



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : **AM 12/03/03**
電話 TELEPHONE : **2869 9203**
圖文傳真 FACSIMILE : **2877 9600**

13 May 2003

Hon Eric LI Ka-cheung, JP
Chairman
Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Li

**Value for money audit:
Subvention for staff emoluments
of The Legislative Council Commission**

Attached for your information is a copy of a letter circulated to Members of the Legislative Council today on The Legislative Council Commission's response to the Director of Audit's major observations and recommendations in Chapter 5 of his Report No. 40.

Yours sincerely

(Ricky C C Fung)
Secretary General

Encl.



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To: Hon Members of the Legislative Council

The Legislative Council Commission

**Value for money audit:
Subvention for staff emoluments of
The Legislative Council Commission**

The Director of Audit (the Director) conducted a value for money audit on the Government's funding arrangement for The Legislative Council Commission (the Commission) in 2002. The Director provided the Commission with two drafts of the report for comments, and the Commission responded to the two drafts respectively. As agreed between the Public Accounts Committee (PAC) and the Administration, the responses should be kept confidential before PAC's public hearings.

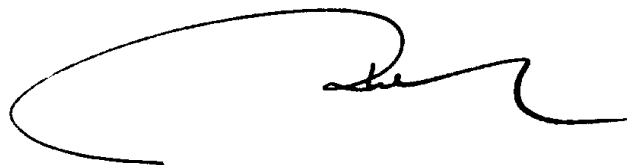
PAC conducted a public hearing on the captioned value for money audit on 12 May 2003. In view of the wide press coverage on the hearing (see Appendix I for press reports and comments), the Commission decided to forward its responses to the draft reports (Appendices II and III) to Members of the Council for their information.

The Commission also prepared a brief on the Director's major observations and recommendations together with the Commission's responses (Appendix IV). The following points are highlighted for Members' ease of reference:

- a. The Government has been providing funds for the Commission entirely in accordance with the provisions of The Legislative Council Commission Ordinance, the Exchange of Letters signed with the Administration and the agreed funding mechanism. From 1994 until now, funds have all along been provided under the one-line vote arrangement. There is therefore no question of any "privilege" or violation of the established mechanism.

- b. Surplus of income over expenditure of the Secretariat has been built up through prudent management of funds in the past nine years. As funds have been provided annually in accordance with the agreed mechanism, the surplus that has been accumulated should not be regarded as “over-provision” or erroneous provision, and the Commission should not be asked to “return” part of its Reserve to the Administration. The Commission has had reviews with the Administration on the arrangement for using the funds allocated in a more effective manner. For example, the Commission decided on 24 October 2002 that it would meet some non-recurrent expenditure, including the financing of the operation of Select Committees, from its Reserve with effect from 1 April 2003, so as to alleviate the commitment of the Government.
- c. When deciding to lower the rate of contract gratuity for newly appointed staff of the Secretariat from 25% of their basic salary to 15% in 2000, the Commission took into consideration the 15% contract gratuity rate commonly adopted by statutory organizations operating under the one-line vote system. As regards whether the Commission can stipulate the terms and conditions of service for its staff, the Legal Adviser (LA) of the Legislative Council Secretariat opines that the Commission is empowered by legislation to do so. There are no provisions in the Exchange of Letters requiring the Commission to seek prior approval of the then Secretary for the Treasury. In this connection, the legal advice obtained by the Government also confirms LA’s opinion. In view of changing circumstances, the Commission notes that the statutory organizations mentioned above have recently lowered the rate of contract gratuity for their non-professional and supporting staff to 10% of the basic salary. The Commission is now conducting a review and a decision will be made shortly.

For further enquiries and information about this letter, please contact the undersigned.



