

**REPORT OF THE  
PUBLIC ACCOUNTS COMMITTEE  
ON  
REPORT NO. 40 OF THE DIRECTOR OF AUDIT  
ON  
THE RESULTS OF  
VALUE FOR MONEY AUDITS  
AND  
*SUPPLEMENTAL REPORT OF THE  
PUBLIC ACCOUNTS COMMITTEE  
ON  
REPORT NO. 39 OF THE DIRECTOR OF AUDIT  
ON  
THE RESULTS OF  
VALUE FOR MONEY AUDITS***

*July 2003*

*P.A.C. Report No. 40*

# CONTENTS

	<b>Page</b>
<b>I. INTRODUCTION</b>	
1 The Establishment of the Committee	1
2 Membership of the Committee	1
<b>II. PROCEDURE</b>	
1 The Committee's Procedure	2 - 3
2 - 3 The Committee's Report	3
4 The Government's Response	3
<b>III. COMMITTEE PROCEEDINGS</b>	
1 Consideration of the Director of Audit's Report No. 40	4
2 Meetings	4
3 - 4 Arrangement of the Report	4
5 Acknowledgements	4
<b>IV. CHAPTER</b>	
<u>Supplemental report on the Director of Audit's Report No. 39</u>	
1. Primary education - The administration of primary schools	5 - 45
<u>Report on the Director of Audit's Report No. 40</u>	
2. Subvention for staff emoluments of The Legislative Council Commission	46 - 78
3. University Grants Committee funded institutions - Governance, strategic planning and financial and performance reporting	79
4. University Grants Committee funded institutions - General administrative services	80
5. University Grants Committee funded institutions - Staff remuneration packages and stipends	81

## CONTENTS

		<b>Page</b>
	SIGNATURES OF THE CHAIRMAN, DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE	82
	CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NOS. 39 AND 40 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT	83
APPENDIX 1	Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region	84 - 85
APPENDIX 2	Paper presented to the Provisional Legislative Council by the Chairman of the Public Accounts Committee at the meeting on 11 February 1998 on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits'	86 - 88
APPENDIX 3	Witnesses who appeared before the Committee	89
APPENDIX 4	Introductory remarks by the Chairman of the Public Accounts Committee, Hon Eric LI Ka-cheung, JP, at the first public hearing of the Committee on Monday, 12 May 2003	90 - 91
	<b>Appendices relating to Chapter 1: "Primary education - The administration of primary schools"</b>	
APPENDIX 5	Letter of 27 December 2002 from the Director of Education	92 - 103
APPENDIX 6	Letter of 6 January 2003 from the Permanent Secretary for Education and Manpower	104 - 105
APPENDIX 7	Letter of 5 June 2003 from the Permanent Secretary for Education and Manpower	106 - 120
APPENDIX 8	Letter of 30 December 2002 from the Director of Education	121 - 122
APPENDIX 9	Letter of 13 January 2003 from the Permanent Secretary for Education and Manpower	123 - 132

## CONTENTS

	<b>Page</b>
APPENDIX 10	Letter of 15 January 2003 from the Director of Audit 133 - 135
APPENDIX 11	Letter of 23 January 2003 from the Permanent Secretary for Education and Manpower 136 - 141
APPENDIX 12	Letter of 9 April 2003 from the Permanent Secretary for Education and Manpower 142 - 145
APPENDIX 13	Letter of 5 March 2003 from the Permanent Secretary for Education and Manpower 146 - 147
APPENDIX 14	Letter of 10 February 2003 from the Permanent Secretary for Education and Manpower 148 - 153
APPENDIX 15	Letter of 11 March 2003 from the Permanent Secretary for Education and Manpower 154 - 155
APPENDIX 16	Letter of 15 January 2003 from the Permanent Secretary for Education and Manpower 156 - 157
APPENDIX 17	Letter of 10 January 2003 from the Permanent Secretary for Education and Manpower 158 - 159
	<b>Appendices relating to Chapter 2: “Subvention for staff emoluments of The Legislative Council Commission”</b>
APPENDIX 18	Head 112: Legislative Council Commission Analysis of Recurrent Account for 2003-04 Estimates 160
APPENDIX 19	Letter of 13 May 2003 from the Secretary General of the Legislative Council Secretariat 161 - 175
APPENDIX 20	Letter of 9 May 2003 from the Secretary for Financial Services and the Treasury 176 - 179
APPENDIX 21	Letter of 29 May 2003 from the Secretary for Financial Services and the Treasury 180 - 182
APPENDIX 22	Letter of 22 May 2003 from the Secretary General of the Legislative Council Secretariat 183 - 187

## CONTENTS

	<b>Page</b>
APPENDIX 23 Letter of 14 June 2003 from the Secretary General of the Legislative Council Secretariat	188 - 189
APPENDIX 24 Letter of 23 May 2003 from the Secretary General of the Legislative Council Secretariat	190 - 191
APPENDIX 25 Letter of 17 June 2003 from the Secretary for Financial Services and the Treasury	192 - 196
APPENDIX 26 Letter of 25 June 2003 from the Secretary for Financial Services and the Treasury	197 - 200
APPENDIX 27 Letter of 24 June 2003 from the Secretary General of the Legislative Council Secretariat	201 - 206
APPENDIX 28 Letter of 24 June 2003 from the Director of Audit	207 - 221
APPENDIX 29 Letter of 25 June 2003 from the Director of Audit	222 - 227
APPENDIX 30 Letter of 26 June 2003 from the Director of Audit	228 - 232
APPENDIX 31 Letter of 19 June 2003 from the Secretary General of the Legislative Council Secretariat	233 - 235
APPENDIX 32 Letter of 19 June 2003 from the Director of Audit	236 - 237
APPENDIX 33 Letter of 19 June 2003 from the Secretary for Financial Services and the Treasury	238 - 239
APPENDIX 34 Letter of 23 August 1997 from the Secretary for the Treasury	240 - 243

