regards unauthorised excavation, HyD would report the incident to the Police for prosecution action to be taken. According to the records provided by the Judiciary Administrator, there were 16 cases of departmental summonses under section 8 of LMPO between 1998 and 2000; and

- about 500 summonses were issued in 2000 by the Police under the Road Traffic (Traffic Control) Regulations in respect of failure to comply with the lighting, signing and guarding requirements specified in the EP.

Reporting of site inspection results

49. Paragraphs 3.3 to 3.17 of the Audit Report revealed that in 1998, the HyD's Research and Development (R&D) Division found that the regional staff were reluctant to record all defects identified in their site inspections because they were inclined to ignore minor defects. Moreover, they might not record defects in order to maintain an amiable working relationship with the contractors and to motivate the contractors to rectify the defects as soon as possible. In view of the findings, the HyD had taken actions to improve the reporting of site inspection results. However, in January 2000, a joint inspection conducted by the R&D Division and the Regional Offices revealed that the non-compliance statistics, as reported by the regional staff, still did not accurately reflect the true site conditions. The Committee therefore questioned:

- why the regional staff were not willing to record all defects;

- whether the HyD had invited the Corruption Prevention Department of the Independent Commission Against Corruption (ICAC) to study the possible opportunity for corruption arising from the weakness in the HyD's control system, particularly having regard to the R&D Division's comments that the regional staff might not record defects as they wanted to maintain an amiable working relationship with the contractors; and

- why there was a significant discrepancy between the non-compliance statistics compiled by staff the R&D Division and those by the regional staff.

50. The **Deputy Director of Highways** explained that:

- the inspection standards of the R&D Division staff and the frontline regional staff were different. The standard applied by the former was more stringent. Moreover, some regional staff were inexperienced in conducting utility inspections. To improve the situation, calibration exercises were conducted to ensure consistency of all regional staff in marking the site inspection checklist, and on-the-job training was provided to the inexperienced staff;

- the R&D Division and the regional staff conducted site inspections on a different date. Conditions in sites, particularly utility sites, were in a state of flux and things might not be the same at different times of the day. As the defects recorded included such things as whether a cone was put in the right position and whether there was any rubbish accumulating, there was bound to be variance in the number of defects recorded by the R&D Division and the regional staff. For instance, some cones might have been knocked over by passing vehicles and were recorded by the R&D Division as defects. When the regional staff carried out the inspections on the same site, the situation might have changed; and

- in April 2001, the HyD issued the "Guidance Notes on Audit Inspection of Utility Sites" (Guidance Notes) to provide guidelines to the regional staff on the inspection of utility sites.

51. In response to the Committee's concern about the R&D Division's comment that some regional staff wanted to maintain "an amiable working relationship with the contractors", the **Acting Director of Highways** said that:

- staff of the HyD had to maintain a working relationship with contractors and consultants. The R&D Division's expression might not be accurate. Probably the proper expression should be that there was a "working relationship", rather than an "amiable relationship", which the contractors and the regional staff did not want to destroy it; and

- the HyD would invite the ICAC to examine the reporting of site inspection results.

52. In his letter of 30 May 2001, the **Director of Highways** supplemented that:

- the ICAC had not looked into the reporting of site inspection results by the regional staff of the HyD. However, contact had already been made with the ICAC to review the procedures; and

- the regional staff and the R&D Division staff used the same checklist and followed the same guidelines for site inspections. Before the issue of the Guidance Notes, a set of "Guideline for marking as defective item in Site Inspection Checklist" was issued in 1997. This "Guideline" was amplified in 1999 and subsequently included as part of the Guidance Notes, which would be reviewed regularly in accordance with the departmental ISO9001 quality system.

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53. The Committee noted from paragraph 3.9(c) of the Audit Report that in November 1999, the HyD revised the method of compiling the non-compliance statistics. The "number of work groups inspected", instead of the number of inspections, would be used as the basic unit. The Committee enquired about the difference between the old and the new methods.

54. The **Deputy Director of Highways** said that under the old method, even if only a single minor defect had been recorded on the site, the site would be counted as a 100% defective site. Under the revised method, the "number of work groups inspected" was used as the basic unit. For example, ten work groups might have been inspected and only one defect was recorded in one of the work groups. The site would be counted as having 10% non-compliance.

55. In his letter of 30 May 2001, the **Director of Highways** added that:

- the inspection checklists used before and after the introduction of the "number of works groups inspected" were essentially the same. Only the methodology used for computing the non-compliance statistics was improved in November 1999; and

- the rationale behind the new methodology was to remove the unfairness of the "all or none" approach as described in paragraph 3.7(a) of the Audit Report, under which good and poor sites could not be distinguished.

56. The Committee pointed out that three parties were involved in the recording of defects, namely the workers, the contractors and the HyD staff who gauged the standard of the work (including both the regional staff and the R&D Division staff). The Committee suggested that the HyD should consult the contractors regarding what constituted a defect and how a defect should be judged, so that there could be an agreed standard among the parties concerned.

57. The **Deputy Director of Highways** responded that:

- the HyD had established the Joint Utilities Policy Group (JUPG), Utilities Technical Liaison Committee (UTLC) and the Road Opening Coordinating Committee (ROCC) to facilitate communication with the utility operators. Hopefully, through discussions by these committees, the HyD and the utility operators could agree on a guideline for reporting site inspection results; and

- the HyD did not have communications with the contractors. However, the Department would consider the Committee's suggestion with a view to improving the guidelines.

58. Regarding the other improvement measures taken by the HyD, the **Acting Director of Highways** said that:

- all completed checklists and record photographs submitted by the regional staff after site inspections were required to be counter-checked by the inspectorate staff. When any inappropriate or dubious markings were discovered, the inspectorate staff would carry out a joint inspection with the concerned Works Supervisor (WS) to clarify any anomaly;

- spot checks would be conducted by the inspectorate staff and independent calibration inspections would be conducted at six monthly intervals; and

- training courses had been arranged for site supervisory staff and this would be continued.

59. According to paragraph 3.12(a) of the Audit Report, the R&D Division recommended that regional staff should be reminded of the importance of non-compliance statistics as a management tool. Persistent and/or intentional failure to record non-compliance would be regarded as failure to properly discharge their duties. The Committee asked whether the HyD had taken disciplinary action against any staff members for failure to record non-compliance in utility inspections.

60. The **Acting Director of Highways** replied that the failure to record non-compliance might not be intentional. Normally, major non-compliances would be identified and recorded in the checklist. On the other hand, minor defects might be sorted out on site or followed up by the regional staff phoning the contractor to take rectification action. As such, such defects were not recorded.

61. The Committee considered it highly unsatisfactory that there might be a lot of work done over the phone but was not recorded. They pointed out the R&D Division's recommendation should have been based on its observation that there had been cases of persistent and/or intentional failure to record non-compliance by the regional staff. Hence, disciplinary action should be initiated by the HyD. The Committee also enquired about the position of the R&D Division in the set-up of the HyD and to whom the Division reported.

62. To ascertain whether the regional staff had short-circuited the site inspection system by not recording non-compliances and the motivation behind, the Committee asked whether, for utility sites with defects recorded, there was any instruction requiring the WSs who recorded the defects to inspect the sites again within a certain period of time, such as 48 hours.

63. The **Director of Highways** provided an organisation chart of the HyD showing the position of the R&D Division and its chain of command, vide his letter of 30 May 2001. In the same letter, he informed the Committee that:

- apart from research and development work, the R&D Division also performed independent quality auditing work which was required under the departmental ISO 9001 quality system;

- the HyD had not taken any disciplinary actions against any regional staff as there was no evidence of negligence on the part of the supervisory staff in discharging their normal duties;

- the HyD considered that it was more effective to review the guidelines and to offer training to the supervisory staff to ensure consistency in standards throughout the Department. During the period between November 1999 and December 2000, the HyD had provided comprehensive trainings to all the WSs. A similar refresher course would be arranged again later in 2001; and

- there was no written instruction specifying the time period that a WS had to re-inspect a site where defects were recorded during site inspection. Generally, if defects were recorded, the staff would forward the checklist to the concerned utility operator by facsimile, and on some occasions, contact the UU by phone requesting them to take immediate remedial action. Under normal circumstances, such defects were promptly rectified well before the pledged time of 10 days when the WS was due for the next round of inspection.

64. Regarding the HyD's role in utility site inspections, the **Acting Director of Highways** said that the utility operators employed contractors to carry out the road opening works. It was the utility operator who should supervise the contractors' works and ensure that its contractors were working to the same standards as the HyD, and that they had complied with the EP conditions. The HyD undertook a technical audit to monitor whether the EP conditions had been complied with.

65. Referring to the reply of the Acting Director of Highways, the Committee pointed out that precisely because the utility operators were supposed to supervise the works of their contractors, the HyD should ensure that any defects identified in site inspections were properly recorded and communicated to the utility operators concerned. The Committee also requested the HyD to provide them with a full set of the EP conditions in order to ascertain how the utility operators were required to supervise their contractors' works.

66. In his letter of 30 May 2001, the **Director of Highways** provided a full set of standard EP conditions. He further stated that additional conditions might be imposed where appropriate for individual permits. Clause 5 of the standard EP conditions required the Permittee to execute the works in strict accordance with the permit requirements. As the Permittee was held fully responsible for his works, he was obliged to closely supervise his contractors to ensure that the permit requirements were complied with.

Frequency of site inspections

67. Paragraphs 4.2 to 4.8 of the Audit Report revealed that since 1998, the HyD had twice reduced the minimum frequency of inspections for each site, from the previous "at least twice a week" to the present "once every ten days". According to the HyD, that was a conscious decision made by its senior management having regard to the Department's priorities, other workload, the improvement of quality of utility inspections, other controls in place and the shortage of WSs. The decision was also the result of the discussions of the HyD's Maintenance Working Group (MWG).

68. It appeared to the Committee that while the number of road openings had not changed drastically over the years from 1995, there had been a significant decrease in the manpower deployed to utility-related duties. The Committee therefore asked about the current manpower of WSs, the performance indicators for WSs deployed to site inspection duties, and whether the current manpower could cope with the workload.

69. The Committee also noted from paragraphs 2.3 to 2.5 of the Audit Report that in 1995, the HyD sought the approval of the Finance Committee of the LegCo for implementing a computerised Utility Management System (UMS). One of the intended benefits of the UMS was to increase the number of inspections carried out on utility openings by 10%. The Committee queried why the HyD, instead of increasing the inspection frequency, had reduced it.

70. The **Acting Director of Highways** and the **Deputy Director of Highways** responded that:

- in 1995, there were 62 WSs available for inspecting road opening sites. However, there were now only 32 WSs available for utility-related duties because the Department had taken up more responsibilities over the years, including slope maintenance work. The 32 WSs were spread across many road opening sites and they could only afford making site visits once in ten days. Before the moratorium on civil service recruitment in 1999, the Department had held 14 recruitment boards in 1997 and 1998. The vacancy level remained high as the success rate was low. There were now seven WS vacancies in the HyD and a recruitment board would be held later;

- in 1996 the HyD required that there should be two site inspections per week. Because of manpower problem, the frequency was later reduced to once per week. The current requirement was once every ten days, and the Department considered that 32 WSs were sufficient for the workload. The quality of inspection, rather than the frequency of inspection, was more important. Nowadays, there were more measures in place to control road opening works. Moreover, by reducing the frequency to once every ten days, the inspections conducted by the WSs would be more thorough; and

- the HyD would definitely conduct an inspection on road opening works that lasted for less than ten days, provided that the utility operators concerned complied with the requirement to notify the HyD two days before commencement of the works. It was also the HyD's practice to inspect more frequently those sites with poor performance records and less frequently those with good performance records.

71. The Committee further asked:

- about the basis of the MWG's decision to reduce the frequency of inspections;

- about the justifications for claiming that the current inspection frequency of "once every ten days" achieved a better quality than the frequency of "twice a week" in the past; and

- whether it was the HyD's view that the quality of the site inspections in the past was not up to standard.

Follow-up review on control of utility openings

72. The **Director of Highways** advised in his letter of 30 May 2001 that:

- the MWG recognised that both inspection frequency and quality were equally important. Owing to the continued difficulty in recruiting sufficient numbers of WS in recent years, the HyD had no other alternative but to reduce the inspection frequency. Despite such reduction, more time had been allocated to each inspection visit to maintain quality. The level of details covered was also greater. Assuming that the utility operators and their contractors maintained a consistent standard of performance, more thorough inspection revealed non-compliances to a greater detail. Furthermore, as the utility operators had responded promptly to non-compliances identified in these site inspections, the site conditions were improved, resulting in a considerable decrease in damage incidents in the past three years;

- the requirement of at least one inspection per ten active permit days was the overall target of the HyD. Individual inspection teams could adjust the frequency taking into account the sensitivity and complexity of the utility works. For example, in Hong Kong Region where road openings generally had greater impact on traffic, the site inspection frequency had generally been maintained at around one inspection per seven active permit days;

- the MWG had been monitoring and reviewing the inspection frequency periodically taking into account the performance of UUs in road opening works and the workload of the regional staff, and adjusted the inspection frequency accordingly; and

- the HyD considered that the quality of the site inspections in the past was up to standard. However, with more experience and lessons learnt, the HyD always looked for opportunities to improve the quality of inspections. This could be seen from the change in the level of details in the current inspection checklists as compared with that used in early 1995. Many more details were now required to be inspected and reported. The HyD had also taken measures to further improve the quality of inspection by providing intensive training to the WSs.

73. In response to the Committee's invitation, the **Director of Audit** provided in his letter of 29 June 2001, in ***Appendix 38***, supplementary comments on the monitoring and control of site inspections by the HyD.

Evidence taken at the public hearing on 3 October 2001

Implementation of EP fee and new penalty system

74. On the introduction of a charging and penalty system for road opening works, the Committee enquired:

- about the latest progress of amending the LMPO to provide for the proposed system and the proposed level of charges; and

- whether the system would apply to the Government, having regard to the fact that government departments accounted for about half of the 70,000 road opening works in a year.

75. The **Secretary for Works** informed the Committee that:

- the Government's stance of imposing the EP fee and a penalty system for road opening works had not changed. The WB would shortly issue a consultation document on the proposed charging and penalty system for street excavation works to the UUs. The WB expected to receive all the responses from the UUs by the end of October 2001. After collating the UUs' responses, the WB would consult the Panel on Planning, Lands and Works in November or December 2001. The Administration's current target was to introduce the amendment bill into the LegCo in April 2002. Both the consultation document and the UUs' feedback would be made available to the Committee as soon as available;

- the proposed fees and charges to be applied would be set out in the consultation document. The proposed charging scheme would recover the full administrative costs incurred by government departments in processing and monitoring EPs based on the "user-pays" principle. This would provide incentive for the UUs and contractors to complete their excavation works without delay. In addition, a further charge based on the economic cost of traffic delay would be levied for excavation work carried out after expiry of the original permit period without good reason. The basis for determining the economic cost would also be provided in the consultation document; and

- the EP fees and other charges would be charged to government departments and their contractors in the same way as other non-government UUs.

Follow-up review on control of utility openings

76. The Committee referred to Appendix 11 of the Director of Highways' letter of 30 May 2001 setting out the estimated additional cost after implementation of the charging scheme for each of the private UUs. In the case of the Hongkong Electric Company Limited and the CLP Power Hong Kong Limited, the estimated additional cost incurred by these two UUs would be $10 million and $38.13 million respectively. The Committee enquired about the basis of these estimation and how the amounts would differ after the economic cost had been factored in.

77. **Mr LO Yiu-ching, Director of Highways**, explained that:

- in 2000 the Commerce and Industry Bureau commissioned a consultancy to conduct an RIA to assess the impact after a charging scheme was implemented. The figures of $10 million and $38.13 million, etc. were the estimation of the then consultancy; and

- the consultancy's estimation at that time was based on the principle of full recovery of the administrative cost only and had not taken into account the economic cost of traffic delays under the current proposal. Details of the charges under the current proposal would be included in the WB's consultation document.

78. Regarding the enforcement of the LMPO and the EP conditions by the HyD, the Committee noted from the Director of Highways' letter of 30 May 2001 that there were 16 cases of departmental summonses under section 8 of the LMPO between 1998 and 2000, and 500 summonses had been issued by the Police in 2000 under the Road Traffic (Traffic Control) Regulations in connection with failure to comply with the lighting, signing and guarding requirements specified in the EP. As revealed in Appendix 1 of the same letter, the Director of Highways, similar to the Commissioner of Police, had the authority to initiate prosecution under the Road Traffic Ordinance. The Committee asked:

- whether the above summonses were issued to the UUs or the contractors; and

- why the HyD had never initiated any prosecution action under the Road Traffic Ordinance although it had the authority to do so.

79. The **Director of Highways** replied that:

- the summonses were issued to the contractors instead of the UUs because it was the contractors who had not complied with the relevant requirements;

- there was a division of responsibilities among government departments. The HyD was responsible for taking enforcement action against breaches that happened on expressways. As for other roads, it was the Police's responsibility to take prosecution action; and

- under the existing LMPO, the HyD could prosecute neither the UUs nor the contractors. However, under other pieces of legislation, the contractors, as the road excavators, could be prosecuted. Depending on the circumstances, the relevant authorities designated under the respective Ordinances and Regulations would initiate prosecution action.

80. In the light of the Director of Highways' reply, the Committee asked:

- whether the division of responsibilities among government departments was stipulated under the law or only for administrative convenience;

- whether the HyD's failure to institute prosecution action against the breaching of EP conditions was due to the division of responsibilities or the existence of the loophole in the LMPO; and

- as the LMPO was enacted in 1972 and the loophole in the LMPO was only confirmed by the AGC in 1996, whether the HyD had knowledge of the existence of the loophole between 1972 and 1996 and if so, why the Department had not taken action to solve the problem during that period.

81. The **Director of Highways** clarified that:

- the division of responsibilities was a division under the law, as reflected by the different authorities designated for enforcing different provisions in the Ordinances and Regulations;

- between 1972 and 1996, the HyD relied on the legislative, administrative and collaboration arrangements to enforce the EP conditions and these arrangements had operated well. In 1996, as a result of the Audit Report and the Public Accounts Committee's recommendation, the HyD was alerted to the legal difficulties in enforcing certain EP conditions against the permit holders under the LMPO. Hence, the Administration proposed to take this opportunity to amend the LMPO to plug the loophole, apart from providing for the fees and charges. The EP conditions would also have to be amended accordingly; and

- after the legislative amendments had been passed, although the EP was issued to the UUs, their contractors would also be held liable. Both the UUs and the contractors could then be prosecuted for breaching of EP conditions.

82. Turning to the proposed penalty system, the Committee asked about the Government's decision regarding whether government departments would be prosecuted for breaching of EP conditions. The **Secretary for Works** said that it was the Government's principle to apply equal treatment to all parties. Under the proposed system, if there was non-compliance with the EP conditions by the private-sector UUs, the contractors and the UUs would be prosecuted. As far as government projects were concerned, the contractors would be liable to prosecution if they were not complying with the permit conditions. However, it was a complicated issue as regards whether prosecution action could be taken by a government department against another government department. Although he had had a detailed discussion with his legal adviser before the hearing, no conclusive answer was available yet.

83. The Committee stressed that government departments should abide by the law and it would be unacceptable to give the public an impression to the contrary. They queried whether there were any legislative principles which prohibited the prosecution of a government department in breach of the law. The Committee further asked whether the Administration would put in place a mechanism for recovering from concerned government departments the administrative and economic costs, in case these departments were unwilling to do so, without having to resort to prosecution.

84. The **Secretary for Works** responded that:

- the question of whether a government department could be prosecuted by another fellow department not only arose in the context of the LMPO, but also in other Ordinances. As it was a question of law, he was not in a position to give an answer in the absence of legal advice. Neither could he give an exact time-frame as to when the legal advice would be available;

- regarding the EP fees and charges, in the WB's proposal to be put forward for consultation, there would be an administrative mechanism to deal with non-conforming government departments. A reconciliatory mechanism would be set up under the WB to handle any disputes over government departments' non-compliances with EP conditions and the recovery of EP fees from the departments concerned; and

- he fully agreed that government departments and government officials should not be above the law. If they had committed any criminal act or serious offence, they should be prosecuted. However, in the context of road excavation works, it would be more appropriate to deal with non-compliances through administrative means.

85. In response to the Committee's enquiry about the bureau that would be responsible for introducing the amendment of the LMPO into the LegCo in April 2002, **Mr John TSANG Chun-wah, Secretary for Planning and Lands**[2], said that the Planning and Lands Bureau was responsible for land policy matters whereas the WB was the policy bureau for works matters. Therefore, the WB would be the responsible bureau for coordinating the legislative amendments about road opening works.

86. The **Secretary for Works** confirmed that the WB would be the responsible bureau for these legislative amendments and it would be accountable for any delay in introducing the amendment bill. The WB and the Planning and Lands Bureau would continue to maintain close coordination over the matter.

87. Referring to the advisory group on road openings chaired by the Director of Highways with members comprising representatives from the LegCo, as mentioned in the Director of Highways' letter of 30 May 2001, the Committee asked about the capacity of the LegCo Members sitting on the group.

88. The **Director of Highways** clarified that:

- the advisory group was set up nine months earlier to identify opportunities for minimising the inconvenience caused to the public by road excavation works as well as to study the application of new technology to shorten the duration of excavation. It was a framework for brainstorming; and

- three LegCo Members from the engineering and construction industries were invited to join the advisory group in their personal capacity. Other group members included representatives from the UUs, contractors and relevant government departments.

[2] Mr John TSANG Chun-wah took up the post of Secretary for Planning and Lands on 16 July 2001.

Follow-up review on control of utility openings

89. **Hon Abraham SHEK Lai-him** declared that he was a member of the advisory group on an ad personam basis.

Reporting of site inspection results and frequency of site inspections

90. Regarding the R&D Division's recommendation that persistent and/or intentional failure to record non-compliance by regional staff would be regarded as failure to properly discharge their duties (paragraph 3.12(a) of the Audit Report), the Committee noted the Director of Highways' reply that no disciplinary actions had been taken against any regional staff as there was no evidence of negligence of duty on their part. The Committee questioned the basis for the R&D Division's recommendation if no evidence of negligence of duty had ever been found.

91. **Mr WAI Chi-sing, Assistant Director (Headquarters) of the HyD**, explained that:

- he was transferred to head the R&D Division in early 1999 and a lot of the R&D Division's work referred to in the Audit Report was done while he was with the Division. Actually, he compiled the R&D Division's reports concerning the regional staff's failure to record non-compliances;

- at that time, he did personally interview dozens of regional staff to understand their actual working conditions. He discovered that in recent years the frontline WSs actually encountered a lot of difficulties in their work. While the WSs were employed to inspect sites, they had to spend a lot of time on paperwork before they could go out for site inspections. As a result, they wanted to reduce paperwork as far as possible. He also found out that many WSs could not master some technical information, probably because they had been in their post for too long and the Department had not provided training to them;

- the problem also occurred because the WSs wanted to finish their tasks as soon as possible. For example, when they identified a defect on a site, they would inform the contractor of the UU directly instead of the UU, as the latter approach would take a longer time. However, they should not have done so because the HyD did not have contractual relationship with the contractor. This was a general problem with most staff in the Regional Offices, not just a few staff members. Hence, this was not a question of dereliction of duty; and

- he had been frank and direct in compiling the R&D Division's reports in order to alert the management to the problem and put forward improvement measures. In this connection, the R&D Division had organised two training sessions and another one would be arranged at the end of the year.

92. In the light of the reply of the Assistant Director (Headquarters), the Committee queried why the R&D Division considered it necessary at that time to remind the regional staff that they must not intentionally leave out non-compliances in their inspection checklists.

93. The Committee also referred to the inspection checklist (provided in the Director of Audit's letter of 25 May 2001 in ***Appendix 39***), on which seven defects were recorded, completed by the staff of the R&D Division during a joint inspection with the regional staff on 10 January 2000. The Committee understood that the regional staff had conducted inspections on the same site prior to the joint inspection but no defects had been recorded. The Committee queried:

- whether the regional staff concerned had intentionally not recorded the defects identified; and

- the reason for the discrepancy in the number of defects identified by staff of the R&D Division and staff of the Regional Office.

94. The **Assistant Director (Headquarters)** said that:

- when he was the head of the R&D Division, it was indeed the phenomenon that the R&D Division staff generally identified more defects than the regional staff. However, the crux of the matter was whether, other than not recording the defects in the checklist, the regional staff concerned had taken follow-up action regarding the defects. It would be an intentional non-recording if no follow-up action had been taken. On the other hand, if follow-up action had been taken, it would not be regarded as dereliction of duty;

- according to the regional staff, they usually followed up the defects by phoning the contractors or the UUs immediately. While the R&D Division had tried to follow up whether actions had actually been taken after telephone calls were made, in the end, it could only rely on the information provided by the staff concerned; and

- the problem could only be solved by providing comprehensive training so that the inspection standard of the staff could be upgraded.

95. With regard to the checklist of the joint inspection conducted on 10 January 2000, the **Acting Director of Highways**, in his letter of 13 October 2001 in ***Appendix 40***, informed the Committee that:

- the regional staff had inspected regularly the site in question prior to the joint inspection. Defects had been identified but not formally recorded in the inspection checklist as the general practice at the time was to adopt an informal channel to notify the permittee, which was the Water Supplies Department in this particular case, by phone for immediate rectification. Such practice had been operating successfully before the Guidance Notes were issued in April 2001 to further improve the inspection and monitoring processes by requiring all non-compliance to be properly documented, and defects were promptly rectified; and

- the joint inspection on 10 January 2000 was not a normal calibration inspection. It was a special inspection conducted jointly by senior staff of the R&D Division and the Regional Offices for the purpose of reviewing the inspection standards stipulated in the inspection guidelines promulgated in 1997. Areas for which training would be required for frontline staff were also identified during the inspection. Subsequently, the guidelines were revised and expanded to become the Guidance Notes, and two refresher courses were organised in 2000 for all WSs.

96. Turning to the workload of the WSs, the Committee noted that the 62 WSs available for site inspection duties in 1995 had been reduced to only 32 in 1999-2000. The Committee also considered it highly unsatisfactory that the HyD, after implementing the UMS, had failed to achieve the intended benefit of increasing the number of utility site inspections. On the contrary, the lack of manpower had resulted in a reduction in the frequency of site inspections.

97. Against this background, the Committee wondered whether the real cause of the failure to record non-compliances was the slackness of the HyD's senior management in monitoring site inspections, leading to a low priority being given to the inspection frequency and a lack of manpower for such duties. They also doubted the effectiveness of training in the absence of sufficient manpower for the work.

98. The **Assistant Director (Headquarters)** responded that:

- the implementation of the UMS in October 1997 had enabled the Department to capture and analyse more data. Hence a more detailed site inspection checklist had been designed. The workload of the WSs had increased partly due to the use of this checklist. As such, the Department had to provide training to the WSs so that they could make use of the checklist to monitor the sites;

- in the past few years, there was a drastic increase in the HyD's workload other than road openings, including road and slope maintenance. The number of road maintenance works orders handled by the Department had increased by more than 80%, while the number of works supervisory staff had increased by only about 10%. As such, the manpower saved through the implementation of the UMS was redeployed to cope with the increased workload in road maintenance, and the number of WSs responsible for inspection duties had to be reduced; and

- given limited resources, the HyD had to deploy its manpower resources in such a way to ensure that all its areas of responsibilities would not be disrupted.

99. On the frequency of site inspections, the **Director of Highways** added that:

- from January to May 2001, the HyD had achieved an average inspection frequency of once every 8.91 active EP days, which had slightly exceeded the target frequency of "once every ten active EP days"; and

- actually, the frequency of inspection was dynamic in that it could be reduced if the UUs performed well. It was indeed the UUs' responsibility to monitor their contractors' work while the HyD only performed a monitoring and supervisory role. If there was a need to increase the inspection frequency, the MWG would review the situation. The Regional Assistant Directors of the HyD were also given the flexibility to adjust the inspection frequency, having regard to the specific situation of each region. In the end, the objective was to minimise traffic disruption and the inconvenience caused to members of the public by road opening works.

Follow-up review on control of utility openings

100. Noting that the HyD had invited the ICAC to review the site inspection procedures in May 2001, the Committee asked about the progress so far and whether the ICAC had made any recommendations on the WSs' practice of following up identified defects by phone calls.

101. The **Director of Highways** advised that the ICAC had already passed the draft report to him. However, he could not disclose the full details as the report had yet to be finalised. In principle, the ICAC called on the HyD to assist the UUs in developing a self-monitoring mechanism to monitor their works. The HyD would only take up an auditing role. The permit period should be shortened as much as possible. The legislative amendment for introducing the charging and penalty system should be proceeded with expeditiously. Moreover, HyD staff should be reminded of the importance of integrity.

102. The Committee enquired how the HyD ensured that the UUs would put in place a mechanism to monitor their works. The **Director of Highways** said that:

- in terms of collaboration with the UUs, there was the three-tier coordination system. The contractor or UU which performed poorly would be discussed at the meetings of the ROCC. Cases of very poor performance would be escalated to the top-level JUPG; and

- other measures that the HyD had taken to improve the coordination with UUs in the past year included:

  (a) the implementation of a utility management system on the Internet and an electronic utility record system;

  (b) the establishment of a working group under the JUPG to review and establish the norms for recording underground utilities;

  (c) the examination of the feasibility of a one-stop-shop mechanism for receiving and processing applications for EPs; and

  (d) the implementation of a district-based traffic impact assessment system.

Follow-up review on control of utility openings

Recent developments

103. In response to the Committee's request, the **Secretary for Works** provided a copy of the consultation document on the Proposed Charging and Penalty System for Street Excavation Works vide his letter of 10 October 2001, in ***Appendix 41***. In his letter of 19 November 2001 in ***Appendix 42***, the **Secretary for Works** provided the comments from the UUs on the consultation document. The Committee noted the Government's proposal that:

- the requirement to obtain an EP before an excavation could be made in the streets maintained by the HyD would apply to the Government, including payment of EP fees. A government department as a permittee would have to comply with those conditions of the EP which were to be complied with by a permittee, and their contractors who were approved as nominated permittees would have to comply with those conditions of the EP which were to be complied with by a nominated permittee;

- criminal proceedings and criminal liability for excavation without an EP or for non-compliance with the permit conditions would apply to the Government's nominated permittees, but not the Government; and

- where the EP conditions were to be complied with by the Government as a permittee, a reporting mechanism was to be set up in a similar way to section 3 of the Environmental Impact Assessment Ordinance, except that the report would be made to the Secretary for Works, rather than the Chief Secretary for Administration.

104. The Committee also noted that, as at January 2002, the Panel on Planning, Lands and Works was still following up the proposed scheme.

105. Responding to the Committee's enquiry about the HyD's progress of implementing Audit's recommendation on the disclosure of performance indicators in the Controlling Officer's Report (COR) (paragraphs 2.7 and 2.8 of the Audit Report), the **Director of Highways** stated in his letter of 26 November 2001, in ***Appendix 43***, that he would include the following additional performance indicators on utility openings in the COR in the Annual Estimates for the year 2002-03:

- the number of inspections carried out on utility openings;

- the average duration of road opening works per EP;

- the number of non-compliances with EP conditions vis-à-vis the total number of items inspected, in percentage terms;

- the number of unattended sites for utility openings per total number of EPs, in percentage terms; and

- the number of incidents of damage to underground utilities due to utility openings and road works.

106. **Conclusions and recommendations** The Committee:

- express grave dismay that after three examinations by the Public Accounts Committee on the control of utility openings in 1991, 1995 and 2001, there is still a lack of real progress on the issue, which is attributable to the following:

  (a) the slow progress of implementing the excavation permit (EP) fee and the new penalty system over the past ten years, and the relevant legislative amendments have still not been introduced to the Legislative Council;

  (b) the regional staff of the Highways Department (HyD) have been reluctant to record all defects observed during site inspections and, as a result, the statistics of non-compliance with EP conditions might not accurately reflect the true site conditions; and

  (c) since 1998, the HyD has reduced the required minimum inspection frequency for each site from "at least twice a week" to the present "once every ten days";

- condemn the senior management of the HyD for its indecisiveness and slackness in monitoring site inspections, as evidenced by:

  (a) the lack of resolve to urge for the introduction of legislative amendments to provide for the implementation of the EP fee and the new penalty system;

  (b) the failure of the HyD, since 1972, to take rigorous enforcement action against breaches of EP conditions;

(c) the failure of the HyD to take any disciplinary action against regional staff for persistent and/or intentional failure to record non-compliance with EP conditions and unattended sites; and

(d) a low priority being accorded to the frequency of utility site inspections, notwithstanding the implementation of a computerised Utility Management System which could increase the number of inspections by 10%, and the senior management's knowledge of the deficiency in the reporting of site inspection results for a long time;

Implementation of EP fee and new penalty system

- note that the Works Bureau is conducting a consultation exercise on the proposed charging and penalty system for street excavation works and that the Legislative Council Panel on Planning, Lands and Works is being consulted;

- note that under the proposed system, criminal proceedings and criminal liability for excavation without an EP or for non-compliance with the permit conditions will apply to the Government's nominated permittees, but not the Government;

- recommend that the Secretary for Works, in considering the matter, should ensure that the penalty system will apply fairly to government departments, the officials involved and government contractors, as well as their private-sector counterparts;

Reporting of site inspection results

- express concern that, because of the shortcomings in the reporting of site inspection results, the Road Opening Coordinating Committee cannot effectively monitor the performance of utility operators in road opening works;

- urge the Director of Highways to closely monitor the implementation of the procedures specified in the "Guidance Notes on Audit Inspection of Utility Sites" to ensure that they are being followed by HyD staff;

- note the following actions taken by the Director of Highways:

(a) enhancing the training for HyD staff to ensure consistency in standards of reporting throughout the Department;

(b) discussing cases of very poor performance of utility undertakers at the high-level Joint Utilities Policy Group (JUPG);

(c) improving the coordination with utility undertakers by implementing a utility management system on the Internet and an electronic utility record system; and

(d) inviting the Corruption Prevention Department of the Independent Commission Against Corruption to review the site inspection procedures;

Frequency of site inspections

- urge the Director of Highways to:

  (a) closely monitor the inspection data of the Regional Offices to ensure that they achieve the required frequency of site inspections;

  (b) closely monitor the outcome of the Maintenance Working Group's (MWG's) regular reviews on the frequency of site inspections, so as to determine whether, as a result of the reduction in the frequency of inspections, there is a deterioration in the performance of utility operators in road opening works; and

  (c) depending on the outcome of the MWG's reviews, consider whether there is a need to increase the frequency of site inspections;

- recommend that the Director of Highways should take appropriate measures to ensure compliance with the two-day advance notification requirement and, in extreme cases, consider terminating the EPs concerned to deter non-compliance;

Damage to underground utilities

- note the reduction in the number of incidents of damage to underground utilities in recent years;

- urge the Director of Highways to make continued efforts to closely monitor the data of damage to underground utilities, to seek improvement opportunities and to take necessary improvement actions;

- note that the HyD is taking the lead in implementing the project on the electronic interchange of utility records and has set up a working group under the JUPG to review and establish the norms for recording underground utilities;

- urge the Director of Highways to closely monitor the progress of the project on the electronic interchange of utility records to ensure that the project is implemented on schedule;

Disclosure of additional performance data in the Controlling Officer's Report (COR)

- acknowledge that the Director of Highways will publish the following additional performance indicators on utility openings in the COR in the Annual Estimates for the year 2002-03:

  (a) the number of inspections carried out on utility openings;

  (b) the average duration of road opening works per EP;

  (c) the number of non-compliances with EP conditions vis-à-vis the total number of items inspected, in percentage terms;

  (d) the number of unattended sites for utility openings per total number of EPs, in percentage terms; and

  (e) the number of incidents of damage to underground utilities due to utility openings and road works; and

- wish to be kept informed of:

  (a) the progress of the legislative amendments to provide for the proposed charging and penalty system;

  (b) the measures to ensure compliance with the two-day advance notification requirement; and

  (c) the progress of implementing the project on the electronic interchange of utility records.

Chapter 3

Review of the Hong Kong Sports Development Board

Audit conducted a review to examine the economy, efficiency and effectiveness of the Hong Kong Sports Development Board's (SDB's) operation and activities, and identified room for improvement in the following areas:

- remuneration and fringe benefits of SDB staff;
- utilisation of sports facilities;
- inspection of sports facilities;
- contracting out of services;
- management of grants to National Sports Associations (NSAs); and
- management of the Sports House.

Remuneration packages of SDB staff

2. Paragraph 2.6(a) of the Audit Report revealed that for 2000-01, at the highest point of their salary scales, the annual remuneration packages of the SDB's Chief Executive, Directors and Managers exceeded those of their comparable grades in the civil service by 11.3% to 26.2%. However, according to paragraph 2.3, the Finance Bureau (FB) had issued Financial Circular No. 19/87 in September 1987, requiring that the terms and conditions of service of staff of subvented organisations should not be superior to those provided by the Government to their comparable grades in the civil service. As such, the Committee invited Chairman, SDB, to comment on this issue.

3. **Mr John HUNG, Chairman, Hong Kong Sports Development Board**, stated in his letter of 11 May 2001, in ***Appendix 44***, that insofar as the existing salary scales and fringe benefits of SDB staff were concerned, they were based on the recommendations of an independent consultant appointed in an earlier exercise to integrate the SDB and the Hong Kong Sports Institute (HKSI) with effect from 1 April 1994. The consultant's recommended remuneration packages, which were discussed and approved by the Governing Boards of the SDB and the HKSI in January 1994, were considered as reasonable for all the posts concerned by the above Governing Boards which included representatives from the Government.

4. The Committee enquired whether SDB staff had been employed on the terms and conditions of service as recommended in the Final Report of the consultancy study on the "Integration of the Hong Kong Sports Development Board and the Hong Kong Sports Institute" mentioned in paragraph 2.1 of the Audit Report. **Mrs Maureen CHAN LEUNG Mong-lin, Executive Director, Hong Kong Sports Development Board**, replied that:

- as the former SDB and the former HKSI were two statutory bodies established for similar purposes, they discussed integration in 1994 and hence commissioned an independent consultant to look into the matter. At that time, the consultant surveyed many public and private organisations. It also drew reference from the terms and conditions of service of various grades in the civil service before putting forward its recommendations;

- she did not have first-hand information on whether the salary and fringe benefits for SDB staff proposed by the consultant were superior to those of their comparable grades in the civil service. Nevertheless, as the representative of the Financial Secretary had said during the discussion on government subvention at the SDB and HKSI Joint Board Meeting on 17 January 1994 that the Government's approval of the block vote for the SDB's staff costs should be expected as long as the principles that staff were not paid higher than those of similar posts in the civil service, she believed that the then remuneration packages of SDB staff had not exceeded those of their comparable grades in the civil service; and

- she agreed that after the passage of so many years, the SDB should, in conjunction with the Home Affairs Bureau (HAB), revise or review the remuneration of SDB staff at regular intervals.

5. The Committee noted from paragraph 2.5 of the Audit Report that when conducting a review during the period January 1999 to June 2000, the HAB had made several enquiries with the SDB about the terms and conditions of service of SDB staff. In its reply to the HAB in June 1999, the SDB listed the comparable grades of its staff in the civil service. However, the SDB subsequently expressed reservations about its list of comparable grades. In September 1999, the SDB informed the HAB that the list could not be regarded as fair and meaningful. The Committee further noted from Appendix C of the Audit Report that the ranking of the SDB's Chief Executive was comparable to a Directorate officer at D4 level in the civil service.

6. Against the above background, the Committee queried why the Administration had not undertaken a study on the comparability of the grades of SDB staff with those in the civil service subsequent to the SDB's reservations about its list of comparable grades. **Mr LAM Woon-kwong, Secretary for Home Affairs**, responded that:

- although initially, the SDB had put forward a list of comparable grades, it subsequently withdrew the list. In other words, it considered that the comparison thereto was not the most appropriate. He admitted that it was a shortcoming on the part of the Administration as it did not attempt at that time to compare the remuneration packages of SDB staff with more comparable ones of civil servants;

- in order to ascertain whether SDB staff had been paid more than civil servants in comparable grades, the Administration needed to look into the circumstances at that time. On the other hand, according to paragraph 2.2(d)(ii) of the minutes of the Joint Board Meeting held on 17 January 1994, members of the SDB and the HKSI had been advised during the discussion that "the proposed packages were lower than the existing packages in real terms";

- up to now, the Administration was still not able to determine the comparable grades of SDB staff in the civil service and hence could not conclude as to whether the remuneration packages of SDB staff exceeded those of their comparable grades in the civil service. As such, he did not consider it necessary and justified to compare the remuneration package of the Chief Executive, SDB, to that of a Directorate officer at D4 level in the civil service. He did not know whether the SDB then considered it necessary to offer higher remuneration to an executive of high calibre who would be responsible for the operation of the SDB as a whole; and

- as a matter of fact, any organisations should, having regard to the passage of time and changes in the market, take the initiative to review from time to time the remuneration packages of their staff, with a view to employing staff in a cost-effective manner.