(Ricky C C Fung)
Secretary General

Encl.

c.c. Hon Eric LI Ka-cheung, JP
Chairman, Public Accounts Committee

**Note by Clerk, PAC: Appendix I not attached.*

**Response from The Legislative Council Commission
to the Report on “Value for Money Audit:
Subvention for Staff Emoluments of The Legislative Council Commission”**

Preamble

1993 LegCo President’s Working Group

In April 1993, a President’s Working Group on the Proposed Reorganization of the Legislative Council Secretariat was set up to examine and to make recommendations as to the key issues relating to the new Legislative Council Secretariat (the Secretariat) underpinning the independent Legislature. It comprised the President (as chairman) and Members of the then Legislative Council and government officers. The key issues examined included, inter alia, the legal status of the new Legislative Council Secretariat and the extent of the financial and managerial autonomy required for the independent and efficient operation of the Legislature. **The recommendations of the Working Group formed the cornerstone of The Legislative Council Commission Ordinance (Cap 443) (LCCO) and the Exchange of Letters (EoL) signed between the Administration and The Legislative Council Commission (LCC) following the enactment of LCCO.** On the issue of funding arrangements, after considering a number of options which might best be applied to the Secretariat, the Working Group decided that LCC be funded through a one-line vote under a new Head of Expenditure created specifically for LCC because this arrangement had the merit of ensuring flexibility under the one-line vote arrangement and recognizing the prestige and status of the Legislature. (Paragraph 133 of the Working Group’s report refers.)

Constitutional and Legal Status of LCC

2. **LCC is a statutory corporation established by legislation.** Under section 9 of LCCO, one of the functions of LCC is “to provide through the [Legislative Council] Secretariat administrative support and services to the [Legislative] Council”. **Section 17 of LCCO makes it clear that LCC “shall not, in relation to the formulation and execution of managerial and financial policies of it or the Secretariat, be subject to any direction or control of any person except that of the Council”.**

3. As regards the day to day operation of LCC and its Secretariat, apart from the general provisions of LCCO, LCC has entered into EoL with the Administration following the enactment of LCCO. EoL sets out the general principles and guidelines governing the administrative arrangements for LCC and its working relationship with the Administration. **Both parties agreed that the provisions of EoL are made on the principle that LCC has managerial and financial autonomy in organising its own administration and support facilities as is compatible with the provisions of LCCO. Both parties further agreed that in the event of any inconsistency between the provisions of EoL and the provisions of LCCO, the latter will prevail.**

Financial and Managerial Authority of LCC

4. Section 12 of LCCO provides-

“(1) The resources of LCC shall consist of-

(a) all money-

(i) paid by the Government to LCC and appropriated for that purpose by the Council; and

(ii) otherwise provided to LCC by the Government; and

(b) all other money and property, including gifts, donations, fees, rent, interest and accumulations of income received by LCC.”

5. In accordance with EoL, the sum of money provided is in the form of a one-line vote. Paragraphs 3.3 and 3.4 further provide that-

“3.3 Savings and income of the Commission may be spent at the discretion of the Commission subject to the proviso that no such expenditure shall create a commitment on government funds without the prior approval of the Secretary for the Treasury^(Note).

3.4 Any surplus of income over expenditure at the end of the year may be kept in the Reserves of the Commission. The Reserves may be spent at the discretion of the Commission subject to the proviso that no such expenditure shall create a commitment on government funds without the prior approval of the Secretary for the Treasury^(Note).”

(Note : The Secretary for the Treasury is now retitled as Secretary for Financial Services and the Treasury.)

6. The legal mechanism through which LCC is paid the money referred to in section 12 of LCCO by the Government is through the enactment of the annual Appropriation Ordinance and administrative arrangements set out in EoL. Paragraph 4 of EoL outlines the mechanism for the preparation of LCC's annual draft estimates of expenditure. It provides that -

“4. Procedure for preparation of the Estimates

4.1 The Secretary General of the LegCo Secretariat is designated as the controlling officer in respect of the estimates of expenditure of the Commission. He will prepare the Commission's annual draft estimates of expenditure in accordance with directions or instructions given generally by the Financial Secretary for that purpose. These will be discussed and agreed with the Administration for incorporation in the draft Estimates of Expenditure for the following financial year.

4.2 The level of provision to be included in the draft Estimates of Expenditure will be determined having regard to -

- (a) the overall government budgetary situation;
- (b) the baseline expenditure of the Commission and price adjustments to reflect the increased cost of services;
- (c) the recurrent consequences of any approved capital works projects which will come on stream in that year;
- (d) the cost of any new or improved services, funds for which have been secured through the Resource Allocation Exercise; and
- (e) any charges imposed by the Government on the Commission for services which it hitherto provides free of charge to the Commission.”