## I. INTRODUCTION

---

**The Establishment of the Committee** The Public Accounts Committee is 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** Dr Hon Eric LI Ka-cheung, GBS, JP

**Deputy Chairman** Hon Emily LAU Wai-hing, JP

**Members** Dr Hon David CHU Yu-lin, JP  
Hon SIN Chung-kai  
Hon LAU Kong-wah, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Tommy CHEUNG Yu-yan, JP

**Clerk** Ms Miranda HON Lut-fo

**Legal Advisers** Chapter 1

Mr Jimmy MA Yiu-tim, JP

Chapter 2

Mr Arthur CHEUNG Ping-kam

## 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 Director of Bureau 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 could assist the Committee in its deliberations;
- (c) the Director of Audit and the Secretary for Financial Services and 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

## PROCEDURE

---

- (g) the Committee shall hold informal consultations with the Director of Audit from time to time, so that the Committee could 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 Report No. 40 of the Director of Audit on the results of value for money audits which was tabled in the Legislative Council on 30 April 2003. 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 report on Chapter 10 of Report No. 39 of the Director of Audit on the results of value for money audits which was tabled in the Legislative Council on 20 November 2002. The Committee's Report No. 39 was tabled in the Legislative Council on 19 February 2003.

4. **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. COMMITTEE PROCEEDINGS

---

**Consideration of the Director of Audit's Report No. 40 tabled in the Legislative Council on 30 April 2003** 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 had therefore only selected those chapters in the Director of Audit's Report No. 40 which, in its 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 two public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of ten witnesses, including two Directors of Bureau and one Head of Department. The names of the witnesses are listed in *Appendix 3* to this Report. A copy of the Chairman's introductory remarks at the first public hearing on 12 May 2003 is in *Appendix 4*.

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 its deliberations on the relevant chapters of the Director of Audit's Reports, are set out in Chapters 1 to 5 below.

4. The audio record of the proceedings of the Committee's public hearings is available in the Library of the Legislative Council for the public to listen to.

5. **Acknowledgements** The Committee wishes to record its appreciation of the cooperative approach adopted by all the persons who were invited to give evidence. In addition, the Committee is grateful for the assistance and constructive advice given by the Secretary for Financial Services and the Treasury, the Legal Advisers and the Clerk. The Committee also wishes 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 its deliberations.

## Chapter 1

### Primary education - The administration of primary schools

---

Audit conducted a review to ascertain whether the major areas of administration in aided and government primary schools functioned properly to support the provision of quality primary education. In conducting the review, Audit selected on a random basis 18 primary schools for examination, covering one school in each of the 18 districts in Hong Kong. Audit identified room for improvement in the following areas:

- strategic planning and financial management;
- human resource management;
- procurement procedures and asset management;
- management of student matters; and
- support from the Education Department<sup>1</sup> (ED) to schools.

2. At the public hearing, **Prof Hon Arthur LI Kwok-cheung, Secretary for Education and Manpower**, made an opening statement. He said that:

- the Administration would seriously consider Audit's recommendations and take appropriate follow-up actions. Many of the recommendations were relevant to the issues that the Administration intended to address. For instance, the Administration was conducting a review of the funding arrangement of the Capacity Enhancement Grant (CEG) with a view to introducing more levels of provision for the CEG for different numbers of operating classes in schools;
- regarding the arrangement for excess senior teachers in a school with a reduced number of operating classes, the Administration would continue to request that excess senior teachers in an aided primary school be transferred to another aided primary school with senior teacher vacancies under the same sponsoring body. At the same time, the Administration would conduct a review of the remuneration of excess senior teachers who remained in the same school, which included withholding the annual increment of such teachers from the 2003-04 school year;

---

<sup>1</sup> The Education and Manpower Bureau (EMB) and the ED have been merged from 1 January 2003. Since then, the EMB (the new organisation after the merger) takes charge of both the formulation and implementation of education policies.

## **Primary education - The administration of primary schools**

---

- to improve the management and performance of schools, the Administration had introduced into the Legislative Council (LegCo) the Education (Amendment) Bill 2002 which contained provisions on the establishment of a multi-party and accountable school management governance framework whereby School Management Committees (SMCs) would be registered under the Education Ordinance as incorporated bodies and actively implement school-based management (SBM). SBM sought to enable schools to manage their resources more effectively with a view to improving teaching and learning standards, thereby enhancing the effectiveness of learning. Under SBM, schools would be provided with the requisite resources, autonomy and flexibility to proactively respond to the needs of students and society, thereby delivering quality education. To ensure enhanced flexibility in schools' deployment of resources to cater for the needs of students and further streamline funding procedures, the ED was conducting a comprehensive review of the various grants;
- in giving schools more autonomy in managing their own operations and resources, the Administration would, on the one hand, formulate clear and adequate regulatory requirements in respect of the administration of schools and, on the other hand, request schools to put in place a mechanism for self-monitoring. With regard to donations received by schools and sale of school items, the Administration would exercise regulatory control in the two directions in response to Audit's recommendations; and
- the ED would continue to provide professional advice and support to schools to facilitate their smooth operation and ensure that schools would expeditiously establish a proper mechanism for internal quality assurance to enable students to receive quality education.