7. The Committee was aware that Audit's comparison focused on the annual remuneration packages of SDB staff and those of their comparable grades in the civil service for 2000-01. They therefore asked:

- whether in the course of establishing the integrated SDB, a comparison was

made between the remuneration packages of SDB staff and those of the civil servants in their comparable grades; and

- how the relevant provision in Financial Circular No. 19/87 could be implemented to ensure that the terms and conditions of service of staff of a subvented organisation were not superior to those of civil servants if some posts in the organisation were not comparable to any posts in the civil service.

8. **Mr Stanley YING Yiu-hong, Deputy Secretary for the Treasury**, informed the Committee that:

- in the course of establishing the integrated SDB, the then Municipal Services Branch and the then Finance Branch had discussed whether the remuneration of certain posts was determined in accordance with the relevant guidelines; and

- if the posts in a subvented organisation were not comparable to grades in the civil service, their remuneration packages would be decided by the governing board or managing board of the organisation in accordance with the relevant legislation.

9. In the light of the above reply, the Committee further asked whether, upon the integration of the SDB and the HKSI in 1994, the Administration had reached a conclusion on the comparability of the grades in the SDB and the civil service. The **Deputy Secretary for the Treasury** said that the Administration did not have many documents relating to the discussions on this issue in 1994. The minutes of the Joint Board Meeting on 17 January 1994 did not record the details of the discussion on the remuneration packages of SDB staff. Neither was there any correspondence on the subject.

10. The Committee noted from the minutes of the Joint Board Meeting held on 17 January 1994 that the representative of the Financial Secretary had raised only one point at the meeting, that is, the Government's approval of a block vote for the SDB's staff costs should be expected as long as the principles that staff were not paid higher than those in similar posts in the civil service and the total subvention remained unchanged were adhered to. The Committee wondered whether he had discharged his duty as the representative of the Financial Secretary by stating only the principles at the meeting.

11. The **Deputy Secretary for the Treasury** explained that:

- the FB was responsible for implementing the "no-better-than principle" in accordance with the "Guidelines on the Management and Control of Government Subventions" (the Guidelines) issued in 1988. In view of the large number of subvented organisations, the FB would find it difficult to supervise all of them directly and hence expected Controlling Officers of the subvented organisations to consciously apply the Guidelines. The Controlling Officer could seek assistance from the FB and the Civil Service Bureau (CSB) if there was any doubt on the comparability of ranking and terms of service;

- if the representative of the Financial Secretary at the said meeting had little information on the subject under discussion, and the subvented organisation asked the representative during the discussion of the principles whether it could draw up similar remuneration packages for its staff, the representative could only provide supplementary information on the principles or remind the organisation of the principles; and

- according to the minutes of the said meeting, it was agreed that "the Boards authorise Management to implement a remuneration system along the lines in Coopers & Lybrand (the consultant)'s proposal". Thus, he did not know what information the representative had at the time of the discussion.

12. The Committee further asked about the preparation by the representative of the Financial Secretary for the discussion on the remuneration packages at the Joint Board Meeting and his follow-up subsequent to the discussion to ensure that the principles he quoted were complied with. **Miss Denise YUE Chung-yee, Secretary for the Treasury**, in her letter of 2 June 2001, in ***Appendix 45***, informed the Committee that:

- based on the FB's file records, it appeared that no paper concerning staff remuneration packages had been made available to members of the Joint Board before the meeting;

- after the meeting, the Financial Secretary's representative i.e. the then Senior Principal Assistant Financial Secretary (SPAFS) in the Finance Branch, asked his staff about the progress of processing the proposal for giving the SDB a block vote. Thereafter, on 31 January 1994, the then Recreation and Culture Branch (RCB) wrote to the SDB, advising that the Finance Branch had agreed to the block vote proposal;

- prior to notifying the SDB about the approval of the block vote arrangement,

the RCB had written to the Finance Branch on 25 June 1993, seeking its agreement to exempt the SDB from the restriction on virement between funds for Personal Emolument and funds for Other Charges laid down in paragraph 3.21(ii) of the Guidelines. In requesting the Finance Branch's approval for the exemption, the RCB had stated, among other things, that the RCB would continue to monitor the SDB's spending carefully to ensure that public funds were well spent. In its reply dated on 2 August 1993, the Finance Branch agreed to the proposal, noting the RCB's undertaking to ensure that value for money was obtained from the Government's subvention to the SDB; and

- the FB noted from this correspondence and the exchanges around that period on similar matters that the RCB and its predecessor, the Municipal Services Branch, had been consciously following the Guidelines.

13. As paragraph 1.6 of the Guidelines stated that the operation of these guidelines would be monitored by the Finance Branch on a continuous basis, the Committee considered that the representative of the Financial Secretary should have collated the relevant information to prepare for the discussion on the remuneration packages of staff of the integrated SDB. They asked whether there was a clear definition of the role of the representative of the Financial Secretary on the Governing Boards of the SDB and the HKSI and the source of reference in this regard.

14. In the same letter, the **Secretary for the Treasury** said that the SPAFS was a member of the HKSI Board by virtue of the HKSI Ordinance (repealed in 1994), which provided for the Financial Secretary or his representative to be a member of the HKSI Board. It was in this capacity as a member of the HKSI Board that the SPAFS attended meetings of the Joint Board. The FB could not find any document defining the representative's role in the Joint Board.

15. According to paragraph 3.32 of the Guidelines, where there was any doubt on the comparability of ranking and terms of service, the Controlling Officer should seek advice from the Finance Branch and the Civil Service Branch. The Controlling Officer might engage the services of management consultancy firms to advise on such issues. The Committee therefore enquired:

- whether upon the integration of the SDB and the HKSI in 1994, the then

Secretary for Recreation and Culture was the sole Controlling Officer responsible for the government subvention to the SDB;

- if so, whether the then Secretary had sought advice from the then Finance Branch and the then Civil Service Branch on the comparability of ranking and terms of service for the staff of the SDB; and

- whether the then Secretary should be held responsible for any failure to ensure that the total benefits available to SDB staff did not exceed those that would be made available to civil servants in comparable grades.

16. The **Secretary for Home Affairs** advised the Committee, in his letter of 28 May 2001, in ***Appendix 46***, that:

- upon the integration in 1994, the then Secretary for Recreation and Culture was the sole Controlling Officer responsible for the government subvention to the HKSDB;

- the Joint Board Meeting of the SDB and the HKSI of 17 January 1994 had authorised the then new Management to "implement a remuneration system along the lines in consultant's proposal, which should be most cost-effective to the organisation but should not disadvantage staff." The consultant's report had recommended that "all appointments be made on new terms and conditions which were to be disengaged from government grading". It was not shown from the HAB's records that the SDB had subsequently submitted salary packages of its staff for the then Secretary's consideration, nor had its records shown that the then RCB had sought advice from the then Finance Branch and the then Civil Service Branch on the comparability of ranking and terms of services for the staff of the SDB; and

- the HAB accepted that the Controlling Officer should have kept abreast of the terms of service offered by the SDB to ensure that the total benefits available to SDB staff did not exceed those that would be made available to comparably graded civil service staff. In this connection, the Committee might also wish to take note of the following relevant factors:

  (a) there was no increase in the overall amount of government subvention due to the merging of the SDB and the HKSI; and

  (b) in view of the above-mentioned disengagement principle, it appeared that

there still remained the question as to whether the salary packages of SDB staff and the civil service were then directly comparable. This issue would be addressed in the HAB's review during the next six months.

17. Noting that the HAB's records did not show that the then Secretary for Recreation and Culture had sought advice from the then Finance Branch and the then Civil Service Branch on the matter, the Committee considered that while the Controlling Officer had neglected to follow the Guidelines, the then Finance Branch or the FB did have the responsibility to monitor the implementation of the Guidelines. The Committee asked the Secretary for Home Affairs and the Deputy Secretary for the Treasury to comment on the responsibility for the negligence.

18. The **Secretary for Home Affairs** responded that as a matter of principle, the HAB or its predecessors had to shoulder responsibility for the fault although the then Finance Branch or the FB had the responsibility to monitor the HAB or its predecessors.

19. The **Deputy Secretary for the Treasury** supplemented that he was unable to pass a judgment on the issue due to the lapse of time and inadequate information available in the files. However, to prevent the recurrence of such incidents, he and his colleagues had made an effort to follow the Guidelines so that they would be in a position to advise the parties concerned. He added that the then Finance Branch or the FB did have the functions of monitoring at a central level and providing advice. However, it relied heavily on the Controlling Officer to supervise the subvented organisation in implementing the Guidelines. Apart from determining the remuneration package of the staff of the subvented organisation upon its establishment, the Controlling Officer needed to undertake long-term monitoring so as to ensure that the package had not departed from that of comparably graded civil servants.

20. The Committee noted the Chief Executive of the SDB's response in paragraph 2.13(a) of the Audit Report that since Audit had recommended that the Secretary for Home Affairs should seek the advice of the Civil Service Bureau on SDB staff's comparable grades in the civil service, a judgement on whether the annual remuneration packages of SDB staff exceeded those of their comparable grades in the civil service should not be made until the comparable grades had been duly determined and their packages had been evaluated. However, according to the letter dated 11 May 2001 from the Chairman, SDB, substantial staff reduction had taken place in 2000 and 2001, a prime example of which was the reduction from five Directors to three. Moreover, the annual remuneration package of the newly appointed Executive Director of the SDB, which had taken effect from April 2001, was now substantially below that of a Directorate

officer at D4 level in the civil service.

21. Against this background, the Committee enquired whether such moves were made by the SDB in response to Audit's recommendations. The **Executive Director, SDB** said that the Chairman, SDB had long been dedicating himself to streamlining and adjusting the operation of the SDB as far as possible. The integration of the SDB and the HKSI in 1994 involved a large number of staff. It took a long time to implement all the reforms. What was stated in the Audit Report regarding the actions taken in 1999 was part of the reforms, such as the reduction in the number of officers at the senior management level. The SDB considered that there was an urgent need to implement the measures concerned, followed by a corresponding review of the duties and the scope of work of all staff, in order to continue with the reforms. As a result, after responding to the enquiries by Audit or the HAB in 1999, the SDB had undertaken a lot of work in this regard. In conjunction with the HAB, it had to continue the review of the organisation and work of SDB staff and find out their comparable grades in the civil service, with a view to revising the remuneration packages of SDB staff.

22. Regarding the HAB's review of the terms and conditions of service of SDB staff which had commenced in early 1999, the Committee noted from paragraph 2.11(b) of the Audit Report that up to the completion of the audit at the end of November 2000, the review had not yet been completed. The Committee were concerned about the slow progress of the review and enquired:

- about the progress made since the completion of the Audit Report; and

- when the review would be completed.

23. **Mr Jonathan McKinley, Principal Assistant Secretary (Home Affairs)**, informed the Committee that:

- on the face of it, it did appear to be a bit slow as eighteen months had passed. Part of the reason was that within that period, there had been a number of changes going on both with regard to the role of the SDB as a whole and the actual staff organisation of the SDB. This had led to a certain degree of fluidity in the roles of individual staff of the SDB, which had meant that the HAB had not been in a position to determine conclusively on the comparability of SDB staff with grades in the civil service;
- the dissolution of the municipal councils, the reappraisal of the role of the

SDB versus the Leisure and Cultural Services Department (LCSD) and the SDB's own moves to reorganise and trim the staff establishment, had made it very difficult for the HAB to specify precisely what the duties of the various officers within the SDB were and would be for the immediate future; and

- as stated in the Secretary for Home Affairs' response to Audit's recommendations, the HAB would expedite action to complete the review. It was its intention to complete the review within six months, i.e. by November 2001.

24. The **Secretary for the Home Affairs** supplemented that the HAB set up a special team in April 2001 to conduct a comprehensive sports review of the operations of major sports organisations and sports facilities. As the functions of the SDB might undergo significant changes as a result of the review, it would be more appropriate to make an assessment in the light of the findings of this review.

25. As regards the progress of the HAB's review that had commenced in early 1999, the **Principal Assistant Secretary (Home Affairs)** further said that at the moment, the Amenities Officer grade and the Recreation and Sports Officer grade in the LCSD were in the process of being merged. It was very likely that when the HAB carried out a comparability study on SDB staff, it would look at the comparability with the grades in the LCSD. As the merger was a bit complicated, this might mean that it would put back the study on the SDB staff. At any rate, the HAB would keep on working with the study and seek the advice of the CSB and the FB. He hoped that the merger would not cause any delay.

26. Noting that the number of SDB staff had been reduced and the annual remuneration of the Executive Director of the SDB had been adjusted downwards, the Committee wondered if it would be meaningful to review whether the past remuneration of SDB staff had been above that of comparably graded civil servants, and enquired about the direction of the HAB's current review.

27. The **Secretary for Home Affairs** replied that as the Committee might still have

doubts as to whether the annual remuneration package of the newly appointed Executive Director of the SDB had exceeded any comparable remuneration package, there was eventually a need to draw a comparison. The review would therefore also include the determination of the future remuneration of the Executive Director having regard to any significant changes in the functions of the SDB. It would not be easy to find a comparable grade in the civil service, but the HAB would strive to find the most comparable grade for the comparison.

28. By January 2002, the Committee found out that the HAB had not completed the SDB review by November 2001, as promised earlier. They asked about the present position and the target completion date. The **Secretary for the Home Affairs** informed the Committee in his letter of 17 January 2002, in ***Appendix 47***, that pursuant to the Director of Audit's Report No.36, the HAB had commenced in May 2001 a review of the existing terms and conditions of service of SDB staff. The review was being conducted in two stages. Stage I aimed at establishing, in consultation with the CSB and the FB, the comparability of SDB staff with those of the corresponding grades in the civil service. Stage II would involve a comparison of the remuneration packages of SDB staff with their comparable grades, where established, in the civil service. Stage I of the review had reached an advanced stage, and the HAB would proceed to Stage II thereafter. On the assumption that the exercise was not to be affected by the sports policy review referred to in paragraph 32 below, the HAB hoped to be able to complete Stage II by April 2002.

Utilisation of the SDB's sports facilities

29. The Committee noted from paragraph 3.7 of the Audit Report that in late 1999, the SDB had commissioned a consultancy study on its sports facilities. They further noted from paragraph 3.8 that the draft final report of the consultancy study issued in October 2000 proposed three different schemes for the redevelopment of the Sports Institute's facilities. Up to the completion of the audit at the end of November 2000, the draft final report was still being considered by a task force which comprised representatives from the SDB, the SDB management, the Planning Department and the HAB. As such, the Committee enquried:

- about the latest position of the matter;

- when the recommendations of the consultancy report would be finalised; and

- whether the recommendations would include improvements to the aging and under-utilised sports facilities.

Review of the Hong Kong Sports Development Board

30. In her letter of 28 May 2001, in ***Appendix 48***, the **Executive Director, SDB** informed the Committee that:

- the consultants had completed their study and presented their findings and recommendations to the SDB at its meeting on 25 April 2001. They found that given the age and conditions of the existing Sports Institute, a refurbishment scheme was expected to last for only a few years and could not really address the Sports Institute's problems in the longer term. Furthermore, some of the existing facilities might no longer meet the current needs of sports training. They recommended that the Sports Institute be redeveloped into a Centre for Sports Excellence, with facilities designed flexibly to allow them to be configured to meet the needs of mainstream sports. Three preliminary architectural redevelopment schemes were proposed by the consultants; and

- noting that a separate territory-wide consultancy study on major sports facilities commissioned by the Government would be completed within 2001, the SDB recognised that any redevelopment proposals for the Sports Institute should take into account the outcome of the Government's territory-wide review before proceeding further. The SDB had authorised the SDB Chairman to discuss with the Secretary for Home Affairs the way forward.

31. In the light of the above reply, the Committee asked about the latest position of the matter and whether the SDB had made a final decision on the redevelopment proposals. The **Executive Director, SDB** replied in her letter of 21 November, 2001, in ***Appendix 49***, that the SDB was still awaiting the Government's decision on the recommendations of the territory-wide review of major sports facilities, and needed to take into account the Government's plans for major sports facilities before pursuing the redevelopment proposals of the Sports Institute. This would ensure cost-effectiveness in their redevelopment. Thus, the SDB had not made any decision on the redevelopment proposals.

32. In response to the Committee's recent enquiry about the present position of the Government's territory-wide review of major sports facilities, the **Secretary for Home Affairs** advised the Committee in his letter of 17 January 2002 that in April 2001, the HAB established a small team to conduct a sports policy review and to begin work on drawing up a detailed blueprint for strategic sports development in Hong Kong. Apart from examining a wide range of issues, including public participation in sport, student sport and elite sport training, the review would also look into the need for major territory-wide sports facilities, such as a new stadium complex or multi-purpose arena. The HAB was working on the review and aimed to publish a report on its findings for wide public consultation within the first half of 2002.

Contracting out of the SDB's services

33. The Committee noted from paragraph 5.2(b) of the Audit Report that the second phase of the contracting-out exercise would cover routine maintenance services, sports shop, and athletes' hostel and residence. According to paragraph 5.23(b), the second phase would be carried out in 2001-02. The Committee therefore asked about the current position of the matter and when it would be completed. The **Executive Director, SDB** stated, in her letter of 21 November 2001, that:

- the SDB was conducting an exercise to contract out general cleaning services in 2001, to be followed by that on horticultural services and routine maintenance services in the next financial year; and

- separately, in response to the Director of Audit's comments in paragraph 5.8 of his Report on the inadequate financial evaluation of the previous contracting-out exercise for catering services, the SDB had conducted another tendering exercise for catering services in early 2001. After detailed financial evaluation of the returned tenders, it decided not to contract out the catering services, because the evaluation result showed that the SDB would be financially better off with the catering services operated internally, which would also ensure that the standard of nutritional needs of the elite athletes could be maintained.

Management of the Sports House

34. Paragraph 7.9 of the Audit Report revealed that according to the tenancy agreement of the Sports House, the Government's representative should carry out periodic inspections of the books and accounts kept for the Sports House for the purpose of ensuring due compliance by the SDB with Clause 3(q), e.g. to apply all revenue, proceeds or profit generated from the Sports House towards the maintenance and refurbishment of the premises and development of sports in Hong Kong. However, Audit could not find any record indicating that the Government's representative had inspected such records since the handing-over of the management of the Sports House to the SDB in 1994. The Committee enquired about the reasons for this.

35. The **Secretary for Home Affairs** explained in his letter of 28 May 2001 that while the SDB had not prepared separate accounts on the use of the Sports House, it had submitted a full set of income and expenditure statement of commercial activities, including that of the Sports House to the Corporate Management Committee of the SDB in which the

HAB was represented. This had helped the HAB to monitor the activities relating to the Sports House. The HAB would continue to examine how it could take a more active role in monitoring detailed operating accounts.

36. Regarding the HAB's inspection of the Sports House's accounts, the Committee noted from 7.12(b) of the Audit Report that the SDB had agreed that, in order to facilitate the inspection, a separate financial statement for the operations of the Sports House should be prepared. In the light of the SDB's undertaking, the Committee asked whether the latest financial statement for the operations of the Sports House had been prepared for the HAB's inspection.

37. In her letter of 28 May 2001, the **Executive Director, SDB** informed the Committee that the 2000-01 financial statement for the operations of the Sports House had been prepared. It would be available for the HAB's inspection as soon as the SDB's auditors had completed the annual audit of the SDB in mid-June 2001. The Executive Director recently informed the Committee that a copy of the financial statement, in ***Appendix 50***, had been forwarded to the HAB.

38. **Conclusions and Recommendations** The Committee

Remuneration packages of Hong Kong Sports Development Board (SDB) staff

- express grave concern that:

  (a) from the integration of the SDB and the Hong Kong Sports Institute in 1994 up to 1999, the then Recreation and Culture Branch, the then Broadcasting, Culture and Sport Branch/Bureau and the Home Affairs Bureau (HAB), which were responsible for the government subvention to the SDB during respective periods, had neglected to follow the "Guidelines on the Management and Control of Government Subventions" to determine the comparable grades of SDB staff in the civil service and ensure that the package of salary and fringe benefits of SDB staff was not superior to that of their comparable grades in the civil service; and

(b) the HAB's review for ascertaining whether the package of salary and fringe benefits of SDB staff has exceeded that of their comparable grades in the civil service, which started in early 1999, has not yet been completed, causing serious doubts on the effectiveness of the role of the Secretary for Home Affairs and other public officers sitting on the SDB in closely monitoring the terms and conditions of service of SDB staff to ensure compliance with the Government's subvention policy;

- recommend that:

(a) the Administration should arrange for one of the public officers appointed to the SDB to be responsible for reminding the SDB of the Government's subvention policy; and

(b) in future, the Secretary for Home Affairs should closely monitor the terms and conditions of service of SDB staff by requiring the SDB to notify the HAB promptly of any material changes to their terms and conditions of service;

Utilisation of the SDB's sports facilities

- express concern that the SDB has not set any targets for the utilisation of its sports facilities which are being used mainly for elite training;

- express serious concern that, during the period 1995-96 to 1999-2000, the overall utilisation of six sports facilities had not been entirely satisfactory as the overall usage rate of each facility had been below 21% and the overall usage rate of all its sports facilities for elite training had decreased from 25.1% in 1995-96 to 20% in 1999-2000;

- note that:

(a) in the draft consultancy report on the SDB's sports facilities issued in October 2000, the consultants commented that due to their age, the sports facilities did not provide the highest quality venues for the existing focus sports;

(b) the SDB is still awaiting the Government's decision on the recommendations of the territory-wide review of major sports facilities, and needs to take into account the Government's plans for major sports facilities before pursuing the redevelopment proposals of the Sports Institute; and

(c) the Government aims to publish a report on its findings on the review of major sports facilities for wide public consultation within the first quarter of 2002 ;

- recommend that the Executive Director, SDB should:

(a) set targets for the utilisation of the SDB's individual sports facilities;

(b) critically and regularly examine the need for retaining those sports facilities of the SDB with low usage rates and, where the demand for such sports facilities is found to be low for a long time, consider converting them into other beneficial uses;

(c) promptly conduct a cost and benefit analysis to evaluate the various options available (including refurbishment, upgrading and redevelopment) for converting the SDB's sports facilities with low usage rates into other beneficial uses, taking into consideration the need to provide elite athletes and other users with flexible training facilities of international standard; and

(d) draw up a long-term plan to upgrade and/or redevelop the SDB's sports facilities;

Contracting out of the SDB's services

- express concern that:

(a) the SDB's financial evaluation of the option of contracting out its catering services in February 1998 was based on an unduly high projection of income from the catering services;

(b) the SDB management had not carried out a sensitivity analysis, based on different assumptions for the projected catering income, to assess the financial viability of the contracting-out option;

(c) there were errors and omissions in the SDB's financial evaluation of the contracting-out option for the catering services;

(d) the SDB had not made a fair and meaningful evaluation of the tenders received and hence the conclusions of the financial evaluation were questionable; and

(e) the second phase of the SDB's contracting-out exercise, planned to commence in April 1999, had been delayed and commenced only in August 2000;

- acknowledge that the SDB is in the process of conducting an exercise to contract out general cleaning services, to be followed by that on horticultural services and routine maintenance services in next financial year;

- recommend that the Executive Director, SDB should:

(a) ensure that in future, realistic projections of income and expenditure are used in the SDB's financial evaluation of the option of contracting out its services; and

(b) ensure that in future, a sensitivity analysis based on different assumptions of income and expenditure is carried out to assess the financial viability of the contracting-out option;

Management of the Sports House and grants to National Sports Associations (NSAs)

- express concern that the SDB had not established productivity standards to objectively assess the NSAs' manpower requirements;

- note the possibility of setting up a central pool of administrative and clerical staff to provide support services to the NSAs accommodated in the Sports House so that the total number of such staff employed with the SDB's grants can be reduced;

- express concern that:

(a) in conducting examinations of the performance of the NSAs, the SDB had not issued guidelines on the specific areas which should be further examined, the extent of examination, and how the results of the examination should be reported;

(b) the SDB's random internal audits did not include a review of the SDB's activities and spot checks on the use of grants by the NSAs; and

(c) no separate statement of accounts had been prepared on the operations of the Sports House for inspection by the Government's representative in accordance with the Government's requirements specified in the tenancy agreement of the Sports House and no Government's representative had inspected such records since the handing-over of the management of the Sports House to the SDB in 1994;

- recommend that the Executive Director, SDB should:

(a) establish productivity standards so that the number of staff to be employed by individual NSAs with the SDB's grants can be more accurately and objectively assessed;

(b) having regard to the established productivity standards, take prompt action to revise the staff establishment of individual NSAs so as to ensure optimum utilisation of their manpower resources;

(c) conduct regular reviews to ascertain if there are any significant changes in the activities of the NSAs and, if so, revise their staff establishment accordingly;

(d) consider the possibility of pooling all the administrative and clerical staff of the SDB and the NSAs accommodated in the Sports House with a view to reducing the personnel expenses and using the personnel expenses thus saved to subsidise sports programmes;

(e) draw up clear guidelines on conducting examinations of the NSAs;

(f) expand the scope of the SDB's random internal audits to include a review of the SDB's activities and spot checks on the use of grants by the NSAs; and

(g) keep separate accounts on the operations of the Sports House in accordance with the tenancy agreement of the Sports House, so as to facilitate inspections of such accounts by the HAB;

- recommend that the Secretary for Home Affairs should:

(a) take prompt action to ensure that the Government's requirements specified in the tenancy agreement of the Sports House, i.e. the SDB should apply all revenue, proceeds or profit generated from the Sports

House towards the maintenance and refurbishment of the Sports House and development of sports in Hong Kong, are properly complied with; and

(b) conduct regular inspections of the Sports House's books, accounts and other accounting records to ensure that the Government's requirements specified in the tenancy agreement of the Sports House are complied with in future; and

- wish to be kept informed of:

(a) the outcome of the HAB's review of the terms and conditions of service of SDB staff;

(b) the outcome of the SDB's consultancy study on its major facilities;

(c) the outcome of the Government's territory-wide review of major sports facilities;

(d) the SDB's decision on the redevelopment proposals of the Sports Institute;

(e) the long-term plan to upgrade and/or redevelop the SDB's sports facilities;

(f) the outcome of the second phase of the SDB's contracting-out exercise; and

(g) the progress of the implementation of the recommendations on the management of the Sports House and grants to the NSAs.

Chapter 4

Procurement and management of government supplies

The Government Supplies Department (GSD) is the central procurement agent for goods required by government departments and certain non-government public bodies (e.g. the Hospital Authority (HA)). Audit conducted a review of the procurement of goods commonly required by departments and the effectiveness of the GSD in assisting other departments to manage their supplies activities.

Procurement of stores

2. According to Table 4 of the Audit Report, 568 common-user items, with stockholding totalling $15.2 million as at 31 March 2001, had a stock turnover rate of lower than 0.5 time a year in 2000-01. Among these 568 items, 194 items with stockholding totalling $4.4 million had a stock turnover rate of lower than 0.01 time a year in 2000-01. The Committee were concerned that as revealed in paragraph 2.17 of the Audit Report, the GSD's average stockholding for 194 items would meet users' requirements for more than 100 years. They enquired about the circumstances leading to the maintenance of excess stocks for these dormant or slow-moving items.

3. **Mr Gregory LEUNG Wing-lup, Director of Government Supplies**, explained that:

- first of all, as shown in the list of the said 194 items, in ***Appendix 51***, submitted to the Committee before the public hearing, 68 items were forms used within the Government. During the past few years, the consumption of these forms was declining due to changes in work procedures or more extensive use of computers. As their consumption tended to decline further, the GSD was taking up the matter with the government departments concerned. In the long run, the Government would not print forms which were not frequently used. As an alternative measure, the forms would be placed on the Internet for downloading by the users or on floppy disks;

- secondly, more than 60 of the 194 items were electrical stores or engineering stores, which were component parts stored for maintenance purposes. The reason was that upon the completion of the works, the departments concerned had requested the GSD to store some component parts, because such parts might not be available in the market when they were subsequently needed for maintenance. The usage of such items was not steady. For example, while there was no request for extractor fans in 2000-01, their consumption amounted to more than $60,000 in 1999-2000. Hence, there was a need to store component parts for future use; and

- thirdly, in some cases, users revised their requirement after the GSD had entered into contracts with the suppliers. For instance, regarding the procurement of drugs, the GSD would make a usage estimate and the contract normally lasted for two years. However, after a year of the contract period had started and when more effective drugs might become available in the market, doctors would make requests for the supply of the newer drugs. For the benefit of the patients, the GSD could not force doctors to use up the remaining contracted amount before supplying them with the newer drugs. Under the circumstances, there would be excess stock of the older drugs in the GSD's warehouse.

4. Noting that in the list of the 194 common-user items, the stock of "duplicating stencils" alone amounted to more than $590,000, the Committee enquired:

- whether departments still used this item; and

- when the remaining stock would be used up.

5. The **Director of Government Supplies** said that in the past two years, the Education Department still acquired "duplicating stencils" for use. Under the GSD's existing mechanism, it would make reference to the usage rate of items over a three-year period. If the value of an item consumed by user departments fell below $50,000 a year, the GSD would take appropriate follow-up action. As a first step, the GSD would discontinue the procurement of the item. Regarding the remaining stock, if the item was still in use in the relevant departments, the GSD would hope that they would use up the stock as far as possible. Alternatively, the GSD could dispose of the stock by tender. GSD staff's thinking had always been that the stock on hand should be used up as far as possible rather than being disposed of by tender. As "duplicating stencils" were still in use in the Education Department, the GSD decided to keep the stock for a longer period.

6. The Committee also noted that in the list of the 194 common-user items, the stock of "syrup ampicillin 500 ml" was worth more than $660,000. As the drug was first delivered in 1995, it should have passed its expiry date. They asked how the GSD would deal with the expired stock.

7. The **Director of Government Supplies** responded that the tender exercise on "syrup ampicillin 500 ml" was conducted in 1994. The syrup was a commonly used drug. Between 1996 and 1997, the HA switched to ampicillin tablets because the tablets were more effective than the syrup. According to the GSD's records, it had held many discussions with the HA to see whether the HA could increase the usage of the syrup before its expiry. The HA had advised that a more effective and newer drug should be used for the benefit of the patients. As the GSD could not force the HA to use the remaining contracted stock, it now had to write off the expired syrup.

8. In response to the Committee's enquiry about GSD's stock of common-user items with expiry dates, the **Director of Government Supplies** provided, in ***Appendix 52***, a list of the items as at 29 November 2001. The Committee noted that the list included 271 medical items with stockholding worth almost $35.2 million. As these items would pass their expiry dates soon, they asked whether the GSD had a mechanism for monitoring the expiry dates of drugs and informing the users of these dates.

9. The **Director of Government Supplies** said that:

- the GSD had a system whereby information on items with expiry dates was stored in the computer. Currently, when items were within six months of their expiry dates, the computer would prompt GSD staff by issuing a notice. They would then inform the user departments concerned and urge them to speed up their consumption of the items; and

- moreover, GSD staff were responsible for monitoring the usage of the unallocated stores. Depending on the usage of the items, they would request the suppliers concerned to deliver the next batch of the goods at an earlier date or, if necessary, to defer the delivery. Where an item ordered by a department had remained in the GSD's store for a long time, the GSD would keep urging the department to draw down the stores.

10. In the light of the above, the Committee further asked:

- for a breakdown by user of the unallocated stores disposed of by the GSD in the past five financial years and a breakdown, by type, value and user, of the stores that should be disposed of by the GSD as soon as possible;

- once the GSD had procured the goods required by users, the actions it took to keep track of their stock turnover rate or the consumption of the items;

- when the stores were close to their expiry dates or would become obsolete soon, the actions the GSD took to follow up with the users for speeding up the consumption of such stores; and

- whether there was a ceiling on the amount of unallocated stores that the GSD could dispose of on behalf of individual users.

11. In his letter of 21 December 2001, in ***Appendix 53***, the **Director of Government Supplies** provided respectively in Annexes 1 and 2 a list of the unallocated stores disposed of by the GSD in the past five financial years and a list of the stores that were surplus to the requirements and might be disposed of. He also stated that the GSD was consulting the users on the continued need to retain the slow-moving items. The GSD had so far decided that those set out in Annex 2 might be disposed of. Many of them would be sold by auction or tender. The expired medical items, at an estimated stock value of $715,327, would be destroyed. Most of the common-user items had more than one user, and the contract volume represented the best estimate at the time of purchase. Consumption might increase or decrease during the contract period, despite the best intentions of the users. The GSD was considering how best to revise the procurement strategies for different items to minimise the possibility of excess stock.

12. In the same letter, the **Director of Government Supplies** further stated that:

- to assist GSD staff in monitoring the consumption of common-user items maintained in its store, the GSD produced monthly reports showing the items that were slow-moving, that had inadequate stock or that were within 240 days of their expiry dates. The GSD planned to introduce additional measures to strengthen its monitoring. Whenever there were any indications that the consumption of an item was declining, GSD staff would seek clarifications from the major users and persuade them to use up, as far as practicable, the remaining contracted amount. In future, the GSD would take more proactive action to deal with such cases and to decide early on how to handle the potential excess stock; and

- once it was confirmed, through consultation with the regular users, that an item was no longer wanted, the GSD would proceed to dispose of the surplus stock by selling them either by auction or tender. In most cases, the surplus stores could be successfully sold. In cases where the stores were not suitable for sale or where the stores were of no saleable value, they would be destroyed. There was no ceiling on the amount of stores that the GSD could dispose of by following these procedures.

13. Referring to the surplus medical stores on the list in Annex 1 of the Director of Government Supplies' above letter, the Committee enquired about:

- the reasons for their disposal and the reasons for the user(s) not using up the contracted amount of the drugs concerned;

- the actions taken by the GSD in respect of the expired drugs, and whether the user(s), e.g. the HA, did actively try to use up the contracted amount of the drugs; and

- the means by which the surplus medical stores were disposed of, and the amount of the proceeds from the sale, if any.

14. In his letter of 11 January 2002, in ***Appendix 54***, the **Director of Government Supplies** informed the Committee that:

- three, three and five medical items were destroyed in 1997-98, 1999-2000 and 2000-01 respectively. The shelf life of these medical stores had expired at the time of disposal;

- many of the destroyed drugs had their shelf life expired back in 1994 to 1997, and due to the lapse of time, some of the relevant files had been destroyed. For six items, the GSD could not trace any records showing what action it had taken to follow up with the users;

- for the other items, the GSD had sent reminders to the users to persuade them to take up as much stock as possible, and according to the records available, on three occasions, the GSD had requested the suppliers to replace, as a gesture of goodwill, the stores that were close to their expiry dates, but in vain. It was, however, not possible to ascertain and conclude from the records what action the users had taken to try to use up the surplus stores; and

- the prescription of drugs was a clinical decision by the doctors. According to the GSD's information, the main reason for the decline in consumption of some drugs was either because the item was found to have adverse side effects on the patients or because a better alternative with better effects on the patients was preferred.

15. The Committee considered that there should be a mechanism for holding users responsible for failure to use up the contracted stock. The Committee asked the Secretary for the Treasury for her views on the matter. **Miss Denise YUE Chung-yee, Secretary for the Treasury**, responded that:

- although the estimate was always different from the actual consumption, the Finance Bureau (FB) would request government departments to draw up an accurate annual estimate as far as possible;

- taking the procurement of drugs as an example, the problem was that when the actual consumption was found to be less than the estimate, the drugs in the store might be useless as they might have already passed or were about to pass their expiry dates;

- even when the HA was notified six months before the expiry of the drugs, it could not draw down the stores if the drugs were not required for the treatment of any patients. Thus, the ultimate solution was to draw up an accurate estimate as far as possible and to explore the feasibility of incorporating more flexibility in the terms of the procurement contracts. Under the existing mechanism, the GSD would order an amount which was less than the estimate provided by the HA;

- regarding the incorporation of flexibility in the contract terms, more flexibility would mean higher tender prices. The GSD needed to strike a balance between them; and

- the Administration could convey to the HA the Committee's message that, in deciding whether to order newer drugs, the HA needed to consider, apart from the well-being of patients, the factors of cost-effectiveness and best value for public money.

16. On the responsibilities of user departments for the surplus stores maintained in the GSD's warehouse, the **Secretary for the Treasury**, in her letter of 10 January 2002, in ***Appendix 55***, further stated that:

- under the present arrangement, common-user items were purchased and, in the first instance, paid for by the GSD. The costs of these items were then recovered from the user departments when they drew down the stores. The user departments did not have any financial responsibilities for the stores until they acquired them from the GSD for their use. In the past few years, the annual issue value from the warehouse exceeded $300 million;

- most of the common-user items were well-established, relatively inexpensive and daily-used stores, such as office sundries, household stores and cleansing material, which a large number of government departments required. It would be administratively very cumbersome for the GSD to require all departments to regularly make an estimate of their needs for those items. At the time of procurement, GSD officers made an estimate of the future requirements, taking into account past consumption patterns and any known factors that might affect future usage;

- for other items, such as component parts for maintenance purposes or stores that required a longer delivery lead time, the GSD requested the users to make a forecast of their requirements before making the procurement. Thereafter, the GSD monitored closely the consumption of these stores and regularly reminded the users when utilisation had fallen behind forecast. At times, surplus stores arising from declining use by one user might be offset by increasing use by another user. The GSD acted as the coordinator;

- at the time of procurement, the contracted quantity represented the best estimate of the time. As circumstances might change, the demand for the stores might increase or decrease. The GSD had the responsibility to prevent surplus or items running out of stock. It had to strike a reasonable balance. In case an item ran out of stock, the user departments might have to acquire interim supplies on an ad hoc basis at higher prices; and

- in cases where an item was required by only one or a few departments for a specific purpose, it might be advisable for the item to be purchased and stored by the user departments. The GSD could continue to act as the procurement/storage agent.

17. As revealed in the Director of Government Supplies' reply, some drugs ordered for the HA became unwanted because the HA subsequently used newer and more effective drugs instead of the drugs already ordered. The Committee asked the Chief Executive, HA whether he agreed that the HA should try to consume the medical stores already ordered and, where the situation warranted, inform the GSD as early as possible as to whether any medical items kept by the GSD were unwanted and could be disposed of by other means, e.g. by sale.

Procurement and management of government supplies

18. In his letter of 13 December 2001, in ***Appendix 56***, **Dr William HO, Chief Executive, Hospital Authority**, stated that:

- the range of medical items, including drugs, medical dressings and consumables, being managed by the GSD, were mainly long established first line medicines commonly used in large quantities in public institutions, including the HA. Among the 4,500 medical items in use in HA institutions, about 300 were obtained direct from the GSD's store;

- regarding the medical items on the list provided by the Director of Government Supplies with stockholding worth more than $35 million, they consisted of items, especially drugs, each with a defined expiry date. Many items listed in Appendix C of the Audit Report were actually fast-moving and were neither dormant nor expired;

- "syrup ampicillin 500 ml", the prominent item in Appendix C, was a long established antibiotic used in first line treatment of infections. The consumption of this drug in the HA had been fairly steady over the years, ranging from two to three million millilitres per year. As far as he knew, the HA was not a major user of this drug; and

- replenishment of stock required data support on usage profile and end-user input. There was already a mechanism in place whereby the GSD would seek the relevant usage estimate of an item as and when user input was considered necessary. In parallel, the HA was proactively informing the GSD of any anticipated change in usage requirement of a particular drug to facilitate their forward procurement planning. If an item was found to be slow-moving, efforts would be made to speed up usage where possible. In fact, the HA held regular liaison meetings with the senior management of the GSD to optimise stock management.

19. In respect of the above statement of the Chief Executive, HA that the HA was not a major user of "syrup ampicillin 500 ml", the **Director of Government Supplies**, clarified in his letter of 17 December 2001, in ***Appendix 57***, that the users of the drug included both the HA and the Department of Health (DH). For this item, the DH had been the major user. Nevertheless, on an overall basis, the HA remained the principal user of the medical items in the GSD's store. In 2000-01, about 73% (in terms of value) of the stock of the 271 medical items on the list, in ***Appendix 52***, in the GSD's store were issued to the HA.

20. As the DH had been the major user of "syrup ampicillin 500 ml", the Committee enquired about:

- the ranks and grades of the staff of the DH who were responsible for ordering the drug;

- the basis on which the contracted amount was ordered; and

- the reasons for not using up the contracted stock.