Under paragraph 4.1 of EoL, the Secretary General prepares LCC's annual draft estimates of expenditure in accordance with directions or instructions given generally by the Financial Secretary for that purpose. They will be discussed and agreed with the Administration for incorporation in the draft Estimates of Expenditure.

7. Having regard to the status of the Legislature and the funding arrangement for LCC as enshrined in EoL, **LCC is of the view that it is incorrect to describe the funds allocated to LCC as a discretionary grant. Application of the ‘Guidelines on the Management and Control of Government Subventions’ is not appropriate and would be contrary to the letter and spirit of LCCO and EoL. (Paragraph 1.6 of Director of Audit's report refers.)**

General Response

8. Since its establishment in 1994, LCC has been acting within the authority conferred on it by LCCO. It has also faithfully implemented EoL and all funding arrangements mutually agreed with the Administration. Therefore, there is no question of over-provision by the government.

9. In accordance with EoL the funding provided by the Administration for LCC is in the form of a one-line vote. Funding provided under this system is not segregated to specify any components. LCC's prudent management of its resources has resulted in surpluses over the years. Such surpluses should be retained in its operating reserve and spent, if LCC so decides, in accordance with the provisions in paragraphs 3.3 and 3.4 of EoL. **Clawing back of any of the operating reserve would be contrary to the provisions in EoL and is therefore unacceptable. Moreover, it also goes against the premise of the one-line vote arrangement, which is to develop a sense of ownership among managers of an organization who in turn would encourage more innovative thinking in the better utilization of resources. For similar reasons, LCC does not consider it consistent with that premise to set a maximum level of its reserve. Therefore, LCC does not see any need to change the provisions in EoL.**

10. EoL sets out the general principles and guidelines governing the administrative arrangements for LCC and its working relationship with the Administration. **Paragraph 4 of EoL outlines the mechanism for the preparation of LCC's annual draft estimates of expenditure. This mechanism enables the Administration to initiate discussions with the Secretary General with a view to arriving at an agreed level of provision for a financial year. These discussions could relate to proposed revisions to details of the funding arrangements provided that such proposals do not conflict with LCCO and EoL.**

11. More specific comments on Audit's Report are set out in the following paragraphs.

Response to Part 2 of the Report: Subvention for Cash Allowance for Staff of the LegCo Secretariat

12. Since its inception, LCC has been operating under the one-line vote system, which does not segregate and earmark funds for any particular type of expenditure. However, Audit assumes that funds are earmarked for particular posts and for particular components of staff emoluments, and that the way such funds have been expended in respect of a certain post may be and should be tracked on a year by year basis. Any funds provided which are not spent in subsequent years thus identified are regarded by Audit as over-provision. It appears that **Audit has disregarded LCC's financial autonomy conferred on it by LCCO and LCC's power to redeploy its resources under the one-line vote system.**

Refund of Unspent Provisions for Cash Allowance

13. Regarding Audit's recommendation that the Secretary General of the LegCo Secretariat should consider refunding to the Administration the so called over-provision of cash allowance, **LCC is of the view that as funding for LCC has been provided under the one-line vote system under which provisions are not itemised for specific components, the question of over-provision of cash allowance does not arise.** It follows that there is no question of making a refund to the Administration on the ground that there has been purported over-provision of funds to LCC.

Response to Part 3 of the Report: Subvention for Contract Gratuities for New Posts and Posts Not Filled by Contract Staff

14. It must be reiterated that **money provided for LCC under the one-line vote system is not segregated and earmarked for salaries, cash allowances or contract gratuities.** Besides, since LCC has full authority to deploy its resources, it has never been the requirement of the Financial Services and the Treasury Bureau to track the creation, deletion or filling of posts for the purpose of calculating the 85% contract gratuities for the third year of the 3-year contract gratuity funding cycle.