### **Strategic planning and financial management**

3. Regarding the disbursement of the CEG to all aided and government schools since the 2000-01 school year, paragraph 2.17 of the Audit Report revealed that in one of the 18 schools visited by Audit, the principal had only asked for some \$180,000 for employing two temporary teachers, but the school was still granted the full amount of \$450,000. The Committee queried why the mechanism was so rigid.

## Primary education - The administration of primary schools

---

4. **Mr CHENG Man-yiu, Deputy Director of Education**<sup>2</sup>, explained that, in the past, the level of provision for many grants was linked to the number of operating classes in a school. As a result, some schools of smaller size were not allocated adequate resources. To tackle the problem, the Administration provided small-size schools with more resources through the CEG.

5. The Committee further asked:

- about the details of the mechanism for granting the CEG to primary schools;
- whether the ED had clawed back the unspent balance of the CEG from the school which only asked for some \$180,000 but was granted \$450,000; and
- about the number of applications received from primary schools since the introduction of the CEG, the total amount of the grant applied in each of the school years 2000-01 and 2001-02, and the number of primary schools which applied for amounts less than the standard rates in the same period.

6. **Mr LEE Hing-fai, Director of Education**<sup>3</sup>, stated in his letter of 27 December 2002, in *Appendix 5*, that the CEG was provided to schools for the purpose of enhancing teachers' capacity to implement the education reform. To give schools flexibility in planning the use of funds, the CEG was placed under the Operating Expenses Block Grant (OEBG) and schools might use the CEG carried forward from the previous year(s) or deploy surplus from the General Domain of the OEBG to make up the funding requirement according to their own circumstances and priorities. As schools' decision on the use of the CEG should be part of the school development planning process since the introduction of the CEG in the 2000-01 school year, schools had been required to submit to the ED a separate plan on how to make use of the CEG. The plan served as an indicative deployment of funds, which might vary in the light of the actual implementation and schools' changing needs. Hence, payment of the CEG would be disbursed to the school in full rates upon receipt of a school's CEG plan which showed that funding was to be spent in accordance with the conditions as set out in the relevant school circular. Under the 12-month rule, clawing back of funds would be effected if the surplus under the OEBG exceeded the provision of 12 months.

---

<sup>2</sup> Following the merger of the EMB and the ED, the post of Deputy Director of Education was deleted on 1 January 2003.

<sup>3</sup> Following the merger of the EMB and the ED, the post of Director of Education was deleted on 1 January 2003.

## Primary education - The administration of primary schools

7. In the same letter, the **Director of Education** provided the following information:

School year	Number of eligible primary schools	Amount of CEG indicated in CEG plans (% against the full CEG rates)				
		100% or above	90% or above	80 % or above	50% or above	Less than 50%
2000-01	686	466 (68%)	622 (90.7%)	649 (94.6%)	673 (98.1%)	13 (1.9%)
2001-02	680	582 (85.6%)	660 (97.1%)	667 (98.1%)	678 (99.7%)	2 (0.3%)

He advised that the figures clearly indicated that the overwhelming majority of schools, over 97% in the 2001-02 school year, had made initial proposals to use 90% or more of the full amount of the CEG. A great majority of them had also proposed to use the surplus funding carried forward from the 2000-01 school year to make up the funding requirement of the 2001-02 school year.

8. The Committee noted Audit's recommendation in paragraph 2.19 of the Audit Report that the Director of Education should, in the review of the funding arrangement of the CEG, consider introducing more levels of provision for the CEG for different numbers of operating classes in schools. According to paragraph 2.20, the Director of Education said that the ED was conducting a review of the CEG, which was scheduled to be completed by December 2003. The Committee enquired about the scope and progress of the review.

9. **Mrs Fanny LAW, Permanent Secretary for Education and Manpower**, informed the Committee in her letter of 6 January 2003, in *Appendix 6*, and the **Deputy Director of Education** said at the public hearing that:

- the Administration agreed with Audit that it was not desirable to fix the rates of the CEG at only two levels, i.e. one rate for schools with less than 19 classes and another rate for schools with 19 classes or more, and that it would be reasonable to introduce more levels of provision for the CEG for different numbers of operating classes in schools; and

## Primary education - The administration of primary schools

---

- in view of Audit's recommendation that more levels of funding should be introduced, the Administration was examining the various options of introducing more levels of provision to schools and would consult the school sector of its final proposal for implementation in September 2003. The approval of the Finance Committee of the LegCo would be sought before implementation.

10. In her letter of 5 June 2003, in *Appendix 7*, the **Permanent Secretary for Education and Manpower** informed the Committee that the EMB had obtained the approval of the Finance Committee to revise the schedule of rates and introduce more funding levels for the CEG with effect from the 2003-04 school year.

11. On the question of surplus funds retained by schools, the Committee noted Audit's observation in paragraph 2.26 of the Audit Report that the current level of surplus, i.e. equivalent to 12 months' cover, that primary schools were allowed to retain appeared to exceed the actual needs of the schools. However, the Director of Education said in paragraph 2.29 of the Audit Report that while there were schools with significant surplus, there were also schools with overall deficit or a rather low surplus. The Committee asked the Administration to elaborate on this point.

12. **Mrs Betty IP, Assistant Director of Education (School Administration & Support)**<sup>4</sup>, responded that a primary school generally received an annual block grant of \$7 million. The analysis of the audited accounts of schools for the 2000-01 financial year showed that more than 60% of schools retained surplus funds of less than \$1 million, whereas more than 30% retained surplus funds between \$1 million and \$2 million. Less than 7% of schools retained surplus funds of more than \$2 million. Based on these figures, schools did not retain excessively high level of surplus funds.