21. **Dr Margaret CHAN FUNG Fu-chun, Director of Health**, explained in her letter of 11 January 2002, in ***Appendix 58***, that:

- the DH clinic dispensaries would keep a running stock of syrup ampicillin for three to four months, depending on the size of the clinic. Senior Dispensers of DH clinic dispensaries would raise requests through the headquarters of the DH Pharmaceutical Service to the GSD for supply of syrup ampicillin on a regular basis, i.e. at monthly to fortnightly intervals. The amount requested would be to maintain a running stock of three to four months;

- antibiotic syrups, including ampicillin syrup, were prescribed to infants and children for treatment of bacterial infections. Since 1995-96, there had been a general decrease in the utilisation of antibiotic syrups by DH clinics. The decrease in utilisation of ampicillin syrup was particularly marked and became evident in 1996-97. This was not compensated by a corresponding increase in the use of other antibiotic syrups. There was a substantial drop in the number of babies born, from 68,375 in 1995 to 50,513 in 1999. In 1995, 11.3% of the patients attending DH general out-patient clinics were below the age of 10 years. This proportion dropped to 8.6% in 1999; and

- the use of antibiotics was a clinical judgment of the attending doctor. The medical community had been advocating the appropriate and cautious use of antibiotics to minimise the emergence of antibiotic resistance. The decrease in antibiotic syrup usage could reflect that doctors were more cautious in prescribing antibiotics to treat childhood infections.

22. The Committee were concerned about the maintenance of excess stocks of drugs by the GSD, which resulted in money being tied up and storage costs being incurred for the items. They invited the Director of Government Supplies to comment on their suggestion that the GSD should consult the FB on whether he could charge the HA, at discounted

prices, for the medical stores already ordered if the HA agreed to consume them before requesting the GSD to order newer and more effective drugs to replace those already ordered.

23. In his letter of 17 December 2001, the **Director of Government Supplies** stated that the GSD would continue to maintain close liaison with the HA and the DH over the consumption of the medical items maintained in its central store. The GSD would clarify with them any indications of declining utilisation of an item, and persuade the users to use up, as far as practicable, all the contracted stock. In cases where the users, despite persuasion, did not consider this possible or advisable, it was rather unlikely that they would be attracted by offers of discounted prices. In such circumstances, the GSD would take proactive action to deal with the potential excess stock. The options included negotiating with the suppliers for cancellation of the contract balance, selling them back to the suppliers or manufacturers at discounted prices, offering the excess stock to local and overseas bidders through competitive tenders, and when all these efforts failed, donating the excess stock to relevant charitable organisations.

Procurement of microcomputer/network systems

24. Paragraph 3.11 of the Audit Report stated that certain microcomputer/network systems and related products were purchased at higher than average market prices paid by departments during the period January 1998 to March 2001. Paragraph 3.12(a) revealed that in many contract price reviews, the GSD and the Information Technology Services Department (ITSD) accepted the prevailing contract prices or the revised contract prices proposed by the contractors, even though these prices were significantly higher than the market prices. Examples in Appendix G of the Audit Report included random access memory (RAM) for microcomputer systems and RAM for network systems. The Committee enquired about the reasons for this.

25. The **Director of Government Supplies** explained that Audit's observation in paragraph 3.12 concerned the procurement arrangement before January 2000. At that time, although the contracts provided for the contractors and the Government to review the contract prices, the Government had encountered difficulties in negotiating with the contractors. Owing to price fluctuations and rapid changes in technology, the arrangement before January 2000 was not favourable to the Government. Hence, a new arrangement for the procurement of microcomputer/network systems was introduced in January 2000. It involved two tender exercises, one for selecting the contractors and the other for inviting proposals from selected contractors.

26. **Mr Alan WONG, Director of Information Technology Services**, supplemented that:

- RAM was a component item, not an independent system. The upgrading of the RAM of a computer might be required to meet specific functional objectives. Comparison of the prices of RAM was a complex issue. The purchased product must be compatible with the user's existing system and the purchase also involved testing. The contractor was required to satisfactorily deal with problems arising from the installation of RAM;

- as the Government could not allow suspension of its services even for several hours, the Government's contracts for the supply of microcomputer/network systems contained more stringent requirements than normal contracts between companies. The contractor should also have knowledge of the Government's computer system. Based on the Government's experience, the contractor with the lowest offer would only provide the product, whereas after-sale service was very important. Hence, it was difficult to push the contractors to sell their products at prices as low as the market prices. At present, 80 to 90 departments were using computers of different generations and models. The ITSD was of the view that in the procurement of RAM, user departments could not just consider the prices but had also to consider other factors; and

- as stated in the Audit Report, the ITSD conducted quarterly price benchmark studies, and pass the information to the GSD. Other departments could also access the information through the ITSD's network. The ITSD hoped to extend the scope of the studies, so that departments could obtain more information for the purpose of negotiating prices with the contractors.

27. In the light of the above reply, the Committee pointed out that there was a need to strike a balance between the price and the requirement for better services. The **Director of Information Technology Services** responded that the ITSD would remind all departments, apart from having due regard to the impact of the installation of RAM on the entire network, to take the price into consideration. The scheme on electronic government was in progress. Many new systems had to be upgraded in one go. His worry was the lack of technicians to deal with the maintenance of the new systems, which involved very high costs. As a matter of fact, the RAM of the existing systems of departments was small and was not able to meet the needs of many network activities. Hence, there was a need to upgrade the systems. The ITSD would enquire with the departments concerned about the urgency for upgrading.

28. Turning to the adoption of a flexible procurement arrangement under the Standing Offer Agreements, which came into effect in January 2000, the Committee enquired:

- about the circumstances under which departments would be required to aggregate their departmental requirements for microcomputer/network systems at the time of purchase;

- about the circumstances under which they would not be required to do so; and

- whether the Administration would put in place a mechanism to facilitate aggregation of requirements for microcomputer/network systems among different departments.

29. The **Director of Government Supplies** informed the Committee that the GSD would suggest to departments that they could aggregate their non-urgent requirements, such as items for regular replacement, for making bulk purchases. As for urgent requirements, such as items required for the introduction of a new service, the GSD would discuss the arrangement with the department concerned. The **Director** also stated in his letter of 17 December 2001 that to assist the smaller departments whose requirements might be only limited, the GSD would set up a mechanism whereby it would coordinate their non-urgent requirements and seek quotations from the contractors in bulk. The GSD needed some time to work out the detailed arrangements.

Supplies management in departments

30. The Committee understood from paragraph 4.12 of the Audit Report that during the period 1998-99 to 2000-01, the Supplies Surveys and Stock Verification (SS & SV) Section of the GSD had carried out stores verifications and system surveys. Paragraph 4.15 revealed that the SS & SV Section found that 33 departmental units had not performed stock verifications. 163 departmental units had not checked the inventory items at least once a year. 264 departmental units had not carried out surprise and security checks at irregular intervals at least once every three months.

31. Against this background, the Committee enquired whether the Director of Government Supplies had looked into the situation of non-compliance with the Stores and Procurement Regulations (SPR). The **Director of Government Supplies** said that consequent upon the release of the Audit Report, the GSD had sent the stores verification/system survey reports to Controlling Officers personally in the hope that they

would make the necessary improvements. In response to Audit's recommendation, the GSD would conduct more frequent inspections on store units with less than satisfactory past performance.

32. On the question of non-compliance with the SPR, the Committee enquired whether:

- the FB was responsible for the enforcement of the SPR; and

- penalties had been imposed on departments in the cases of non-compliance.

33. The **Secretary for the Treasury** replied that the Public Finance Ordinance (Cap. 2) empowered the Financial Secretary to make the SPR. As the Financial Secretary had delegated the power to the Secretary for the Treasury, the SPR were made by the FB.

34. The **Director of Government Supplies** added that the Administration relied on departments in implementing the SPR. In departments, most of the staff responsible for managing the warehouse were junior staff. He considered that the provision of education and training was a much better means than penalty in helping staff perform their supplies functions effectively. The GSD would strengthen the relevant training as far as possible. It hoped to provide opportunities for such staff to attend refresher courses once every two years.

35. Regarding the 33 departmental units which had not performed stock verifications, the Committee asked about their names and their respective current stock positions. The **Director of Government Supplies** provided the information in the Annex to his letter of 17 December 2001. The Committee noted the list of the 33 departmental units and further enquired whether:

- these departmental units had now performed the required stock verifications after their cases of non-compliance with the relevant SPR had been found, and if not, when individual units would perform the verifications; and

- the stores held by the government departments involved in the first three departmental units on the list had passed their expiry dates and had to be disposed of.

Procurement and management of government supplies

36. In his letter of 11 January 2002, the **Director of Government Supplies** informed the Committee that:

- three of the 33 departmental units had yet to carry out the required verification but had undertaken to complete it before the end of March 2002. The relevant information on the other units was set out in the Annex to his letter; and

- according to the results of the verification exercises carried out by the GSD for the first three departmental units on the list in 1998-99, 2000-01 and 2000-01 respectively, there were no stores held in these units which had passed their expiry dates.

37. Paragraph 4.19 of the Audit Report revealed that during the period 1998-99 to 2000-01, the total losses or deficiencies of stores involving fraud, suspected fraud or negligence reported by departments had amounted to $0.91 million. The Committee noted from Table 13 of the Audit Report that there were seven cases of loss of stores, and either the officers concerned had been surcharged during the same period or surcharge actions were in progress as at 31 March 2001. However, paragraph 4.22 revealed that Audit had noted that there were other cases of loss of stores issued to officers in the course of their duties. The departments concerned had treated these cases as not involving fraud, suspected fraud or negligence, and the officers concerned had not been surcharged. The Committee were concerned that double standards might have been applied in the treatment of similar cases of loss of stores. They therefore enquired whether the GSD could provide objective criteria for the treatment of losses or deficiencies of stores.

38. The **Director of Government Supplies** responded that according to existing procedures, Controlling Officers made the decision on surcharge of public officers, having regard to the circumstances of losses. As stated in his response to Audit's recommendation, the GSD would consider issuing, for reference by Controlling Officers, some further guidelines on treatment of losses or deficiencies of stores, including the circumstances under which the officers concerned might be surcharged. It should be noted that no guidelines could be exhaustive and Controlling Officers would need to continue to evaluate each case on its merits.

39. The Committee further asked when the more detailed guidelines would be issued. The **Director of Government Supplies** said that the GSD would need to examine some cases of loss or deficiency of stores and consider staff reaction before devising the guidelines. It would take six months.

Procurement and management of government supplies

40. **Conclusions and recommendations** The Committee:

Procurement of stores

- express serious concern that:

  (a) for 1,303 items or 79.9% of all common-user items, the target stock turnover rate of five times a year was not achieved in 2000-01, resulting in $35.3 million being tied up in the average stockholding of these items;

  (b) 568 items, with stockholding totalling $15.2 million as at 31 March 2001, had a stock turnover rate of lower than 0.5 time a year in 2000-01; and

  (c) among these 568 items, 194 items with stockholding totalling $4.4 million had a stock turnover rate of lower than 0.01 time a year in 2000-01;

- express dismay that the Government Supplies Department (GSD) has not demonstrated that it had exerted its best efforts to:

  (a) notify the user departments of the anticipated expiry dates of items in stock; and

  (b) dispose of items which are in excess of users' requirements and will become outdated or pass their expiry dates shortly;

- concur with the Secretary for the Treasury that in cases where an item is required by only one or a few departments for a specific purpose, it may be advisable for the item to be purchased and stored by the user departments and the GSD can continue to act as the procurement/storage agent, and urge the Secretary to implement the arrangement, particularly with regard to the Department of Health and the Hospital Authority;

- express concern that the GSD had examined the prices of only 316 items in the last five price comparison studies or 19.4% of all items held in the GSD's warehouse as at 31 March 2001;

- urge the Director of Government Supplies to:

  (a) expeditiously review the dormant and slow-moving items on hand which have defined expiry dates and might become obsolete or unwanted by users, ascertain the underlying reasons and find the best means to dispose of such items to ensure as far as possible that money is not being tied up in the unwanted stocks;

  (b) request user departments to keep proper records of and monitor the goods ordered so as to ascertain the amount of goods that are no longer wanted, and to notify the GSD accordingly;

  (c) publish regularly a list of the outdated and/or excess stocks with the names of the user departments concerned;

  (d) issue guidelines to departments to assist them in seeking the GSD's prior consent to make direct purchases of common-user items. In doing so, the GSD should make available to all departments details of direct purchases approved by the GSD;

  (e) ascertain the circumstances in which departments may make direct purchases of common-user items at prices lower than those paid by the GSD and consider whether the procurement of such items through the central store should continue; and

  (f) improve the effectiveness of the GSD's price comparison studies on the common-user items by:

    (i) identifying the underlying reasons for those items which do not achieve net savings and finding ways of procuring them more cost-effectively;

    (ii) ensuring that, for those items which do not achieve net savings, a follow-up price comparison is carried out; and

    (iii) extending the scope of the price comparison studies and reviewing the prices of all items on a cyclical basis;

Procurement of microcomputer/network systems

- express concern that, according to the Information Technology Services Department's (ITSD's) price benchmark studies, during the period January 1998 to March 2001 certain microcomputer/network systems and related products were purchased by departments at higher than the average market prices;

- express dissatisfaction that the GSD and the ITSD had failed to enforce the contract price review provision in the bulk contracts in force before January 2000 to ensure that the contract prices were constantly more favourable than the prevailing market prices;

- consider that, due to inadequate competition, non-aggregation of departmental requirements and the small number of contractors, the flexible procurement procedures adopted by the GSD since January 2000 have not provided adequate assurance that microcomputer/network systems and related products are purchased at the lowest market prices;

- note that the Stores and Procurement Regulations (SPR) were revised in June 2001 to allow departments to make direct purchases of microcomputer/network systems and related products after seeking the GSD's prior consent and having regard to value for money considerations;

- express concern that, during the period January to June 2000, the lowest offers were not accepted in 14% of the purchases with a value exceeding $500,000, and that the departments concerned were not required to submit returns to the GSD to explain the cases;

- express concern that:

  (a) the ITSD's Product Selection Guide does not provide sufficient guidelines to help departments purchase hardware products cost-effectively, and that if departments had only purchased cathode ray tube (CRT) 15-inch monitors instead of liquid crystal display (LCD) 15-inch monitors, the total expenditure in 2000-01 for computer monitors would have been reduced by $19 million; and

  (b) the ITSD did not make the contractors' order summary reports available to departments for reference when selecting contractors for quotations, evaluating the reasonableness of the price quoted by contractors and conducting price negotiations;

- recommend that the Director of Government Supplies and the Director of Information Technology Services should:

  (a) establish procedures for coordinating the aggregate departmental requirements for microcomputer/network systems in order to obtain bulk purchase discounts;

  (b) in warranted cases (e.g. major upgrading and replacement of computer equipment), conduct an open and separate tendering exercise for bulk purchases of microcomputer/network systems in order to increase competition among suppliers and to obtain the best prices available from the market;

  (c) issue guidelines to departments with indications of the circumstances in which they should negotiate with the contractors for better offers;

  (d) take action to ensure that all contractors submit their quotations within the time limit specified in the Standing Offer Agreements upon receipt of requests from departments;

  (e) if Standing Offer Agreements similar to the existing ones are to be adopted in the next open tendering exercise, increase the number of contractors in each category of microcomputer/network system products in order to further increase competition among the contractors;

  (f) facilitate departments in making direct purchases of microcomputer/network systems from other suppliers whose selling prices are lower than the contractors' selling prices by:

    (i) establishing procedures for seeking the GSD's prior consent to make direct purchases;

    (ii) making available to all departments details of the direct purchases approved by the GSD to enable them to make similar direct purchases; and

    (iii) providing departments with details of the results of the price benchmark studies;

(g) for purchases of microcomputer/network systems with a value exceeding $500,000, require departments to submit half-yearly returns indicating, with detailed explanations, the purchases for which less than five quotations have been obtained. Departments should also report in the returns, with detailed explanations, those cases in which the lowest offers have not been accepted;

(h) enhance the ITSD's Product Selection Guide so that departments are fully informed about the practical functions of similar hardware products (e.g. LCD vis-à-vis CRT monitors) and to enable departments to select products with due regard to their practical functions and cost-effectiveness; and

(i) post the contractors' order summary reports to the ITSD's dedicated web site for reference by departments. This would enable them to obtain lower prices in making purchases from the contractors under the existing Standing Offer Agreements;

Supplies management in departments

- express serious concern that:

(a) during the period 1998-99 to 2000-01, the GSD found many cases in which departmental store or administrative units had not complied with the requirements of the SPR for making direct purchases, maintaining stores records or performing stock verifications; and

(b) the Finance Bureau and the GSD did not perform control and checking procedures to ensure that all departments had submitted the half-yearly returns on losses or deficiencies of stores, and that whilst some officers had been surcharged in a number of cases for loss of stores, others in similar cases were not;

- recommend that the Director of Government Supplies should:

(a) provide adequate training and instructions to the Supplies Grade staff to enable them to manage the departmental supplies activities more effectively in accordance with the SPR. In particular, where many cases of non-compliance have been found, the Director should organise intensive training courses for the staff responsible for managing the stores;

(b) regularly remind Controlling Officers of the importance of ensuring compliance with the SPR and draw their attention to the common non-compliance cases; and

(c) adopt a risk-based approach in conducting stores verifications in departments, by inspecting more frequently those store units with unsatisfactory past performance. This will help ensure that effective and timely improvement measures are taken;

- recommend that the Secretary for the Treasury and the Director of Government Supplies should implement control and checking procedures to ensure that departments properly exercise their delegated authority for writing off losses or deficiencies of stores. In particular, the Secretary for the Treasury and the Director of Government Supplies should:

  (a) take action to ensure that all departments submit to them on time the half-yearly returns required by SPR 1040(c); and

  (b) consider asking departments to examine the past cases of loss or deficiency of stores, as reported in their half-yearly returns, in order to find out whether there are cases which warrant surcharge action;

- acknowledge that the Director of Government Supplies has undertaken to issue, within six months, more detailed guidelines on the treatment of losses or deficiencies of stores, including the circumstances in which the officers concerned should be surcharged for the losses or deficiencies; and

- wish to be kept informed of the more detailed guidelines on the treatment of losses or deficiencies of stores.

Chapter 5

Administration of the Quality Education Fund

Audit conducted a review of the administration of the Quality Education Fund (QEF) and identified areas where improvements could be made.

2. At the public hearing, **Mrs Fanny LAW FAN Chiu-fun, Secretary for Education and Manpower**, made an opening statement. She said that:

- the Education and Manpower Bureau (EMB) and members of the QEF Steering Committee welcomed Audit's recommendations. Since the establishment of the QEF in 1998, the Steering Committee had reflected on the experience gained and reviewed the administrative procedures and the strategy after each call for funding applications. Between the third and fifth calls for applications, themes had been set so that the QEF grants could meet the demand for education development in a more strategic manner;

- the purpose of setting up the QEF was to encourage schools to take the initiative to propose innovative projects and to instill a culture of self-improvement through a flexible funding approach. From the outset, it was hoped that there could be as many QEF projects as possible. In the past four years, the QEF had been very well received by the education sector and many completed projects were positively assessed;

- since its establishment, the QEF had approved funding for 4,341 projects of which 3,749 (or 86%) were school-based projects. These projects met the needs of individual schools. The QEF had also enabled 326 other organisations to use their special expertise to provide services to schools;

- to improve the administration of the QEF, the Steering Committee had invited the Management Services Agency to review the processes for assessing funding applications, project monitoring and the promotion strategy. A task force had also been set up to review the existing promotion measures. It was hoped that a long-term strategy could be formulated to complement the targets of the education reform; and

- starting from the next financial year, the administration of the QEF would be transferred to the Education Department (ED). In order to relieve the burden on teachers and having regard to the proposals of the education reform, the Steering Committee had decided to adopt a focused approach for the fifth call for applications. Limits had been set for the themes and number of applications by schools, except that every school could still apply for QEF funding for installing air-conditioning facilities. Those schools which had not applied for QEF funding in the past would be encouraged to do so.

Administration of the Quality Education Fund

Strategic planning of the QEF

3. The Committee understood from paragraphs 2.11 to 2.16 of the Audit Report that some projects had been standardised by the QEF Secretariat and such projects had absorbed 40% of the QEF funding in the fourth call for applications. The Committee shared Audit's concern that if funding for standard projects continued to increase, they could eventually take up a very large share of the QEF funding.

4. Noting that the QEF had approved funding for 4,341 projects since its establishment, the Committee asked whether the Administration perceived a need to restrict the number of projects to be approved so that the QEF funds could be spent on genuine innovative and quality initiatives.

5. The **Secretary for Education and Manpower** responded that:

- standard projects had been introduced with a view to simplifying the application procedures and enhancing efficiency. Some projects, such as school orchestras under the "All-round education" category of the Grants Programme, were first suggested by individual schools. Subsequently, other schools made similar applications because they shared a common need. Taking into consideration the need to reduce teachers' burden in preparing application proposals and maintain fairness in assessing applications based on similar justifications, the Steering Committee agreed to standardise the applications for certain items for which the needs of most schools were quite similar;

- the Steering Committee was also concerned about the increasing number of standard projects, particularly in the present economic downturn where the QEF's return on investment was small, affecting its recurrent income. Therefore, the Steering Committee was considering whether it should set limits on the proportion of funds for allocation to different types of projects. This would be addressed in the Steering Committee's review; and

- regarding the number of QEF projects, the EMB had in the past hoped to encourage as many applications as possible in order to select for promotion those projects with proven results. However, the Steering Committee now agreed that there was a need to set a limit on the number of applications. Starting from the fifth call for applications, a school with a QEF project underway would not be allowed to make another application. Such a restriction could also help to ensure that teachers were not overloaded.

Administration of the Quality Education Fund

6. According to paragraphs 2.17 to 2.20 of the Audit Report, the QEF had been used by the Education Department (ED) as a supplementary source of funding for school education. For the Information Technology Coordinators (ITCs) projects of 250 schools, funding was initially provided under the Government's annual budgetary process. However, to extend the scheme to other schools, the ED successfully applied twice from the QEF total funding of $238 million, instead of through the Government's annual budgetary process. Similarly, to extend the upgrading of the Multi-media Learning Centres scheme to the "one-student-one-computer" basis for 102 subsidised secondary schools, the ED successfully obtained $31.7 million from the QEF, instead of using funds from the ED capital accounts.

7. The Committee noted that the above grants to the ED amounted to about $270 million, representing about 5% of the $5 billion capital of the QEF. They queried:

- whether such an arrangement had reduced the QEF funds available for applications by other applicants; and

- how the EMB could ensure that there was no conflict of interest when the ED applied for QEF funding, especially after the QEF Secretariat was transferred to the ED by April 2002.

8. The **Secretary for Education and Manpower** explained that:

- in respect of most projects for which the ED was the applicant, the ED was in fact making batch applications on behalf of schools. For the ITCs scheme, the initiative actually came from the Hong Kong Subsidised Secondary Schools Council (HKSSSC), which had conveyed the views of its member schools to the ED that the 250 ITCs initially provided under the Government's recurrent funding lagged far behind the pace of the schools' development in information technology (IT). The ED considered that the extension of this IT pilot project should be fully supported and should not be hindered by the fact that the extension had not been budgeted for in the Government's annual budgetary exercise. Hence, the ED made batch applications for the schools and the real beneficiaries were the schools concerned, not the ED;

- the ED was the applicant of some educational research projects. This was consistent with the objectives of the QEF because the ED had to take the initiative to conduct strategic researches targeted at raising the quality of school when no schools put up such proposals. In the end, the beneficiaries were the schools; and

- after the QEF Secretariat had been transferred to the ED, the ED would not make any more applications for QEF funds. Neither would universities be allowed to apply for QEF funds on an individual basis. The applications must come from schools.

9. In the light of the Secretary for Education and Manpower's reply, the Committee questioned:

- regarding the ITCs scheme, why the HKSSSC, instead of making a batch application for schools, had requested the ED to do so, creating the impression that the ED's applications would be considered more favourably by the Steering Committee as there were officials of the ED sitting on it; and

- whether the ED would continue to make use of the QEF to expedite the implementation of projects which the ED considered should be speeded up but would take several years to process under normal funding arrangements.

10. The **Secretary for Education and Manpower** and **Mrs Cherry TSE, Deputy Secretary for Education and Manpower**, stated that:

- in the QEF's past calls for applications, there was no limit on the amount of funds to be allocated. All quality initiatives conducive to enhancing the quality of education would be approved. Hence, there was no question of some quality projects being rejected due to the approval of the applications by the ED;

- most of the members of the QEF Steering Committee were frontline education workers. There were only two ex-officio members representing the ED and the EMB, whereas there were nine non-official members. The ED representative had to make a declaration whenever he put up the ED's suggestions. In other words, the membership of the Steering Committee could help to ensure that all applications were vetted fairly;

- there were only two choices of funding source for ITCs schemes, namely, the Government's recurrent expenditure and the QEF. If schools requested to expedite the development of IT but the ED insisted that such should be provided under the annual budgetary process, schools would be demoralised because other priorities in the Government's education policy might have precedence over IT projects. On the other hand, by financing schools' IT initiatives through the QEF, the development of IT in schools would not be

hindered and the pace of such development among different schools would be more synchronised; and

- when introducing a new scheme, the Government would design a time-frame for implementation and extension. However, sometimes schools might advance more quickly than as originally envisaged by the Government. They would then demand, at an early stage, extension of the scheme. In the circumstances, it would be appropriate to refer the funding applications to the Steering Committee for consideration.

11. **Mr Anthony TONG Kai-hong, Deputy Director of Education**, supplemented that:

- the Government's original provision of 250 ITC posts for 250 schools was for a period of two years and was subject to review. If the ED were to apply for funding from the Legislative Council (LegCo) before the review, it was unlikely that the LegCo would approve the application;

- the ED considered that it was in a better position than the HKSSSC to make a bulk application for schools. If the HKSSSC were to make the application, the work involved would have to be taken up by the school principals who did not have spare capacity for the extra work. On the other hand, the ED was familiar with the operation of the ITCs scheme, including the conditions of employment of the ITC posts and the possible source of teachers for taking up the posts;

- when deciding to make the application for the second time, the ED had taken into account the requests of subsidised primary schools for extending the ITCs scheme to them so as to assist them in implementing IT initiatives. Moreover, it would be difficult for individual primary schools to make separate QEF project proposals. Batch applications also saved the processing time of the QEF Secretariat. Most importantly, the ED hoped that the outcome of the extension would serve as a basis for the review to be conducted on the ITCs scheme and for the formulation of a long-term strategy, including the source of funding for the scheme in the long run; and

- not all applications by the ED had been approved. Among the 23 ED project proposals, only 12 were approved whilst 11 were not. This reflected that the Steering Committee had vetted all applications fairly according to the established criteria. Of the 12 approved projects, eight were coordinated by the ED for schools and four were research projects relating to the enhancement of the quality of education.

Administration of the Quality Education Fund

12. In response to the Committee's request, the **Secretary for Education and Manpower** provided, vide her letter of 17 December 2001 in ***Appendix 59***, the approval criteria for QEF project proposals and the membership lists of the QEF Steering Committee and its various subcommittees.

13. The Committee pointed out that, irrespective of whether funds were allocated out of the ED's annual budget or from the QEF, the ultimate beneficiaries should still be schools rather than the ED. Despite the good intention, proper funding procedures should be adhered to. On the use of QEF funding to extend the ITCs scheme to more than the 250 schools originally approved by the LegCo, the Committee considered that the ED should have applied for supplementary funding from the Finance Committee (FC) rather than using the QEF as an alternative source of funding. The FC might approve the funding application if it was justified. The Committee considered that the arrangement had deviated from the principle of subjecting major Government expenditure items to the LegCo's monitoring.

14. The Committee were also concerned that while it was stated in FC paper FCR(97-98)81 (in ***Appendix 60***), which sought the FC's approval for the creation of the QEF, that the Fund would be used to fund one-off projects which would not give rise to financial implications on a recurrent basis, some QEF projects, such as the provision of air-conditioning for classrooms, might have recurrent expenditure implications.

15. The **Secretary for Education and Manpower** and the **Deputy Secretary for Education and Manpower** responded that:

- many of the ED projects approved under the QEF e.g. the Primary School English Development Scheme and the Multi-media Digital Reading Project, were one-off in nature. As for the ITCs scheme, the ED had completed a review on it in mid-2001, and would submit a paper to the LegCo setting out the scheme's future direction. If extension of the scheme was considered worthwhile, the ED would definitely seek funding approval from the FC;

- the air-conditioning project would not give rise to recurrent expenditure. It was not the Government's policy to provide air-conditioners for schools. If a school was to apply for QEF funding for installing air-conditioners, it must be able to raise half of the capital cost by itself and obtain the parents' agreement to bear the recurrent costs; and

- the EMB clearly understood the concerns of the FC and the Public Accounts Committee. Therefore, after the publication of the Audit Report, the EMB had reviewed internally to ascertain if any improvements could be made to the existing mechanism so as to prevent the occurrence of the mistakes suggested by Audit.

16. **Mr Stanley YING, Deputy Secretary for the Treasury**, said that:

- according to the minutes of meeting of the FC of the Provisional LegCo held on 12 December 1997 (in ***Appendix 61***), some members were worried that allowing Government departments and bureaux to make use of the QEF instead of seeking allocations in the normal resource allocation exercises would create confusion and bring about ambiguity between the roles of Government and non-Government bodies, and the Finance Bureau (FB) representative "assured members that as stated categorically in the FC agenda item the Fund would not be used to create posts within the civil service, and that the proposal was not intended to bypass the control of recurrent expenditure"; and

- the QEF only provided funding on a one-off basis. If there were projects that might incur recurrent expenditure, the ED should apply for funding through the normal annual budgetary exercise. If necessary, funding applications would be submitted to the LegCo for consideration. It was only after funding approval had been granted by the LegCo that recurrent expenditure could be incurred.

17. The Committee considered that the present arrangement appeared to have confirmed that the FC members' concerns were well founded and fully justified. They enquired how the FB had ensured that the control over recurrent expenditure was not bypassed by QEF projects. In her letter of 22 December 2001 in ***Appendix 62***, **Miss Denise YUE Chung-yee, Secretary for the Treasury**, informed the Committee that:

- it was stated in the FC paper that "In line with the capital nature of the Fund, we will only approve projects which are genuinely one-off .... and will not give rise to financial implications on a recurrent basis", and that "Given the capital nature of the Fund, we will not entertain projects of a permanent recurrent nature";

- when the FC approved the establishment of the QEF and the capital commitment was created under Head 146 Government Secretariat: EMB, the Controlling Officer for this Head, i.e. the Secretary for Education and Manpower, became responsible for the implementation of the scheme in accordance with the parameters defined in the FC agenda item as approved by the FC; and

- it was possible that the EMB might, having regard to the success of a pilot project funded by the QEF, eventually proposed to continue the project on a recurrent basis. The FB's role was to ensure that in such cases, the EMB had to apply for additional recurrent funding through the annual resource allocation exercise, in the same way as other government bureaux and departments. If the proposal was supported, the recurrent funding would be included in the annual draft Estimates for the approval of the LegCo or processed as an in-year proposal subject to the FC's approval where required, and be subject to the normal financial control over the allocation and use of government recurrent expenditure. The fact that the initiative had previously been funded by the Fund on a pilot or one-off basis would not give it a claim for special treatment in these processes of recurrent resource allocation. The FB would continue with such controls over recurrent expenditure.

18. The Committee considered that while some standard QEF projects, such as grants for air-conditioning of classrooms and grants for procurement of notebook computers for loan to needy students, were worth supporting and well-justified, the ED should apply for the necessary funding through the normal resource allocation mechanism, rather than resorting to the QEF. Such a practice was particularly unsatisfactory having regard to Audit's observation that the QEF required a less competitive, more flexible resource bidding environment outside the annual budget process (paragraph 2.29 of the Audit Report). The Committee questioned:

- why the provision of air-conditioning and notebook computers was regarded as quality initiatives that met the QEF's approval criteria;

- why air-conditioning and notebook computers were not included as standard provision items for schools, particularly having regard to the fact that the ED had been coordinating the applications for these items; and

- whether the Administration had applied for funding from the LegCo for the provision of these items to schools.

Administration of the Quality Education Fund

19. In her letter of 28 December 2001 in ***Appendix 63***, the **Secretary for Education and Manpower** informed the Committee that:

- the Government did not install air-conditioners for all public sector schools as a matter of policy since an air-conditioned environment was not considered essential from an educational point of view. Therefore, air-conditioners were not included as standard provision for schools. However, the Government recognised that air-conditioning would provide a more comfortable and quieter environment and was conducive to learning. Hence, the libraries (but not the classrooms) of new schools adopting the Year 2000 design and schools in phase 4 and the final phase of the School Improvement Programme were equipped with air-conditioners. In addition, libraries of all schools adopting the pre-2000 design and all classrooms and special rooms affected by traffic noise in excess of 65 decibels were provided with air-conditioners under the noise abatement programme. In these circumstances, the recurrent costs (e.g. electricity charges and maintenance) were provided by the Government as part of the subsidy to the relevant schools;

- noting on the one hand that air-conditioning was non-essential, and on the other hand, a more comfortable environment could help improve learning and was therefore consistent with the objective of enhancing the quality of school education, the QEF had agreed to fund the capital costs for the installation of air-conditioners in libraries and classrooms, but on a 50-50 matching basis. The QEF did not automatically provide funding for installing air-conditioners in all schools. Only schools which took the initiative to apply and agreed to pay for half of the capital costs and the full recurrent costs out of their own funds could benefit from the QEF funding;

- in line with the prevailing policy on air-conditioning for schools, the Administration had applied for funding from the LegCo for the provision of air-conditioners only for libraries of schools adopting the Year 2000 design or in phase 4 and the final phase of the School Improvement Programme, as well as for libraries and classrooms for those schools covered by the noise abatement programme;

- the provision of notebook computers for loan to needy students was intended to bridge the "digital divide" amongst secondary students. When the Government launched the Five-Year Strategy for IT Education in 1998, funding was obtained from the LegCo to install IT equipment in schools and children and youth centres as well as for teacher training. Many of the students from low-income families might not have computers at home and it might not always be convenient for them to rely solely on computers in

schools or in youth and children centres. To supplement the Government's efforts in promoting IT in education and to forestall the widening of the "digital divide" among secondary school students of different family backgrounds, the QEF had thus approved the provision of notebook computers for loan to needy secondary school students; and

- as notebook computers were not essential for teaching and learning in schools, they had not been included as standard provision items for schools. Since the number of households with computers had been on the rise, the Administration envisaged that accessibility, in general, would not be a problem. Hence, the Administration had not approached the LegCo for funding to provide notebook computers.

20. The Committee considered that providing air-conditioning to classrooms would improve the learning environment. In view of the fact that the QEF would only fund the capital costs for the installation of air-conditioners on a 50-50 matching basis and parents had to afford the recurrent costs, the Committee were concerned that students from poor families would be put in a disadvantageous position.

21. The **Secretary for Education and Manpower** said that:

- the Hong Kong Jockey Club had agreed to provide support in case parents could not raise the required capital costs. Where an individual student could not afford the recurrent costs, it was a problem for the school to sort out; and

- the question of how to assist the disadvantaged groups in society could not be addressed by the QEF alone. In fact, the ED had always tried to find ways to assist disadvantaged students.

22. The Committee noted that under the existing system, a government expenditure item of less than $10 million did not need the FC's approval. Moreover, as the Provisional LegCo had already approved the funding of $5 billion to create the QEF, which was a capital fund in nature, there was no need for the Administration to report any QEF grants to the LegCo, irrespective of the amounts involved. In order to ensure that the allocation of funds to major projects of a recurrent nature would not bypass the LegCo's scrutiny through QEF grants, the Committee enquired whether the Administration would consider:

- putting in place a mechanism for reporting major QEF grants to the LegCo, such as by reporting to the Education Panel those grants exceeding $10 million; and

- defining more clearly the nature of projects that should be funded by the QEF, so as to avoid allocating grants to too wide a range of projects which did not meet the core objective of the QEF.

23. The **Secretary for Education and Manpower** stated that:

- projects of a permanent recurrent nature would not be funded under the QEF. All QEF projects were one-off in nature although some might last for two or three years. Moreover, the allocation of QEF grants was monitored by the QEF Steering Committee whose members were mainly frontline education workers;

- the range of projects that could be supported by the QEF not only included innovative projects, but also projects conducive to the upgrading of the quality of education. The five categories of projects that could be funded by the QEF were Effective Learning, All-round Education, School-based Management, IT, and Educational Research. The scope of the QEF grants programme would be too narrow if it were to fund only innovative projects; and

- she recognised the need to increase the transparency of QEF grants and for the Administration to be accountable for how the QEF funds had been spent. When considering the proposal to devise a reporting mechanism, she would also take into account the need to be cost-effective in doing so.

24. In her letter of 17 December 2001, the **Secretary for Education and Manpower** supplemented that she would consult the QEF Steering Committee on the suggestion that the Education Panel be informed of grants exceeding $10 million, and on the mechanism for so informing the Panel.

25. The Committee understood from paragraphs 2.34 and 2.35 of the Audit Report that, in Hong Kong, a wide range of alternative funding sources (including the QEF) were available for educational programmes and projects. Some funding sources overlapped in terms of their objectives and the type of projects that could be funded. The Committee therefore asked:

- whether there was a rule requiring QEF applicants to disclose if they had applied for funding from other sources for the same projects; and

- whether grantees of QEF projects were allowed to receive funding from other sources for the same activities.

26. In her letter of 17 December 2001, the **Secretary for Education and Manpower** advised the Committee that:

- applicants for QEF grants were required to provide information in their application on whether they had applied for or obtained subsidy from other organisations for their proposed projects; and

- where the proposals involved a substantial budget, the QEF encouraged the applicants to collaborate with other organisations on the funding arrangements. In such cases, provision of funds by the QEF would be on a matching basis and there would be no duplication of funding for the same activities.

Assessment processes and monitoring of QEF funded projects

27. On the monitoring of QEF funded projects, the Committee enquired whether funding for large-scale projects would be provided in phases to ensure that the promised performance targets, including interim targets, had been achieved before further funding was given. They also asked whether there was a mechanism to stop the payment of or reduce the funding to projects that were found to be unsatisfactory during the monitoring process.

28. The **Secretary for Education and Manpower** replied that:

- the QEF Secretariat required a grantee to submit a progress report every six months. For large-scale projects exceeding a certain amount, reports would have to be submitted more frequently. There were also external reviewers to conduct site visits to monitor the progress and effects of the projects; and

- funding for large projects was normally provided in phases and there was a mechanism to stop the funding of a project which was underway. However, before doing so, the Administration would certainly discuss with the grantee with a view to revamping the project, hoping that it could be improved and completed.

Administration of the Quality Education Fund

29. According to paragraph 3.38 of the Audit Report, some external reviewers were project managers for QEF projects within their own schools or institutions. A small honorarium of $500 was paid to each external reviewer. The Committee asked whether:

- external reviewers would be assigned to monitor the QEF projects of their own schools; and

- the Administration would consider raising the honoraria paid to the external reviewers.

30. The **Secretary for Education and Manpower** replied that:

- external reviewers would not monitor the projects of their own schools; and

- the honorarium of $500 was to cover the transport cost for visiting projects. Indeed, for some projects that lasted for two or three years, the honorarium would not be sufficient to cover the transport cost and the external reviewers might have to pay by themselves. Hence, it was necessary to review the amount of the honoraria. From her contacts with the external reviewers, they were all zealous education workers for whom money was not the first priority. In fact, money was not a sufficient reward for their hard work.

31. On the financial position of the QEF, the Committee noted from paragraph 3.45 of the Audit Report that as at 31 August 2000, the size of the Fund had increased beyond its original $5 billion to $6.5 billion due to revaluation of investments and investment gains. However, the Committee pointed out that it had recently been reported that according to the chairman of the QEF Steering Committee, the current balance of the Fund was only $3.8 billion. Noting that about $1.1 billion had been granted in the fourth call for applications, the Committee asked whether it was correct that the QEF had lost about $1.6 billion in investments between August 2000 and August 2001.

32. The **Secretary for Education and Manpower** and **Miss Elizabeth LEE, Principal Assistant Secretary for Education and Manpower**, clarified that:

- the closing balance of the QEF for the year ending 31 August 2001 was about $4.9 billion. The current balance of $3.8 billion of the Fund quoted by the chairman of the Steering Committee had factored in the committed expenditure that must be paid to approved projects in the next few years. The amount of $1.1 billion was actually committed expenditure and had not

been disbursed. The balance of $3.8 billion had also factored in the amount of funds allocated to projects approved in the fourth call for applications but not the amount to be allocated in the fifth call as it was still going on; and

- the size of the QEF was $5 billion when it was set up in February 1998. The closing balance as at 31 August 1998 was $4.8 billion, indicating a loss of $200 million. The closing balance as at 31 August 1999 was $6 billion, indicating a gain of $1.2 billion which, according to the Treasury, represented a rate of return of 32%. The closing balance as at 31 August 2000 was $6.4 billion, indicating a gain of $400 million and a rate of return of 13%. For the year ending 31 August 2001, the closing balance was $4.9 billion, indicating a loss of $1.5 billion and a rate of return of -10%.

33. As the accounts of the QEF was subject to audit by the Audit Commission, the Committee invited Audit to provide information on the amount of loss of the QEF as at 31 August 2001. In response, **Mr David M T LEUNG, Assistant Director of Audit**, informed the Committee that:

- for the year ending 31 August 2001, the amount of investment loss was about $764.9 million and the amount of foreign exchange loss was about $10 million. The total unaudited loss was about $770 million. Audit did not have information beyond 31 August 2001; and

- very often the amount of investment gain/loss was only on paper. Since a large proportion of the QEF was invested in equities, the current amount of gain/loss would fluctuate as the prices of the equities went up or down in the coming months.