New Posts Created in 1996-97 to 1998-99

15. For cash flow reasons, provision of funds was made on the basis that 15% of contract gratuities was provided in the normal funding (baseline) of each year; and the remaining 85% was provided in the third year of each 3-year gratuity funding cycle, according to the establishment and projected salaries of the second year of each cycle. The actual staff establishment and contract gratuities incurred in the first year and third year of each cycle were not factors employed for projecting the 85% contract gratuities funding requirements. This estimation method was mutually agreed between the Administration and LCC.

16. Audit has interpreted this funding method in a different way. It assumes that, in the third year of each 3-year cycle, posts created in the first year would be provided with the balance contract gratuities of 3 x 85%, while posts created in the second and third years would be provided with 2 x 85% and 1 x 85% respectively. Audit's interpretation would require the tracking of each and every post, including posts that are created in the middle of a financial year and posts which have been vacant for some time during the year, in order to work out the actual provision required. **This is contrary to the rationale of establishing a one-line vote for LCC.**

17. On the bidding of funds in a Resource Allocation Exercise (RAE), bids have always been calculated at 100% of the annual contract gratuities to reflect the full financial implications. Calculating the bids at 15% of the annual contract gratuities as suggested by Audit would be misleading to the Star Chamber. LCC remains of the opinion that it is appropriate to indicate the full costs in its bids for new posts in the annual RAE.

Posts Not Filled by Contract Staff in 1994-95

18. The contract gratuities applied for 1996-97 were calculated according to a funding method mutually agreed between the then Finance Branch and LCC. If the posts filled by civil servants in 1994-95 were not taken into account when LCC applied for gratuities funding for 1996-97, as suggested by Audit, **LCC would have to track all posts in the Secretariat to determine which one was filled by a civil servant or which one was left vacant for one reason or another. This would defeat the purpose of adopting the one-line vote system for LCC.**

Refund of Unspent Provisions for Contract Gratuities

19. For reasons as stated in paragraph 13 above, **LCC does not consider it acceptable to make any refund to the Administration.**

Response to Part 4 of the Report: Contract Gratuities Provided for Non-Professional and Supporting Staff

20. As mentioned earlier, LCC is a statutory corporation established by legislation to provide, through the Secretariat, administrative support and services to the Legislature. LCC is given a status independent of the Government and is empowered, among other things, to act in all financial and administrative matters relating to the provision of support services for the Council. According to section 17 of LCCO, **LCC shall not, in relation to the formulation and execution of managerial and financial policies of it or the Secretariat, be subject to any direction or control of any person except that of the Legislative Council.**

21. LCC is given the power to determine the terms and conditions of staff employed by it under section 10 of LCCO. However, exercise of that power is subject to the requirement that LCC must ensure that the terms and conditions so determined are kept broadly in line with those applicable to persons employed in the Civil Service, with LCC being given the discretion to make exceptions in such cases as it sees fit.

22. LCC's decision made on 13 April 2000 was a policy decision made after having considered the changes in the terms and conditions of service of civil servants notified to the Secretary General through Finance Bureau Circular Memorandum No. 10/99 (FBCM No. 10/99) and the proposals made by the Secretary General in LC Paper No. LCC 34/99-00. **Legal Adviser of the Secretariat was of the view that section 10(2) of LCCO provided the legal authority for LCC to make that decision.**

23. In the view of the Legal Adviser of the Secretariat, FBCM No. 10/99 did not impose an obligation on LCC or the Secretary General to seek prior approval of the then Secretary for the Treasury before LCC made its decision on 13 April 2000. Neither did EoL impose such an obligation because LCC was given the discretion to spend the reserve of LCC on condition that an expenditure so incurred did not create a commitment on government funds.

24. LCC notes the Director of Audit's suggestion that the Secretary General should conduct a review on the level of contract gratuities offered to newly recruited non-professional and supporting staff of the Secretariat.