13. The Committee asked whether the ED had discussed with schools Audit's recommendations on surplus funds retained by schools as referred to in paragraph 2.28 of the Audit Report. The **Director of Education** replied in his letter of 30 December 2002, in *Appendix 8*, that the ED had not yet discussed the recommendations with schools. To work out a suitable arrangement on surplus funds of the OEBG, the ED needed to examine in detail the utilisation rate and spending pattern of the OEBG for more than one year. Since the OEBG was introduced in September 2000, only data on the first year of

---

<sup>4</sup> Following the merger of the EMB and the ED, the post of Assistant Director of Education (School Administration & Support) was deleted on 1 January 2003.

## Primary education - The administration of primary schools

---

implementation was available while comprehensive data for the second year, i.e. the 2001-02 school year, would not be available until 2003. The ED would seek the views of the school sector at a later stage when more data on the utilisation of the OEBG was available for analysis.

14. In response to the Committee's enquiry about the rationale behind the current practice of allowing schools to retain as much as 12 months' provision of the OEBG/ Subject and Curriculum Block Grant, the **Director of Education** explained that in 1991, the Administration launched a scheme called School Management Initiative (SMI). Under the new system, schools received a block grant which was made up of a General Domain and a Special Domain. No transfer between grants was allowed within the Special Domain. However, schools were free to decide on the amount to be spent on individual constituent grants within the General Domain and use the surplus funds for other purposes. When determining the level of surplus funds to be retained by schools, the Administration had held discussions with schools councils and schools over a long period of time. After discussions, the parties concerned considered 12 months a reasonable level. The Administration would review the level of surplus funds to be retained by schools after the OEBG had been implemented for two years.

15. Referring to paragraphs 2.30 to 2.35 of the Audit Report concerning the case of over-provision of electricity charges to School C, a government school, the Committee queried whether the Administration:

- had monitored the estimation of the annual electricity cost by the school; and
- had clawed back the surplus funds from the school.

16. In his letter of 27 December 2002, the **Director of Education** stated that:

- School C commenced operation in the 2000-01 school year. It was a new whole-day school combining two bi-sessional government schools. Since it was the first of its kind in government primary schools with the Year 2000 Design, no reference could be drawn from other government primary schools on the consumption of electricity when preparing the 2001-02 estimates in September 2000. Therefore, the school could only provide rough estimation of electricity charges in its draft estimates;

## Primary education - The administration of primary schools

---

- in September 2001 when the draft estimates for the 2002-03 financial year was prepared, the actual expenditure for the 2001-02 financial year of the school, which could better reflect the spending pattern on electricity consumption, was not yet available for reference. As a developing school, School C had the capacity of operating additional classes and further opening up its premises to support community services. All such factors that would lead to higher electricity consumption had been taken into account when preparing the 2002-03 estimates. Before the commencement of the 2002-03 school year, the ED noted from the actual expenditure for the 2001-02 financial year that there was room for adjusting downwards the amount of funding allocated to School C for payment of electricity charges. As such, \$280,000 was clawed back in October 2002. The provisional allocation for electricity charges for the 2003-04 financial year was made with reference to its spending pattern for the 2001-02 financial year; and
- upon giving schools greater flexibility in the use of funds under the spirit of SBM, the Administration had also delegated to schools the responsibility to exercise good financial management and make effective use of the funds allocated. In November 2002, school heads and SMCs of government schools had been reminded to exercise good budgetary control and ensure that the funds were managed in line with the departmental circulars and guidelines on accounting and financial control.

17. Paragraph 2.38 of the Audit Report stated that in 2000, to support the implementation of information technology (IT) in schools, the ED provided schools with projectors to meet the basic IT needs in education. Three projectors were provided to each school. Paragraph 2.39 revealed that in 2000, School Q had an enrolment of only ten students, but the ED still gave it three projectors. When Audit visited the school in February 2002, Audit observed that only one projector was installed in the computer room for teaching purposes. The other two projectors were still left unpacked. The Committee questioned whether the ED had managed to detect, before the commencement of the audit review, the under-utilisation of the projectors by School Q.

18. The **Director of Education** explained in his letter of 27 December 2002 that:

- since the provision of IT equipment, including projectors, to schools in 2000, the ED had been conducting visits to schools on a random basis to observe the utilisation of the equipment and implementation of IT in education projects at schools. At the time when the audit review commenced, the ED's visits had not yet covered School Q. Its visit to School Q was conducted in October



## Primary education - The administration of primary schools

---

2002. The school was situated in a very remote rural area. It had three classrooms with one being converted to a computer room fitted with a burglar alarm system, whereas the other two classrooms were located a distance away without strengthened security measures. The visit revealed that the school had been fully utilising the three projectors provided by the ED. For security reasons, two of the projectors were packed and stored in the school's computer room, as observed by Audit, when they were not in use. The ED considered this practice acceptable; and

- the ED would continue to monitor the use of projectors and other IT equipment in schools and would request the return of any surplus equipment. The ED would also continue to advise schools on the ways to put the equipment into better use for teaching and learning purposes.

19. The **Director of Education** also provided, in the same letter, copies of two circulars issued by the ED on the provision of projectors to schools. He said that:

- the arrangement for accommodating three projection systems had been set out in the suggested accommodation plan in Appendix 3 to Circular Memorandum No. 16/98 on "IT in Education";
- in Circular Memorandum No. 316/99, the ED had provided flexibility to schools in acquiring IT-related equipment in accordance with schools' own needs. Schools had been encouraged to make their own plan for the progressive implementation of IT initiatives which fitted in with their respective teaching and learning environment; and
- in the seminars organised in April 1999 on the "IT in Education" Project, schools were reminded to exercise flexibility in fully utilising the IT-related equipment made available to them, taking into account the IT readiness of both their teachers and students.