34. In her letter of 17 December 2001, the **Secretary for Education and Manpower** provided the Committee with a breakdown of the annual income and expenditure of the QEF from 1 February 1998 up to 31 August 2001.

35. The Committee were concerned about the substantial investment loss of the QEF for the year ending 31 August 2001. They also noted from paragraph 3.47 of the Audit Report that for the two financial years of the QEF from 1 September 1998 to 31 August 2000, the actual expenditure for approved grants and expenses exceeded the QEF's recurrent income by about $110 million. The Committee were concerned that if such a trend continued, all QEF funds would be expended within a few years.

36. The **Secretary for Education and Manpower** responded that:

- there had been heated discussions among members of the Steering Committee as to whether the amount of recurrent income of the QEF, in terms of interest and dividends, should be used as the basis for determining the funds that could be allocated. If so, the QEF would have to stop approving grants for several years because the current balance of the Fund was smaller than the original capital base. On the other hand, there were members who felt strongly that as the QEF had gained momentum, grants should not be stopped midway. In the end, the Steering Committee agreed that it should adopt a focused approach and limit the number of applications in the fifth call for applications; and

- the Steering Committee was considering whether an alert level should be set and if so, the appropriate level. Under such a mechanism, the QEF would stop making grants when its balance fell below the prescribed level.

37. According to paragraph 3.47 of the Audit Report, paragraph 15 of FC paper FCR(97-98)81 had provided a general guideline for the management of QEF funds. It was stated in paragraph 15 of the paper that the QEF would adopt an investment approach which would generate reasonable growth in the value of the Fund whilst producing recurrent income to meet regular funding requests. Having regard to the fact that the actual expenditure for approved grants had exceeded the QEF's recurrent income in the past two years and that there was considerable investment loss in the last year, the Committee queried whether, from the Administration's perspective, the objectives laid down in the FC paper had been achieved.

38. In her letter of 17 December 2001, the **Secretary for Education and Manpower** stated that:

- the Director of Accounting Services (DAS) was responsible for investing the funds of the QEF, subject to the advice of the QEF Investment Committee. The DAS had in turn engaged the services of professional fund managers. The funds of the QEF had been invested in global equities and bonds. The asset allocation model adopted by the QEF Investment Committee aimed to achieve reasonable growth in capital value to meet funding requests over a period of time. During the period from 1 January 1998 to 31 August 2001, the portfolio had generated a total income of $1,555 million from interest, dividends as well as price appreciation. Although the total expenditure was more than the total income, it was noteworthy that over the years the QEF had

funded 4,341 projects, the implementation of which had greatly benefited the school sector in the pursuit of quality education and in the enhancement of teaching and learning skills;

- the QEF Investment Committee had regularly reviewed the investment strategies and monitored the investment activities closely. Given the current global investment situation, the value of the Fund was inevitably affected;

- the present QEF funding cycle had been designed with reference to the operation of the school sector. The QEF Steering Committee started to consider the strategies and arrangements for the next call for applications around September each year, based on the financial performance of the Fund in the preceding school year. Cashflow for the approved projects would start in the following school year. Hence, the school calendar and the processing cycle involved at least a one-year gap between the approval of project and the actual disbursement of grants during which significant changes in the investment return might have occurred. Therefore, it was only reasonable to interpret the objectives set out in the paper FCR(97-98)81 as referring to the need to maintain a reasonable balance between income and expenditure over a period of time rather than strictly on a per-year basis; and

- the Management Services Agency had been invited to carry out a review of the QEF operation which would include, among other things, a study on the financial control of the Fund and possible limits for future spending.

39. The Committee noted from paragraph 2.23(e) of the Audit Report that the Secretary for Education and Manpower had said that the QEF was, by its nature, a source of "seed money". The Committee considered that in accordance with the concept of "seed money", after the capital of $5 billion had been allocated by the LegCo, the expenses and grants of the QEF in a year should be met by its recurrent income in the same year. The capital should not be spent. Otherwise, there would be the risk that no more income could be generated by the capital when it fell to a low level. The Committee therefore asked about the Administration's view on the appropriate alert level to be set.

40. The **Secretary for Education and Manpower** replied that:

- the question of whether or not the capital of the QEF could be spent had been deliberated by the Steering Committee. Some members did not agree that the capital base of $5 billion could not be used at all;

- by "seed money", the EMB referred to the granting of a small sum of money to a school so as to allow it to grow. Both the QEF Steering Committee and the QEF Investment Committee were concerned about the appropriate alert level that should be set. If the level was set too low, the amount of interest and dividends generated would be too small. When making the decision, the Steering Committee and the Investment Committee would have to make a judgement as to whether it was a short-term or long-term phenomenon that the balance of the Fund was below $5 billion. The EMB would welcome Members' views on the appropriate alert level. The Management Services Agency would also give advice in this regard; and

- the deadline for the fifth call for applications was the end of 2001 and the assessment of applications would commence in 2002. It was hoped that the alert level could be set before the assessment of applications began, although no definite timetable had been drawn up yet. Hopefully, a decision could be made in early 2002.

41. On the question of whether the capital of the QEF could be spent, **Mr Johnsman AU Chung-man, Acting Director of Audit**, said that:

- as stated in paragraph 1.12 of the Audit Report, the QEF was administered under a Trust. The Director of Education Incorporated was the QEF Trustee, who signed agreements with grantees of QEF projects; and

- it was stated in the QEF Trust Deed (in ***Appendix 64***) that the Trustee would "hold the capital and income of the Quality Education Fund upon trust to apply the income and all or such part or parts of the capital at such time" for the purposes of the Fund. Hence, the Trust Deed did allow the spending of the capital.

42. The Committee considered that even if the capital of the QEF could be spent, it was still unsatisfactory as there might be a lack of awareness amongst the QEF grant assessors of the amount of money that was available for the QEF projects in the coming year, as revealed in paragraph 3.47(a) of the Audit Report.

43. The **Secretary for Education and Manpower** said that:

- the chairman of the QEF Steering Committee was a member of the Investment Committee and the Principal Assistant Secretary for Education

and Manpower was the secretary to both the Steering Committee and the Investment Committee. Thus, they had knowledge of the financial position of the Fund; and

- she accepted Audit's recommendations that a formal reporting mechanism should be established and budget progress reports should be submitted regularly to the QEF Steering Committee.

44. The Committee further asked whether there was any conflict between the QEF Trust Deed which allowed the spending of the capital of the Fund and the objective set out in FC paper FCR(97-98)81 that the investment of the Fund should produce recurrent income to meet regular funding requests.

45. The **Deputy Secretary for the Treasury** said that:

- the FC paper had neither stated that the capital of the QEF could not be spent nor that sufficient income had to be generated in a year to meet the grants and expenses for the same year; and

- the FB considered that the intention of the objectives set out in the FC paper was to provide a general approach to investing the QEF funds whereby the investment should generate a reasonable growth in the value of the Fund and produce sufficient recurrent income to meet the recurrent expenditure over a period of time.

46. The **Secretary for Education and Manpower** informed the Committee vide her letter of 17 December 2001 that:

- there was no conflict between the QEF Trust Deed and the FC paper FCR(97-98)81. It was not feasible to interpret the need to ensure sufficient investment returns to meet funding requests as a requirement that had to be met on a per-year basis. It was only reasonable and realistic to assess the investment results and their impact on funding requests over a period of time; and

- it was stated clearly in paragraph 8 of FCR(97-98)81 that the Administration intended to invite applications for grant almost immediately after the QEF was established, i.e. before there could be any significant investment returns and where some spending of the capital base of the Fund was inevitable.

47. The Committee requested the Secretary for Education and Manpower to elaborate on the meaning of "seed money" referred to in paragraph 2.23(e) of the Audit Report. They also asked whether such an interpretation had been reflected in the QEF Trust Deed.

48. In her letter of 28 December 2001, the **Secretary for Education and Manpower** explained that:

- by "seed money", the EMB referred to the one-off funds provided by the QEF to enable the implementation of worthwhile education initiatives. The adjective "seed" was used to underline the catalytic effect of the QEF funds, as experience suggested that the effects of the projects could normally last beyond the duration of QEF funding, e.g. fostering students' cultural and music appreciation, as well as enhancing parent-school cooperation, team-work in schools and students' awareness of the historical and cultural heritage of Hong Kong; and

- such an interpretation was consistent with the objectives behind the setting up of the QEF, as stated in paragraph 4 of FC paper FCR(97-98)81 and reflected in Clause 3 and Clause 4(i) of the QEF Trust Deed.

Performance measures of the QEF

49. Table 7 and paragraph 4.9 of the Audit Report revealed that the majority of the QEF's performance indicators measured inputs, as opposed to outputs and outcomes. The Committee were concerned that, in the absence of meaningful indicators and measures of output and outcomes, the QEF might not be able to properly evaluate its effectiveness and hence could not set a correct direction for future development.

50. The **Secretary for Education and Manpower** said that:

- it was difficult to develop effective and quantitative performance measures for educational outcome. That was a common problem for the education sector throughout the world, not only Hong Kong. For instance, a site visit by an external reviewer might reveal that the students had taken a more active approach to learning. However, that would not necessarily lead to an improvement in the students' academic performance; and

- she accepted Audit's recommendations in this regard and would try to make improvement, having regard to such factors as the workload of the QEF Secretariat and the pressure that would be exerted on teachers if a lot of follow-up evaluations were to be performed on a QEF project. She would invite the Steering Committee and its Promotion and Monitoring Subcommittee to consider Audit's recommendations.

Dissemination practices of the QEF

51. According to paragraphs 5.20 and 5.21 of the Audit Report, a QEF survey completed in July 2000 found out that 44% of schools had not applied for any QEF funding. These schools had cited excessive paperwork as the main reason for not applying for a QEF grant. The Committee were concerned that these schools might in fact be those that were most in need of improvement but lacked the resources and initiative to apply for QEF funding. Under the existing arrangement, they could not benefit from the QEF. The Committee wondered whether, for the purpose of improving education quality, it would be more effective and efficient to allocate funding to schools directly than through the QEF, particularly bearing in mind the extra workload created on teachers due to QEF applications.

52. The **Secretary for Education and Manpower** responded that:

- by creating a capital fund like the QEF to finance initiatives in quality education outside the Government's normal provision to schools, the Government had indeed put the education sector in a more privileged position. The QEF was recommended by the Education Commission Report No. 7 with the stated aim of encouraging quality educational initiatives from schools. The objectives behind the recommendation were to encourage those schools that were more innovative and were willing to spend efforts on research and exploration, or had special needs. It was hoped that school-based management which allowed schools to set their own priorities could be encouraged. These were consistent with the concepts of education reform;

- actually, there were voices from society that funding for education was too important to be affected by economic fluctuations. Some political parties had even demanded a bigger education fund. It would not be appropriate to draw conclusions on the effectiveness and value of the QEF based simply on the survey result that 44% of the schools had not applied for QEF funding; and

- the focus for the first few years since the establishment of the QEF was on encouraging applications by schools that took the initiative to do so and on disseminating the good practices of funded projects. After four years of operation, the QEF Steering Committee understood that the teachers of some schools had been overloaded by the work involved in making QEF applications. For example, there was a school which once submitted 37 applications in a call. Therefore, starting from the fifth call, a limit on the number of applications that an applicant could submit had been set by the Steering Committee.

53. On the value of the QEF, the **Deputy Secretary for Education and Manpower** added that:

- she had come across a Band Five school which had obtained QEF funding for purchasing musical instruments. The teachers told her that the musical instruments had the effect of raising the self-confidence of the students. The teachers of another school which had received QEF funding told her that the QEF project was proposed after discussions among the school principal, teachers and students. From her experience, the QEF could encourage teachers and students to take the initiative to improve their schools and enhance team spirit; and

- the EMB was also concerned that 44% of schools had not made any QEF applications. Hence, starting from the fifth call for applications, the QEF would give priority to the applications from those schools which had never applied for QEF funding.

54. **Conclusions and recommendations** The Committee:

Strategic planning

- express serious dismay that:

  (a) although the Quality Education Fund (QEF) has been established for four years and four calls for applications have been processed, it has still not developed an overarching strategic plan;

(b) little emphasis has been placed on the development of an effective dissemination strategy that would maximise the impact and sustainability of the many good practices among the QEF projects approved;

(c) there is evidence that the Grants Programme was subsumed by standard projects in the last two years and the Education Department (ED) has used the QEF as a supplementary funding source for school education, creating the potential for the ED to bypass the Legislative Council's (LegCo's) scrutiny of a substantial part of its expenditure;

(d) the ED has received funding for a series of large-scale projects and such a practice, if continued, will have the potential of limiting QEF funds available for innovative applications from schools;

(e) substantial amounts of QEF funds have been granted to some research projects of tertiary institutions that extend over a long time-frame and have uncertain outcomes, and the funding has not been provided in phases; and

(f) there has been little synergy and coordination among a wide range of alternative funding sources for educational programmes and projects;

- urge the Education and Manpower Bureau (EMB) to inform the LegCo of QEF grants exceeding $10 million;

- acknowledge that:

(a) the Secretary for Education and Manpower has invited the QEF Steering Committee to take Audit's recommendations into account in its deliberations on the way forward for the strategy of the QEF;

(b) the ED will not make any more applications for QEF funds;

(c) the EMB and the ED have reached an agreement to transfer the Secretariat of the QEF to the ED by 1 April 2002;

(d) the Secretary for Education and Manpower will diligently improve the coordination among the various education-related sources of funding, and avoid duplication of funding; and

(e) the EMB will consult the QEF Steering Committee on the suggestion that the LegCo Education Panel be informed of grants exceeding $10 million, and on the mechanism for so informing the Panel;

Assessment processes and monitoring of funded projects

- acknowledge that the Secretary for Education and Manpower is taking actions to improve the assessment and processing of QEF applications, and the monitoring of funded projects;

- express dismay that there was no systematic and formal reporting mechanism between the management of the Fund and the Grants Programme;

- recommend that the Secretary for Education and Manpower should establish a formal reporting mechanism to enable the QEF Secretariat and QEF Steering Committee to monitor closely the level of annual expenditure against the financial position of the Fund, paying special attention to whether the recurrent income will be able to finance the recurrent expenditure;

Performance measures

- note that the majority of the QEF's performance indicators measure inputs, as opposed to outputs and outcomes;

- express concern that:

  (a) there were no general guidelines for a well-designed and effective evaluation method for QEF applicants to follow; and

  (b) the objectives and goals of the applications for the QEF were often abstract and difficult to measure;

- acknowledge that the Secretary for Education and Manpower has invited the QEF Steering Committee and its Promotion and Monitoring Subcommittee to take into considerations Audit's recommendations on how the monitoring work of the QEF can be enhanced;

Dissemination practices

- express concern that:

  (a) the QEF has not developed an effective strategy for disseminating QEF projects; and

  (b) according to a QEF survey completed in July 2000, 44% of schools had not applied for any QEF funding, and consider that these schools may be those that are most in need of improvement but lack the resources and initiative to apply for QEF funding under the existing system, and hence cannot benefit from the QEF;

- acknowledge that the Secretary for Education and Manpower is taking actions to develop an effective promotion and dissemination strategy that will maximise the impact and sustainability of the many good practices among the approved projects;

Outstanding schools and teachers awards

- express concern that:

  (a) in assessing the application for the Outstanding Schools Award, due weight had not been given to the academic performance of students; and

  (b) the Outstanding Teachers Award has still not yet been launched;

- recommend that the Secretary for Education and Manpower should:

  (a) consider giving suitable recognition to the academic achievement of students when assessing schools for the Outstanding Schools Award; and

  (b) take measures to introduce the Outstanding Teachers Award at an early date; and

- wish to be kept informed of:

  (a) the actions taken on the development of an overarching strategic plan for the QEF;

  (b) the results of the review on "standard projects" to establish the costs, benefits and outcomes of these projects;

(c) the strategic plan on the optimum proportions of funds for allocation to standard projects, fostering innovation and providing supplementary facilities in schools respectively;

(d) the results of the monitoring of the outcomes of the tertiary institutions research projects and large-scale ED projects, so as to ensure that they are practical and useful, having regard to the objectives of the QEF;

(e) the actions taken for improving coordination among various education-related sources of funding and avoiding duplication of funding;

(f) the mechanism to be devised for informing the LegCo of grants exceeding $10 million;

(g) the actions taken to improve the assessment processes and monitoring of funded projects;

(h) the actions taken in respect of:

(i) developing performance indicators and measures of outputs and outcomes, rather than inputs, for the QEF;

(ii) developing guidelines on specific evaluation methodology for reference by applicants to assist them in preparing funding proposals; and

(iii) assisting grantees to develop appropriate performance indicators and performance measures linked to the QEF objectives; and

(i) the actions taken to develop the dissemination strategy and improve the dissemination practices of the QEF.

Chapter 6

Construction of government office buildings

Audit carried out a review of the construction of government office buildings with a view to:

- evaluating the economy and effectiveness with which the Government Property Agency (GPA) and the Architectural Services Department (ArchSD) had planned and administered projects for the construction of government office buildings; and

- ascertaining whether there was room for improvement in future.

Change in the allocation of office space of the Cheung Sha Wan Government Offices (CSWGO)

2. According to paragraph 1.1 of the Audit Report, the Government's policy for the acquisition and allocation of government office accommodation is to relocate government departments from leased accommodation to government-owned accommodation, and, as far as practicable, from prime locations of high rental value to non-prime locations of low rental value. Paragraph 2.3 revealed that in November 1995, the GPA planned to relocate the ArchSD from the government-owned Queensway Government Offices (QGO) to the CSWGO which was to be constructed. The ArchSD would be the major user department of the CSWGO. The Committee questioned why the GPA had allocated the CSWGO to the ArchSD, but not to other departments occupying leased premises in accordance with the Government's policy.

3. **Ms Maria KWAN, Government Property Administrator**, said that:

- the GPA had always adhered to the Government's policy that priority should be given to allocating new government buildings to those departments occupying leased premises so that rental expenditure could be reduced. For instance, 82% of the space in the newly-completed Shatin Government Offices were allocated to government departments which had originally been accommodated in leased premises. However, this was not the only consideration in office allocation. Other factors had to be taken into account, including the need to relocate departments occupying government office buildings at underutilised sites so as to release the sites for alternative uses, and the need to meet government departments' demand for office space; and

- the GPA had proposed to allocate the CSWGO to the ArchSD because the office space the ArchSD occupied in the QGO could be released for use by the Department of Justice and the Judiciary, which had been requesting an

additional office space of 9,700 square metres since 1995. In the circumstances, relocating the ArchSD to the CSWGO could achieve rental savings. If the two departments' demand for additional office space could not be met by government premises, it might be necessary to lease the required accommodation from the private sector, incurring rental expenditure.

4. The Committee noted from paragraphs 2.6 and 2.7 of the Audit Report that in February 1998, the Secretary for the Treasury had held a meeting with the Government Property Administrator to discuss the government offices building programme. The Secretary for the Treasury said at that time that, as a matter of principle, the GPA should give priority to relocating government departments occupying leased premises when deciding which departments should be relocated to new government office buildings. After the meeting, in March 1998, the Government Property Administrator decided to allocate the office space of the 10th to 18th floors of the CSWGO to four government departments, including the Rating and Valuation Department (RVD), which were then occupying leased premises, instead of to the ArchSD.

5. Paragraphs 2.10(d) and 2.11 of the Audit Report further revealed that the GPA selected the RVD, instead of the ArchSD, to be relocated to the CSWGO because the RVD had been occupying expensive leased premises in Causeway Bay at a rental expenditure of $68 million a year. The RVD, which had been selected at short notice as the major user department to replace the ArchSD, was undergoing an organisational reform and there were changes in its schedule of accommodation. In the event, the submissions of the RVD's fitting-out plans were delayed. The ArchSD assessed that the delay cost was $3.27 million.

6. Against the above background, the Committee asked:

- whether there had been a lack of coordination or a disagreement between the Finance Bureau (FB) and the GPA over the allocation of the CSWGO, hence a meeting had to be held in February 1998 to sort the matter out;

- why the Government Property Administrator had subsequently decided not to allocate the CSWGO to the ArchSD, and whether that was due to the Secretary for the Treasury's views;

- why the GPA had not selected the RVD in the first place in November 1995 in order to achieve rental savings; and

- whether the Government Property Administrator agreed that, if an earlier decision had been made, the abortive work for the preparation of the fitting-out plans for the ArchSD and the estimated cost of $3.27 million for the delay could have been avoided.

7. The **Government Property Administrator** replied that:

- the GPA had all along been implementing the Government's accommodation policy. It would not be appropriate if the GPA only relocated those departments occupying leased premises whenever there were new government-owned premises. In fact, government departments' demand for office space was changing all the time, giving rise to different considerations. For instance, sometimes the GPA might relocate a department which was occupying government premises because the plot ratio of the site was not fully utilised. After all, there were different ways to save and optimise the use of resources;

- the GPA had in fact allocated some space of the CSWGO to departments which were then occupying leased premises. In view of the great demand for office space in the Central district, the GPA decided to relocate the ArchSD to the CSWGO so as to release the space in the QGO. Subsequently, having considered the Secretary for the Treasury's view, the Government Property Administrator decided that the ArchSD should continue to stay in the QGO and started to identify other user departments for relocation to the CSWGO;

- the objective of the Government's accommodation policy was to reduce rental expenditure. In implementing the policy, the GPA would, where possible, try to achieve rental savings while catering to the need of departments for additional office space. It was not true that the Government Property Administrator and the Secretary for the Treasury had different opinions over the accommodation policy. It was a matter of striking a suitable balance. Nevertheless, in future, the GPA would strengthen its communication with the FB and user departments with a view to preventing the recurrence of similar incidents; and

- it was indeed a late decision to relocate the RVD to the CSWGO. In deciding to allocate the CSWGO to other user departments, the GPA had taken into account whether the change would cause delay to the construction works and incur additional cost. After discussing with the ArchSD, it was considered that there should not be such implications. At the time when the

RVD was identified for relocation, the GPA did not know that the RVD was undergoing an organisational reform. However, as it transpired, it had taken a longer time for the RVD to submit its fitting-out plans due to the organisational reform.

8. The Committee further asked whether, in selecting the departments to be relocated, it was the GPA which took the initiative to identify the suitable departments, or the GPA would only consider those departments which had put up requests for relocation or for additional office space.

9. The **Government Property Administrator** explained that:

- the GPA did take the initiative to identify suitable departments for relocation. It also made arrangements upon the receipt of departments' requests; and

- in the present case, the GPA had taken into account the fact that the Judiciary and the Department of Justice had been requesting additional space since 1995 and other departments' demand for office space in the Central district had been great. In the end, without relocating the ArchSD, an extra 4,000 square metres of office space was leased from the private sector for the Department of Justice. This indicated that when office space in the QGO could not be released by the ArchSD, additional premises had to be rented, incurring additional rental expenditure.

10. Turning to the meeting between the Government Property Administrator and the Secretary for the Treasury in February 1998, the Committee enquired about the background to the meeting. The Committee also asked:

- when the Secretary for the Treasury was first informed of the relocation of the ArchSD to the CSWGO; and

- if the Secretary had been informed earlier, whether the estimated delay cost could have been avoided.

11. **Miss Denis YUE Chung-yee, Secretary for the Treasury**, said that:

- there was a standing arrangement for the Secretary for the Treasury and the Government Property Administrator to meet every four to six months to

review the GPA's major tasks in hand. During the meetings, the Government Property Administrator would discuss with the Secretary those issues on which she hoped to seek the Secretary's views; and

- the meeting held in February 1998 was a regular one during which the Secretary for the Treasury was informed for the first time of the relocation of the ArchSD to the CSWGO. Other issues not related to the CSWGO were also discussed at that meeting.

12. The Committee further questioned:

- why the Secretary for the Treasury had not been informed of the ArchSD's relocation earlier; and

- what the division of responsibilities between the FB and the GPA over the accommodation policy was.

13. The **Government Property Administrator** replied that:

- the GPA was responsible for implementing the Government's accommodation policy. As the allocation of office space was a matter of execution of the policy, the GPA was responsible for discussing with the various user departments concerned; and

- in implementing the policy, the GPA would report its decisions to the FB as early as possible so that the FB could be informed of how the policy had been executed.

Abortive design and fitting-out works in the CSWGO for the Medical Examination Board (MEB)

14. According to paragraphs 3.2 to 3.8 of the Audit Report, the MEB of the Department of Health (DH) was scheduled to move from the Canton Road Government Offices to the CSWGO in March/April 2000. Since early 1997, the DH had been aware of the development of an outsourcing proposal to allow trading fund departments to engage private practitioners to conduct medical examinations. However, it was only in December 1999, i.e. two months after the completion of the fitting-out works for the MEB in the CSWGO, that the DH informed the GPA of the outsourcing proposal. In January 2000, the DH informed the GPA that the relocation of the MEB to the CSWGO was not necessary

in view of the outsourcing of the medical examination services. The ArchSD estimated that the cost of fitting-out works of $3.7 million completed for the MEB was rendered abortive.

15. Against the above background, the Committee questioned why the GPA had not had earlier knowledge of the proposal to outsource the medical examination services and whether that was attributable to a lack of coordination and communication between the DH and the GPA.

16. In response, the **Government Property Administrator** and **Mr Wilson LEE, Chief Property Manager (Technical Services) of the GPA**, said that:

- throughout the process of allocating office space to a user department, there was a lot of communication between the GPA and the department. Under the normal procedure, the GPA would discuss with the department the layout, as well as its design and fitting-out requirements after the construction works had commenced for two months. Then the layout, detailed design and fitting-out requirements would be frozen about 12 months before the completion of the works. Thereafter, no major change would be allowed in order to minimise delay to the project;

- in the present case, the deadline for making changes to the fitting-out plans was July 1998 when the ArchSD approved the plans of the MEB; and

- the GPA was all along not aware that the medical examination services would be outsourced until so informed by the DH. Perhaps the DH could not have informed the GPA earlier of the outsourcing proposal because there was only one MEB in Hong Kong that provided medical examination services for the civil service. Hence, the DH might have to wait for a definite policy directive before it could decide on the future of the MEB and the need for reprovisioning.

17. **Dr CHAN FUNG Fu-chun, Director of Health**, stated that:

- the whole issue had been handled according to procedure and principles. As set out in Table 1 in paragraph 3.3 of the Audit Report, in July 1998, the ArchSD approved the fitting-out plans of the MEB which had been submitted by the contractor in February 1998. The fitting-out works for the MEB commenced in May 1999 and were completed in October 1999; and

- the DH began discussing with the Civil Service Bureau (CSB) the proposal to outsource the medical examination services in January 1997. At that time, the idea was only to conduct a pilot scheme whereby private medical practitioners would be engaged to conduct medical examinations for the recruits of trading fund departments. After the meeting between the CSB, the FB and the DH on 16 July 1999, the decision was still to implement the outsourcing proposal by phases. In the circumstances, the DH could not have predicted that the MEB would be disbanded in 2000 and asked the GPA to allocate the space of the CSWGO originally earmarked for the MEB to other users.

18. In the light of the Director of Health's reply, the Committee asked whether:

- prior to May 1999, the DH was aware that the fitting-out works for the MEB would commence in that month; and

- the DH was aware that a meeting would be held in July 1999 to discuss the outsourcing of the medical examination services by phases and that it was likely that the meeting would decide that the MEB might require less or no space at all. If so, the reason for the DH's not suggesting that the commencement of the fitting-out works for the MEB be deferred until July 1999 pending the outcome of that meeting.

19. In her letter of 21 December 2001, in ***Appendix 65***, the **Director of Health** informed the Committee that:

- prior to May 1999, the DH had not been advised that the fitting-out works for the MEB would commence in May 1999. At the Building Programme Review Committee meeting on 29 April 1999 between the ArchSD and the DH, it was only generally reported that the fitting-out works of the CSWGO were in progress and the target completion was by the end of 1999;

- the DH was not aware that a meeting would be held in July 1999 to discuss the outsourcing of medical examination services by phases. In the CSB's memo of 21 June 1999, the CSB mentioned that one of the options of the outsourcing programme being considered was a phased implementation, probably starting with trading fund departments. It was not until 14 July 1999 that the DH was invited through electronic mail to the meeting to be held on 16 July 1999 to formally discuss the outsourcing programme of the MEB. One of the items for discussion was the phasing or timetable of the outsourcing programme; and

- in February 1999, the DH was informed by the GPA that the contractor was working at full speed and all design for the CSWGO should be frozen until the completion of the building. The DH was warned that any change of fitting-out works would lead to the contractor's claim for extra cost and time.

20. The Committee further enquired whether the DH had considered the option of not relocating, or deferring the relocation of, the MEB from the Canton Road Government Offices.

21. In the same letter, the **Director of Health** informed the Committee that:

- in March 1999, the DH was informed by the GPA that the Canton Road Government Office was scheduled for disposal in 2002-03. As there was no definite plan to outsource the MEB, the DH's plan was to relocate the MEB to the CSWGO. Since the DH had also been informed by the GPA in February 1999 that the contractor was working at full speed and any change of fitting-out works would lead to extra cost and time, the DH had not considered deferring the relocation of the MEB to the CSWGO;

- in September 1999, after the CSB's meeting with the FB, the FB decided to outsource the MEB on a full scale. Since the fitting-out works had been substantially completed at that time, the DH started to take remedial action to minimise the abortive cost. Between September 1999 and January 2000, the DH explored alternative units for relocation and liaised with other departments to draw up a proposal for alternative use of the space earmarked for the MEB; and

- in December 1999, the CSB informed heads of departments that the Government planned to outsource the medical examination services by July 2000. Therefore, the DH informed the GPA in January 2000 that the MEB would not be relocated to the CSWGO and put up the proposal on the alternative plan.

22. In order to ascertain the flexibility of the contract and how rigid the deadline of July 1998 for making changes to the fitting-out plans of the MEB was, the Committee asked, if the GPA had been informed by the DH in July 1998 that the medical examination services might probably be outsourced:

- how the GPA would have handled the situation; and

- whether the GPA would have requested that the fitting-out works for the MEB be stopped or deferred.

23. The **Government Property Administrator** and the **Chief Property Manager (Technical Services)** replied that:

- as the CSWGO was constructed under a design-and-build contract, it was necessary to set critical dates after which fitting-out requirements would be frozen. If the DH had informed the GPA of the outsourcing proposal before the deadline of July 1998, the GPA might have explored whether:

  (a) it was possible to expedite the decision on the outsourcing proposal;

  (b) the timing for relocating the MEB from the Canton Road Government Offices could be changed; and

  (c) instead of relocating the MEB to the CSWGO, other government premises could be identified for accommodating the MEB temporarily; and

- if the DH had informed the GPA of the outsourcing proposal before the fitting-out works were completed, the GPA and the ArchSD might have discussed with the contractor how the effects of the change and the possible abortive works could be minimised. Hence, the crux of the whole matter was when the DH informed the GPA that the relocation of the MEB was not necessary.

24. Regarding the feasibility of deferring the relocation of the MEB from the Canton Road Government Offices, the Committee enquired:

- whether, if the relocation of the MEB had been deferred, there would have been any impact on the disposal of the Canton Road Government Offices site and, if so, what the impact was; and

- whether the option of not relocating, or deferring the relocation of, the MEB from the Canton Road Government Offices had ever been considered.

Construction of government office buildings

25. In her letter of 28 December 2001, in ***Appendix 66***, the **Government Property Administrator** stated that:

- the Canton Road Government Offices occupied part of a site intended for disposal. During 1997 and 1998, the indicative year of disposal was 2001-02. It had been rolled forwarded to 2002-03 in February 1999 and the position had remained the same since then. To enable timely hand-over of the site to the Lands Department to fit in with its disposal plan, the MEB would need to move out of the Canton Road Government Offices no later than three to four months before the scheduled hand-over date required by the Lands Department, to allow time for de-commissioning. Therefore, theoretically speaking, any deferment of the relocation of the MEB which would enable it to move within this time-frame should not have any impact on the disposal of the Canton Road Government Offices site;

- the GPA was not in a position to consider not relocating or deferring the relocation of the MEB unless and until it was advised by the DH of the cessation of the need for reprovisioning or of anticipated changes which might negate the need for such reprovisioning; and

- upon being advised by the DH in January 2000 of the outsourcing of the medical examination services and of the DH's view that relocating the MEB to the CSWGO would not be worthwhile, the GPA immediately worked with the DH and identified alternative users in the same month.

26. Referring to Table 1 in paragraph 3.3 of the Audit Report, the Committee pointed out that the fitting-out plans of the MEB were approved by the ArchSD in July 1998 while the works only commenced ten months later in May 1999. The Committee questioned:

- whether it was indeed necessary to set the date for approving the fitting-out plans so far in advance of the commencement of the works, thereby prohibiting any further changes to the plans;

- whether, under existing rules and regulations, changes to the fitting-out requirements were still allowed after the fitting-out plans had been approved by the ArchSD; and

- whether, after the fitting-out works had commenced, the ArchSD could request the contractor to stop work under the contract so as to minimise the cost of abortive works.

27. **Mr PAU Siu-hung, Director of Architectural Services**, replied that:

- under the design-and-build contract, the target completion dates for various activities, including the submission of fitting-out plans, were specified. Such dates had to be complied with by both the ArchSD and the contractor, otherwise disputes would arise. In the present case, the approval of the fitting-out plans by the ArchSD in July 1998 was in accordance with the contract whereas the commencement of the works in May 1999 was in fact behind schedule;

- although July 1998 was the deadline for the approval of the fitting-out plans under the contract, in the event of unforeseen circumstances leading to a need for change, there was flexibility in the contract that allowed the ArchSD to discuss with the contractor whether the change would lead to the contractor's claim for extra cost and time; and

- even after the fitting-out works had commenced, it was possible for the ArchSD to request the contractor to suspend or stop work. The contractor would then be paid according to the cost of the materials purchased and the amount of work done.

28. The **Government Property Administrator** informed the Committee in her letter of 28 December 2001 that:

- Accommodation Regulation 322(1) provides that "While repeated alterations and additions to approved schedules of accommodation cannot be accepted, minor amendments may be entertained with the agreement of the appropriate Chief Architect of the project during the design and construction process. However such amendments must not incur a need for significant additional staff resources or cause delay to the construction programme or cause the approved project estimate to be exceeded"; and

- in line with the above provision, changes to the fitting-out plans originally agreed by the user department and approved by the ArchSD might be allowed by the GPA in consultation with the ArchSD if they did not involve significant staff resources, cause delay to the construction programme or cause the approved project estimate to be exceeded.

29. The Committee asked what would have been the consequence and the cost implications, if it had been decided in May 1999 that the commencement of the fitting-out works for the MEB be deferred or be stopped. In his letter of 28 December 2001, in ***Appendix 67***, the **Director of Architectural Services** informed that if the fitting-out works were stopped in May 1999, the cost implications would be $2.38 million. This variation did not have any other contractual implications than normal valuation of the cost.

30. In the light of the Director of Architectural Services' reply, the Committee noted that the cost of $3.7 million of the abortive fitting-out works for the MEB could have been reduced if the GPA had been informed of the DH's decision of not relocating the MEB before the works were completed, so that the works could be stopped. On the other hand, the Committee asked the Government Property Administrator whether it was practicable to require a user department, which had been allocated office space in a government building, to notify the GPA of any possible policy change which might subsequently affect the requirement of the accommodation. They also hoped that, in future, government officers would take a more prudent and proactive approach in handling similar situations by treating the public money involved as if it were their own money.

31. The **Government Property Administrator** responded that:

- at present, government departments having surplus office accommodation were required under the Accommodation Regulations to notify the GPA so that the GPA could consider alternatives for the use of the accommodation. However, the Accommodation Regulations did not have specific provisions about how to deal with changes which might affect departments' allocated accommodation in a government office building under construction. The GPA was considering how best the Accommodation Regulations should be amended to cater for such a situation; and

- the GPA was also concerned that the use of public funds should be optimised. The GPA would explore whether greater flexibility could be built into the works process, taking into consideration whether the project cost would be increased. For example, the GPA might consider notifying more parties of the critical dates specified in the contract or setting the deadline for finalising the fitting-out requirements at a later date.

32. In her letter of 28 December 2001, the **Government Property Administrator** informed the Committee of her preliminary views regarding how best to minimise abortive fitting-out works in a government office building under construction. She stated that:

- the GPA would work with the ArchSD to enhance the general awareness of heads of bureaux and departments regarding the operation of a design-and-build contract for the construction of a new government office building and the significance of the critical dates throughout the contract period. In particular, the GPA would explain the possible cost implications of changes in allocation or fitting-out plans beyond the critical dates with a view to enabling a full appreciation of the significance of changing course mid-way;

- currently, after departments had been allocated space in a new government office building to be constructed, various meetings would be held between the GPA, the ArchSD and the users to discuss design and fitting-out issues and to advise the dates by which layout and detailed design regarding fitting-out works would be frozen. The GPA would consider supplementing these arrangements in future by advising concerned heads of departments of various critical dates and their impact in relation to the specific construction contract, and requiring them to:

  (a) proactively inform the GPA at the earliest opportunity of matters that might affect their accommodation requirements/fitting-out plans in respect of the building under construction, including outsourcing initiatives, changes in the service to be provided or mode of delivery, and organisational changes, and of the departments' proposal to minimise impact on the construction contract. As changes might be unavoidable over time, the guiding principle was to alert the GPA of decisions or considerations underway which might affect the fitting-out works or the taking up of the premises allocated; and

  (b) draw the critical dates and their implications to the attention of all relevant parties whose considerations would have a bearing on their accommodation requirements, and to explore with the relevant parties ways to minimise possible adverse impact of changes which might be required;

- the GPA would also make it clear to departments that it was their responsibility to manage the effects of all necessary changes. The GPA and the ArchSD would assist the departments in carefully assessing the financial implications under the design-and-build contract with a view to finding the most appropriate solution; and

- the GPA would give further thoughts to necessary refinement and how the information/requirements could be best conveyed /implemented.

Construction of government office buildings

33. **Conclusions and recommendations** The Committee:

Change in the allocation of office space of the Cheung Sha Wan Government Offices (CSWGO)

- express serious concern that:

  (a) priority was not given to relocating the Rating and Valuation Department (RVD), which had been occupying substantial leased premises in high rental areas, to the CSWGO before the award of the construction contract;

  (b) due to the change in the allocation of office space of the CSWGO from the Architectural Services Department (ArchSD) to the RVD, the submissions of the fitting-out plans for the RVD were delayed resulting in the grant of extension of time to Contractor A, and the estimated prolongation cost of $3.27 million;

  (c) the Department of Health's decision, in January 2000, of not relocating the Medical Examination Board (MEB) was made after the fitting-out works for the MEB had been completed in October 1999, resulting in abortive fitting-out works of $3.7 million; and

  (d) the GPA had informed the Department of Health in February 1999 that all design for the CSWGO should be frozen from then on until building completion although the fitting-out works for the MEB only commenced in May 1999;

- acknowledge that the Government Property Administrator will:

  (a) give priority to relocating government departments occupying leased premises to government-owned accommodation;

  (b) endeavour to minimise changing allocation of office space to other user departments after the award of the contract for the construction of a new government office building;

  (c) consider advising heads of departments concerned of the various critical dates throughout the contract period and their impact in relation to the specific construction contract and requiring them to:

(i) proactively inform the GPA at the earliest opportunity of matters that may affect their accommodation requirements/fitting-out plans for the building under construction, and of the departments' proposal to minimise the impact on the operation of the construction contract; and

(ii) draw the critical dates and their implications to the attention of all relevant parties, and explore ways to minimise possible adverse impact of changes which may be required; and

(d) make it clear to departments that it is their responsibility to manage the effects of all necessary changes;

- acknowledge the Director of Architectural Services' statement, that under the design-and-build contracts used for the construction of government office buildings, the deadline for submitting the fitting-out plans of user departments for approval by the ArchSD could be adjusted having regard to the actual situation;

- wish to be kept informed of the action taken by the Administration to address the issue;

Provision of a footbridge for the CSWGO

- express concern that a footbridge between the CSWGO and an adjacent commercial building, which the GPA considered as an integral part of the CSWGO project, was not included in the planning for the construction of the government office building;

- acknowledge that the Government Property Administrator has agreed:

(a) before the award of a contract for the construction of a government office building, to critically review the need for essential facilities in planning the design of the government office building; and

(b) to include all essential facilities in the contract documents after it has been decided that the Government is responsible for constructing the facilities;

- urge the Director of Architectural Services to agree in advance with a contractor on the extra time and cost involved before issuing variation orders, if changes are considered necessary after the commencement of the design in a design-and-build contract; and

Modification of the hoarding works of the Shatin Government Offices

- acknowledge that the Director of Architectural Services has agreed to:

  (a) regularly review and update the ArchSD's standard drawings and plans for building works, so as to ensure compliance with the relevant current building works requirements issued by the Buildings Department; and

  (b) incorporate into the contract documents the latest Buildings Department's building standards and requirements before the award of works contracts.