Response to Part 5 of the Report: Operating Reserve of the Commission

25. LCC wishes to reiterate that the surpluses have been accumulated over the past nine years **through its prudent management of funds under the one-line vote system** which promotes a sense of ownership and flexibility in optimal utilization of funds. Moreover, LCC considers that **it would be inconsistent with the rationale of the one-line vote funding arrangement adopted for LCC if a maximum level was to be set for LCC's operating reserve. The existing provisions in EoL should remain unchanged.**

20 February 2003

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**Response of The Legislative Council Commission
on the audit observations on the response from
The Legislative Council Commission
to the draft audit report on
“Subvention for staff emoluments of The Legislative Council Commission”**

General comment

The Legislative Council Commission (LCC) is disappointed that, despite the explanation given in its response to the draft audit report in February 2003, the special constitutional status of the Legislature as reflected in the provisions in The Legislative Council Commission Ordinance and the funding arrangement for LCC laid down in the Exchange of Letters have not been understood. LCC particularly disagrees with the statement that “One basic control in any funding system, including the one-line vote arrangement, is a control over the actual subvention requirements at the inception of the arrangement and at times when there are significant changes in circumstances.”, because such a control measure renders impossible the flexible deployment of resources promoted under the “one-line vote” funding arrangement. While LCC does not wish to repeat the points made in its earlier response, it would like to comment on two points raised in the audit observations.

Subvention for cash allowance

2. Audit has stated that “the Legislative Council Secretariat (LCS) keeps detailed records of cash allowance payments, including the movement of cash allowance rates. Therefore, the LCS has all the detailed information to enable it to avoid the over-provision of subvention for cash allowance”. This is incorrect. First, the movement of cash allowance rates is not an adjustment factor under the funding mechanism in respect of cash allowance mutually agreed between the Administration and LCC. Second, as funding for LCC under the one-line vote arrangement is not itemized, LCS cannot determine whether there has been over-provision of funding for cash allowance and indeed for any other specific item of expenditure.

Subvention for contract gratuities

3. Audit has alleged that “the over-provision of subvention for contract gratuities actually arose from the LCS’s calculation errors”, “the LCS’s calculations of contract gratuities for the new posts created during the period 1996-97 to 1998-99 are incorrect”, and “the LCS subsequently made a double request”. These allegations are unjustified because the calculations were done entirely according to the mechanism for the funding of contract gratuities agreed with the Administration. The item-by-item tracking and adjustment suggested by Audit for the purpose of preparing the budget is not only not called for under the agreed funding arrangement, but it also defeats the purpose of establishing a one-line vote for LCC.

31 March 2003

**Report No. 40 of the Director of Audit on the results
of value for money audits - March 2003**

“Subvention for Staff Emoluments of The Legislative Council Commission”

BRIEF

AUDIT’S MAJOR OBSERVATIONS AND RECOMMENDATIONS

- **Over-provision of \$50.9 million to The Legislative Council Commission (LCC) in respect of :**
 - ◆ **Cash Allowance (over-provision of \$30.5 million)**
 - subvention to LCC has not been adjusted according to the decreasing trend of the cash allowance rates (over-provision of \$22.7 million)
 - some staff chose not to receive cash allowance (over-provision of \$7.8 million)
 - ◆ **Contract Gratuities (\$20.4 million)**
 - funds for gratuities for new posts created from 1996-97 to 1998-99 exceeded the prescribed level (over-provision of \$15.3 million)
 - funds for gratuities for some posts in 1994/1995 filled by secondees from the government instead of contract staff (over-provision of \$5.1 million)
- **LCC should consider refunding the over-provision to the Administration**
- **Financial Services and the Treasury Bureau (FSTB) should consider amending the Exchange of Letters to recoup the over-provision from LCC**
- **Non-compliance with the Administration’s guidelines on the provision of contract gratuities to non-professional and supporting staff:**
 - ◆ 15% instead of 10% as stipulated in FSTB’s guidelines
 - ◆ FSTB should seek Department of Justice’s advice on whether The Legislative Council Commission Ordinance had empowered LCC to offer contract gratuities to Secretariat staff at a higher rate than that prescribed by FSTB, without seeking FSTB’s prior agreement
 - ◆ SG should review the justifications for offering 15% contract gratuity
- **A ceiling should be set for the reserve of LCC**