20. In the light of the above, the Committee requested the Administration to provide copies of specific circulars/notices on the provision of three projectors to all primary schools. The Committee also enquired whether:

- the ED had conducted any survey to determine the number of projectors provided to each primary school; and

## Primary education - The administration of primary schools

---

- any test had been conducted to ascertain the utilisation of the three projectors by School Q.

21. In her letter of 13 January 2003, in *Appendix 9*, the **Permanent Secretary for Education and Manpower** informed the Committee that:

- no survey had been conducted to determine the number of projection systems to be provided to each primary school. Professionally, the Administration considered that three projection systems were the basic provision to each primary school with six levels of classes; and
- the Administration considered that effective utilisation was achieved when teachers used the projection systems whenever the learning and teaching process required. It had to rely on schools to make the best use of resources and facilities provided. It would continue to advise schools on the ways to put the equipment into better use for learning and teaching purposes.

22. The **Permanent Secretary for Education and Manpower** also provided, in the same letter, a copy of an information note of April 1999. She advised that schools had been invited in the information note to indicate whether they would like to procure the equipment through the ED's central tender or self-arranged tendering; and if the former was chosen, the required quantity of the equipment.

23. In view of the information provided by the Director of Education in his letter of 27 December 2002 on the utilisation of the projectors by School Q, the Committee invited the Director of Audit to comment on the issue.

24. The **Director of Audit** offered his comments in his letter of 15 January 2003 in *Appendix 10*. He advised that on 7 January 2003, Audit staff asked the head of School Q to clarify the position regarding the use of the three projectors allocated to his school. He informed Audit staff that prior to September 2000, when the computer room had not yet been set up, two projectors were used once in the classrooms. After September 2000, one projector was installed in the computer room and had been in use since then, while the other two projectors had not been used and were stored in the computer room for security reasons. The head of School Q also said that there was no need for his school to have three projectors, and that he would have no objection if the ED decided to withdraw two projectors from his school. It was evident that the two projectors at School Q, which had a student population of only ten in 2000 (eight in January 2003), had been under-utilised.

## Primary education - The administration of primary schools

---

25. The Committee noted from paragraph 2.45 of the Audit Report that of the 18 schools visited by Audit, there were 16 aided schools. Audit examined the external audit arrangements of these 16 schools in the school year 2000-01. As revealed in paragraph 2.46, most of the schools had appointed their existing external auditors for many years without going through a competitive selection process. Moreover, according to paragraph 2.48, most of the schools had not agreed with their appointed external auditors on the terms of engagement by means of audit engagement letters. The Committee further noted from paragraph 2.44 that the ED had provided guidelines for the external auditors to follow when auditing the school accounts. Paragraphs 2.50 and 2.51, however, revealed that not all the 16 schools had fully met the relevant requirements.

26. Against this background, the Committee asked the Director of Education to comment on the irregularities detected by Audit. The **Director of Education** and the **Assistant Director of Education (School Administration & Support)** explained that:

- the School Administration Guide (SAG) had clearly laid down guidelines on tendering and procurement for schools. Single purchase above \$50,000 had to be arranged by tender. Purchases in the range of \$30,000 to \$50,000 should be arranged through written quotations and those below \$30,000 through oral quotations. In other words, schools were required to adopt a competitive process of tendering or obtaining quotations in the procurement of goods and services. Nevertheless, the SAG did not specify that the engagement of external audit services had to be arranged by tender or through quotations;
- there was a School Audit Section (SA Section) under the Finance Services Sub-Division of the ED. The staff of the SA Section conducted inspections of schools' auditing procedures. In some cases, the ED had issued letters, including warning letters, to schools requiring them to follow financial procedures properly. As there were more than 1,000 public-sector schools, the SA Section could only select schools for inspection on a random basis. Nevertheless, the SA Section would conduct more frequent inspections of schools with irregularities in financial management; and
- schools in general were weak in financial management. Hence, in the past year or so, the ED had held some experience-sharing sessions for schools to remind them of the common irregularities and introduce good practices.

## Primary education - The administration of primary schools

---

27. The **Director of Education** further stated in his letter of 27 December 2002 that:
- in 2000 and 2001, the ED had conducted audit inspections of 12 of the 18 schools examined by Audit. The remaining six schools were inspected in 2002. At the end of each audit inspection, the school principal and the staff engaged in financial and accounting duties were briefed on inspection findings and recommendations, and a management letter would be issued to the school supervisor;
  - apart from the different samples of schools which the ED had inspected during the period concerned, owing to the different samples of transactions and records selected for test checks, it was not possible to have the same set of findings and irregularities as pointed out by Audit. Similarly, Audit might not come to the same findings and irregularities as the ED. For example, in respect of errors in charging accounts, the ED found that School H had wrongly charged the cost of a multimedia projector of \$44,200 to the Newly Arrived Children Grant Account but there was no mention of the same error in the Audit Report;
  - regarding the absence of audit engagement letters, the ED had relied on the information submitted by the schools through the Internal Control Questionnaires before the commencement of the audit review. The ED agreed that this was an area where further improvement could be made; and
  - as regards whether the ED was able to detect before the commencement of the audit review the errors in respect of the surplus balances in the audited accounts of School L and School N, the ED pointed out that the audited accounts mainly served the purpose of clawing back surplus beyond the approved limit. The ED did not check the audited accounts submitted by schools as these accounts had already been certified by the schools' auditors. Nonetheless, the kind of errors detected by Audit might surface when the books of account were examined by the ED's audit teams during their inspections to schools.
28. Noting that schools were required to obtain oral quotations even for procurement of goods and services below \$30,000, the Committee enquired about:
- the number of primary schools that were required to go through such a selection process for obtaining external audit services; and

## Primary education - The administration of primary schools

---

- the range of audit fees of aided primary schools that had engaged external audit services.