Chapter 7

Mechanised street cleansing services

The Committee held a public hearing on 6 December 2001 to receive evidence on this subject from the Director of Food and Environmental Hygiene. The Committee also received additional information from the witness after the public hearing.

2. To allow themselves more time to consider the various issues involved and the additional information provided by the witness, the Committee have decided to defer a full report on this subject.

Chapter 8

The administration of sale of land by public auction

Audit conducted a review to:

- evaluate the effectiveness of the administration of sale of land by public auction;

- examine the implementation of the Government's planning objective for the sale of a site in Siu Sai Wan; and

- ascertain whether there was room for improvement in the administration of the sale of land by public auction.

Implementation of planning objective for developing the Siu Sai Wan site and the change in classification of the site

2. The Committee noted from the Audit Report that the Government's planning objective for developing the Siu Sai Wan site was to lower the development density in order to "thin out" the population and that the maximum plot ratio for the domestic part of the development should be 6.5. This was in line with the Metroplan Selected Strategy (Metroplan) and the Hong Kong Planning Standards and Guidelines (HKPSG). In June 1996, the draft Special Conditions of the Conditions of Sale of the site contained Clause 10(b)(i) which specified that the total gross floor area (GFA) for the domestic part of the development should not exceed 167,700 square metres. However, at the District Lands Conference (DLC) meeting held on 27 September 1996, the representative of the Planning Department said that the maximum residential GFA of a plot ratio of 6.5 might not be achievable. The DLC subsequently agreed to delete the clause. In the event, the GFA of the domestic part of the development was 223,914 square metres, which was equivalent to a plot ratio of 8.819. This was much higher than the plot ratio of 6.5 specified in the Metroplan.

3. The Committee considered that the deletion of the clause which specified the maximum GFA restriction by the DLC had resulted in the failure to achieve the Government's planning objective. They queried the justification for such a decision and whether it was a normal DLC practice to delete certain clauses.

4. **Mr R D Pope, Director of Lands**, said that:

- the DLC was chaired by an Assistant Director of the Lands Department and its members included representatives from the Planning Department, the Buildings Department and other government departments; and

- there was indeed some discussion at the DLC meeting about the plot ratio of the Siu Sai Wan site. The consensus of the meeting was that the Conditions of Sale of the site should remain silent on the maximum GFA and just state that the maximum GFA should be subject to the Building (Planning) Regulations (B(P)R).

5. **Mr Bosco FUNG Chee-keung, Director of Planning**, supplemented that:

- the Planning Department had originally proposed to prescribe in the Conditions of Sale a clause which stipulated that the maximum plot ratio for the domestic part of the development of the Siu Sai Wan site should be 6.5; and

- he understood that at the DLC meeting, members considered that the development of the site was subject to many constraints, including the provision of a public transport interchange, a public car park, retail carparking spaces and an emergency vehicular access. In view of these constraints, the DLC arrived at the collective decision that it would be more preferable to provide maximum design flexibility for the prospective purchaser.

6. In response to the Committee's request, the Director of Lands provided a copy of the minutes of the DLC meeting held on 27 September 1996 vide his letter of 21 December 2001, in ***Appendix 68***.

7. The Committee asked whether the failure to achieve the planning objective for developing the Siu Sai Wan site and the subsequent confusion over the matter was a result of poor planning and coordination. In response, the **Director of Lands** said that:

- as the land authority and the chairman of the DLC, his representative was the final authority on the Conditions of Sale of a site. However, decisions over the Conditions of Sale were normally arrived at by discussion, as was in this. Following a discussion, the consensus of opinions was to leave the Conditions of Sale silent on the maximum GFA and the maximum plot ratio permitted;

- he did not think that there was confusion over the matter. The Metroplan was only guidelines and had no statutory effect. It was the Outline Zoning Plan (OZP) that was statutory. If the Administration wanted to impose control on the plot ratio of a particular site, it would do so by specifying the plot ratio in the OZP concerned. As there was no such provision in the OZP

of the Siu Sai Wan site, there was no reason for the chairman of the DLC to specify a plot ratio in the Conditions of Sale. Actually, it was quite correct for the DLC to decide to leave the matter open so that it was up to the developer to try to get as much development on the site as he wished; and

- although members of the DLC had originally thought that the purchaser could not even achieve a plot ratio of 6.5, the fact that the purchaser subsequently achieved an 8.819 ratio did not matter.

8. On the classification of the Siu Sai Wan site, the Committee noted from paragraph 4.5 of the Audit Report that the Lands Department had approved the reserve price of $6,300 million on the basis that the site was a Class A site. Paragraphs 4.26 and 4.27 further revealed that, in the end, the purchaser succeeded in obtaining the Building Authority's agreement to "grant modification in treating the site as a Class C site", provided that a street was maintained alongside the south-eastern boundary. As a result of the change in the site classification from Class A to Class C, the total GFA of the development increased from 226,918 square metres by 41,985 square metres to 268,903 square metres.

9. The Committee asked:

- whether, if the Administration had been aware that the plot ratio could be higher than 6.5, the reserve price of the site would have been increased and the site could have been sold at an even higher price;

- whether a mistake had been made by assuming that the site was a Class A site when assessing the reserve price of the Siu Sai Wan site; and

- the reason why, after the Lands Department had determined the reserve price of the site on the basis that it was a Class A site in March 1997, the Building Committee agreed in May 1997 that the site was a Class C site.

10. The **Director of Lands** explained that:

- in March 1997, the Lands Department did value the site as a Class A site and, in hindsight, that was incorrect. At that time, the Administration did not know that the developer could build to a higher plot ratio. If the Administration had thought that the site could become a Class C site and the plot ratio could thus be higher, a higher reserve price would have been set. But that was academic because finally the site was sold at $11,820 million,

which was significantly higher than the reserve price of $6,300 million. Thus, there was no question of the Government having lost any income. According to his understanding, all the bidders at the auction assumed that the site was a Class C site and that was why the price went so high;

- he did not accept that a mistake had been made. That involved professional judgment. When valuing the site, the Lands Department obtained the best professional advice from the Buildings Department and the advice was that it was a Class A site. So the Lands Department valued it accordingly. It transpired that because of legal arguments, the purchaser was able to obtain approval for treating the site as a Class C site and hence get a higher plot ratio. It was not a matter of change of mind within a short time; and

- it was actually very difficult for the Buildings Department or other departments to make any judgment on the classification of a site until the developer had submitted his specific building proposal.

11. **Mr LEUNG Chin-man, Director of Buildings**, added that:

- the classification of a site was made purely for internal purposes and was not specified in the Conditions of Sale. In a land auction, all bidders were aware that it was possible to develop a site as a Class C site under the B(P)R;

- there could be change in circumstances, including a specific building proposal from the developer, that might affect the classification of a site. The Buildings Department could only give advice on the classification of a site based on the prevailing circumstances and available information. Based on the then available information, the Siu Sai Wan site was classified as a Class A site. The purchaser's proposal to provide internal streets so as to change the site classification could not have been known until the purchaser had actually submitted the building plans; and

- the Buildings Department was responsible for ensuring that the development of a site was in compliance with the Buildings Ordinance. As to the plot ratio of a development and whether it was a correct judgment to assess the reserve price of the Siu Sai Wan site on the basis of a maximum plot ratio of 6.5, these were outside the Buildings Department's purview.

12. The **Director of Planning** said that:

- the original maximum plot ratio of 6.5 for the Siu Sai Wan site was determined according to the Metroplan. The Metroplan was not a statutory document but only a conceptual strategy setting out a number of directions for the Metro area to follow in terms of planning and development. However, it was difficult to comply with all the directions laid down in the Metroplan in a land sale. Therefore, it had been the practice that while the Metroplan provided a reference for land sale and planning purposes, certain adjustments were allowed; and

- in the present case, although a maximum plot ratio of 6.5 had been used in the draft Special Conditions, when the DLC discussed the Conditions of Sale of the site, members considered that the plot ratio might not be achievable and decided to allow the purchaser more design flexibility. That was a collective decision although it might not be the best one. It had not occurred to them that the developer could achieve a plot ratio of higher than 6.5.

13. According to paragraphs 2.24(a) and 2.25 of the Audit Report, several prospective purchasers of the Siu Sai Wan site had enquired of the Planning Department about some basic information on the development of the site, including the site classification and the maximum GFA. However, the Planning Department did not record details of the answers to such enquiries. There was also no evidence indicating that the Planning Department had notified the Lands Department of the answers it gave to the prospective purchasers.

14. Since in land auction, the classification of a site and the maximum plot ratio permitted were pieces of essential information that had a direct bearing on the land premium, and that prospective purchasers had raised enquiries on such information before the auction, the Committee queried whether an error had been committed by the Administration in deciding to delete the maximum domestic GFA restriction from the Conditions of Sale of the Siu Sai Wan site. They further asked whether the Administration had deliberately chosen to remain silent on the maximum GFA with a view to obtaining a higher auction price.

15. In response, the **Director of Lands** reiterated that he did not agree that an error had been committed. The maximum GFA was only stipulated in the Metroplan but not in the OZP. He considered that if the maximum plot ratio of 6.5 had been specified in the Conditions of Sale of the Siu Sai Wan site and the developer had not been given flexibility, the auction price of the site might not have been as high as $11,820 million.

16. To ascertain the Director of Lands' role over the DLC's decision to delete the clause concerning the maximum GFA, the Committee asked:

- whether the Director of Lands had reviewed or endorsed the DLC's decision; and

- about the Director's relation with the DLC.

17. In his letter of 11 January 2002 in ***Appendix 69***, the **Director of Lands** stated that:

- he had not taken any action to review or endorse the DLC's decision;

- as Head of Department and the land authority of Hong Kong, all DLC papers and decisions were available to him and, where appropriate, he would review these decisions in consultation with his senior staff. In logistical terms, however, he was normally reliant on his staff and particularly the DLC chairmen, to draw his attention to potentially controversial cases and decisions; and

- the DLC's decision reached in this case was both correct and in accordance with prevailing policy, and thus was not specifically drawn to his attention at the time.

18. On the procedures for handling pre-auction enquiries received from prospective purchasers, the **Director of Lands** said that:

- at that time there were no policy guidelines requiring the departments concerned to direct all pre-auction enquiries about the Conditions of Sale to the Lands Department. It was the practice then for individual departments to answer the questions; and

- in response to the Audit recommendations, he had agreed with the Planning Department and the Buildings Department that, in future, all enquiries on the sale conditions of a site should be directed to the Lands Department for reply as the department was responsible for lease conditions. This had also been agreed by the industry. After consulting representatives of the industry, it had also been agreed that the Lands Department would not answer any enquiries relating to the interpretation of the Conditions of Sale. On receiving such enquiries, staff of the Lands Department would suggest the

prospective purchasers to approach their legal advisers for any necessary advice. Occasionally where there was an error in the Conditions of Sale of a site, the error would be corrected and the clarification would be published in the newspaper for general information.

19. The Committee noted that although the Planning Department had received and answered a number of enquiries concerning the classification of the site, the domestic GFA, and the development density before the auction, details of the answers were not recorded and there was a change in the classification of the site after the land sale, the Committee wondered if the Administration had been fair to those prospective purchasers who had made enquiries.

20. The **Director of Buildings** explained that:

- he was responsible for enforcing the Buildings Ordinance and the B(P)R. When a purchaser submitted building plans according to the law after the land sale, he was bound to make a fair judgment as to whether the plans could be approved under the law. He could not reject the plans simply because the site was originally classified as a Class A site before the auction; and

- because of the change in circumstances after the land sale, the Buildings Department agreed to treat the site as a Class C site. There was no question of contradiction between the former decision and the latter decision.

21. The **Director of Lands** supplemented that the Conditions of Sale were the contract between the Government and the purchaser. Any purchaser of land should base their judgment only on the Conditions of Sale and should not obtain advice from other government departments.

22. The **Director of Planning** admitted that it was a mistake that his staff had not recorded the answers to the pre-auction enquiries concerning the classification of the site, the domestic GFA, etc. It had now been agreed among his department, the Lands Department and the Buildings Department that all enquiries relating to the Conditions of Sale should be referred to the Lands Department.

23. The Committee considered that there were three competing objectives in the development of a site, namely the Buildings Department's concern about density control, the Lands Department's concern about revenue and the Planning Department's concern about the achievement of planning objectives. The Committee asked:

- which objective would be more dominant when there was a conflict and what the Government's overall land policy objective was;

- whether the Government's planning objective of lowering the development density for developing the Siu Sai Wan site had ever been abandoned; and

- as the maximum domestic GFA of the Siu Sai Wan site was not specified in the Conditions of Sale, resulting in uncertainties about the classification of the site, and the bidders had to take the risk of applying for changing the site classification after the purchase, whether the arrangement had been fair to all prospective purchasers with different capacity to take risk.

24. The **Director of Lands** replied that:

- as the land authority, the Lands Department took advice from other government departments and set the Conditions of Sale. It had never specified the site classification in the Conditions of Sale. It was entirely up to the developer to obtain whatever site classification he could from the Buildings Department, depending on the development scheme he produced;

- for the Siu Sai Wan site, the Lands Department did not consider it appropriate for the Government to assume that it was a Class C site because if the purchaser could not obtain a Class C site classification subsequently, the Government might be sued for giving wrong information to the prospective purchasers. Moreover, if the Lands Department had assumed that the site was a Class C site and set a higher reserve price, the site might not be sold in the end as the developer might doubt whether he could really get Class C classification. Hence, the Lands Department had to take a conservative view about the development potential of the site. It only based its assessment on what it knew to be a fact and leave the risk to the developer. After all, it was only after a lot of legal arguments that the Building Authority was eventually persuaded that the site could be a Class C site; and

- on the other hand, if the Lands Department had assumed that it was a Class A site and included a maximum GFA clause in the Conditions of Sale, the Government would have potentially lost the revenue that could have been obtained from the purchaser who could change it to a Class C site.

The administration of sale of land by public auction

25. **Mr John TSANG Chun-wah, Secretary for Planning and Lands**, in his letter of 28 December 2001 in ***Appendix 70***, advised the Committee that:

- the Government's overall land policy objective had been, and still was, to ensure an adequate land supply to meet market demand and to facilitate infrastructural developments which were essential to the long-term social and economic development of Hong Kong. Compatibility and complementarity with land use planning were part and parcel of this overall objective of optimizing the use of land. Maximising land revenue was not an overriding factor;

- the Metroplan was essentially a broad conceptual strategy which was subject to on-going review. The HKPSG, on the other hand, provided non-statutory guidelines on development density for different areas in Hong Kong. The two documents were planning frameworks which formed one of the factors to be taken into account in determining site-specific development controls. Other considerations, such as design feasibility and flexibility, were taken into account in determining the development density of a particular site. The Administration did not usually have specific planning objectives for individual sites; and

- the arrangement of not specifying the maximum domestic GFA in the Conditions of Sale of the Siu Sai Wan site was not unfair to prospective purchasers. The terms set out in the Conditions of Sale, the OZP and the B(P)R were open and transparent to all prospective developers. The developers should be capable of making their own decisions as to how they could fully utilise the potential of the site within the provisions of the Conditions of Sale and the statutory framework of the OZP and the B(P)R.

26. The Committee further asked whether the decision to delete the clause specifying the maximum domestic plot ratio of 6.5 from the Conditions of Sale of the Siu Sai Wan site had violated the Government's land policy objective.

27. In his letter of the 28 December 2001, the **Secretary for Planning and Lands** stated that the decision was not against the overall land policy objective.

28. The **Director of Lands** said that the Lands Department would only impose plot ratio restrictions where these were stipulated in the OZP. Where there were no such restrictions in the OZP, they would not be included in the Conditions of Sale because there

was no authority for him to do so. By imposing a limit on the plot ratio, the Lands Department would be restricting the land revenue. While his role was to achieve the best planning for Hong Kong, he also had the duty to obtain the best land price he could, for the benefit of the general public.

29. The Committee then referred to the Committee's Report No. 21A on "Sale of a commercial site in Garden Road" published in May 1994. In that case, the planning intention was to erect a building of six to seven storeys. However, because of a loophole in the Special Conditions of Sale of the site, it turned out that a 31-storeyed building was erected. The Director of Lands accepted that the Government's planning intention should always be clearly reflected in the Conditions of Sale. It was also the Committee's recommendation that the Government's planning intention should always be accurately translated into the Conditions of Sale of a site.

30. Against the above background, the Committee questioned whether the Administration had failed to fulfil its undertaking by deleting from the Conditions of Sale of the Siu Sai Wan site the clause specifying the maximum domestic plot ratio, resulting in the failure to achieve the planning intention.

31. The **Director of Lands** explained that:

- in the Garden Road case, he had accepted that the loophole would not have arisen if the planning intention for a low-rise commercial building had been specified in the OZP. The Government had subsequently taken steps to change the system so that plot ratio restrictions were more commonly written into the OZPs; and

- in other words, planning intentions for developing a site would be stipulated in the OZP concerned. Otherwise, there might only be a planning view without any statutory effect.

32. In the light of the Director of Lands' reply, the Committee asked why the planning objective for developing the Siu Sai Wan site had not been incorporated in the OZP.

33. The **Director of Planning** said that:

- it was normal practice to incorporate plot ratio and height restrictions in the OZPs where there was a policy that the maximum level of development would need to be controlled to a level below that permitted under the B(P)R. Where there were no such provisions in the OZPs, the development of the sites was subject to the control of the B(P)R. As such, there was no need to impose restrictions again in the OZPs under the Town Planning Ordinance; and

- as the Siu Sai Wan site was a new land lease, its development could be controlled through the Conditions of Sale. Hence, the maximum GFA permitted was not incorporated in the OZP but was specified in the draft Special Conditions of the Conditions of Sale of the site. However, the DLC meeting subsequently decided collectively to delete the clause in order to give the developer greater flexibility.

34. The Committee further asked if it had been specified in the Conditions of Sale that the site was a Class A site and the developer subsequently succeeded in persuading the Building Authority that it was a Class C site, whether the developer would be required to pay land premium. The **Director of Lands** replied that it was government policy not to make fundamental changes to the Conditions of Sale within five years of a sale. The Lands Department believed that a change in the maximum GFA would be a fundamental change.

35. Referring to paragraph 4.37 of the Audit Report, the Committee asked about the Director of Lands' view on the recommendation that he should, prior to the auction of a site, seek advice from the Building Authority on the classification of a site to be sold. They also enquired whether, if the Lands Department had followed all the Audit recommendations, a higher reserve price might have been set and whether the auction price might have been different.

36. The **Director of Lands** said that:

- he agreed with the Audit recommendation and would seek clarification from the Building Authority on the classification of a site for the purpose of assessing the reserve price; and

- he did not believe that the outcome would be different even if he had followed all Audit recommendations.

37. The Committee questioned whether, prior to the auction of the Siu Sai Wan site, the Lands Department had explored the possibility of changing the classification of the site from Class A to Class C, so as to obtain the highest price for the site in the auction. The **Director of Lands** informed the Committee, vide his letter of 21 December 2001 that:

- it was not normal land administration practice to specify site classification in the lease conditions, hence, the question of changing the classification of the site did not arise. The issue of site classification was a matter for the Building Authority under the provisions contained in the B(P)R of the Buildings Ordinance;

- in the context of the B(P)R, the classification of a site for development would depend on the number of streets it abutted on. These streets might either be public or private. Accordingly, where a developer proposed in his development scheme to include a street within the site, this might well lead to a change in site classification. The Building Authority would not normally commit itself to site classification until a formal building scheme was submitted by the purchaser; and

- from the Lands Department's point of view, provided a site would be offered for sale competitively by auction or tender, then clearly it was in the Government's interests, both in respect of optimising development and maximising premium, to allow the developer the greatest flexibility to exploit the full potential of the site within the provisions of the Conditions of Sale and the statutory framework of the OZP and the B(P)R. In this respect, developers were professionally advised by architects, engineers, surveyors and lawyers, and thus such developers were fully able to make their own commercial decisions on the preferred development options as reflected in the competitive bids they made for the site.

38. The Committee enquired whether, when considering the terms and conditions for the disposal of the Siu Sai Wan site, representatives from the government departments concerned had paid any visit to the site.

39. In the same letter, the **Director of Lands** stated that:

- in addition to routine inspections made by staff in District Lands Office/Hong Kong East, the case officer concerned had visited the site on not less than ten occasions throughout the entire process of drawing up and finalising the draft Conditions of Sale. The case officer was a professional surveyor at Estate

Surveyor rank. Prior to the discussion of the case at the DLC, specific site visits had been paid, on two occasions, by the chairman of the DLC. He was accompanied by the District Lands Officer (Hong Kong East), an officer at the Chief Estate Surveyor level, and the case officer concerned; and

- according to the Director of Planning, it was common practice for district planners to conduct site visits regularly. His district planner who handled the terms and conditions for the disposal of the Siu Sai Wan site had visited the site at least ten times on different occasions.

40. The Committee wondered whether in most land sale cases, the maximum or minimum GFA were specified in the Conditions of Sale. The **Director of Lands** replied that the maximum GFA would only be specified where there was a restriction on plot ratio in the OZP concerned. For a site such as the Siu Sai Wan site, it was normal not to specify the maximum GFA. As it was only stated in the Conditions of Sale that the maximum GFA was to be governed by the B(P)R, it was entirely up to the developer to obtain whatever plot ratio he could get on the site. That was the fairest and most transparent way to optimise development.

41. In response to the Committee's request, the **Director of Lands** provided, vide his letter of 21 December 2001, information on the number of sites sold by public auction from 1994 to 2000 with the maximum plot ratio/GFA specified in the Conditions of Sale and the number of sites that did not, and the reasons thereof.

42. The Committee noted from paragraphs 4.15, 4.16 and 4.20 to 4.27 of the Audit Report that after the land sale, the purchaser proposed to provide two internal streets in order to make the Siu Sai Wan site a Class C site. The proposal was accepted by the Buildings Department. Ultimately, the Building Authority agreed that only one street had to be provided. The Committee enquired whether it was unusual to accept after a land auction the successful bidder's application to create two additional streets so as to change the classification of a site from Class A to Class C, resulting in an increased plot ratio.

43. In response, the **Director of Buildings** said that:

- it was really up to the developer who had bought the site. Under the Buildings Ordinance and the B(P)R, a street included public streets and private streets. When a developer submitted a development scheme proposing to carve out private streets, the streets would be treated as streets if

they met the requirements of a street. However, in carving out private streets, the developer would be losing certain site area; and

- in some cases the Buildings Department required the developers to carve out private streets to provide access roads, such as for a huge development like Whampoa Garden and Taikoo Shing. In other words, it would depend on the circumstances of individual cases.

44. In his letter of 18 December 2001 in ***Appendix 71***, the **Director of Buildings** provided the Committee with the number of applications for changing plot ratio received by the Buildings Department and the number of applications involving the creation of streets within sites from 1989 to 1998, as well as the number of such applications that had been approved.

45. At the Committee's invitation, the **Secretary for Planning and Lands** offered his views on the way the departments concerned had handled the sale of the Siu Sai Wan site. He stated that:

- the Lands Department, the Planning Department and the Buildings Department did have competing objectives. The Administration had to seek an appropriate balance so as to optimise the different competing objectives, including the maximisation of income for the Government, the maximisation of clarity in the land sale process and the maximisation of development potential;

- it was very important to have more clarity and transparency in the land sale process and to give the sense that there was a level playing field where everybody was getting an equal amount of information;

- although there was a lot of risk for the developer, it was proper because they were the people who would be making the profits; and

- he had agreed with the three Directors that in future, density control should be achieved by one of the following measures:

  (a) if there was a policy to cap the GFA of a site below the limit set out in the B(P)R and such a cap was set out in the OZP concerned, reference to the cap would have to be made in the Conditions of Sale of the site;

(b) if there was a policy to cap the GFA of a site below the limit set out in the B(P)R but such a cap was not set out in the OZP concerned, the cap would have to be specified in the Conditions of Sale of the site; and

(c) in other cases, the maximum level of GFA or plot ratio permitted as stipulated in the B(P)R would apply.

46. The Committee enquired whether, after implementing the above three measures, it was still possible for a purchaser to apply for treating a site as a Class C site so as to increase the plot ratio.

47. The **Secretary for Planning and Lands** said that in theory, any classification was possible with any piece of land provided that the developer was willing to give up certain site area for creating streets. This would be subject to discussions between the developer and the Director of Buildings and it was also the risk to be taken by the developer.

48. The **Director of Buildings** supplemented that:

- even if the maximum plot ratio permitted had been specified in the Conditions of Sale, under the law, the purchaser could still apply for increasing the plot ratio. The Buildings Department would have to fairly consider the application according to the law. However, the Director of Lands might not accede to the purchaser's request; and

- in the event that the maximum plot ratio permitted was not specified in the Conditions of Sale but was to be governed by the B(P)R, the classification of the site would be subject to the developer's judgment and interpretation of the B(P)R.

49. The Committee further asked:

- about the Director of Buildings' views on the feasibility of specifying the classification of a site in the Conditions of Sale at the outset by, where necessary, stating clearly that the purchaser would be required to carve out certain additional streets within the site; and

- whether the Administration had the authority to impose such a requirement and whether it had ever done so.

The administration of sale of land by public auction

50. In his letter of 11 January 2002 in ***Appendix 72***, the **Director of Buildings** informed the Committee that:

- the classification of a site depended on the number of streets it abutted on. The Building Authority had to make a definitive ruling, with reference to the B(P)R, on the classification of a site specific to a development proposal upon submission of building plans for the proposed development. Given this, the Building Authority would be required to classify a certain site based on the submitted building plans in the manner specified under the B(P)R even if a different site classification was stipulated in the Conditions of Sale;

- however, where density control had to be effected through the Conditions of Sale at a level below the limit set out in the B(P)R, the appropriate way to do that was to specify the maximum permissible GFA in the Conditions of Sale, because site classification was really a matter for determination under the Buildings Ordinance; and

- he understood that the Lands Department had not, in the past, set out in the Conditions of Sale any requirements to carve out additional streets within a site for the purpose of site classification.

51. The Committee noted from paragraph 4.38(a) of the Audit Report that the Director of Buildings had said that he would consult the building profession and industry as soon as possible with a view to refining the definition of streets under the B(P)R and issuing a Practice Note for Authorised Persons on the principles for determination of streets, and on the possibility of creating a street within a site for the purpose of site classification and the relevant requirements. The Committee asked about the progress so far made.

52. The **Director of Buildings** advised the Committee that after consulting the industry, the Practice Note had already been issued. He had also consulted the industry with regard to the suggestion to refine the definition of streets. In his letter of 21 December 2001 in ***Appendix 73***, the **Director of Buildings** added that he planned to submit the proposed amendment of the B(P)R to refine the definition of streets to the Legislative Council in June 2002.

The administration of sale of land by public auction

53. **Conclusions and recommendations** The Committee:

- express grave dismay that:

  (a) the Director of Lands, and the chairman and members of the District Lands Conference (DLC) had:

    (i) neither achieved the Government's planning objective of lowering the development density in order to "thin out" the population, despite the Committee's recommendation in their Report No. 21A on "Sale of a commercial site in Garden Road" that "the Government's planning intention should always be accurately translated into the conditions of sale of a site", nor

    (ii) sought to obtain the maximum revenue at the public auction by upgrading the Siu Sai Wan site to a Class C site, for example, by requiring the provision of an extra street;

  (b) although the maximum plot ratio permitted and the maximum gross floor area (GFA) of the development of the site were essential information for the prospective purchasers to consider before the public auction, the Conditions of Sale of the Siu Sai Wan site were silent on the site classification and the maximum GFA. As the result of the uncertainties about the classification of the site, the Government eventually failed to achieve the planning objective, prospective purchasers might not have put forward the most competitive bids at the auction, and the Government was unfair to developers of various sizes with different risk-taking capacity;

  (c) the DLC's decision to delete the clause specifying the maximum residential GFA from the Conditions of Sale of the Siu Sai Wan site was unjustified because the decision had not fulfilled any land policy, revenue, or planning objectives;

  (d) with the change in the classification of the Siu Sai Wan site from Class A to Class C after the auction, the total GFA of the development was increased from 226,918 square metres by 41,985 square metres to 268,903 square metres. If the additional GFA had been taken into account, the reserve price of the Siu Sai Wan site would have been increased by $1,018 million;

(e) if the site had been clearly classified as a Class C site for auction, the eventual auctioned price might be higher than the present auctioned price of $11,820 million; and

(f) the requirement for the provision of retail carparking spaces was not stipulated in the Conditions of Sale of the Siu Sai Wan site;

- do not accept the Secretary for Planning and Lands' statements that:

(a) the arrangement of not specifying the maximum domestic GFA in the Conditions of Sale of the Siu Sai Wan site was not unfair to prospective purchasers; and

(b) maximising land revenue is not an overriding factor;

- consider that the reason for the sale of land by public auction must be to maximise land revenue after other objectives, such as land supply, town planning, environmental and safety concerns, have been clearly provided in the Conditions of Sale and relevant legislation;

Procedures for sale of land by public auction

- express concern that other departments concerned, such as the Planning Department, did not have the procedures similar to those of the Lands Department's Lands Administration Office Instruction, which requires the recording and advertising of all pre-auction enquiries received from (and answers given to) prospective purchasers if they relate to a basic ambiguity in the Conditions of Sale;

- acknowledge that the Director of Lands:

(a) will advertise any necessary amendments to the Conditions of Sale where basic ambiguities in the Conditions of Sale are identified;

(b) will notify all departments concerned of the requirements of the Lands Department's Lands Administration Office Instruction to record all pre-auction enquiries received from (and answers given to) prospective purchasers; and

(c) after consulting the industry, has obtained the industry's agreement that the departments concerned should direct all pre-auction enquiries about the Conditions of Sale to the Lands Department, so as to enable the

Department to deal with such enquiries centrally and provide answers, where appropriate, to prospective purchasers before the date of auction of a site, and that the Lands Department will not answer any enquiries relating to the interpretation the Conditions of Sale of a site;

Implementation of planning objective for developing the Siu Sai Wan site

- acknowledge the Secretary for Planning and Lands' statement that, in future, density control could be achieved by one of the following three measures:

  (a) if there is a policy to cap the GFA of a site below the limit set out in the Building (Planning) Regulations and such a cap is set out in the Outline Zoning Plan concerned, reference to the cap will have to be made in the Conditions of Sale of the site;

  (b) if there is a policy to cap the GFA of a site below the limit set out in the Building (Planning) Regulations but such a cap is not set out in the Outline Zoning Plan concerned, the cap will have to be specified in the Conditions of Sale of the site; and

  (c) in other cases, the maximum level of GFA or plot ratio permitted as stipulated in the Building (Planning) Regulations will apply;

Change in classification of the Siu Sai Wan site and the provision of retail carparking spaces

- acknowledge that the Director of Buildings:

  (a) before the auction of a site, will take action to clarify and remove any uncertainties (such as that relating to the definition of streets under the Buildings Ordinance) about the classification of the site;

  (b) has undertaken to submit to the Legislative Council the proposed amendment of the Building (Planning) Regulations to refine the definition of streets in June 2002;

  (c) after consulting the industry, has issued a Practice Note for Authorised Persons on the principles of definition of streets and on the possibility of creating a street within a site for the purpose of site classification and the relevant requirements; and

(d) on completion of the development of a site, will verify whether the internal streets to be provided within the site for site upgrading purpose, as agreed by the purchaser/developer, have in fact been constructed;

- acknowledge that the Director of Lands has agreed to:

  (a) prior to the auction of a site, seek clarification from the Director of Buildings on the classification of the site for the purpose of assessing the reserve price; and

  (b) review the existing instruction with the aim of making any necessary amendments to state the circumstances in which approval for the provision of additional carparking spaces in a development would be given and the basis for charging the related approval fee; and

- wish to be kept informed of:

  (a) the progress of the actions taken to improve the procedures for sale of land by public auction;

  (b) the progress made in amending the Building (Planning) Regulations to refine the definition of streets; and

  (c) the outcome of the review of the existing instruction relating to the provision of additional carparking spaces.

Chapter 9

Radio Television Hong Kong: Performance and resource management

Audit conducted a review on the performance and resource management of Radio Television Hong Kong (RTHK) in the following areas:

- performance measurement and reporting;
- budgetary control;
- procurement of services;
- management of overtime (OT) work;
- school educational television (ETV) service; and
- outsourcing opportunities.

Performance measurement and reporting

2. The Committee noted from paragraphs 2.7 to 2.17 of the Audit Report that, while RTHK had used a staff productivity indicator for its radio service, it had not used a similar indicator for its public affairs television (PATV) service. According to Audit's estimation, the productivity of the PATV programme staff in 2000 was 13.8 programmes (or four output hours) per year per staff member. The Committee asked the Director of Broadcasting whether he considered such a level of productivity satisfactory.

3. **Mr CHU Pui-hing, Director of Broadcasting**, stated that:

- RTHK used a staff productivity indicator for its radio service because it had its own radio transmission channels. On the other hand, RTHK did not have its own television (TV) transmission channel. Basically, it was not a TV station, but only a producer of programmes for broadcasting through the commercial TV stations;
- the productivity figure in the Audit Report was calculated on the basis that, in 2000, RTHK had produced 537 output hours with the involvement of 135 programme staff. The figures did not reflect the fact that the production of TV programmes was a teamwork requiring the input of staff from different disciplines, such as research, production and administrative staff. Actually, the 135 staff comprised different staff responsible for different tasks. For example, out of these 135 staff, about a dozen were producers who were required to produce more than 30 hours of PATV programmes a year, which

far exceeded four output hours. Therefore, RTHK considered that the number of output hours per employee was not a realistic measurement of staff productivity; and

- in the international conferences held by public service broadcasters in recent years, there had been many discussions about the development of commonly accepted productivity and cost-effectiveness indicators. Generally, the broadcasters held diverse views on the propriety of using the number of output hours per employee as an indicator.

4. The Committee enquired how, in the absence of staff productivity indicators, RTHK could help the public assess its staff's productivity and evaluate whether there had been changes in productivity. The **Director of Broadcasting** responded that:

- in order to enhance transparency and accountability, he had agreed to include productivity indicators in the Controlling Officer's Report (COR). As a first step, he would report the "number of TV programmes per employee". Then the "number of output hours per employee" would be included;

- RTHK would also try to develop more indicators to evaluate its productivity and cost-effectiveness from different perspectives. For instance, the quality of TV programmes was another important indicator. After productivity statistics had been accumulated for a period of time, it would be possible to conduct a trend analysis and detect changes in staff productivity; and

- RTHK had been outsourcing its programme production in the past few years. During the tendering process, RTHK had taken the opportunity to ask independent producers the time they required for producing a 30-minute documentary. Most producers required eight weeks, which could be regarded as an industry norm. Nevertheless, the actual time taken to produce a TV programme depended on the complexity and format of the programme.

5. The Committee agreed that apart from staff productivity, the audience's perception of the quality of the programmes was also an important indicator of RTHK's effectiveness. The Committee therefore asked why RTHK had not used qualitative indicators (such as appreciation index survey results) to assess its radio service.

6. The **Director of Broadcasting** explained that:

- appreciation index surveys had not been conducted by RTHK because of practical difficulties. To conduct such surveys, the names of different radio programmes had to be read out for rating by the respondents. However, there were far too many radio programmes, particularly if the programmes of the commercial broadcasters were also included. A respondent would not be patient enough to give a score to each programme surveyed; and

- as an alternative, RTHK would attempt to include some qualitative questions in future surveys to ascertain whether it was possible to draw up suitable qualitative indicators.

7. On the other hand, the Committee noted that whilst RTHK used appreciation index survey results as a measure of performance for its PATV service, RTHK did not report in its COR the number of people who had watched the PATV programmes. The Committee asked why RTHK had not reported the viewer numbers.

8. The Committee also noted from paragraph 2.29(e) of the Audit Report that starting from 2002-03, RTHK would include in the COR the prime-time viewership figures of its programmes broadcast on the two commercial TV stations. The Committee enquired whether RTHK would report the non-prime-time viewership figures as well.

9. The **Director of Broadcasting** said that:

- one of the reasons for not reporting viewer numbers was that RTHK did not have its own TV transmission channel. The viewership figures of RTHK's programmes were affected by the ratings of the commercial TV stations which broadcast the programmes. The average viewer numbers of RTHK's programmes broadcast on the Jade Channel of Television Broadcasts Limited (TVB) were between 1.2 million and 1.3 million, whereas those broadcast on the Home Channel of Asia Television Limited (ATV) were between 250,000 and 300,000. The public might be confused by the different sets of figures if they were published; and

- there would be difficulties if RTHK was to obtain the non-prime-time viewership figures of its programmes. At present, the viewership surveys were conducted by the commercial TV stations on a weekly basis. RTHK was not involved as the cost incurred was quite substantial. RTHK's prime-

time viewership figures were secured free of charge from TVB informally. In other words, RTHK did not have information on its non-prime-time viewer numbers. Nevertheless, RTHK would consider the Committee's suggestion to obtain non-prime-time viewership figures. In doing so, he would take into account the cost involved.

10. The Committee enquired about the factors that RTHK would consider in making a decision on the matter. The **Director of Broadcasting**, in his letter of 14 December 2001 in ***Appendix 74***, informed the Committee that:

- RTHK would attempt to obtain both prime-time and fringe time viewership figures for its TV programmes as yardsticks to assess its performance. The question was cost. ACNielsen had been organising the TV rating panel service in Hong Kong since 1978. Its rating service was open to all interested parties through subscription. The minimum annual subscription fee for 2002 was $512,500 for the basic TV rating service. The basic service covered access to the minute by minute rating performance data of the four terrestrial channels plus over 20 channels of Cable TV and STAR TV. The rating data was updated and supplied to all subscribers weekly; and

- RTHK was studying the cost-effectiveness of subscribing to the service and was in the process of negotiating a better deal. If RTHK were to subscribe to the basic service, the following information would be requested:

  (a) weekly report of the rating figures of RTHK non-school programmes (prime-time and fringe-time on ATV, TVB and Cable TV);

  (b) quarterly report of the audience profile of RTHK non-school programmes (prime-time and fringe-time on ATV, TVB and Cable TV); and

  (c) quarterly report of the audience reach and profile of RTHK school programmes.

11. As regards the value and use of performance indicators, the Committee commented that while it would not be possible to provide all information with indicators, they served as useful pointers highlighting doubtful areas which deserved attention and follow-up action by controlling officers.

12. The **Director of Broadcasting** agreed with the Committee's view. He said that:

- in recent years, public service broadcasters around the world had been placing increasing emphasis in this area. A working group had been set up by these broadcasters in 2000 to consider the appropriate key performance indicators to be developed; and

- at an international conference held in September 2000 in Toronto, it was agreed that key performance indicators should be developed in four aspects, namely quality, efficiency, popularity and characteristics. There had not been any concrete proposals yet, but RTHK would closely follow up the development.

13. Referring to the Director of Broadcasting's remark that the viewership figures of RTHK's programmes only reflected the ratings of the commercial TV stations broadcasting the programmes, the Committee queried:

- whether the Director considered that the viewer numbers of RTHK's programmes were purely determined by the viewing habits of the public, regardless of the programme quality; and

- whether it was true that even a bad programme would have a high viewing rate if it was broadcast by the stronger TV station.

14. The **Director of Broadcasting** stated that:

- the viewer numbers of RTHK's programmes would indeed be affected by the viewing rates of the TV stations broadcasting the programmes. In addition, the viewership figure of a programme would also be influenced by what other programmes were scheduled in the time period during which it was shown. For instance, most RTHK programmes were shown at 7:00 pm. The attractiveness and viewership figures of the programmes shown immediately before and after an RTHK's programme would have a bearing on the viewer numbers of the RTHK's programme; and

- the viewer numbers of a programme was also affected by its own attractiveness, particularly with regard to the viewers of the particular TV station which broadcast it. For example, there had been a RTHK programme shown on ATV which secured a viewing rate higher than ATV's average rate.

15. Noting that the viewing rates of the two local commercial TV stations differed significantly and usually producers would like to show their programmes in the stronger station, the Committee asked how RTHK allocated its programmes for broadcasting between the two stations.

16. The **Director of Broadcasting** replied that:

- being a public service broadcaster, RTHK had the responsibility to ensure a balance in the allocation of its programmes between the two TV stations, and to ensure that its programmes could reach viewers from all walks of life; and

- as far as possible, RTHK allocated its programmes between TVB and ATV for broadcasting alternately. However, for programmes such as "City Forum" which had been broadcast on the Jade Channel for almost 20 years, RTHK would not allocate them to the other TV station.

Procurement of services

17. According to paragraphs 4.5 to 4.7 of the Audit Report, in early 2000 the Independent Commission Against Corruption (ICAC) conducted a study on RTHK's procedures for the engagement of contractors for programme production. As at June 2001, RTHK had implemented 19 of the 34 recommendations made by the ICAC to improve RTHK's procurement procedures. The Committee asked about the current position in implementing the recommendations.