LCC'S RESPONSE

1. Background on the constitutional and legal status of LCC

- ◆ **Recommendations of the 1993 Legislative Council President's Working Group formed the cornerstone of The Legislative Council Commission Ordinance (LCCO) and the Exchange of Letters (EoL) signed between the Administration and LCC, under which LCC operates. The Working Group recommended the one-line vote funding arrangement for LCC because the arrangement had the merit of ensuring flexibility in redeployment of resources and recognizing the prestige and status of the Legislature.**
- ◆ **LCC is a statutory corporation established by legislation to provide, through the Secretariat, administrative support and services to the Legislature. Section 17 of LCCO makes it clear that LCC "shall not, in relation to the formulation and execution of managerial and financial policies of it or the Secretariat, be subject to any direction or control of any person except that of the Council".**
- ◆ **The provisions of EoL were made on the principle that LCC has managerial and financial autonomy in organizing its administrative and support facilities and services.**

2. General Response

- ◆ **Since its establishment in 1994, LCC has been acting faithfully within the authority conferred on it by LCCO and implementing funding arrangements in EoL and other detailed funding arrangements mutually agreed with the Administration.**

3. Over-provision of funds to LCC

- ◆ **There is no question of so-called "over-provision" of funds for cash allowance and contract gratuities.**
- ◆ **Audit's allegation about over-provision in respect of cash allowance is unfounded, because the movement of cash allowance rates is not an adjustment factor under the funding mechanism mutually agreed between the Administration and LCC.**

- ◆ **Audit's allegations about miscalculations of contract gratuities are unjustified, because the calculations were done entirely according to the funding mechanism mutually agreed between the Administration and LCC.** The Director of Audit's interpretation of the funding method would require the tracking of each and every post in order to work out the budget of LCC.
- ◆ **Funding for LCC has been provided under the one-line vote arrangement under which provisions are not itemized for cash allowance, contract gratuities, and indeed for any other specific components.** Under EoL, any surplus of income over expenditure at the end of the year may be kept in LCC's operating reserve.
- ◆ **The item-by-item tracking and adjustment suggested by Audit for the purpose of preparing the budget is not called for under the agreed funding mechanism.** Moreover, it also defeats the purpose of establishing a one-line vote for LCC.

4. Refunding over-provision to the Administration

- ◆ **As the funds in question were provided to LCC in accordance with the agreed funding mechanism, there is no question of over-provision of funds for LCC.** The need for making refunds to the Administration therefore does not arise.
- ◆ **It is against the one-line vote arrangement,** which is to encourage more innovative and economical utilization of resources.
- ◆ **LCC does not see any justification to change EoL to allow clawing back of LCC's reserve.**

5. Non-compliance with guidelines on the provision of contract gratuities to non-professional and supporting staff:

- ◆ **As provided under Section 17 of LCCO, LCC "shall not, in relation to the formulation and execution of managerial and financial policies of it or the Secretariat, be subject to any direction or control of any person except that of the Council".** Hence **the question of non-compliance with the guidelines** by offering a higher rate of contract gratuities (at 15% instead of 10%) to non-professional and supporting staff of the Secretariat **does not arise.**

- ◆ **The Legal Adviser of the Secretariat is of the view that section 10(2) of LCCO provides the legal authority for LCC to make that decision.** Section 10(2) states that “The Commission shall ensure that the grading, remuneration and other terms and conditions of service of staff of the Secretariat are kept, subject to the Commission’s discretion to make exceptions in such cases as it sees fit, **broadly in line** with those applicable to persons employed in the Civil Service of the Government.”
- ◆ **The decision of a uniform rate of contract gratuities for all staff was based on equity principles, rather than on employment and market situation.**

6. Setting a ceiling for the operating reserve of LCC

- ◆ LCC’s reserve has been built up through prudent management of funds under the one-line vote arrangement. **It would be inconsistent with the rationale of the one-line vote funding arrangement adopted for LCC, as stated in the report of the 1993 Legislative Council President’s Working Group, if a maximum level was to be set for LCC’s operating reserve.**
- ◆ **LCC will use its operating reserve to fund unforeseen expenses, such as those in connection with Select Committees.**

29 April 2003