29. In her letters of 13 January 2003 and 23 January 2003, in *Appendices 9 and 11*, the **Permanent Secretary for Education and Manpower** informed the Committee that:

- all aided primary schools were required to obtain oral quotations for procurement of services below \$30,000, including external audit services. There was no need for government primary schools to engage external audit services as their accounts were subject to audit by the Audit Commission; and
- the ED had received 489 audited accounts from aided primary schools for the 2000-01 school year. Aided bi-sessional primary schools were only required to provide one set of audited accounts covering both the AM and PM sessions. The range of audit fees of these schools was as follows:

<u>Amount of fees</u>	<u>Number of schools</u>
Free of charge	3
Below \$5,000	8
\$5,000 to \$10,000	174
\$10,001 to \$15,000	181
\$15,001 to \$20,000	97
\$20,001 to \$25,000	11
\$25,001 to \$30,000	10
\$30,001 to \$50,000	5
Above \$50,000	0
	<hr/> 489
	===

## Human Resource Management

30. The Committee noted from paragraph 3.3 of the Audit Report that Audit had reviewed the recruitment procedures for teaching staff of the 18 schools in the 2000-01 and 2001-02 school years. Paragraphs 3.3, 3.4, 3.6 and 3.9 revealed cases of non-compliance with proper recruitment and appointment procedures, as follows:

- School Q's non-compliance with recruitment requirements in respect of two part-time teachers;

## Primary education - The administration of primary schools

---

- School R's failure to document the assessment of applicants;
- SMC members in seven schools not participating in recruitment interviews; and
- ten schools' offering of appointment to teachers without prior approval from the SMCs.

31. Against this background, the Committee asked whether:

- the practices of School Q and School R were in breach of any legislation or guidelines; and
- the ED had managed to detect, before the commencement of the Audit review, the above cases of non-compliance.

32. In his letter of 27 December 2002, the **Director of Education** stated that:

- the relevant documents governing the appointment of teaching staff in aided schools are Administration Circular No. 32/2000 on "Appointment of Staff in Aided Schools" issued on 26 June 2000, and Section 7.1 to 7.4 of SAG, October 2001;

### School Q

- it was suggested in Administration Circular No. 32/2000 and Section 7.3.2 of the SAG that schools should have a selection panel to conduct recruitment interviews. The selection panel might comprise a member of the SMC, the school head, a senior teacher or a senior member of the administrative staff, depending on the job requirements of the vacant post. The appointment of two part-time teachers by School Q for the 2001-02 school year, however, was determined by the school head alone without going through a selection procedure as set out in the circular and the SAG;
- furthermore, School Q had not advertised vacancies of the teaching posts in the press as required in Section 7.3 of the SAG which stated that all vacancies should either be advertised in the press or circulated by internal circulars as appropriate. However, according to the school head, he had screened more than 40 self-recommended application letters from suitable candidates and contacted them for interviews; and

## Primary education - The administration of primary schools

---

### School R

- Administration Circular No. 32/2000 and Section 7.3 of the SAG stipulated that shortlisting criteria should be pre-determined and documented after endorsement by the SMC. In addition, assessment of candidates should be properly documented and such records should be kept for a specified period. School R did not keep any record of the selection criteria, the interviews and the assessment on applicants. Such practice was not in line with the principles on staff selection as laid down in the said circular and the SAG. The school had developed document for selection criteria and had kept written records of all the interviews conducted, including the assessment on applicants, starting from the 2002-03 school year.

33. In his letter of 27 December 2002, the **Director of Education** also stated that the ED had not conducted management audit to vet the recruitment documents and minutes of the SMC meetings of School Q and School R. Likewise, no checking of records had been carried out in relation to the appointments of teachers by the ten schools mentioned in paragraph 3.9 of the Audit Report. The appointments were reported to the ED in the prescribed forms duly endorsed by the school supervisor on behalf of the SMC in accordance with section 39 of the Education Ordinance. They were accepted as proper documents for that specific purpose.

34. Noting that the appointments of new teachers were reported to the ED in the prescribed forms duly endorsed by the school supervisor on behalf of the SMC, the Committee asked the Administration to provide a copy of the specimen form and enquired:

- whether the school supervisors and the school principals concerned knew, when signing the forms, if prior approval of the SMCs had been sought regarding the appointments; and
- about the penalty for their failure to comply with the requirement of seeking prior approval of the SMCs.

35. The **Permanent Secretary for Education and Manpower** provided in her letter of 13 January 2003 a copy of the prescribed form for appointment of teaching staff in aided schools. She advised that:

## Primary education - The administration of primary schools

---

- the form had been so devised as to require the school principal to indicate on the form that the SMC had approved the appointment before the form was endorsed and signed by the school supervisor, confirming that the appointment was made in accordance with the provisions in the Education Ordinance, Education Regulations, the Code of Aid and the relevant circulars; and
- the Education Ordinance included a penalty on any person who contravened section 39(2)(d) or (3), which stipulated that the school supervisor should within one month after the happening of such event give notice in writing to the Director of Education if, amongst others, any teacher commenced to teach or was employed to teach at the school. The person that contravened the section(s) concerned should be liable on conviction to a fine at level 5 and to imprisonment for two years.