18. The **Director of Broadcasting** stated that, so far, RTHK had implemented 29 of the 34 recommendations made by the ICAC and five were outstanding. Two progress reports had been submitted to the ICAC. Of the five remaining recommendations, two would take a longer time to implement because they required information which took time to collate. Nevertheless, RTHK would strive to implement the remaining recommendations as soon as possible.

19. The Committee were concerned that, according to paragraphs 4.10 to 4.19 of the Audit Report, RTHK had not complied with Stores and Procurement Regulation (SPR) 280(c) in hiring film crews. SPR 280(c) stated that, for jobs exceeding $50,000 but not $1.3 million, written quotations from not less than five contractors should be obtained. Moreover, the availability of short-listed suppliers on the scheduled filming dates was checked only verbally. In addition, Audit's analysis of the 47 high-value cases awarded in

2000-01 revealed that 19 cases (i.e. 40%) had been awarded to suppliers whose charges were not the lowest. The usual justifications for awarding jobs to such suppliers were that they had better experience and service.

20. The Committee further referred to the case mentioned in paragraphs 4.17 and 4.18 of the Audit Report in which RTHK awarded a filming job to the supplier who charged the highest amount. The recommending officer rejected the other three short-listed suppliers who had quoted a lower price, on the ground that they did not have much experience in drama filming. But no documentary evidence had been provided to substantiate his view. On the contrary, Audit found that these three suppliers had been awarded drama filming jobs on other occasions on the recommendations of RTHK officers, and there was no documentary evidence indicating that their performance was unsatisfactory.

21. Against the above background, the Committee asked:

- how RTHK ensured that filming jobs were awarded in an open and equitable manner and that the choice of film crews was not unduly affected by the personal preferences of individual producers;

- about the reason for the conflicting comments by different RTHK officers on the performance of the three unsuccessful suppliers; and

- about the improvement measures that RTHK would take to address the problem, and the time-frame for implementing the measures.

22. The **Director of Broadcasting** said that:

- given the tight schedule of filming work, RTHK's own film crews were insufficient to cope. Hence, filming services had to be procured from outside sources, usually at short notice. As a result, there were difficulties in obtaining the required number of written quotations on some occasions;

- there were also cases in which some suppliers, although they had given verbal quotations, were unwilling to submit their quotations in writing. To address the problem, he had required RTHK staff to document the process of obtaining quotations. In future, in case they encountered suppliers who insisted on not providing written quotations, the staff concerned would be required to record the reasons given by the suppliers. The arrangements would be implemented as soon as possible;

- RTHK had looked into the reasons for the different comments given by its staff on the performance of the three unsuccessful suppliers, and was satisfied that the reasons were justified. Actually, there was a wide variety of dramas, some of which required a higher filming standard and hence the charge would be higher. Given the broad spectrum of drama productions and the high artistic content of a filming job, it would be difficult to draw up a set of standard criteria for rating the suitability of different film crews. After all, the choice of film crews involved professional judgement by producers. That explained why a film crew might be considered suitable for a filming job on one occasion but not on other occasions; and

- he agreed that it was necessary to devise an appropriate marking scheme for assessing the performance and suitability of different suppliers. Consideration would be given to assigning suitable weightings to different aspects such as the suppliers' quality, charges, past performance and capabilities. In future, when jobs were to be awarded to those suppliers whose charges were not the lowest, RTHK staff would be required to provide documentary evidence to support the decisions.

23. The Committee enquired whether, for those suppliers who repeatedly refused to submit written quotations, RTHK would consider deleting them from its supplier lists. The **Director of Broadcasting** undertook to consider the suggestion.

24. In his letter of 14 December 2001, the **Director of Broadcasting** provided further information on RTHK's process of evaluating the performance of hired film crews and the background to the award of the filming job to the supplier who charged the highest amount. He stated that:

- the "Hire Crew Performance Evaluation Questionnaire" had been used since late 1999 to document the performance of hired crews. Different ratings ranging from "Poor" to "Outstanding" were used by hirers to evaluate the hired crew's performance on different aspects, such as work experience, professional expertise and equipment. Suppliers on RTHK's contractor lists had to maintain a consistent level of satisfactory performance, or they would be taken off. While RTHK had conducted performance evaluation on the three suppliers in question, there was no evaluation report that showed their sub-standard performance;

- in the case in question, the first choice was the supplier whose charge was the cheapest among the five short-listed suppliers. It was due to a clash in schedule that the second choice (which happened to be the most expensive) was selected. The remaining three unsuccessful suppliers had been employed by RTHK from time to time for various programme requirements; and

- the choice of the successful supplier in the present case was a group decision reached after reviewing samples of work done by other bidding suppliers, bearing in mind the importance of continuity in the serialised drama in question.

Management of OT work

25. The Committee were concerned about the shortcomings in the management of OT work by RTHK, as identified by Audit. The Committee noted from paragraphs 5.17 to 5.19 of the Audit Report that under Civil Service Regulation (CSR) 667, a minimum period of one hour of OT in respect of any one shift must be worked before overtime allowance (OTA) was payable. Periods of OT of less than one hour per shift might not be accumulated for the purpose of claiming OTA. However, Audit's examination of the OTA claims of the Scenic Services Unit revealed that, contrary to CSR 667, OT periods had been accumulated by six officers in the Unit.

26. According to paragraph 5.21(g), the Director of Broadcasting was investigating the cases and would take appropriate action in due course.

27. The Committee asked:

- why the management of RTHK had not detected the cases of non-compliance with CSR 667 and what the responsibility of the supervisory and management staff for the irregularities was;

- whether RTHK had completed the investigation of the six cases; and

- about the actions taken by RTHK to follow up the findings of the investigation.

28. The **Director of Broadcasting** said that:

- in addition to the claimants, the supervisory staff concerned should also be held accountable for the irregularities. There was also a need to review the management culture. In the cases in question, the staff claiming the OTA were junior staff and the supervisory staff concerned were Programme Officers and Assistant Programme Officers. To prevent the recurrence of similar incidents in future, all supervisory level staff had been required to strengthen management and to conduct random checks; and

- upon notification by Audit of the six cases, RTHK had immediately stopped paying the half-hour OTA to the staff members concerned since July 2001. Starting from October 2001, the OT certifying and verification work had been re-assigned to officers not involved in the cases. Statements and written reports had been obtained from the staff involved and they were being studied.

29. As regards why the investigation into the six cases had still not yet been completed, the **Director of Broadcasting** said that:

- RTHK's financial records were kept for seven years and he had requested a thorough investigation into all OT cases during the years from 1994 to 2001 to ascertain if there were similar irregularities. Hence, more time was required for collating and examining documents; and

- all officers involved in the claims of OTA, from application to approval, were covered in the investigation relating to non-compliance with CSR 667. The outcome of the departmental investigation would be submitted to the Committee as soon as available.

30. To ascertain the responsibility of the management staff of RTHK over the control of OT work, the Committee requested RTHK to provide the relevant organisation charts showing the tiers of staff involved, from the submission to the approval of claims for OTA. The Committee also asked:

- whether departmental guidelines for the control and administration of OT had been issued by RTHK and if so, when; and

- about the level of staff responsible for ensuring compliance with the guidelines.

31. In response to the Committee's request, the **Director of Broadcasting**, in his letter of 27 December 2001 in ***Appendix 75***, provided the organisations charts showing the tiers of staff involved in the submission and approval of claims for OTA in the Scenic Services Unit, Film Services Section and Transport Section. He also stated that these three Unit/Sections accounted for 73% of RTHK's OT expenditure in 2000-01, with breakdown as follows:

Unit/Section	OTA expenditure in 2000-01
Scenic Services Unit	$1.16 million
Film Services Section	$0.25 million
Transport Section	$1.73 million

32. In the same letter, the **Director of Broadcasting** informed the Committee that:

- in addition to Civil Service Bureau (CSB) guidelines, RTHK had issued departmental guidelines for the control and administration of OT work and OTA; and

- it was mainly the responsibility of section heads to ensure compliance with CSB and departmental guidelines. These officers were normally at the rank of Senior Programme Officer or above.

33. In his letter of 16 January 2002, in ***Appendix 76***, the **Director of Broadcasting** provided the Committee with RTHK's investigation report on the six cases of non-compliance with CSR 667 revealed by Audit. He said that:

- the investigation covered the staff involved in the claims, from the claimants to the management officers concerned. The six claimants were in one-man posts undertaking a unique function in the TV programme production line. To maintain a six-day service, they were required to work every Saturday morning, instead of the usual long-short week, on top of their daily 8.5-hour work during weekdays. This resulted in 46.5 hour per routine working week, compared with their conditioned 44-hour a week;

- to ensure that the staff worked on their short week, it was decided that their excess hours should be spread out on weekdays, instead of being grouped on Saturdays. It was a staff choice whether to work OT or not, as such if Saturdays were designated as OT, there would be no guarantee that the staff would report for work on Saturdays. This OT arrangement was made,

according to the supervisors concerned, out of their ignorance of the stipulation of CSR 667. The investigation also revealed that the claimants had performed the incorrectly claimed OT work in full and the supervisors had not secured any personal gain from the claims;

- the RTHK Discipline Review Panel (the Panel) recommended that disciplinary action should be taken against nine staff members concerned, from claimants to supervisors. The proposals had been forwarded to the Secretariat on Civil Service Discipline of the CSB for advice; and

- RTHK would step up its efforts to inform all staff of key administrative regulations. In addition to circulating CSB circulars widely within the department, division heads would be required to issue simple clear-cut operational guidelines to their supervisory staff as regards compliance with administrative procedures governed by CSRs and so on. They would hold briefing sessions for supervisors who, in turn, would do the same for junior staff involved.

34. At the Committee's invitation, the **Director of Audit** provided, vide his letter of 21 January 2002 in ***Appendix 77***, his comments on the outcome of the investigation carried out by RTHK. His observations were as follows:

- according to the Panel, the total amount of OTA improperly claimed by the six claimants (between April 1994 and June 2001) amounted to $236,338.62. The Secretary for the Treasury had directed that RTHK should recover the overpayment from the officers in addition to disciplinary action, if necessary;

- the Review Panel recommended that disciplinary action should be taken against nine officers, as follows:

  (a) for the six claimants, informal disciplinary action in the form of written warning should be issued to them as their roles were subordinates in this case;

  (b) for the two immediate supervisors, who should bear the largest responsibility in this incident, formal disciplinary action under section 9 of the Public Service (Administration) Order should be instituted; and

  (c) for the officer who certified the claims, informal action in the form of written warning should be issued;

- in the course of its investigation of the claims in question, the Panel noted the following allegations:

  (a) the practice of combining half-hour OT periods into one-hour period for OTA claims was common in the Art Services Section; and

  (b) there was a breach of other relevant supplies and procurement regulations as stated in the submission of one of the staff members subject to the investigation; and

- the Panel recommended that RTHK should conduct a thorough investigation separately and immediately to establish the truthfulness of these allegations.

35. Turning to the time reporting of film crews, the Committee noted from paragraphs 5.10 to 5.16 of the Audit Report that the Job Assignment Form (JAF) served as the official attendance record of the film crew, and the reported off-duty time in the JAF was used for OT calculations. In paragraph 5.12, Audit revealed a case where, according to the JAF, the film crew returned to RTHK at 9:30 pm and was off-duty at 9:45 pm. However, according to the relevant vehicle log book, the vehicle which conveyed the film crew had returned to RTHK at 7:45 pm. This was one hour 45 minutes earlier than the reported return time in the JAF.

36. The Committee were also concerned that in 33 (i.e. 16%) out of the 203 jobs checked by Audit, the return times shown in the vehicle log books were much earlier than the reported return times recorded in the JAFs. The Committee therefore asked:

- for the specific case mentioned in paragraph 5.12 of the Audit Report, what happened during the one hour 45 minutes between the return time shown in the vehicle log book (i.e. 7:45 pm) and the off-duty time reported in the JAF (i.e. 9:30 pm); and

- about the improvement measures that RTHK would take to ensure that all producers and film crews would record correct information in the JAFs.

37. The **Director of Broadcasting** responded that:

- there had indeed been confusion in the past which might have been caused by the design of the JAF. The producers and the film crews might have filled in the job finishing time in the space provided for return time. The JAFs would be modified to enable accurate recording of information;

- a film crew usually consisted of a producer, a cameraman, a soundman, a lightingman, etc. A driver was also involved as he was responsible for transporting staff and equipment. While the driver could be off-duty shortly after he had returned to RTHK, the producer and the film crew were normally required to perform other duties after returning. Such duties included equipment alignment, designing production plans, etc; and

- for the case in question, he had obtained a report from the film crew concerned on the reason for the discrepancy between the return time shown in the vehicle log book and the off-duty time reported in the JAF. It was found that the producer and the film crew had continued to carry out in-house filming at base until 9:30 pm. He was satisfied with the explanation.

38. As regards whether there had been over-statement of OT in the 33 cases of inaccurately reported off-duty times in the JAFs revealed by Audit, the **Director of Broadcasting** replied that:

- the crux of the matter was not the over-statement of OT because in a film crew, only the soundman and the lightingman were eligible for OTA whereas the producer and the cameraman were not. Moreover, some soundmen and lightingmen were non-civil servants. However, RTHK had not investigated the OTA claims by the film crews concerned. As requested by the Committee, RTHK would conduct an investigation into this aspect; and

- regarding the 33 cases, he had obtained from the film crews concerned an account of their activities between the return times shown in the relevant vehicle log books and the reported off-duty times in the JAFs. He was still assessing the findings.

39. The **Director of Broadcasting**, in his letter of 14 December 2001, provided the Committee with the investigation reports on the 33 cases. He further stated that:

- there had been no over-statement of OT for the case concerned as no OT was incurred on that particular filming day. The inconsistency noted by Audit was only due to a deficiency in the form design, i.e. no distinct item of vehicle returned time and off-duty time for the film crew. The problem had been addressed with separate space allowed for the vehicle returned time and job end time on the new JAF introduced in November 2001. Supervisors had also been required to compile and furnish reports to RTHK management regarding their enhanced spot checks to filming sites; and

- the 33 cases in question had been fully investigated. Having checked all the relevant records and reviewed the statements made by the programme directors and film crews concerned, no evidence of fraud or deception had been identified. Furthermore, all OTA had been budgeted for and the total amount incurred was a modest sum of $2,387 for the two months. RTHK management was satisfied with the findings of the investigation.

40. At the Committee's invitation, the **Director of Audit** provided in his letter of 27 December 2001, in ***Appendix 78***, his comments on the outcome of RTHK's investigations into the cases. On the specific case mentioned in paragraph 5.12 of the Audit Report, the **Director of Audit** informed the Committee that:

- he had reservations about the Director of Broadcasting's statement that "there was no over-statement of overtime for the case concerned as no overtime was incurred on that particular filming day". He noted the Director of Broadcasting explanation that OT meant that the film crew's work had exceeded nine hours in a normal working day. On this basis, the Director of Broadcasting considered that no overtime was incurred on that particular filming day because the film crew concerned had worked 9 hours (i.e. from 12:45 p.m. to 9:45 p.m.) on that day. However, the OT calculations for film crews were carried out **monthly** (instead of daily), based on the total number of hours worked in that month minus the number of conditioned hours; and

- the crux of the matter was not whether OT work (i.e. working time exceeding nine hours) had been incurred on a particular day. Rather, the important issues were whether the film crew's attendance records (i.e. the JAFs) were accurate and whether there was an over-statement of the total number of OT hours worked for the month as a whole.

41. Regarding whether the OT claims in the 33 cases were proper, the **Director of Audit** stated in the same letter that:

- to ascertain whether the OT claims in these cases were proper, Audit staff had visited RTHK on 18 and 19 December 2001 and had discussions with the Production Manager, the Deputy Production Manager and the Manager (Training and Administration), who had management responsibilities over the film crews. Audit staff were informed that:

(a) in forming the conclusion that "no evidence of fraud or deception was identified", RTHK's senior management had to rely on the statements of the programme directors and the film crews concerned; and

(b) independent evidence, such as closed circuit TV tapes and filmed raw materials, was unavailable due to the passage of time during which the tapes had been re-used; and

- in the absence of independent evidence that corroborated the statements of the programme directors and the film crews concerned, he was unable to express an opinion on whether or not the OT claims were proper.

42. The Committee noted from paragraphs 5.7 to 5.9 of the Audit Report that OT work of many RTHK staff was recompensed by OTA, instead of by time-off in lieu according to the guidelines issued by the CSB. RTHK had said that all OT work of the Scenic Services Unit was recompensed by OTA because of the acute shortage of staff. The Committee asked about the measures that RTHK would take to ensure that time-off was used as the normal recompense for OT work.

43. The **Director of Broadcasting** replied that:

- about 30% of RTHK staff were eligible for OTA. They were mostly administrative staff and junior staff responsible for logistical support. Normally, the OT work of administrative staff was compensated by time-off in lieu. For the junior staff involved in programme production, they usually claimed OTA. Although RTHK would like to grant time-off in lieu to the junior staff, this was not always possible due to operational requirements. Nevertheless, he had required all units to recompense OT with time-off as far as practicable;

- the workload of the Scenic Services Unit fluctuated. If additional manpower was acquired on a permanent basis, there would be the problem of idling staff during the non-peak periods. The best method to deal with the situation was to retain a team of core staff to handle the workload during normal periods, while during peak periods the increased workoad would be coped with by hiring temporary staff (usually on a day-to-day term) and requiring the permanent staff to work OT. Hence, a certain amount of OT work by RTHK staff during peak periods was unavoidable; and

- given the above characteristics of TV programme production work, the use of non-civil service contract (NSCS) staff might not be the most appropriate solution to the problem of manpower shortage.

44. As employing NCSC staff might be more economical than paying OTA, the Committee asked whether the RTHK would employ more NCSC staff so as to enable it to grant time-off as the normal recompense for OT work.

45. In his letter of 14 December 2001, the **Director of Broadcasting** stated that:

- currently, RTHK employed over 200 NCSC staff. Management had adopted strict measures not to increase staff numbers. Meanwhile, RTHK had used the NCSC staff system to reduce OTA with favourable results. Notwithstanding RTHK's efforts to cut numbers, five additional NCSC drivers would be employed to provide transport service during weekends and public holidays. It was expected that this would reduce existing drivers' OT by 50%; and

- in financial terms, RTHK had successfully reduced its OTA expenditure by 27% from $5.9 million in 1998-99 to $4.28 million in 2000-01. For 2001-02, an OTA expenditure of $3.8 million was projected, which represented a 35% reduction compared to 1998-99.

School ETV service

46. In respect of the school ETV service, the Committee noted from paragraphs 6.3 and 6.4 of the Audit Report that the ED was primarily responsible for developing school ETV programmes and writing programme scripts. RTHK was responsible for the production of the programmes. In 2000-01, RTHK spent $58 million on ETV production whereas the ED spent $23 million on the ETV service. According to paragraph 6.15, in 2000, the productivity of RTHK's programme staff was 8.2 programmes (or 2.1 output hours) per year per staff member for the school ETV production. The Committee asked about the reason for the low productivity of the staff responsible for ETV programmes and the high cost of production.

47. The **Director of Broadcasting** explained that:

- similar to the PATV service, the production costs of different TV programmes varied significantly according to their complexity and format. The production cost of a simple TV programme showing a one-to-one interview would be low whereas that of a drama would be higher. At present, 70% of the ETV programmes were drama production and a lot of animations, incurring high production cost, were used. Actually, 69% of RTHK's animation production was for use in ETV programmes;

- the high cost of ETV production was also attributable to the use of children actors, resulting in a longer time required for producing a programme. Children actors needed more time for rehearsal and were not as efficient as professional actors. According to labour legislation, they could not work for more than four hours a day after school. Thus, most filming work had to be done on Saturdays;

- the production cost of a programme was not directly proportional to its length. For instance, the effort and resources required for producing a 15-minute programme was not half of those for a 30-minute programme. Generally speaking, ETV programmes were those that required more resources for production. Such programmes accounted for 8.5% of RTHK's total output hours, about 16% of RTHK's film-crew time and 18% of RTHK's total production resources. To produce a programme which appealed to viewers and matched the school curriculum, a certain amount of investment was necessary; and

- in the past two years, RTHK had outsourced the production of some ETV programmes on Putonghua. The bids submitted by the tenderers ranged from $100,000 to $400,000, and the average cost was $270,000. In comparison, RTHK's in-house production cost was $300,000. RTHK had undertaken to reduce its production cost by 10% next year.

48. The Committee were concerned about the low viewing rates for the school ETV programmes in secondary schools, particularly the Chinese Language, English Language and Mathematics programmes. As shown in Table 10 of paragraph 6.22 of the Audit Report, for secondary schools, the overall viewing rate was only 18%. The viewing rates for Chinese Language, English Language and Mathematics were 6%, 6% and 8% respectively. For primary schools, the viewing rate for Putonghua was 43%. The Committee considered that the situation was particularly unsatisfactory because of the high cost of production. The Committee therefore asked about the reasons for the low viewing rates and how the ED would improve the situation.

49. **Mr Matthew CHEUNG Kin-chung, Director of Education**, responded that:

- the main reason for the disparity of viewing rates between primary school programmes and secondary school programmes was the difference in viewing practices due to provision of equipment. Primary schools were provided with one TV set for each class of students and one video cassette recorder (VCR) for every four classes. Secondary schools were provided with only one TV set and one VCR for each form level. As such, primary school teachers usually allowed their students to view the ETV programmes at the time of broadcast whereas secondary school teachers normally taped the programmes and let their students watch the programmes later. Hence, the viewing rates in secondary schools tended to be low;

- to address the problem, the ED would, as far as possible, convert the ETV programmes to digitised format on video compact discs (VCDs) for distribution to schools. For primary schools, the plan was to convert the programmes before June 2002 and each primary school would at least be provided with four VCDs. For secondary schools, the plan was to complete the conversion by September 2003. In future, all new programmes would be provided in the form of VCDs. In the short term, to improve the accessibility of ETV programmes, by the end of the current school year, all programmes could be viewed on the Internet;

- as regards the contents of the programmes, the ED would maintain close contact with schools to ascertain the requirements of users and to ensure that the new productions would meet their expectations; and

- a Standing Committee on the Development of ETV Service (Standing Committee) would be established to review the school ETV service and to study the direction for future development. The Standing Committee, to be chaired by the Deputy Director of Education, would comprise representatives from RTHK, the Information Technology and Broadcasting Bureau, the Education and Manpower Bureau (EMB), as well as from the school sector and the media sector. The ED planned to announce the Standing Committee's membership and objectives by the end of December 2001 so that it could start work in early 2002.

50. On the viewing rate for Putonghua programmes, the **Director of Education** said that as there was usually one Putonghua lesson a week in primary schools and it was common practice for primary school teachers to show the ETV programmes during live broadcasting, the viewing rate of the programmes for Putonghua was relatively low. The

situation would improve with the production of VCDs. Starting from next week, the ED would distribute to schools VCDs recording 13 programmes for Putonghua.

51. Regarding the reasons given by schools for not using the ETV service, paragraphs 6.23 to 6.25 of the Audit Report revealed that the three common problems were "tight curriculum", "programmes did not match schools' syllabi" and "insufficient supplementary teaching materials". Besides, secondary schools felt that the contents of the programmes were out of date and could not motivate students to learn. In view of the schools' feedback and the fact that an ETV programme would only be replaced every five years, the Committee pointed out that, unless the programmes were more creative and could match the expectations of teachers and students, the distribution of VCDs as an alternative medium would still be ineffective for attaining better viewing rates.

52. The **Director of Education** said that:

- it was important to keep the contents of the programmes up-to-date. To this end, the ED planned to shorten the cycle for replacing the programmes. Regarding secondary schools, all ETV programmes for Form One students would be replaced in the current school year;

- it was a fact that secondary schools' demand for ETV service was smaller than that of primary schools. With the development of information technology (IT), the use of IT and the Internet in education was becoming more popular. Given their interactive mode of communication, programmes that made use of IT might be a more appropriate form of teaching aids. As such, an overall review on the ETV service would be conducted by the Standing Committee. Currently, the ED's tentative plan was to gradually cease the production of ETV programmes for secondary schools from 2003-04. As regards the ETV service for primary schools, a final decision would be made after a review on the ETV service and the viewing rates of the programmes was conducted in the two years after 2003-04. All these would be discussed and decided by the Standing Committee; and

- the ED would not waste the airtime of the TV stations even if the production of secondary ETV programmes ceased. It would be used for showing other educational programmes, such as those relating to pre-school education and adult education, which were also very important.

53. In the light of the Director of Education's reply, the Committee asked about the membership and terms of reference of the proposed Standing Committee. The Committee further enquired:

- about the exact meaning of gradually ceasing the production of ETV programmes for secondary schools from 2003-04;

- whether it would completely cease the production of secondary school ETV programmes by that time or it would continue with the production, only that the programmes would be recorded on VCDs for distribution to schools; and

- if the intention was to completely cease the production of the programmes, how the ED would deal with the resulting excess manpower.

54. In his letter of 14 December 2001, in ***Appendix 79***, the **Director of Education** provided the proposed membership and terms of reference of the Standing Committee.

55. In his letter of 27 December 2001, in ***Appendix 80***, the **Director of Education** informed the Committee of the ED's plan regarding the production of ETV programmes for secondary schools from 2002-03. He stated that:

- to ensure cost-effectiveness while at the same time ensuring that schools' needs could be fully addressed, the ED intended to proceed on two fronts. First, it would provide a small but essential collection of ETV programmes in the form of VCDs which also contained the supplementary materials, such as teacher's notes and pupil's worksheet. This part of work would be completed by 2002-03. Other than the Science programmes which enjoyed high utilisation rates, secondary school programmes would not be replaced regularly as in the past. This meant that, as a rule, regular replacement of secondary school programmes, except Science programmes, would cease after 2002-03; and

- at the same time, the ED would monitor the utilisation of these programmes and the needs of teachers for further production. From 2003-04 onwards, new programmes would only be provided when there were strong justifications, either in terms of educational needs or reasonable requests from schools and teachers. In this connection, endorsement of the Standing Committee (to be set up in January 2002) would be required.

56. On the question of excess manpower resulting from reduced ETV programme production, the **Director of Education** informed the Committee in the same letter that:

- the resulting excess capacity of the staff would be redeployed to enriching the primary school ETV programme collection which, according to a survey done in May 2001, had a shortfall of about 130 programmes since 1998; and

- at the same time, part of the excess manpower was to be redeployed to producing new educational programmes arising from justifiable educational needs and requests from schools and teachers. These programmes would include those for pre-primary school children, adult education, life-wide learning, parent education etc.

57. Noting that Audit's survey on viewing rates had helped to reveal schools' reasons for not using the ETV service as well as schools' opinions on the ETV programmes (paragraphs 6.20 to 6.27 of the Audit Report), the Committee questioned:

- whether the ED had conducted its own surveys to gauge schools' feedback on the ETV programmes, and if so, whether the ED's surveys had revealed similar results; and

- whether the ED was aware of teachers' negative comments on the ETV programmes for secondary schools and if so, why it had not ceased the production of the programmes earlier.

58. The **Director of Education** and **Mr LO Man-fai, Chief Curriculum Development Officer (Educational Television)**, replied that:

- in June every year, the ED conducted school questionnaire surveys on the utilisation of the school ETV service. The focus was on utilisation rates and viewing rates, but not the reasons behind. Although the schools, for some reason, had reported a higher utilisation rate to the ED, generally the ED's surveys also revealed that the viewing rates for secondary school programmes were lower than those for primary school programmes;

- to make further improvement, in future, apart from utilisation rates, the ED's surveys would also cover qualitative aspects (such as the quality and effectiveness of the ETV service, as well as teachers' opinions), with a view to developing an effectiveness indicator; and

- in the past seven or eight years, the ED had committed most of its ETV resources to primary school programmes due to rapid changes in the primary school curriculum. As such, the programmes for secondary schools had not been replaced frequently. Hence, the secondary schools' comment that the ETV programmes were out of date.

59. The Committee considered that airtime was a precious resource and should not be wasted on programmes with low viewing rates. The Committee asked whether the ED would set a minimum acceptable viewing rate to signal when a programme should cease to be produced and broadcast. The Committee also asked whether the ED's plan to cease the production of secondary school ETV programmes was made in response to the Audit Report or due to the unsatisfactory viewing rates.

60. The **Director of Education** said that the quality and effectiveness of the school ETV service could not be reflected solely on the basis of viewing rates. It was more important to assess the educational outcome and the service's impact on teaching and learning. However, these aspects were difficult to measure. That was why the ED proposed to cover the qualitative aspect in future surveys.

61. **Mrs Fanny LAW FAN Chiu-fun, Secretary for Education and Manpower**, supplemented that:

- it was not true that ED only reviewed the school ETV service because Audit had studied the matter;

- before the use of IT in education, ETV was almost the only electronic teaching aid available for use by teachers. With the launching of the Five-Year Strategy for IT Education by the Government, the ED began to explore the possibility of strengthening the teaching resources through the application of IT. In future, there would bound to be rapid changes in the ETV service due to the development of IT. Probably, there would be cross-subject programmes while the production cost might be lower. Programmes could also be procured from overseas or shared on the Internet;

- the task of the Standing Committee to be set up was to review different aspects of the school ETV service, especially the content, mode of delivery, production, utilisation of airtime and cost-effectiveness, in the light of the education reform and advances in IT, and to map out an implementation plan; and

- while she believed that, in future, there would be less live broadcasting of ETV programmes, it did not mean that the airtime should be given up altogether. In making a decision, there would be other factors that should be taken into account, such as the overall educational need and whether the service targets should include adults, people who pursued life-long learning or pre-school children, other than school students.

62. **Mrs Carrie YAU, Secretary for Information Technology and Broadcasting**, added that the Standing Committee would also consider how to bring in the industry, such as the animation houses, for the production of ETV programmes, so as to make the programmes more appealing to students. Another option was to outsource the production of such programmes to draw on the talent in the private sector.

63. While noting the Administration's view that viewing rates alone could not reflect the effectiveness of the school ETV service, the Committee considered that without an objective indicator, it would be difficult to assess the cost-effectiveness of the service. It would also be difficult to prove that the large amount of public money spent on the service had achieved value.

64. The **Secretary for Education and Manpower** and the **Director of Education** responded that:

- it was true that viewing rates could not reflect the actual utilisaton of the programmes as teachers might tape the programmes and show them to students later. Nevertheless, the Administration was also concerned about the utilisation of the programmes. The ED would conduct surveys on the utilisation of the programmes and the VCDs, including teachers' views on their effectiveness; and

- the ED would put forward the matter for consideration by the Standing Committee.

65. The Committee further enquired:

- about the methods of distributing the VCDs; and

- how, after converting ETV programmes to VCDs, the ED would evaluate their utilisation and effectiveness, and how the ED would collect users' opinions on the programmes and the VCDs.

66. In his letter of 27 December 2001, the **Director of Education** stated that:

- four copies of a VCD would be provided to each school. While the VCDs were intended for use by teachers in the classroom, schools would be advised to place one or two copies in the school library so that pupils could view the programmes whenever there was the need or borrow the VCDs and view them at home. The long-term objective was to build up a video-resource library for reference by teachers and pupils; and

- on the evaluation of utilisation rates, the ED would continue to despatch questionnaires for every new programme to collect teachers' feedback. The ED would measure the utilisation rate of the ETV programmes and report the rate as a performance indicator in the COR irrespective of whether they were broadcast or provided in the form of VCDs. Furthermore, teachers would be asked to comment on the effectiveness and usefulness of the programme for compilation of the effectiveness indicator.

67. On the quality of the ETV programmes, the Committee asked:

- how the ED ensured the quality of the ETV programmes currently produced by the RTHK; and

- whether the ED could outsource the production of the ETV programmes.

68. The **Director of Education** informed the Committee in the same letter that:

- ETV programmes were jointly produced by the ED and RTHK. As such, the two departments shared the responsibility for the quality control of the programmes produced. The ED was responsible for programme content, research and scripting. It also served as the producer. ED officers would be present during the filming and other stages of production to ensure the educational quality of the programme. On the other hand, RTHK took charge of the technicalities of production and funding control; and

- under the present arrangement, funding was provided directly from the EMB to the Director of Broadcasting for producing ETV programmes. RTHK was thus structurally the service provider on ETV programme production. RTHK would consider outsourcing the production work when it perceived such a need, for example to meet the sharp increase in ETV programme output in 1999-00 and 2000-01.

Budgetary control

69. The Committee noted from paragraph 3.9 of the Audit Report that, among the 91 TV programmes which had incurred a direct cost of more than $100,000 each in 2000-01, 34 programmes (i.e. 37%) had exceeded the budgets. The Committee asked the Director of Broadcasting whether he considered such a percentage of budget variances acceptable.

70. The **Director of Broadcasting** responded that:

- vote controllers, particularly those in the Producer rank, were responsible for several programmes in a year. They were allowed flexibility in deploying the allocated budgets under their control among the programmes. It was not unusual for them to approve budget revisions for individual programmes to meet changing needs. It should also be noted that in Audit's analysis, 37 programmes (i.e. 41%) were produced within budgets; and

- RTHK agreed with Audit that there was a need to keep formal record of approvals for budget revisions and to ensure that the revised budget data are input into the Costing System for budgetary control purposes.

Outsourcing opportunities

71. The Committee noted from paragraph 7.22(b) of the Audit Report that the Director of Education had said that he would be glad to work out with RTHK a proposal for outsourcing 10% to 15% of the school ETV programme productions. The Committee consider that such a percentage was low and asked:

- whether it was necessary to put a cap on the percentage of programme productions to be outsourced; and

- whether the EMB had explored the feasibility of purchasing ETV programmes from local or overseas sources.

72. In her letter of 17 January 2002, ***in Appendix 81***, the **Secretary for Education and Manpower** stated that:

- at present, 21% of the production work in relation to ETV, including filming, art work, transportation, etc., was already outsourced. While the EMB agreed that outsourcing was a viable and flexible option, the Bureau had to

proceed at a measured pace to avoid massive redundancy in the present economic climate. The EMB's target was to outsource an additional 5% of the programme production work by 2003-04, thus increasing the percentage of work outsourced to about 25%. The EMB would review the extent of outsourcing by the end of 2003-04; and

- the EMB would increase the purchase of good and suitable ETV programmes from local and overseas sources to bring in more variety in ideas, presentation and content. The ED was identifying suitable programmes for this purpose.

73. **Conclusions and recommendations** The Committee:

Performance measurement and reporting

- express concern that:

  (a) the Controlling Officer's Report (COR) of Radio Television Hong Kong (RTHK) has not included staff productivity indicators for its public affairs television (PATV) service, although such indicators would provide useful information to help stakeholders assess RTHK's staff productivity;

  (b) RTHK has not set productivity targets or standards for assessing the productivity of the PATV programme staff;

  (c) RTHK has not reported viewer numbers of its PATV service in the COR, although such statistics can help stakeholders assess the effectiveness of the service; and

  (d) the existing performance indicators in the COR cannot adequately reflect RTHK's achievements in fulfilling the role of a public service broadcaster;

- acknowledge that RTHK will:

  (a) include staff productivity indicators for the PATV service in the COR and will initiate work on setting productivity targets and standards;

  (b) attempt to obtain both prime-time and fringe time viewership figures for television programmes for inclusion in the COR, and will include some qualitative questions in future surveys to ascertain whether it is possible to draw up suitable qualitative indicators for its radio service; and

(c) attempt to devise performance indicators in line with international practices and development, for reporting RTHK's success in fulfilling the role of a public service broadcaster;

Budgetary control

- express concern that:

  (a) of the 91 television programmes which had incurred a direct cost of more than $100,000 each in 2000-01, no budget data on 20 programmes (i.e. 22%) were recorded in the Costing System;

  (b) although budget approvals for the 20 programmes had been obtained from the vote controllers concerned, formal records of the budget approvals were not kept; and

  (c) for the 34 programmes (i.e. 37%) which had exceeded the budgets, even though budget revisions had been approved, the revised budget data were not input into the Costing System and formal records of the budget revisions were not kept;

- acknowledge that with the assistance of exception reports, which have been produced since July 2001, RTHK will closely monitor budget variances and take prompt follow-up actions;

Procurement of services

- express concern that five of the Independent Commission Against Corruption's (ICAC's) recommendations to improve RTHK's procurement procedures, made in 2000, have not yet been implemented;

- recommend that the Director of Broadcasting should expedite action to implement the remaining ICAC recommendations;

- express concern that, in hiring film crews, RTHK has not complied with Stores and Procurement Regulation 280(c) which states that, for jobs exceeding $50,000, written quotations from not less than five contractors should be obtained;

- recommend that the Director of Broadcasting should closely monitor the situation to ensure that his staff comply with Stores and Procurement Regulation 280(c);

- express concern that the choice of film crews may be unduly affected by the personal preferences of individual producers and that, without an appropriate marking scheme, there is no assurance that filming jobs are awarded in an open and equitable manner;

- recommend that the Director of Broadcasting should:

  (a) expedite action to implement a marking scheme for the hiring of film crews and procurement of other major services; and

  (b) consider deleting from RTHK's supplier lists those suppliers who have refused to submit written quotations;

Management of overtime (OT) work

- express dismay that in the cases revealed by Audit:

  (a) the film crews had inaccurately reported their return times in the Job Assignment Forms; the inaccurate entries were readily accepted by the countersigning officers; and RTHK lacked effective internal checking to detect such inaccuracies; and

  (b) contrary to Civil Service Regulation (CSR) 667, OT periods were accumulated by RTHK staff for claiming OT allowance;

- consider that the shortcomings in (a) above have cast doubt on the reliability of the Job Assignment Forms as the official attendance records of the film crews;

- acknowledge that the Director of Broadcasting:

  (a) has introduced a new Job Assignment Form with separate space for recording vehicle returned time and film crew off-duty time, which will improve control and facilitate independent checking of OT work;

  (b) is vigorously following up the cases of non-compliance with CSR 667; and

  (c) has agreed to use time-off as the normal recompense for OT work as far as staff rosters permit;

School educational television (ETV) service

- express grave dismay about the low viewing rates for the school ETV programmes in secondary schools, particularly the Chinese Language, English Language and Mathematics programmes;

- acknowledge that regular replacement of secondary school programmes, except Science programmes, will cease after 2002-03. From 2003-04 onwards, new programmes will only be provided when there are strong justifications, and this will require the endorsement of the Standing Committee on the Development of ETV Service to be set up in January 2002. Meanwhile, the Education Department will provide a small but essential collection of ETV programmes in the form of video compact discs (VCDs) for distribution to schools;

- express concern that the distribution of VCDs as an alternative medium will still be ineffective for attaining better viewing rates unless the programmes are more creative and can meet user needs;

- urge the Director of Education to consult the Legislative Council at an appropriate time on the following:

  (a) whether the school ETV service has valid educational value;

  (b) whether the recommendations of the Standing Committee on the Development of ETV Service will meet the needs of schools and students;

  (c) the methods that will be adopted for distributing VCDs, evaluating and tapping the utilisation rates of VCDs, and surveying users' opinions on the ETV programmes provided in the form of VCDs; and

  (d) whether there is a possibility of sourcing alternative producers, other than RTHK, on a more competitive basis;

Outsourcing opportunities

- express concern that RTHK has not devised a clear strategy for progressively increasing the scale of outsourcing for school ETV, PATV and radio programmes;

- acknowledge that RTHK's new outsourcing initiatives, particularly the outsourcing of school ETV programme productions, are a step in the right direction and that subjecting RTHK's programme production to market testing will help enhance the economy, efficiency and effectiveness with which RTHK delivers its services;

- note the Director of Education's views that outsourcing is a viable, flexible and cost-effective alternative to supplement the mainstream production by RTHK, and that the Education and Manpower Bureau's target is to increase the percentage of outsourced ETV programme production work to about 25% by the 2003-04 financial year;

- urge the Secretary for Education and Manpower and the Director of Broadcasting to devise a strategy for outsourcing the production of school ETV programmes and, in doing so, take into account the benefits (e.g. cost savings) of outsourcing and the need to provide independent producers with more business opportunities to help achieve the Government's objective of fostering the development of the broadcasting and film industries; and

- wish to be kept informed of:

  (a) the progress of including staff productivity indicators for the PATV service in the COR and of setting productivity targets and standards;

  (b) the progress of including prime-time and fringe time viewership figures for television programmes in the COR and of including qualitative questions in future surveys with a view to drawing up suitable qualitative indicators for the radio service;

  (c) the progress of devising performance indicators for reporting RTHK's success in fulfilling the role of a public service broadcaster;

  (d) the outcome of RTHK's follow-up action on the cases of non-compliance with CSR 667;

  (e) the actions that will enable RTHK to use time-off as the normal recompense for OT work;

  (f) the deliberations, conclusions and recommendations of the Standing Committee on the Development of ETV Service; and

  (g) the strategy for progressively increasing the scale of outsourcing for school ETV, PATV and radio programmes.

Chapter 10

Provision of legal aid services

Audit conducted a review of the legal aid services provided by the Legal aid Department (LAD). The review covered the following areas:

- increasing costs of legal aid services;
- some measures to contain the costs of legal aid;
- means test and merits test; and
- performance indicators and strategic planning.

Some measures to contain the costs of legal aid

2. Audit observed that in 2000-01, the LAD spent a net amount of $413 million on legal aid cases through the Ordinary Legal Aid Scheme (OLAS). The Supplementary Legal Aid Scheme was a self-financing scheme which had made a surplus of $8.6 million in the financial year ended 30 September 2000. The deficit (i.e. legal aid costs less costs recovered) of the OLAS increased (in real terms) by 280% from 25.9 million in 1993-94 to $122 million in 2000-01. Audit considered that there was a need to limit the deficit by adopting more cost control measures to contain the legal aid expenditure of the OLAS. Paragraphs 3.2 to 3.4 of the Audit Report stated that in view of the large number of matrimonial cases which in the year 2000-01 represented 36% of the civil legal aid costs, the LAD had asked applicants for legal aid to consider using the family mediation service of the Judiciary. The service was a three-year pilot scheme which began in May 2000. Paragraph 3.15 stated that the Judiciary had commissioned a local tertiary institution to conduct an evaluation of the effectiveness of the service. The Committee enquiried about the scope and progress of the evaluation.

3. In his letter of 3 December 2001, in ***Appendix 82***, **Mr Wilfred TSUI Chi-keung, Judiciary Administrator**, advised the Committee of the objectives of the study to evaluate the Pilot Scheme on Family Mediation. He also stated that:

- as at the end of November 2001, the study team of the Hong Kong Polytechnic University had conducted 121 interviews: 94 with service users, 13 with mediators and 14 with referrers. It had collected 95 users' satisfaction questionnaires;

- in September 2000, the study team administered a public attitude survey with over 800 respondents to assess public understanding and acceptance of family mediation. It would conduct the same survey one and a half years after the implementation of the Pilot Scheme, i.e. in February 2002, to see if there were any changes; and

- an interim report would be compiled in March 2002 on the basis of the data and information in hand. A final report, covering the entire three-year period of the Pilot Scheme, would be released in August 2003.

4. In the light of the above reply, the Committee asked whether:

- the Judiciary had come to preliminary conclusions on the effectiveness of the Pilot Scheme; and

- the interim report on the Pilot Scheme would be submitted to the Legislative Council.

5. The **Judiciary Administrator** replied that the final evaluation report would not be released until August 2003. Hence, he was not able to comment at this stage on the effectiveness of the Pilot Scheme. He also informed the Committee in his letter of 12 December 2001, in ***Appendix 83***, that the interim report would be submitted to the Legislative Council as soon as it was released to the Judiciary.

6. Noting that the Pilot Scheme was to take three years, the Committee wondered whether this meant that during this period, the Director of Legal Aid could not implement Audit's recommendations in paragraph 3.12 of the Audit Report. **Mr CHAN Shu-ying, Director of Legal Aid**, explained that the relevant existing legislation did not allow the LAD to do so. Legislative amendments would have to be made. The policy issue involved was whether there was a need to require applicants in matrimonial cases to use the family mediation service to resolve the disputes before legal aid would be granted. The **Director of Legal Aid** further said in his letter of 14 January 2002, in ***Appendix 84***, that the LAD would take into account the findings of the interim evaluation by the Hong Kong Polytechnic University study team and the recommendations in its final report in considering the viability of making this a requirement for applicants in matrimonial cases.

7. **Mr Andrew WONG, Director of Administration**, supplemented that the Administration hoped to study the findings of the evaluation on the Pilot Scheme, including those on the acceptance of family mediation and the problems of the Pilot Scheme. After studying the findings, the Administration would conduct a consultation exercise and discuss with Legislative Council Members the way forward for the policy. If there was a need, the Administration would propose the relevant legislative amendments.

8. On the control of costs of matrimonial cases, the Committee noted from paragraph 3.26(d) of the Audit Report, the new scale of fixed costs for such cases had been put into effect. In response to their question about the effectiveness of the measure to improve cost control, the **Director of Legal Aid** said that over 90% of Legal Aid Panel solicitors indicated their willingness to elect fixed costs in handling legally aided matrimonial cases. The legal aid cost spent on such cases had been substantially reduced.

9. The Committee further enquired about the new scale of fixed costs for matrimonial cases and the amount of savings achieved by the adoption of fixed costs. The **Director of Legal Aid** provided the information on the new scale in Appendix 3 of his letter of 18 December 2001, in ***Appendix 85***. He also stated that for the period between 1 January and 30 November 2001, there were a total of 915 assigned-out cases closed in respect of which fixed costs were elected. The amount of legal aid costs incurred was around $14.7 million. Had the costs of these cases been taxed or assessed, the amount of legal aid costs that could have been payable in respect of these cases was estimated to be around $22.7 million. The amount of savings directly attributable to the election of fixed costs was thus estimated to be $8 million.

10. According to paragraph 3.17 of the Audit Report, upon granting of legal aid, an aided person's case could either be assigned to an in-house lawyer or a lawyer in private practice. The Committee asked whether in deciding to assign out a case, the LAD had taken into consideration the difference between the fees charged by an in-house lawyer and those charged by a lawyer in private practice.

11. The **Director of Legal Aid** replied that:

- the LAD would consider the capacity and workload of its Litigation Division as well as the right of an aided person to choose lawyers for protection of his lawful rights and interests as stated in Article 35 of the Basic Law. Hence, if the aided person nominated a lawyer in private practice to handle his case, the LAD could not choose another lawyer for him; and

- if fixed costs were elected in legally aided matrimonial cases, legal proceedings would be conducted in a cost-effective manner. As regards personal injury cases, the LAD was normally able to deduct the legal costs from the damages awarded to aided persons. In principle, there was not much difference between the fees charged by an in-house lawyer and those charged by a lawyer in private practice. The reasons were good chances of success and the availability of some protection funds such as the Employees Compensation Fund. Even if the aided person did not receive the damages, the legal costs could be covered by some funds.

12. Referring to the conditional fees arrangements, the Committee understood from paragraph 3.42 of the Audit Report that the arrangements had previously been proposed by the Department of Justice but was shelved. In the same paragraph, the Director of Legal Aid had said that he would liaise further with the Department of Justice on this issue. The Committee asked whether the Director would discuss with the Department of Justice (D of J) the viability of introducing conditional fees arrangements into Hong Kong.

13. The **Director of Legal Aid** replied that:

- as mentioned in the Audit Report, the Inter-departmental Working Group (IWG) set up in 1997 had noted that the Government of the United Kingdom (UK) had been using conditional fees arrangements in litigation. This was also one of the issues to be examined in the LAD's strategic plan. As conditional fees arrangements were formally introduced in the UK in 1995 to replace legal aid, the LAD needed to consider the viability of introducing them in Hong Kong in the light of the experience in the UK;

- the IWG had recommended that the Department of Justice should be asked to review the issue of conditional fees at the appropriate time, because this concerned legal policy and would have a bearing on the existing lawyer's fees system; and

- the D of J had set up a working group to study the issue of access to justice. The LAD would request that the proposal of conditional fees arrangements be also reviewed by the working group.

14. The **Director of Legal Aid** provided additional information on this issue in his letter of 25 January 2002, in ***Appendix 86***. He stated that:

- the proposal to introduce the conditional fees arrangements was raised with the D of J in the course of the Legal Aid Policy Review in 1998. However, it was not considered that the time was ripe to assess the English system of conditional fees at the time;

- in the same year, the IWG recommended that the D of J should be asked to review the issue of conditional fees arrangements at the appropriate time. In 1999, Legal Aid Services Council was consulted and endorsed the recommendation. The Secretary for Justice was so informed; and

- in view of the Director of Audit's recommendation, the LAD had further taken up the matter with the Secretary for Justice. In a recent reply to the LAD's request to revisit the issue, the Secretary had agreed that serious consideration should be given to conditional fees arrangements. Given that the matter was a complicated one, the Secretary was arranging for counsel in her Department to conduct a thorough study and would consult the LAD before taking further steps.

Means test and merits test

15. The Committee noted from paragraph 4.9 of the Audit Report that Audit had conducted studies on 82 legal aid cases completed in 1999 and 2000 to examine the means test procedures. Paragraph 4.14 revealed that of the 82 cases, there were 31 cases where the applicants had indicated that they had income from employment. Of these 31 cases, eight applicants were not able to produce any proof of income. Paragraph 4.17 further revealed that of the 82 cases, there were three cases where the applicants were sole proprietors of businesses. In two of these three cases, the applicants did not produce financial statements in respect of their businesses.

16. Against the above background, the Committee asked how the LAD had ensured that the information provided by legal aid applicants was accurate and reliable.

Provision of legal aid services

17. The **Director of Legal Aid** said that:

- before October 1997, the Social Welfare Department (SWD) was responsible for conducting the means test of the majority of the legal aid cases while the LAD only dealt with the means test of the urgent cases. In the same year, in response to public requests for shortening the vetting time, the LAD revised its work procedures, and starting from October 1997, it was fully responsible for the means test of civil legal aid applications. The LAD then launched its performance pledges in November 1997. The target was to complete the vetting of 80% of the civil cases within three months;

- the LAD was aware of the importance of the means test. As a result, in 1997, it also invited the Corruption Prevention Department of the Independent Commission Against Corruption (ICAC) to comment on its vetting procedures. The LAD subsequently implemented the recommendations made by the ICAC in 1998. Furthermore, the LAD set up its Internal Audit Unit in mid-1998. After a review of the means test procedures, the Unit made recommendations for improvements to the procedures, which had been implemented by the LAD. Since then, the Unit selected 200 to 250 cases every year for verification to ensure that the vetting work had been conscientiously carried out by the Department. In order to further tighten up the means test procedures, the LAD had set up a working group in January 2001 to comprehensively review the application and means test procedures;

- as for Audit's recommendations in paragraph 4.24 of the Audit Report, the LAD normally requested legal aid applicants to provide information and the relevant documentary proof and would, if necessary, conduct in-depth investigations. Noting the results of the case studies conducted by Audit, the LAD had issued a circular reminding its staff to conduct the mean test according to the established procedures, including strictly requiring legal aid applicants to produce the relevant documentary proof and a declaration on assets kept outside Hong Kong. Regarding Audit's recommendation for home visits, it would be followed up by the working group, and clear guidelines would be issued accordingly;

- under existing legislation, it was a criminal offence to provide false information and withhold information on assets in respect of a legal aid application. If convicted, the maximum penalty was a fine of $10,000 and imprisonment of six months. In the past three years, the LAD had passed 17 cases to the Hong Kong Police Force (HKPF) for investigation. Of these cases, four applicants or aided persons had been convicted. Two were sentenced to imprisonment and the other two were fined. The investigation of three cases was still in progress;

- under the law, even after the granting of legal aid, the aided person had the duty to report any change in his financial position. The LAD had reminded lawyers that if the applicant's assets shown in legal documents did not tally with the information provided by him in this regard, or in other cases in which the lawyers concerned considered that the applicant should not be granted legal aid, the lawyers had the duty to provide the LAD with the information. The LAD would then vet the case again. In other circumstances, if the third party could produce information showing that a certain applicant should not be granted legal aid, the LAD would conduct the means test again. If it was found out that the financial resources of the applicant exceeded the upper financial eligibility limit, his legal aid certificate would be revoked or discharged. The LAD had been implementing this policy during the past few years;

- under normal circumstances, an applicant was required to produce documentary proof. In arranging an appointment with the applicant for the means test, the LAD would provide the applicant with a checklist specifying the documents required for the purpose; and

- the few cases identified by Audit were processed in 1997 and fell into the category of urgent cases, viz. those with proceedings already in progress at the time of application, those with a bar date, those concerning injunctions or those concerning the safety of children. The LAD admitted that there were inadequacies in the verification of the financial resources of the aided persons in those cases.

18. In the light of the above reply, the Committee further asked:

- whether the LAD could ensure that applicants would definitely be required to produce proof of income and, where appropriate, financial statements;

- about the circumstances which warranted in-depth investigations into cases; and

- how the LAD detected the problems in those 17 cases, which were subsequently passed to the HKPF for investigation.

Provision of legal aid services

19. The **Director of Legal Aid** advised the Committee that:

- regarding the production of documents, the LAD had issued a circular requiring its staff to ensure that the decision should not be made until an applicant had produced all the necessary information. Whether an in-depth investigation was required depended on the circumstances surrounding individual cases. To a certain extent, the in-house lawyer would make a decision on the list of documents required from the applicant, based on his experience and judgement. If some applicants, such as casual workers and those who had no knowledge of their employers, were unable to produce any proof of income, the LAD would refer to their bank statements or savings passbooks for detailed examination of the entries of their income and expenditure;

- to a certain extent, it was the applicant's responsibility to provide proof his financial resources. Through the investigation procedures, LAD staff could decide, based on their experience and judgement, as to whether there was a need to obtain additional information from the applicant;

- regarding its staff's compliance with the means test procedures, the LAD would make more random checks on cases, strengthen staff training and organise more seminars. Experience-sharing sessions were also organised. In addition, team structure was in place, so that staff could seek advice from their team leader when problems arose; and

- as far as the 17 cases were concerned, the LAD received information from the third party in some cases and the information provided by the applicants or aided persons was not consistent with the relevant court documents. As litigants were required to submit an affirmation of means, they could not deceive the court.

20. The Committee noted the measures recommended by Audit in paragraph 4.24 of the Audit Report to deter fraudulent applications and to ensure that legal aid services were provided only to people who really could not afford the costs of conducting litigations on a private basis. They therefore asked the Director of Legal Aid to provide a timetable for the implementation of Audit's recommendations.

Provision of legal aid services

21. In Appendix 4 of his letter of 18 December 2001, the **Director of Legal Aid** informed the Committee that:

- guidelines had been issued in early December 2001 reminding LAD staff to conduct home visits in doubtful cases. The LAD's own Internal Audit Unit had been instructed to select cases on a random basis for conducting home visits commencing in the first quarter of 2002;

- guidelines had been issued to LAD staff in October and early December 2001 to tighten means test procedures in the manner as recommended by the Director of Audit; and

- consolidated guidelines on means test were being drawn up by the Working Group on Review of Application and Means Test Procedures set up in January 2001 and chaired by him, and would be issued in the first quarter of 2002. Training was an on-going exercise. The LAD aimed to conduct Means Testing Workshops regularly for the staff concerned commencing in the first quarter of 2002.

22. Turning to the issue of home visits, the Committee understood from paragraph 4.11 of the Audit Report that no home visits had been conducted in the 82 cases studied by Audit. Paragraph 4.22 revealed that there were seven of them where applicants declared that they did not have any income from employment or any other sources but the LAD did not carry out any further investigations. The Committee pointed out that the case mentioned in the same paragraph involving an applicant who said that his daily expenses had been met by the "Lai See" money of around $1,000 a year was particularly doubtful. They queried:

- why the LAD had not paid a home visit in this case; and

- what the mechanism for paying home visits was.

23. The **Director of Legal Aid** responded that:

- the LAD paid 191 home visits in 1999, 187 in 2000 and 137 in 2001. Not all the home visits were related to means investigation. Visits might not fully serve the purpose of investigation. For example, with the rise in the general living standard, visits alone might not help ascertain whether the internal condition of the applicant's dwelling reflected his financial position. Due to the need to comply with the Personal Data (Privacy) Ordinance (Cap. 486),

LAD staff could no longer make enquiries with the applicant's neighbours regarding his employment;

- before 1997, home visits were conducted by the SWD. It had given the feedback that home visits might not be useful in certain circumstances and requested that the number of visits be reduced. Nevertheless, home visits were necessary in some cases, such as those in which the LAD had lost touch with aided persons;

- as regards the mechanism for home visits, the LAD relied, to a large extent, on the judgement of its in-house lawyers, and the need for such visits also depended on the circumstances surrounding the cases. In particular, the lawyer would make reference to the applicant's demeanour at the interview in deciding whether there was a need to conduct further investigation into his financial resources. In the past, when the SWD was responsible for means investigation in legal aid cases, the LAD would request the SWD to pay home visits; and

- the "Lai See" money case had its unique background. In 1997, the applicant applied for legal aid to seek a judicial review of the decision of the Ombudsman. He had previously lodged a legal aid application about another matter in 1992. The information that he provided in 1997 was consistent with that provided in 1992. At the interview, LAD staff could judge from his personal history and outfits that he was telling the truth. As the LAD understood that he did not wish to let his family know the case, it was bound to observe confidentiality on the case. Without his consent, LAD staff could not pay home visits.

24. It was recommended in paragraph 4.24 of the Audit Report that the Director of Legal Aid should pay home visits on a random basis and on all doubtful cases. The Committee noted from the Director's above reply that without the applicant's consent, LAD staff could not pay home visits. As stated in paragraph 4.9, Audit was only able to obtain the consent of the aided persons in 82 cases to examine the means test procedures. The Committee therefore considered that both they and the Director of Audit would encounter difficulties in carrying out their work and that the information about legal aid cases seemed to be more confidential than the minutes of meetings of the Executive Council.

25. In the light of the above , the Committee wondered whether, against the need to

observe confidentiality on legal aid applications, the LAD could pay home visits on a random basis. The **Director of Legal Aid** explained that:

- under section 24 of the Legal Aid Ordinance (Cap. 91), the relationship between an applicant for legal aid and the Director of Legal Aid and counsel and solicitor was equivalent to that of client, counsel and solicitor acting in their professional employment. Hence, the applicant was entitled to the professional privilege which required the LAD not to disclose information about the case to any other people, especially the other party in the litigation; and

- on some occasions, the LAD did not need to obtain the applicant's consent for the home visit. For instance, if LAD staff did not need to enter the applicant's home, they could note the living environment or take photographs of the surroundings for reference. In any case, home visits were limited in scope.

26. The Committee further pointed out that both the Audit Commission and the Public Accounts Committee had to discharge their respective functions as required by the relevant legislation and their work concerned public interest. The Committee asked whether the LAD would consider informing applicants, at the time applications for legal aid were made, that their case details would be disclosed to the Director of Audit.

27. The **Director of Legal Aid** replied that:

- at the time of application, an applicant was required to sign the form of consent and undertaking giving his consent to the Director of Legal Aid obtaining information relating to his income and assets from any government departments or private organisations for determination on his application for legal aid; and

- if the Committee considered it necessary for the Director of Audit to have access to the information on legal aid cases, the LAD would have to update the form. In that case, the LAD would have to consider various scenarios, e.g. whether an applicant would sign the form; and if not, whether the LAD would refuse to grant him legal aid.

28. **Mr Johnsman AU Chung-man, Acting Director of Audit**, supplemented that:

- when the Audit Commission examined the 82 legal aid cases in the conduct of this audit review, the identity of the applicants was of no interest to Audit. Rather, Audit was interested in the facts of the cases and the operation of the means test mechanism. Moreover, Audit staff observed strict confidentiality on the privacy of the individuals that came to their knowledge;

- for example, under section 4 of the Inland Revenue Ordinance (Cap. 112), Audit staff were allowed to have unrestricted access to any tax case in the course of auditing, provided that the staff had taken an oath of secrecy; and

- Audit had to seek the assistance of the LAD in obtaining the consent of the aided persons in the case studies. If those 82 aided persons had not given their consent, the Audit Commission would have not been able to complete this audit review.

29. The Committee were concerned about the difficulties encountered by the Director of Audit in obtaining the consent of the aided persons in past cases. They asked whether the Administration would put in place a mechanism, while safeguarding the rights and interests of legal aid applicants, to allow the Director unrestricted access to the information on legal aid cases, so that he could ensure the accountability of the LAD for its expenditure on legal aid. The **Director of Administration** informed the Committee, in his letter of 17 December 2001, in ***Appendix 87***, that:

- he had discussed with the Director of Legal Aid. The Director of Legal Aid would, in consultation with the Department of Justice, put in place a standing arrangement to seek, at the time applications for legal aid were made, the consent of applicants to disclose their case details to the Director of Audit, or his representatives, for purposes connecting with the conduct of audits on legal aid services; and

- subject to the advice of the D of J, the Director of Legal Aid aimed to implement the new arrangement within the first quarter of 2002.

30. The Committee noted that Audit had reviewed a legal aid case involving an infant with a wealthy father. Paragraph 4.29 of the Audit Report revealed that the father owned companies with total assets worth over $10 million and had millions of dollars in his personal bank accounts. In the means assessment, the financial resources of the parents were not taken into account. Legal aid was granted to the infant. In view of wide public

concern over this case, the Committee considered that there was an urgent need to plug the loophole, otherwise the expenditure on such cases could become a serious drain on legal aid resources.

31. In response to the Committee's view, the **Director of Administration** commented that to assess the parents' financial resources in legal aid application by an infant involved a policy change. In his letter of 19 December 2001, in ***Appendix 88***, the **Director of Legal Aid** stated that:

- the present arrangement of not aggregating the financial resources of parents and infant in determining the financial eligibility of the infant reflected the existing policy that was last reaffirmed in the Legal Aid Policy Review (1997-1999). The Working Group which conducted the review at the time recommended that the current method of assessing the financial eligibility of infant applicants should be retained. During the consultation exercise that followed, no opposing view was received in relation to this recommendation;

- the policy was reflected in Regulations 6(b) and 8 of the Legal Aid (Assessment of Resources and Contribution) Regulations (Cap. 91). In processing legal aid applications by infants, the LAD would have to adhere to this legislative provision; and

- this existing arrangement was in line with overseas practice. Under the Community Legal Service funding arrangement in the UK, children were assessed in their own right when they applied for Legal Representation and their parents' financial position was not taken into account.

32. The Committee noted from paragraph 4.35 of the Audit Report that Audit had carried out case studies on the merits tests of the 82 cases, comprising 72 civil cases and 10 criminal appeal cases. The Committee were concerned that although the 72 civil cases had been endorsed by a Senior Legal Aid Counsel/directorate officer, there were no detailed records of how the merits test had been conducted. The Committee enquired about the reasons for this.

33. The **Director of Legal Aid** said that:

- criminal appeal cases were different from civil cases in nature. Criminal appeal cases depended very much on the grounds for the appeal. The LAD had to refer to the relevant court documents in ascertaining the merits of the appeal case. As the aided person would not be able to provide the grounds for the appeal, LAD's professional staff must state the grounds in a memorandum to their supervisor for reference;

- as for the 72 civil cases, they were either matrimonial or personal injury cases. Most of the cases were factual and straightforward. It was easier to obtain the facts of the cases from the questionnaires or statements;

- as far as some very complicated civil cases were concerned, normally LAD staff had recorded in their reports to their supervisors the reasons for the recommendations as to whether legal aid should be granted;

- there were also complicated cases in which LAD staff would seek barristers' advice. The opinions and the recommendations would be clearly stated in the memoranda; and

- in response to Audit's recommendation, the LAD would prepare a checklist to further record the rationale for the LAD's decisions.

34. Upon the Committee's enquiry about the success rate of legal aid cases, the **Director of Legal Aid** replied that:

- there was no such breakdown in the LAD's computer system. The LAD would consider how to capture the information in the comprehensive information system currently under development;

- in many cases, success or failure might not be clear-cut terms. For example, in some matrimonial cases, the divorce proceedings were in progress while both parties also pursued matters like alimony, rights of custody, rights of access and transfer of property. The outcome could be that each party was awarded the custody of one child in the case of two children. In this type of cases, the successful party would not be awarded the legal costs. Hence, there was a certain degree of difficulty in deciding whether the cases were successful; and

- as regards criminal cases, it would not be appropriate to determine the success of the legal aid scheme by whether the appellant was able to win the appeal.

For legal aid in capital appeal cases, the Director of Legal Aid did not need to apply the merits test.

35. **Conclusions and recommendations** The Committee:

Some measures to contain the costs of legal aid

- acknowledge that the Judiciary considers that the family mediation service has the advantage of resolving disputes efficiently and cost-effectively;

- wish to be kept informed of the results of both the interim report and the final report on the Pilot Scheme on Family Mediation to be released in March 2002 and August 2003 respectively, and the viability of requiring applicants in matrimonial cases to use the family mediation service to resolve disputes before receiving legal aid;

Means test and merits test

- regret that the Legal Aid Department (LAD) had only been able to obtain the consent of the aided persons in 82 cases for the Director of Audit's examination of the means test procedures;

- acknowledge that the Administration has undertaken to put in place a standing arrangement to seek, at the time applications for legal aid are made, the consent of applicants to disclose their case details to the Director of Audit or his representatives, for purposes connecting with the conduct of audits on legal aid services;

- express concern that:

  (a) the LAD had only paid cursory home visits on a selective basis to verify the financial resources of legal aid applicants; and

  (b) the LAD did not take further steps to verify the incomes of applicants who were unable to produce proof of income or substantive evidence to support their applications;

- acknowledge that the Director of Legal Aid has issued guidelines:

(a) in December 2001 reminding LAD staff to conduct home visits in doubtful cases, and has instructed the LAD's own Internal Audit Unit to select cases on a random basis for conducting home visits commencing in the first quarter of 2002; and

(b) in October and early December 2001 to LAD staff to tighten means test procedures in the manner as recommended by the Director of Audit;

- express concern that there were no detailed records showing how the merits tests were conducted in civil cases;

- recommend that the Director of Legal Aid should, in cases where the estimated legal aid costs are significant, ensure that the justifications for the grant of legal aid for litigation in such cases are properly documented;

Performance indicators and strategic planning

- express concern that the LAD's performance indicators are largely focused on reporting operational activities and output;

- wish to be kept informed of the development of efficiency and effectiveness performance indicators, having regard to the practice of advanced countries;

- express concern that the LAD does not have an overarching strategic plan to determine how the legal aid objectives can best be achieved; and

- recommend that the Director of Legal Aid should, in consultation with the Director of Administration, develop an overarching strategic plan to better achieve the objectives of legal aid.

Chapter 11

Management of medical equipment

Part I: Introduction

The Hospital Authority (HA) is a statutory body established in December 1990 under the Hospital Authority Ordinance (Cap. 113). It manages 44 public hospitals/institutions which provide about 29,000 hospital beds. There are about 75,000 items of medical equipment in the HA hospitals costing $5.1 billion. In 2000-01, the Government granted $28,353 million recurrent subvention to the HA, and spent $1,348 million on hospital projects from the Capital Works Reserve Fund (CWRF). In the same year, the HA spent $540 million on new medical equipment, and $324 million on maintenance of medical equipment. Audit conducted a review to examine the economy, efficiency and effectiveness of the HA's management of medical equipment, and identified room for improvement in the following areas:

- allocation of resources for medical equipment;
- basis of provision of medical equipment;
- procurement of medical equipment;
- Asset Management System (AMS) and utilisation of medical equipment;
- maintenance of medical equipment; and
- the HA's overall management of medical equipment.

2. The Committee held two public hearings, on 3 December and 11 December 2001, to receive evidence from the Administration and the HA on the Director of Audit's findings and observations.

Part II: Evidence taken at the public hearing held on 3 December 2001

Allocation of resources for medical equipment

3. Paragraph 2.3 of the Audit Report stated that from time to time, based on the Government's development plans, the HA, in coordination with the Health and Welfare Bureau (HWB), built new hospitals or carried out extension works in existing hospitals, which were funded from the CWRF. The HWB prepared proposals for new capital works to the Finance Bureau (FB) for consideration. In respect of capital works projects for new hospitals or hospital extensions, the estimated construction costs and the estimated furniture

and equipment (F&E) costs, including those of medical equipment, were included in the project proposals. The proposals were then submitted to the Public Works Subcommittee of the Finance Committee (FC) of the Legislative Council for vetting, and to the FC for final approval. Paragraph 2.5 revealed that medical equipment costs usually accounted for some 80% of the F&E costs of a hospital project. To examine the applications for, and use of, funds from the CWRF for the acquisition of medical equipment items for new hospitals, Audit selected for review three recent hospital construction projects, namely the Alice Ho Miu Ling Nethersole Hospital (AHNH), North District Hospital (NDH) and Tseung Kwan O Hospital (TKOH).

4. Regarding the estimation of F&E costs for the AHNH, NDH and TKOH projects, the Committee noted from paragraph 2.17 of the Audit Report that for the AHNH project, acquisition of F&E items was based on the approved provision at constant prices, and no allowance for inflation was given. However, such acquisition for the NDH and TKOH projects was based on the approved money-of-the-day (MOD) provision, which included a provision for inflation. As revealed in paragraphs 2.7 and 2.28, the estimated cost of F&E for the AHNH project would be adjusted in the future in accordance with changes in the Consumer Price Index, while the provision of inflation of F&E in respect of the NDH project was based on the average movement of Import Unit Value Index of Scientific, Medical, Optical, Measuring and Controlling Instruments and Apparatus (IUVI) over the ten-year period up to 1993, and that in respect of the TKOH project was based on the Government Economist's forecasts of the trend of labour and construction price index movements.

5. Against this background, the Committee queried the use of three different budgetary approaches in drawing up the F&E budgets for the three hospital projects. **Miss Denise YUE Chung-yee, Secretary for the Treasury**, explained that:

- the proposal for the AHNH project was approved by the FC in 1988. In April 1993, after the receipt of fixed-price tenders for the main building contract, the FB sought approval for an increase in commitment for the construction of the hospital. As five years had lapsed after the approval of the original project estimate, price fluctuations and commercial considerations of the bidders were taken into account in determining the tender prices. However, at the time of the second funding application, the FB had not yet established a mechanism for converting project estimates at constant prices into those at MOD prices. In the light of the experience of adopting MOD estimates for some Airport Core Programme (ACP) projects in the early 1990s, the new mechanism was introduced around mid-1995;

- she noted that a portion of the total costs of the AHNH project was to be met by fund-raising, which amounted to $120 million at third quarter 1992 prices. However, she did not know how the donation had been spent on the project. It might have been used for the acquisition of F&E items;

- due to an urgent need to provide the NDH and the TKOH in the districts concerned, the Administration considered it necessary to adopt the fastest procedures to ensure the timely completion of the projects. Hence, the funding mechanism for the projects was different from that for other HA subvented projects. To this end, the Government signed project development agreements with the HA on the NDH and TKOH projects. It was clearly stated in each of the agreements that the approved project estimate should be paid in full to the HA in a lump sum and that any unspent balance in the project account should be repaid to the Government on completion of the projects; and

- based on the experience of adopting MOD estimates for some ACP projects, such an approach could ensure a higher degree of budgetary certainty about final project out-turn costs. Thus, MOD project estimates had already been used in the NDH and TKOH projects before the new mechanism was introduced in April 1995.

6. In the light of the above reply, the Committee asked the Secretary for the Treasury to provide information on the use of the donation of $120 million for the AHNH project. On the other hand, they pointed out that the funding application for the TKOH project was submitted to the FC about slightly more than one year after that for the NDH project, and therefore enquired about the basis for using two different indices for the projects. The **Secretary for the Treasury** advised the Committee in her letter of 8 December 2001, in ***Appendix 89***, that:

- the FB understood that the AHNH had raised a total of $156.47 million for the reprovisioning project, and the entire amount was spent on the construction works (versus F&E items) for the project;

- when the Administration approached the FC in November 1993 for funding in respect of the NDH project, the Administration had not yet rolled out the practice of seeking funding in MOD (versus constant price) terms to cover all capital works projects, whether within the ACP or not. Thus, the use of price adjustment factors pegged to trend labour and construction price movements was not a standard. Having regard to the fact that there was no index that

could fully reflect the price fluctuation of medical equipment and having considered other options such as using the Consumer Price Index (A), the Administration decided then to adopt the IUVI as the better alternative for estimating the MOD funding required for F&E items for the NDH; and

- in March 1995, the Administration decided to roll out the practice of using MOD estimates for all capital works projects. Departments had to adhere to a standard set of price adjustment factors pegged to trend labour and construction price movements. Accordingly, when the Administration approached the FC in July 1995 for funding in respect of the TKOH project, the FB adopted the trend labour and construction price index which was the then prevailing standard index for the purpose of estimating the MOD estimate for all capital works projects.

7. On the background of the acquisition of F&E items for the AHNH, NDH and TKOH projects, **Dr William HO, Chief Executive, Hospital Authority**, supplemented that:

- the HA had been following the Government's practices concerning funding applications and acquisition of F&E items for hospital projects. If the F&E cost was indicated as a percentage of the construction cost for the three projects, the F&E provisions did not differ much among the projects. In fact, the variances in their MOD estimates were due to the inclusion of inflation elements based on different indices;

- before acquisition of F&E items for hospital projects, the HA had to submit lists of proposed items for the approval of the HWB. If the actual out-turn inflation rate for F&E for a project was lower than the forecast inflation rate, tender prices of F&E items would be lower than expected. In this case, the unspent balance must be repaid in full to the Government. In other words, even if the HA received a lump sum from the Government, it had no intention of exhausting every cent of it; and

- concerning the use of a particular index as a measure of price movements of F&E for a hospital project, the Administration had stated in the Audit Report the limitations of the IUVI which was used for the NDH project. The HA considered that in future, if a better index could not be identified to replace the IUVI, the use of construction cost was a relatively simple method for estimating the F&E provision required for hospital projects. Moreover, construction cost was directly related to the gross floor area of a hospital and the complexity of the accommodation requirements, which in turn reflected the extent of the F&E provision required.

8. According to Table 6 of the Audit Report, the actual out-turn inflation rates for F&E were much lower than the forecast rates stated in the FC papers for the NDH and TKOH projects. The Committee therefore considered that there should be savings from the F&E provisions for the two projects. Noting that both hospitals had already commenced operation, the Committee enquired:

- when the projects would be fully completed; and

- how the savings would be returned to the Government.

9. The **Chief Executive, HA** and the **Secretary for the Treasury** responded that:

- in implementing hospital projects, the increase in the prices of medical equipment was often higher than the inflation. Taking X-ray equipment as an example, given the rapid development in medical technology, such equipment had evolved into digitalised imagers, which were much more expensive than X-ray equipment procured in the past. Although it was four to five years from the design stage to the completion of construction of a project, there would be significant changes in the quality and sophistication of medical equipment during the period;

- for a new hospital, it normally took about two years from phase one commissioning to full commissioning. The TKOH had commenced operation in 2000-01, but would not be fully commissioned until 2002-03;

- the project development agreements on the NDH and TKOH projects contained two major measures for budget control. Firstly, the construction and F&E sections of the budget would be accounted for separately. In other words, funds should not be transferred between the construction and F&E budgets. Secondly, any unspent balance in the project account on completion of the project should be repaid to the Government. As the NDH was close to full commissioning now, the FB was liaising with the HA about closing the account. The FB would request the HA to return to the Government the unspent balance, if any, in the NDH project account, according to the project development agreement; and

- if more advanced equipment was available in the market several years after the FC had approved a hospital project, it would not be cost-effective and appropriate to require the HA to acquire outdated equipment of the same type. The HWB was responsible for approving non-standard F&E expenditure of

hospital projects, while the FB exercised control over the total expenditure of hospital projects.

10. **Dr FUNG Hong, Director (Professional Services & Planning), Hospital Authority**, added that after a hospital had been fully commissioned, the HA must return to the Government the unspent balance in the project account within two years.

11. The Committee understood that in the case of the NDH and TKOH projects, the forecast inflation rates for F&E were eventually found to be far from accurate. They asked how the HWB had monitored the F&E expenditure of the two projects. **Mr Thomas YIU Kei-chung, Acting Secretary for Health and Welfare**, explained that in approving F&E applications submitted by the HA, the HWB had to be satisfied that the items applied for were within the scope of the projects and that the accumulated approved F&E expenditure would not exceed the F&E budget of the project as approved by the FC. In the funding applications for the F&E provisions for the NDH and TKOH projects, the budgets were based on a percentage of the construction cost plus the inflation allowance. On both occasions, detailed lists of F&E items required for the projects were not available. Hence, in vetting the F&E applications, it was difficult to estimate the actual out-turn inflation rate for each item under application. The HWB would review the existing vetting mechanism to see how to strengthen it.

12. The **Chief Executive, HA** added that he did not consider that a mechanism was lacking in the Government's monitoring of the acquisition by the HA of F&E for hospital projects. He reiterated that before acquisition, the HA was required to submit a list of the proposed items for the approval of the HWB. In examining the list, the HWB would make enquiries with the HA. At any rate, if during the process, the HA wished to acquire more advanced equipment or items not applied for previously, it would have to seek approval from the HWB.

13. On the mechanism under which a lump sum was paid to the HA at the commencement of hospital projects, the **Secretary for the Treasury** supplemented that among the 40 hospital projects funded by the Government since the establishment of the HA in December 1990, the mechanism was adopted only in the NDH and TKOH projects due to their urgency. Although she could not guarantee that this mechanism would not be adopted in future hospital projects, she considered that the two projects were exceptional cases.

14. Regarding the effectiveness of the role of the HWB in monitoring and controlling

the F&E expenditure for the NDH and TKOH projects, the Committee asked whether:

- the HWB had a mechanism to monitor and control the F&E expenditure for the projects; and

- the mechanism was identical to that adopted by other government bureaux which discharged similar duties of vetting expenditure on F&E items; and if not, why the HWB had adopted a different mechanism.

15. In his letter of 8 December 2001, in ***Appendix 90***, the **Acting Secretary for Health and Welfare** informed the Committee that:

- as laid down in the project development agreements governing the NDH and TKOH projects, a Steering Committee chaired by the Secretary for Works was responsible for controlling and monitoring the projects. Membership of the Steering Committee consisted of senior representatives from the HWB, the HA, the FB, the Architectural Services Department and the Department of Health. A Building Committee under the chairmanship of the Director of Architectural Services, the vote controller, would approve designs, tenders and contractors before expenditure was committed;

- at the procurement stage, the HA had to seek approval from the HWB for the acquisition of F&E items for the NDH and TKOH projects. Prior approval from the HWB must be obtained before the HA could acquire an F&E item. In approving F&E applications submitted by the HA, the HWB had to be satisfied that the F&E items under application were integral to and within the scope of the approved hospital project and that, if approved, the accumulated approved F&E commitment would not exceed the F&E budget of the project as approved by the FC. On approval by the HWB, the HA might then proceed to purchase the F&E items. In cases where the tender price exceeded the commitment of an F&E item approved by the HWB, the HA had to seek approval from the HWB to increase the approved commitment of the F&E item in question; and

- other than the HWB, the FB, the Government Property Agency, the Education Department and the University Grants Committee also carried responsibilities for vetting expenditure on F&E items. The detailed procedural requirements might differ among offices, but the broad principles should be the same. Basically, a procuring department/agency must satisfy the vetting authority that the item was integral to the project and did not exceed the scope as

approved by the FC and that sufficient funds were available within the project estimate.

16. The Committee noted that the Chief Executive, HA had considered that the use of a percentage of the construction cost was a relatively simple method for estimating the F&E provision for a hospital project. The Committee further noted from paragraph 2.39 of the Audit Report that the Secretary for Health and Welfare had said that based on past experience, the use of construction cost at constant prices was a reasonable basis to gauge the F&E needs of a hospital. Regarding the F&E cost estimated for the NDH and TKOH projects, i.e. $290 million at first quarter 1993 prices and $292.18 million at December 1994 prices respectively as stated in the FC papers, the Committee enquired about the basis for estimating the cost and the rationale of choosing the particular basis.

17. In his letter of 8 December 2001, the **Acting Secretary for Health and Welfare** stated that:

- the HA normally used construction cost at constant prices as a basis for estimating the required F&E provision for a hospital. This was because construction cost was directly related to the gross floor area to be constructed and the complexity of the accommodation requirements, which in turn determined the F&E provision required for a hospital project. There was no standard "F&E" percentage. In determining the appropriate "F&E" percentage, the HA would take into account the nature of a hospital project (i.e. whether it was a development or redevelopment project) as well as the nature (i.e. whether the hospital was tertiary acute, secondary acute or convalescent hospital) and scale of the service provision of the project. Where at the time of application for funding of a hospital project, there were recent hospital projects of comparable nature, the HA would use the F&E provision of such hospital projects as a basis for estimating the F&E budget of the project. The proposed budget would also take into account the operational needs of the project in question;

- the F&E estimate for the NDH was based on the F&E provision for AHNH, adjusted to take into account additional requirements to meet service delivery needs. Unlike AHNH which was planned as a secondary acute general hospital, NDH would provide tertiary level services with special focus on traumatology. The budget of $290 million at first quarter 1993 prices for the NDH was arrived at by using the $260.6 million F&E estimate of the AHNH as a basis, and adjusting the estimate upwards by $29.4 million to take into

account additional F&E requirements of the NDH such as angiographic X-ray machine, dual head gamma camera, tomography machine and mammography X-ray unit; and

- the F&E budget of $292.18 million at December 1994 prices for the TKOH was drawn up having regard to the F&E provisions of the AHNH and NDH projects which were in the region of 28% to 30% of the construction costs of the respective hospitals, as well as the nature and scale of service to be provided by the TKOH. Bearing in mind that the TKO new town had a relatively young population (with 25% of the population below the age of 15 years), the TKOH was designed to provide enhanced ambulatory care facilities in line with the international trend. Ambulatory care services were projected to take up 30% to 40% of the TKOH's in-patient activities, thus resulting in a reduction in the scale of the in-patient component of the hospital. The F&E budget for the TKOH was therefore set at 26.5% of its construction cost.