36. The Committee invited Audit's comments on the Permanent Secretary for Education and Manpower's above response. In his letter of 15 January 2003, the **Director of Audit** stated that the SAG required schools to observe Regulation 76 of the Education Regulations, which stipulated that the appointment and dismissal of any member of the teaching staff of any school should be determined by a majority vote of all the members of that school's SMC. While the appointment form required the confirmation of SMC's approval to fill the post, Audit could not find evidence that the ten schools in question had sought approval from their SMCs regarding the appointment of applicants. In some instances, the selection panels or the school principals informed the members of the SMC at meetings that new teachers had been appointed, but formal approval from the SMC regarding the appointment of new teachers had not been sought in the recruitment process.

37. In view of the Director of Audit's comments, it appeared to the Committee that the ten schools in question had not sought formal approval from their SMCs regarding the appointment of new teachers before requesting the school supervisors to sign the forms. The Committee asked the Administration whether that was indeed the case; and if so, whether penalty had been imposed on the schools.

38. In her letter of 23 January 2003, the **Permanent Secretary for Education and Manpower** provided the details of the Administration's findings. She stated that:

- the Administration had looked into each of the cases relating to the ten schools, and noted that some of them had obtained from their SMCs beforehand informal agreement for the appointment of new teachers and some



## **Primary education - The administration of primary schools**

---

had obtained covering approval/endorsement to such appointments at subsequent SMC meetings. However, there was no documentary proof from these schools regarding the grant of prior approval by their SMCs before the school supervisors signed on the prescribed appointment forms. Irrespective of all these, the Administration had given due advice to these schools that they should follow all the appropriate procedures for the appointment of new teachers;

- Regulation 76 of the Education Regulations stipulated that the appointment and dismissal of any member of the teaching staff of any school should be determined by a majority vote of all the members of the management committee of that school. Section 32 of the Education Ordinance also provided that every school should be managed by its management committee. Notwithstanding Regulation 76, Regulation 75 stipulated that the powers and duties of the managers should be defined in the constitution of the SMC and that every such constitution as approved by the Director of Education should be binding upon the school and the managers and teachers thereof and should not be altered or amended without the prior approval in writing of the Director. The requirement for the SMC to approve teacher appointments might therefore be subject to the powers and duties of managers as defined in the constitution of the SMC as approved by the Director of Education;
- there was no penalty clause in the Education Regulations on the violation of Regulation 76. However, section 82(1)(a) of the Education Ordinance stipulated that the Director of Education might, if it appeared to him that a school was not managed satisfactorily, by notice in writing give such directions as he thought necessary in order that the school would be operated satisfactorily. Section 82(2) further provided that the notice under subsection (1) might be served on the supervisor and every other manager of the school concerned; and might specify a period of time within which the directions should be complied with. Section 87(1)(i) provided that any person who, being a supervisor or any other manager of a school, failed to comply with any notice served on him under section 82 should be guilty of an offence and should be liable on conviction to a fine of \$250,000 and to imprisonment for two years;
- under SBM, schools, in return for the greater authority delegated to them by the Administration, were subject to greater accountability under a more open, accountable and participatory school management structure. The Education (Amendment) Bill 2002 aiming at providing tighter legislation, stronger enforcement action and more accountability on the part of schools, if passed, would provide the Administration with the necessary legislative backing; and

## **Primary education - The administration of primary schools**

---

- whilst it was not the Administration's priority area to conduct management audit to schools, the Administration would continue to conduct investigation into reported cases of irregularity. If found substantiated, the schools concerned would be given appropriate advice, and the Administration would follow up to ensure that remedial action was taken. For repeated cases of irregularity, the Administration would serve written warning on schools and would closely monitor all reported cases of irregularity to ensure early rectification by the schools concerned.

39. Based on the information provided by the EMB, the Committee noted that the following 13 schools were found by Audit to have irregularities in their procedures for recruiting teaching staff:

- S.K.H. Kei Yan Primary School;
- St. Paul's Primary Catholic School;
- Hok Shan School;
- Kowloon City District Kaifong Welfare Association School;
- Po Leung Kuk Stanley Ho Sau Nan Primary School;
- Sau Mau Ping Catholic Primary School;
- The Hong Kong S.Y.C. & I.A. Chan Lai So Chun Memorial School;
- Lei Muk Shue Catholic Primary School (AM);
- Lam Tei Gospel School;
- Shek Wu Hui Public School (AM);
- Confucian Sam Lok Chow Mud Wai School;
- Leung Shuen Bay School; and
- Cheung Chau Fisheries Joint Association Public School.

The Committee directly enquired with the principal and supervisor of each of the above schools on the circumstances relating to their cases of non-compliance.

## Primary education - The administration of primary schools

---

40. The Committee noted from the responses of the above 13 schools that:
- some schools were not allowed to recruit teachers until the “de-freezing” notification from the Administration was received in mid-August. By then, they might not have enough time to recruit teachers before September and might have practical difficulties in calling an SMC meeting;
  - some school heads did have covering approval from their SMCs for the appointment of teaching staff;
  - some schools were not aware of the requirements under Regulation 76 of the Education Regulations; and
  - one school was not aware that the required appointment procedures also applied to temporary part-time substitute teachers.

The Committee sought the Administration’s comments on the schools’ above responses and requested it to provide a copy each of all the prescribed forms signed by the principals and supervisors of these 13 schools for the appointment of teaching staff in the 2000-01 and 2001-02 school years.