18. Referring to the lack of the respective lists of major equipment items (together with estimated costs) at the time of application for funding of the NDH and TKOH projects, the Committee considered that if there were such lists, they would serve as a useful basis for closing the respective F&E accounts. In response to the Committee's view, the **Acting Secretary for Health and Welfare** said that the Administration would have difficulties in providing a list of major F&E items with estimated costs at the time of funding application. Moreover, with rapid development in medical technology, the items on the list could be outdated when most of the F&E items were purchased several years after the project had been approved.

19. As stated in paragraph 2.18 of the Audit Report, both the NDH and TKOH had already commenced operation. The Committee pointed out that most of the F&E required for the hospitals might have already been procured. As such, they enquired:

- whether the unspent balances in the two project accounts could be returned to the Government at this stage; and

- how the repayment would be effected.

20. The **Acting Secretary for Health and Welfare** said that the HWB, in

collaboration with the HA, would calculate the respective total expenditures committed by the HA for the projects and those to be committed for completing the projects. The **Acting Secretary** further advised in his letter of 8 December 2001 that although the NDH and the TKOH had commenced operation in February 1998 and December 1999 respectively, the two hospitals had yet to be fully commissioned. As at the end of November 2001, the NDH (with a designed bed capacity of 618) had opened 552 beds, whereas the TKOH (with a designed bed capacity of 458) had opened 410 beds. The HA had agreed to identify the unspent balances in the NDH and the TKOH projects that could be returned to the Government at this stage, pending the full completion of the projects. The Director of Architectural Services, the vote controller of the two projects, was working with the HA to take stock of the commissioning programme, with a view to ascertaining the amount of savings achieved so far in respect of all committed expenditure items (including F&E items) of the two projects. Such savings would be returned to the Government in the interim, pending the full completion of the projects. The exercise would take about one month. Once the results were available, the HWB would inform the Committee of the amount to be returned by the HA to the Government. The Director of Architectural Services would then follow up with the HA regarding the refund.

21. Turning to the submission of applications from the HA's hospitals for acquisition of major medical equipment, the Committee understood from paragraph 2.41 of the Audit Report that such applications required the approval of the Chief Executive, HA through the annual resource allocation exercises. Paragraph 2.45 revealed that more than 80% of such applications was not approved. Furthermore, Audit was not aware that Hospital Chief Executives (HCEs) were formally informed of the reasons for the unsuccessful applications. This could lead to re-submission of applications to acquire the same items. Audit considered that there was a need for better liaison among the HA Head Office, cluster coordinators, specialty coordinating committees (COCs) and HCEs.

22. Against this background, the Committee asked:

- why the HA did not formally inform HCEs of the reasons for the unsuccessful applications; and

- whether there was adequate liaison among the HA Head Office, cluster coordinators, specialty COCs and HCEs over the submission of applications for acquisition of major medical equipment.

23. In his letter of 7 December 2001, in ***Appendix 91***, the **Chief Executive, HA**

explained that:

- the HA was not spending excessive corporate efforts in the annual resource allocation exercise for major medical equipment. Hospitals largely developed their major equipment requirement lists from the prioritised lists of the previous years. Among the applications submitted in the past years, a substantial proportion were re-submitted requests for which the Chiefs of Services and the administration need not repeat the preparatory work every year, except to update the estimates. The full list of equipment requests would, however, be re-prioritised every year to reflect the updated service operational requirements;

- in the past years, the HA had put in place arrangements to ensure that applications for major medical equipment were assessed and prioritised according to the needs of service development and operations. The mechanism involved a participatory process with consensus-building and informed decision-making, and was managed in an open and fair manner. Several tiers and dimensions of management existed in the HA as described by the Director of Audit;

- each year, all major medical equipment requests submitted by the hospitals were prioritised based on relative service development and operational needs, with professional input and recommendations from COCs. Membership of the COCs included the Chiefs of Services of the respective specialties. The final allocation was made by the Chief Executive of the HA in a round-up meeting with the respective functional directorates, chairmen of the COCs and the Head Office operations teams. In addition to taking into account the recommendations from the COCs, additional information in the form of age profile analysis for aging medical equipment and detailed utilisation analysis for high value X-ray equipment, such as computed tomography scanners and magnetic resonance image scanners, were also used to underpin the final decision-making; and

- as the Chiefs of Services were closely involved in the prioritisation process, it was generally understood that the reasons for not approving certain equipment in a financial year were usually funding constraints and the relative lower priority in service development and operations. The Chief Executive of the HA would communicate with individual HCEs on the allocation results as well as other service development and improvement priorities in his discussion with them on the hospital annual plans.

Part III: Evidence taken at the public hearing held on 11 December 2001

Management of medical equipment

Allocation of resources for medical equipment

24. As stated in the letter of 8 December 2001 from the Acting Secretary for Health and Welfare, there was no standard "F&E" percentage. The Committee queried whether the reason for using different "F&E" percentages for the AHNH, NDH and TKOH projects was the lack of criteria for determining the percentage.

25. Dr E K YEOH, **Secretary for Health and Welfare**, explained that:

- the estimated F&E costs were provided by the HA for the HWB's reference. In fact, the "F&E" percentages did not differ much among the three projects although the AHNH and the NDH were different in nature. As the NDH was in the North District, there was a need to provide a wider range of facilities to meet the needs of cross-border travellers. The NDH was equipped with enhanced facilities for urgent treatment to patients and delivering service in traumatology. As for the TKOH, it was designed to provide more day treatment facilities to serve the residents of TKO. The provision of day treatment generally did not require many equipment. Hence, the "F&E" percentage was relatively lower. In addition, as the TKO new town had a younger population, the delivery of medical services did not involve many specialised equipment items;

- even if a list of major F&E items was compiled at the time of funding application, it would serve little meaningful purpose in the monitoring of F&E expenditure due to the rapid development in medical technology. Hence, the general practice was to determine the "F&E" percentage by referring to that of past hospital projects, which was in the region of 25% to 30%; and

- the HA applied in phases for acquisition of F&E items. For instance, for those items which needed to be installed, the HA would submit the list to the HWB at an early stage. They were normally very expensive, and the HWB would ascertain whether they were appropriate for the functions of the hospital. In the case of an acute hospital, equipment such as scanners must be acquired. Thereafter, the HA would apply for acquisition of some expensive and less expensive equipment. It would submit a detailed list in respect of every application. If the total cost of the equipment items under application exceeded $100,000, the HA was required to fill in a form, providing information on the use, the utilisation and the maintenance of the items. HWB staff would study the information and, if necessary, would seek

clarifications from the HA. If approved, the estimated prices would be put on the form. If the selling prices were lower than the estimated prices, the savings would be returned to the Government. According to the HA's preliminary estimation of the savings from lower than expected tender prices of the approved F&E items for the NDH project, a sum of $50 million to $60 million could be returned to the Government.

26. The Committee noted from Table 4 of the Audit Report that the approved MOD provision for the acquisition of F&E items for the NDH project included an inflation allowance of $138 million. Table 6 revealed that negative actual inflation out-turn rates were recorded during the period from 1994 to 2000. The Committee enquired why the savings of the project was so much less than the inflation allowance.

27. The **Acting Secretary for Health and Welfare** stated in his letter of 28 December 2001, in ***Appendix 92***, that:

- the provision for inflation in respect of the F&E budget for the NDH project was based on the average movement of the import prices of scientific, medical and optical equipment over the 10 years preceding 1993 as reflected in the IUVI. It should be noted that the IUVI captured price movements for 86 types of imported scientific, medical and optical equipment, with only nine items belonging to the medical category. The nine medical items covered by the IUVI were consumables, instruments or appliances rather than capital medical equipment, and these medical items only represented 16% of the total value of all the imported items used in calculating the IUVI. In this regard, about 5% of the approved F&E budget of the NDH project was spent on such small medical instruments, and the nine medical items covered by the IUVI only accounted for a small portion of the medical instruments acquired under the NDH project;

- when the Administration decided to adopt the IUVI as the basis for estimating the F&E budget for the NDH project in MOD prices, there was no index that could fully reflect the price movements of medical equipment. Having explored other options like using the Consumer Price Index (A), the Administration considered that on balance the IUVI was the better alternative. In this connection, the use of the IUVI in estimating the provision for inflation in the F&E budget was only a budgetary approach. The actual price movements were reflected in the actual tender prices of the F&E items purchased. That apart, it should be borne in mind that due to advancement in

technology, the quality, design and sophistication of a medical equipment item would change over time. Comparison of a unit value index at a particular time point with the base year was meaningful only if no new products had emerged and there was no change in the quality of the products concerned;

- Appendix 2 was a comparison table on the actual costs of the same type of medical equipment procured by the AHNH and the NDH. The table illustrated that during the period September 1996 to August 2001, the price of the capital medical equipment in question had gone up. All these items were not medical instruments covered by the IUVI. The more marked cost increases for some of these items were primarily due to changes in technology or the introduction of new technologies. For example, the low temperature steriliser procured by the NDH used a new technology that could minimise the potential occupational hazards to operators which were inherent in the older models. The cost differences between the X-ray or radiodiagnostic equipment items acquired by the AHNH and the NDH were mainly due to the advancement in digital imaging technology; and

- savings amounting to $64 million would be returned to the Government in the interim, pending the full completion of the NDH project. The figure was the sum of:

  (a) a saving amounting to $58 million achieved through the actual purchase of approved F&E items by the HA up to 15 August 2001 against the total approved budget for the items concerned which amounted to $358 million; and

  (b) an unspent balance of the F&E budget of $6 million, being the difference between the F&E budget for the project, i.e. $443 million, and the total F&E provision approved by the HWB up to 15 August 2001, i.e. $437 million.

  There might be further savings from those F&E items which had yet to be procured by the HA against a total budget of about $79 million approved by the HWB. Such unspent balance would be repaid to the Government on completion of the project.

28. In the light of the Acting Secretary for Health and Welfare's undertaking to return to the Government the savings in the NDH project account in the interim, the

Committee enquired about the amount of unspent balance in the TKOH project account which could be returned to the Government at this stage. The **Acting Secretary** informed the Committee in the same letter that an unspent balance amounting to $323 million in respect of the TKOH project could be returned to the Government at this stage. This amount was the sum of an unspent balance for F&E items amounting to $83 million, and that in respect of construction totalling $240 million.

29. In response to the Committee's enquiry about the dates of full completion scheduled for the NDH and TKOH projects, the **Secretary for Health and Welfare** advised in his letter of 17 January 2002, in ***Appendix 93***, that the HA's current plan was to fully commission the NDH and the TKOH in 2003-04. Allowing about two years to finalise the accounts for the two projects and to settle payment, the remaining unspent balances of the NDH and the TKOH projects would be returned to the Government by 2005-06.

30. In his letter of 8 December 2001, the Acting Secretary for Health and Welfare had undertaken to inform the Committee of the results of the exercise whereby the Director of Architectural Services ascertained the amount of savings achieved so far in respect of all committed expenditure items of the NDH and TKOH projects. The **Secretary for Health and Welfare** subsequently provided the information in his letter of 29 January 2002, in ***Appendix 94***. He stated that the exercise had been completed. For the NDH project, an unspent balance amounting to $188.4 million, comprising respective savings of $124.4 million from the construction budget and $64 million from the F&E budget, could be returned to the Government in the interim. As regards the TKOH project, the total amount of unspent balance that could be returned in the interim amounted to $373 million, comprising respective savings of $290 million from the construction project and $83 million from the F&E budget. The Director of Architectural Services was making the necessary arrangements pertaining to the refund by the HA.

31. Concerning the submission by the HA of lists of proposed F&E items for the NDH and TKOH projects, the Committee asked whether the HA was required to observe a timetable in this regard. The **Secretary for Health and Welfare** advised that the submission of such lists normally depended on the progress of the construction. As the designs of the two hospitals were not available at the time of their funding applications, the HA would not have been able to decide on the required F&E. This happened in all the hospital projects in the past. Taking the AHNH as an example, no list of major F&E items was mentioned in the FC paper of February 1988, i.e. at the time of the first funding application. Subsequently, when applying for an increase in commitment for the project in April 1993, the draft plan for the hospital had been completed and therefore a list showing

the major equipment items with the estimated costs was attached to the FC paper.

32. The **Chief Executive, HA** supplemented that given the scale of service of a large hospital, F&E items required totalled 8,000 to 10,000, among which there were several hundred major items. In the process of designing the ceiling or the floor loading, the HA would be able to decide on the forward procured equipment. When the project reached the detailed design stage in respect of individual areas of the hospital, the HA would be able to draw up lists of the F&E items required for the areas concerned. Thus, there was a need to draw up the F&E lists in phases, and the HA could not be required to observe a timetable in this regard.

33. The **Director (Professional Services & Planning), HA** added that as both the NDH and the TKOH were built using an "enhanced design and build" contract, the respective designs of the hospitals were not available at the time of their funding applications. Generally speaking, it took about one and a half years to complete the detailed design. Depending on the complexity of the design, the HA would be able to draw up an initial list of the first batch of equipment items. There were about three submissions of lists of proposed F&E items for a hospital project.

34. To enhance their understanding of the history of F&E submissions for the NDH and the TKOH, the Committee requested the Chief Executive, HA to provide information on:

- the number of lists of proposed F&E items for each project with their respective dates of submission; and

- the number of F&E items on each list and the total cost of the items on each list.

The **Chief Executive, HA** provided the information in his letter of 21 December 2001, in ***Appendix 95***.

35. In response to the Committee's concern about the different "F&E" percentages of the AHNH, NDH and TKOH projects, the **Secretary for Health and Welfare** said that the

AHNH was planned as a secondary acute general hospital, whereas the NDH and the TKOH were acute general hospitals. The F&E budget for the NDH project, which was based on the F&E estimate of the AHNH project, was adjusted upwards by 29.4 million to take into account additional F&E requirements, such as dual head gamma camera. With constant development in medical technology, more equipment was required for new hospitals than that of the same nature commissioned a long time ago. He agreed that the justifications for "F&E" percentage difference between the hospital project under application and previous hospital projects of comparable nature would be stated in funding applications in future.

36. In the light of the above, the **Secretary for the Treasury** commented that:

- the FB had been submitting funding applications for hospital projects to the FC since 1991. The F&E provisions, if indicated as a percentage of the construction cost, for all these projects ranged from 13% to 50%. The median percentage was in the region of 25% to 35%;

- when the HWB submitted a paper to the FB to apply for funding for a hospital project, the FB would see whether it could draw reference from the F&E budget of any hospital of the same nature which had been completed in the immediate past;

- in the case of the NDH project, the FB had drawn reference from the F&E budget of the AHNH project. As the F&E budget at first quarter 1993 prices for the NDH project was $290 million as compared to the F&E estimate of about $260 million for the AHNH project, the FB did write to the HA to enquire about the reasons for the additional commitment of $30 million. The HA stated clearly in its reply that five items of additional equipment items were required for the NDH but were not in the F&E requirement of the AHNH. The FB had also consulted the HWB as to whether there was a need for acquiring the additional equipment items for the NDH; and

- in dealing with the funding application of the TKDH project, the FB adopted the same approach, that is, drawing reference from the F&E budgets of comparable hospital projects which were in progress or had been completed recently. Based on such budgets of the AHNH and NDH projects, the FB estimated the F&E provision to be $290 million at December 1994 prices for the TKOH project.

37. Noting the procedures adopted by the FB in dealing with funding applications for the NDH and TKOH projects, the Committee asked about the work undertaken by the HWB in monitoring the acquisition of F&E items for the two hospitals.

38. The **Secretary for Health and Welfare** replied that:

- before approaching the FB about funding applications for the NDH and TKOH projects, the HWB had deliberated over the need for and the nature of the hospitals. The HWB was then engaged in preliminary discussions with the HA about the project proposals. It needed to have full knowledge of the justifications for the proposals so as to decide whether to support them. The FB also consulted the HWB during the whole process; and

- there were dozens of files relating to a funding application. The HWB had raised many queries in its numerous correspondence with the HA concerning the information on the equipment items under application and the justifications. Approvals were not easily given.

39. The Committee further asked about:

- the criteria adopted by the HWB for vetting the HA's lists of proposed F&E items in respect of the NDH and TKOH projects; and

- the number of items which were not approved by the HWB and a comparison of their total cost and the total cost of the approved items.

40. In his letter of 28 December 2001, the **Acting Secretary for Health and Welfare** informed the Committee that:

- in vetting an application for the purchase of F&E items in respect of a hospital project, the HWB had to be satisfied that the F&E items under application were integral to and within the scope of the approved hospital project and that, if approved, the accumulated approved F&E commitment would not exceed the F&E budget of the project as approved by the FC. In approving an application, the HWB would take into account, among others, whether there was a justified need for the proposed item, whether the proposed item fell within the project scope, the projected utilisation of the proposed item, whether the price quoted was reasonable, the feasibility of shared use and whether there was room to economise on the spending. For F&E items costing $100,000 or more, the cost specifications needed to be provided and clarifications on costing would be sought as necessary;

- for the NDH project, the original budget for four out of 13 F&E applications submitted by the HA had been reduced by $2.2 million. In terms of the number of F&E items involved, one item amounting to $0.36 million was not supported by the HWB, one item amounting to $0.6 million was withdrawn by the HA, and the budget of two items had been trimmed by $1.24 million which accounted for 7.2 % of the total original proposed budget for the two items; and

- for the TKOH project, the original budget for four out of 22 F&E applications had been reduced by $2.8 million. In terms of the number of F&E items involved, nine items amounting to $0.78 million were not supported by the HWB, and the budget of 22 items had been trimmed by $2 million which accounted for 7.5% of the total original proposed budget for the 22 items.

41. The Committee pointed out that before the incumbent Secretary for Health and Welfare took office, the post had been held by Administrative Officers in the civil service, who were not medical professionals. The Committee queried whether they were able to monitor effectively the F&E expenditure for hospital projects. The **Secretary for Health and Welfare** explained that the HA operated like a government department, which monitored the items of work within its purview. The Government should monitor the procedures and not duplicate the monitoring work of every item of the HA's work. Professional monitoring meant monitoring of professional work, whereas high-level monitoring involved monitoring of procedures. HWB officers needed to possess experience in monitoring procedures and refer to past cases in carrying out their work.

42. The Committee noted that according to the project development agreements on the NDH and TKO projects signed between the Government and the HA, funds should not be transferred among the F&E, commissioning and construction budgets without the prior approval of the Steering Committee. As such, they asked whether the HA had applied for such transfer of funds in respect of the two projects.

43. The **Chief Executive, HA** informed the Committee in his letter of 21 December 2001 that the HA had applied for, and the Steering Committee of the NDH project chaired by the Secretary for Works approved at its meeting held on 18 November 1996, the transfer of $15.02 million from the project contingency to the F&E budget to fund the procurement of the

Laboratory Automation System (LAS). The topping-up of the F&E budget for the NDH was considered necessary at the time as the LAS was an additional item not originally allowed for when the budget was derived. The HA had not applied for any transfer of funds between the F&E, commissioning and construction budgets for the TKOH project.

44. In response to the Committee's enquiry about the relationship between the planned number of in-patient beds and the estimated F&E provision, the **Secretary for Health and Welfare** said that the former was not directly proportional to the latter. The HA would take into account the estimated number of patients and the scope of service in estimating the F&E provision for a hospital project. For example, a convalescent hospital might have the same number of beds as an acute hospital, but the convalescent hospital needed very few equipment items. In the case of an acute hospital, all kinds of equipment had to be available for meeting the needs of many treatment modalities. Even if some medical equipment would be used for urgent treatment of only one patient, there was still a need for the HA to acquire the equipment.

45. In the light of the Secretary for Health and Welfare's above statement about the acquisition of medical equipment for urgent treatment of only one patient, the Committee queried whether many equipment items had been acquired for this purpose. The **Secretary for Health and Welfare** responded that:

- some particular equipment must be provided for urgent treatment of patients. However, not every patient needed such equipment. The HA had to strike a balance between both. In the past, equipment for urgent treatment was not available in the wards in many hospitals. Where only a few items of such equipment were available in the entire hospital, it would take long for nurses to locate one of these items, and this would have an adverse effect on rescuing the patient concerned. Hence, even if an equipment item was used four to five times a year, it had to be acquired; and

- some costly equipment items which were worth several million dollars had also to be acquired for use, along with less expensive items. In the case of ultrasound equipment items which were worth much less, these had been made available since over 10 years ago in every department of a hospital so as to assist doctors in making diagnoses promptly. Moreover, such equipment would break down easily if they were moved around time and again.

46. The Committee noted the circumstances surrounding the funding applications of the NDH and TKOH projects, particularly the fact that the funding application of the TKOH project was submitted to the FC at its last meeting in 1994-95 Legislative Council Session. They wondered whether the funding application in respect of the estimated F&E provision

for the TKOH project should have been made at a later stage of the project, i.e. when the HA was able to draw up a list of major F&E items.

47. The **Secretary for the Treasury** stated that:

- from the FB's point of view, the approval by the FC of a project should concern the overall expenditure. For a hospital, it would not be a useful project if only four walls and the floor of the building were completed. F&E were essential items of a hospital. From the angle of public financial management, she considered it essential to include the F&E budget in the funding application in the first place; and

- she understood from the statement by the Chief Executive, HA that upon the completion of the detailed design of a hospital, the HA would be able to draw up a list of major equipment items. She considered that the Administration could put in place a mechanism whereby the HA could submit such a list to the HWB upon the completion of the detailed design. The list would serve as important reference in the subsequent acquisition of the equipment, so that the HA and the HWB could be more accountable for the follow-up and the use of public funds in this regard.

48. In the light of the above, the Committee invited the Secretary for the Treasury to elaborate on the mechanism. The **Secretary** said in her letter of 29 December 2001, in ***Appendix 96***, that:

- the Administration was prepared to request the HA to submit a list of major medical equipment to the Administration as and when the detailed designs for future hospital projects were available. This list would be used as a reference document to facilitate the Administration to vet and monitor subsequent requests from the HA to commit funding on the procurement of individual items of medical equipment for the hospital project concerned;

- as thousands of equipment items were involved in a hospital project, it would not be practicable to expect the HA to draw up an exhaustive list of medical equipment to be procured, even at the detailed design stage. Accordingly, the Administration would discuss with the HA what constituted a "major"

equipment item and how subsequent changes to the list of major items were to be dealt with. The FB's present inclination was to regard any equipment item estimated to cost $1 million or above as a "major" item. In respect of the NDH and the TKOH projects, expenditure on such items accounted for 34% and 42% respectively of the approved F&E provisions; and

- in taking forward the above approach, the FB would take into account the need for the Administration to institute a practicable and effective cost-control and monitoring mechanism to enable the FB to vet the funding bids from the HA.

Basis of provision of medical equipment

49. According to paragraphs 3.2 to 3.4 of the Audit Report, in early 1998, the HA launched a pilot scheme to introduce a scale of provision (SOP) for commonly-used medical equipment in hospitals. By late 1999, the SOPs for 11 types of medical equipment had been approved for implementation. Audit conducted an examination to find out whether there were surpluses or shortfalls of equipment items, based upon the SOPs for the 11 types of medical equipment. The medical equipment lists of four hospitals were selected for review. Paragraph 3.5 revealed that there were more equipment shortfalls than surpluses in the four selected hospitals. The extent of the shortfalls was significant.

50. Against this background, the Committee asked whether the HA had monitored the allocation of resources among hospitals. The **Chief Executive, HA** explained that:

- the SOP served as a rough guideline for hospitals in respect of the provision of medical equipment. The types of medical equipment covered in the audit review were of relatively low value. Other types of medical equipment could perform partial functions of certain types of medical equipment reviewed by Audit. Taking the non-invasive blood pressure monitor as an example, it was an equipment for measuring blood pressure. Nurses normally do this manually in the wards, whereas the equipment would be available in the accident and emergency department where there were more patients. Hospitals would determine the priorities in acquiring minor medical equipment having regard to their circumstances; and
- moreover, as for the SOP for endoscopic equipment, i.e. SP10 in Figure 3 of the Audit Report, the results of the audit review presented a general picture. Actually there were many kinds of endoscopic equipment. It might not make sense to state that there was underprovision of this type of equipment in the

four hospitals.

51. In the light of the Chief Executive, HA's above remarks about the SOP of endoscopic equipment, the **Director of Audit** advised the Committee in his letter of 22 December 2001, in ***Appendix 97***, that the estimated percentages of surplus or shortfall of the 11 types of medical equipment included in Figure 3 of the Audit Report were based on the information in the HA's AMS. Based on the approved SOPs, Audit estimated the surplus or shortfall variances of each of the 11 types of equipment in each of the four hospitals. Audit subsequently sought the HA's confirmation on the estimated figures. Classification of endoscopic equipment was complex, and it was sub-classified into 12 types of equipment. Audit sought assistance from the HA to estimate the surplus or shortfall variances of endoscopic equipment in each of the four hospitals. In response, the HA provided the estimated surplus or shortfall variances of each of the sub-classified type of endoscopic equipment. The HA also provided the overall surplus or shortfall variances of endoscopic equipment in each of the four hospitals. For simplicity of presentation, only the overall surplus or shortfall variances were presented in the Audit Report. The estimated surplus or shortfall variances of each type of endoscopic equipment in each of the four hospitals were shown at Appendix A of his letter.

Procurement of medical equipment

52. The Committee noted from paragraph 4.11 of the Audit Report that the HA procured $540 million worth of medical equipment a year. However, according to paragraph 4.8, most hospitals conducted their procurement individually without central coordination, and therefore obtained lower bulk-purchase discount and incurred higher equipment costs. Moreover, as observed in paragraph 4.8(c), for equipment items which provided similar functions, uncoordinated procurement by individual hospitals would result in proliferation of the equipment. The Committee noted the prominent example of ultrasound scanner in Figure 4 of the Audit Report, i.e. 348 items of 35 different brands of the equipment installed in HA hospitals as at 31 March 2001.

53. In response to the Committee's concern about the prices and number of the ultrasound scanners installed in HA hospitals as at 31 March 2001, the **Chief Executive, HA** said that:

- on the one hand, he agreed that the HA could coordinate procurement of medical equipment of the same brand. On the other hand, centralisation of procurement would be implemented on a selective basis because, for example, several thousand types of medical equipment were required for a large

hospital. At present, the HA was coordinating the procurement of such large equipment items as linear accelerators or X-ray equipment; and

- as there were many sub-classified types of ultrasound scanner which were used in different specialties, it was difficult to generalise on whether economies of scale could be achieved by centralisation of procurement of all sub-classified types of the equipment. The HA had to take into account the market situation in making a decision in this regard.

AMS and utilisation of medical equipment

54. The Committee noted from paragraphs 5.8 and 5.12 of the Audit Report that based on the information captured in the AMS of the HA, Audit had assessed the utilisation of 50 items of major medical equipment acquired in established hospitals in the past three years and the utilisation of 20 items of major medical equipment installed in two recently built hospitals. Paragraph 5.9 revealed that in 1999-2000 and 2000-01, for 11 of the 50 items of equipment in the established hospitals selected for examination, the actual utilisation was lower than the projected utilisation stated in the equipment applications submitted to the HA Head Office by more than 50%. According to paragraph 5.13, in one of the recently built hospitals, the actual utilisation of four of the ten selected major medical equipment items was lower than the projected utilisation by more than 50%, whereas similar under-utilisation was found for three of the ten selected major medical equipment items in the other recently built hospital.

55. In response to the Committee's question about the significant variance in the utilisation of the medical equipment concerned, the **Chief Executive, HA** said that:

- having noted Audit's observations, the HA agreed that there was room for improvement in many areas. Nevertheless, it hoped to point out that the AMS was not implemented until a couple of years ago. According to the HA's investigation, some information kept in the AMS was not accurate. Thus, the projected utilisation of some medical equipment might appear higher than the actual utilisation;

- in considering equipment applications from hospitals, the HA did take into account other factors, apart from the projected utilisation. However, for some of the 50 items of equipment in the established hospitals, it was difficult to project their utilisation; and

- due to rapid development in medical technology and changes in treatment modalities, some medical equipment might not achieve the projected utilisation.

56. Noting the Secretary for Health and Welfare's earlier statement that under-utilised equipment was of low value, the Committee invited the Director of Audit to comment on this. The **Director** stated in his letter of 22 December 2001, in ***Appendix 97***, that all the 50 items of medical equipment procured for use by established hospitals (shown in Figure 5 of the Audit Report), and the 20 items of equipment installed in two recently built hospitals (shown in Figure 6 of the Audit Report) were major medical equipment items costing $1 million or more per item.

Maintenance of medical equipment

57. According to Audit's observations on the procurement of medical equipment in Part 4 of the Audit Report, Schedule 1 and Schedule 2 hospitals used different tendering procedures for the procurement of medical equipment. The Committee further noted, from Audit's observations on the maintenance of medical equipment in Part 6, that Schedule 1 and Schedule 2 hospitals used different arrangements for the provision of maintenance services. As such, the Committee asked whether the HA would implement central coordination of procurement and maintenance services. The **Chief Executive, HA** responded that the HA had long been hoping to implement central coordination of these services. However, due to historical reasons, Schedule 1 hospitals were tied to using the services provided by some government departments. These departments did not have adequate resources to meet the needs of all hospitals, including Schedule 2 hospitals. Hence, the HA might encounter difficulties in the central coordination of the services.

58. In the light of the above reply, the Committee asked whether:

- the HA would enlist the assistance of any particular policy bureau and/or government department in achieving the long-term goal of central coordination of procurement and maintenance services;

- a mechanism had been put in place to implement the measures in this regard; and

- an implementation schedule had been formulated in this regard.

Management of medical equipment

59. In his letter of 21 December 2001, the **Chief Executive, HA** informed the Committee that:

- on central coordination of procurement, the HA was conducting a review of its relationship with the Government Supplies Department (GSD), the procurement agency of the HA. Steer from the HWB would be sought in the process; and

- in achieving the long-term goal of central coordination of procurement and maintenance services for medical equipment, the HA had put in place the following measures:

  (a) the HA had initiated standardisation of medical equipment for centralised procurement since 1999. The initial plan covered high value and high risk medical equipment, including linear accelerators, anesthesia machines and 25 items of other common medical equipment, with an estimated total purchase value of around $120 million. The HA would review the role of the GSD, with a view to unifying the tendering procedures among all HA hospitals; and

  (b) due to historical reasons, the arrangements for maintenance of medical equipment varied between Schedule 1 and 2 hospitals. For X-ray equipment, the HA had consolidated a significant proportion of X-ray equipment maintenance for all Schedule 1 hospitals and several major Schedule 2 hospitals. At present, about 80% of the total contract sum ($53 million per annum) of X-ray equipment maintenance in Schedule 1 hospitals were centrally coordinated. The maintenance contracts of X-ray equipment at several major Schedule 2 hospitals, including Caritas Medical Centre, Kwong Wah Hospital, Hong Kong Buddhist Hospital, Ruttonjee Hospital and Tang Shiu Kin Hospital, Tung Wah Hospital and United Christian Hospital were also centrally coordinated by the HA Head Office. Further centralisation of the X-ray equipment maintenance service would be implemented in parallel with the new cluster management reforms in 2002-03. For non X-ray equipment, the HA had outsourced the maintenance of around 7,000 items of commonly-used medical equipment in 2001. Further outsourcing of around 5,000 items of low and medium risk medical equipment in Schedule 2 hospitals would be arranged in 2002 to gain bulk leverage and greater cost-effectiveness.

Management of medical equipment

60. **Conclusions and recommendations** The Committee:

Monitoring of furniture and equipment (F&E) expenditure in new hospital projects

- express serious dismay that:

  (a) for the North District Hospital (NDH) and Tseung Kwan O Hospital (TKOH) projects, the Finance Bureau (FB) and the Health and Wealth Bureau (HWB) did not establish a mechanism to ensure that the inflation allowances for F&E approved by the Finance Committee (FC) of the Legislative Council were used only to meet inflationary increases; and

  (b) the FB has not taken action, in accordance with Financial Circular No. 4/95, to ascertain the latest out-turn money-of-the-day costs for F&E for the NDH and TKOH projects;

- urge the Secretary for the Treasury to ensure that, in future FC papers for hospital projects, where the F&E are not standard provision, the FB and the HWB should preferably provide a list of major F&E items with estimated costs at the outset or, if one is not ready, should state the basis of provision of F&E expenditure (e.g. indicating the percentage of F&E expenditure to the estimated construction cost), followed by the submission to the Legislative Council of a list of major F&E items with estimated costs at the earliest opportunity**,** for the purpose of supporting the original estimate;

- note that:

  (a) in accordance with the terms of the respective project development agreements on the NDH and TKOH projects, any unspent balance shall be repaid to the Government on completion of the projects; and

  (b) the Hospital Authority's (HA's) current plan is to fully commission the NDH and the TKOH in 2003-04, and the remaining unspent balances will be returned to the Government by 2005-06;

- acknowledge that:

(a) the Administration is considering using the construction cost or other viable alternatives as a basis for estimating the required F&E provision for new hospital projects;

(b) the Secretary for the Treasury's statement that the Administration was prepared to request the HA to submit a list of major medical equipment as and when the detailed designs for future hospital projects were available; and

(c) the HA will return in the interim to the Government an unspent balance amounting to $188.4 million, comprising respective savings of $124.4 million from the construction budget and $64 million from the F&E budget, in respect of the NDH project, and an unspent balance amounting to $373 million, comprising respective savings of $290 million from the construction budget and $83 million from the F&E budget, in respect of the TKOH project, pending the full commissioning of the projects;

Scale of provision for commonly-used medical equipment

- express concern that, there were significant shortfalls in some types, and surpluses in other types, of commonly-used medical equipment in some hospitals based on the approved scale of provisions;

- acknowledge that the HA has commenced a rationalisation process since early 2001 to transfer surplus medical equipment to hospitals which are underprovided;

- recommend that the HA should conduct a review to ascertain if there is overprovision or underprovision of medical equipment in individual HA hospitals, so that the HA can more effectively conduct equipment rationalisation among the hospitals;

Procurement of medical equipment

- express dismay that:

(a) 11 years after the establishment of the HA, Schedule 1 and Schedule 2 hospitals are still using different tendering procedures for the procurement of medical equipment and most HA hospitals conduct their procurement without central coordination; and

(b) the Nominated Product Scheme recently introduced by the HA would only achieve limited cost savings and reduction in the proliferation of brands of equipment;

- acknowledge that the HA:

(a) has commenced a review of the existing tendering procedures to eliminate inconsistencies between Schedule 1 and Schedule 2 hospitals; and

(b) will introduce bulk procurement tenders for major medical equipment items to tie in with the replacement programmes;

- urge the HA to:

(a) expeditiously consolidate the resources and procurement expertise in hospitals to form a central procurement unit in the HA Head Office to coordinate procurement; and

(b) use its own tendering procedures instead of using the Government Supplies Department's services;

Utilisation of medical equipment

- express serious dismay that of the 70 items of major equipment selected for examination, i.e. those costing $1 million or more per item, the actual utilisation of at least 18 items was lower than the projected utilisation stated in the equipment applications by more than 50%;

- express concern that, five years after the introduction of the Assets Management System (AMS) in 1996, the Queen Elizabeth Hospital (QEH) and the Hong Kong Red Cross Blood Transfusion Service (BTS) have not implemented the AMS;

- urge the HA to make further improvements to the acquisition programme for medical equipment for new hospitals so that the acquisition will dovetail with the build-up of demand for medical services;

- acknowledge that the HA will implement:

(a) the AMS in the QEH and the BTS; and

(b) procedures to enable the HA Head Office to monitor and improve the utilisation of major medical equipment installed in hospitals;

Maintenance of medical equipment

- express concern that:

  (a) there were significant variations in maintenance costs among different hospitals;

  (b) for historical reasons, Schedule 1 and Schedule 2 hospitals used different arrangements for the provision of maintenance services;

  (c) most Schedule 1 hospitals adopted the more costly preventive maintenance approach for medical equipment, while most Schedule 2 hospitals adopted the less costly corrective maintenance approach;

  (d) Schedule 2 hospitals normally selected their contractors to provide maintenance services themselves without the central coordination of the HA Head Office; and

  (e) the HA has not maintained cost and maintenance information on maintenance services;

- acknowledge that the HA will:

  (a) review the variations in the maintenance costs of medical equipment among hospitals, and adopt the most cost-effective arrangements;

  (b) extend the central coordination of maintenance contracts to all hospitals;

  (c) continue to conduct regular reviews to improve the quality and risk management of medical equipment and maintenance;

  (d) implement an enhanced maintenance module in the existing AMS to record the resources used by different providers of maintenance services;

  (e) adopt the most cost-effective method of maintenance of medical equipment;

(f) proceed in phases and within a reasonable time span to introduce full scale implementation of open tenders for maintenance services for medical equipment; and

(g) proceed to enhance the AMS to capture all essential management information on equipment maintenance upon the implementation of the AMS maintenance module in 2002;

- recommend that the HA should:

(a) based on internationally recognised risk assessment standards, conduct a thorough review of all types of medical equipment with a view to classifying them into high, medium or low risk equipment;

(b) based on the results of the risk assessments, adopt a consistent set of preventive maintenance procedures for all high-risk equipment items, and a consistent set of corrective maintenance procedures for medium-risk or low-risk items in all HA hospitals; and

(c) based on the resources used by the in-house personnel on the maintenance of X-ray equipment in Schedule 1 hospitals, carry out a review to ascertain whether it is more cost-effective to outsource the maintenance services;

HA's overall management of medical equipment

- acknowledge that the HA will take appropriate action to formulate a strategy for the overall management of medical equipment; and

- wish to be kept informed of:

(a) the progress of the refund to the Government of the unspent balances in respect of the NDH and TKOH projects;

(b) the progress of the rationalisation process to transfer surplus medical equipment to hospitals which are underprovided;

(c) the results of the HA's review of overprovision or underprovision of medical equipment in individual HA hospitals;

(d) the results of the review of the HA's tendering procedures;

(e) the progress of the introduction of bulk procurement tenders for major medical equipment items;

(f) the progress of the formation of a central procurement unit in the HA Head Office;

(g) the progress of using the HA's own tendering procedures;

(h) the progress of the HA's introduction of further improvements to the acquisition programme for medical equipment for new hospitals;

(i) the progress of the implementation of the AMS in the QEH and the BTS;

(j) the progress of the implementation of procedures to enable the HA Head Office to monitor and improve the utilisation of major medical equipment installed in hospitals;

(k) the results of the review of the variations in the maintenance costs of medical equipment among hospitals;

(l) the progress of the extension of central coordination of maintenance contracts to all HA hospitals;

(m) the progress of the implementation of the enhanced maintenance module in the AMS to record the resources used by different providers of maintenance services;

(n) the progress of the implementation of open tenders for maintenance services for medical equipment;

(o) the progress of the action taken to capture all essential management information on equipment maintenance in the AMS;

(p) the results of the HA's review of all types of medical equipment based on internationally recognised assessment standards;

(q) the progress of the adoption of a consistent set of preventive maintenance procedures for all high-risk equipment items and a

consistent set of corrective maintenance procedures for medium-risk and low-risk items in all HA hospitals;

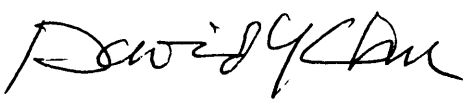
(r) the results of the review of the cost-effectiveness of the outsourcing of the maintenance services; and

(s) the progress of the formulation of the strategy for the overall management of medical equipment.

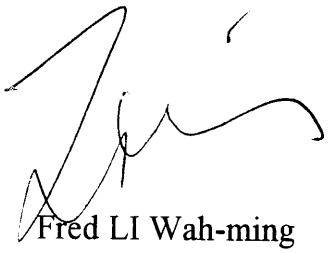
SIGNATURES OF THE CHAIRMAN, DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE

Eric LI Ka-cheung
(Chairman)

Emily LAU Wing-hing
(Deputy Chairman)

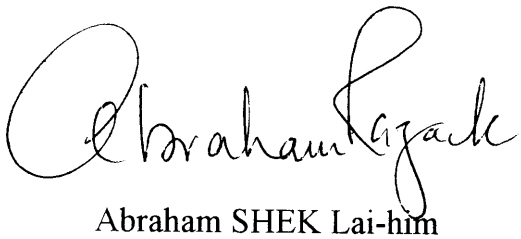


David CHU Yu-lin



Fred LI Wah-ming

LAU Kong-wah



Abraham SHEK Lai-him

Tommy CHEUNG Yu-yan

23 January 2002

CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NOS. 35, 36 AND 37 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT

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Chapter		
1	Follow-up review on control of utility openings	2
6	Review of the Hong Kong Sports Development Board	3
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Chapter		
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