41. In her letter of 9 April 2003, in *Appendix 12*, the **Permanent Secretary for Education and Manpower** explained that:

- to facilitate redundant teachers in aided primary schools to seek teaching posts, all teaching vacancies in aided primary schools had been “frozen” around April in the past years until all redundant teachers were placed. The dates of “defreezing” were 16 August and 8 August in 2000 and 2001 respectively. During the “frozen” period, schools were not allowed to enter into formal appointment contracts with non-redundant teachers in respect of their vacant posts though they might interview prospective candidates. In spite of the “freezing” arrangement, schools should ensure that the recruitment procedures were in compliance with the relevant regulations and requirements. For 2003, the Administration had revised the placement arrangements for redundant teachers with a view to completing the exercise in early July;
- the Administration noted that some schools had obtained covering approval/endorsement to new teacher appointments at subsequent SMC meetings. As prior approval by the SMCs was required, the Administration had advised these schools to follow the appropriate procedures for appointment of new teachers;

## Primary education - The administration of primary schools

---

- school authorities had the responsibility to ensure that all the regulations currently in force were complied with. Training courses for school managers and new school heads were organised regularly, which covered, among others, appointment and personnel matters; and
- appointment of new teachers reported in the prescribed appointment form, irrespective of whether the teachers were temporary or regular, was subject to the same appointment procedures.

42. Having perused the 79 prescribed forms in respect of appointment of teaching staff in the aided schools concerned provided in the Permanent Secretary for Education and Manpower's letter of 5 March 2003, in *Appendix 13*, the Committee noted that the requirements under Regulation 76 of the Education Regulations were not brought to the attention of the school heads on the prescribed appointment form. The Committee asked the Administration about the reasons for this. In addition, the Committee noted that:

- in five of the eight appointment forms submitted by one school, the school head did not state the date on which the SMC had approved the filling of the teaching post. In one of the appointment forms, the school head completed the form one day before the SMC gave approval of the appointment;
- in two of the 17 appointment forms submitted by another school, the school head did not state the date on which the SMC had approved the filling of the teaching post; and
- in eight of the 12 appointment forms submitted by a further school, the school head did not state the date on which the SMC had approved the filling of the teaching post.

The Committee questioned whether the above practices were accepted by the then ED.

43. The **Permanent Secretary for Education and Manpower** responded in her letter of 9 April 2003 that:

- under Section III of the prescribed appointment form, the school supervisor was required to declare that the appointment of the teacher concerned was conducted in accordance with the provisions in the Education Ordinance, Education Regulations, Code of Aid and standing circulars. Regulation 76 of the Education Regulations was therefore included under this statement. To ensure compliance with this requirement by schools, the Administration

## Primary education - The administration of primary schools

---

would revise the prescribed appointment form to ensure that schools would observe all the regulations and requirements for staff appointment; and

- schools were required to report to the Administration via the prescribed appointment form the particulars of the SMC's approval, including the approval date, in respect of the appointment of teaching staff starting from the 2000-01 school year. For the initial year or so when the arrangement was new, the Administration had adopted a flexible approach, under which an appointment form without the date of the SMC's approval was also accepted if it was endorsed by the school supervisor so as not to delay the payment of salaries to teachers. The Administration had subsequently tightened up the processing of such forms. At present, appointment forms that had not included the SMC's approval date were returned to schools and the outstanding particulars need be filled in before the forms were further processed.

44. Noting the Administration's undertaking to revise the prescribed appointment form, the Committee enquired:

- when the appointment form would be revised; how the wording of the form would be revised; how the revised declaration requirement could ensure full compliance of the proper procedures for recruitment and appointment of teaching staff; and
- whether, under the current procedures, there was any requirement that the school principal and the school supervisor had to make a declaration of interest in the recruitment and appointment process, e.g. in cases where the appointee was a family member or relative of the principal or an SMC member.

45. In her letter of 10 February 2003, in *Appendix 14*, the **Permanent Secretary for Education and Manpower** informed the Committee that:

- the Administration would revise the form to include a clause that required the school supervisor to declare that the appointment had been approved by the majority of the members of the SMC, and that the school had followed all the guidelines laid down by the EMB. A warning clause would also be included to alert supervisors that making false declaration would constitute maladministration. The proposed clauses served to forewarn schools that they should ensure strict observance of the relevant provisions and requirements before making any offer of appointment to new teachers; and

## Primary education - The administration of primary schools

---

- it was laid down in Administration Circular No. 2/98 that SMCs should require their members and school staff to report any situations where they or their immediate family members had an interest in any matter under consideration by the school (including staff appointment), and should, on receipt of any disclosure of interest, consider whether or not the member or the school staff concerned should be directed to withdraw from participating in the further consideration of the matter in respect of which the conflict arose. The “Points to Note in Handling Appointment Matters” attached to Administration Circular No. 32/2000 repeated the need for the selection panel members to declare any conflict of interest that might arise in the staff appointment process. It further stated that any person who and whose family member had an interest in the appointment must be excluded from the selection panel. It also included other specific circumstances that might constitute a conflict of interest.

46. In her letter of 5 June 2003, the **Permanent Secretary for Education and Manpower** informed the Committee that the EMB would issue a revised appointment form to aided schools in June 2003.

47. Referring to Regulations 75 and 76 of the Education Regulations, the Committee asked the Administration to provide a copy of the constitution of the SMC of each of the 13 schools as approved by the ED. It also enquired:

- whether there was any ordinance that provided for the incorporation of any of the 13 schools or their SMCs;
- about the legislative intent of Regulation 76;
- whether the vote of all the members of the SMC could be taken by means other than at a meeting, e.g. by circulation of paper or by telephone confirmation; and
- whether the SMCs of the 13 schools were allowed to delegate, under its constitution or by resolution, to their principals or supervisors the authority to appoint and dismiss teaching staff.

## Primary education - The administration of primary schools

---

48. The **Permanent Secretary for Education and Manpower** informed the Committee in her letters of 5 March 2003 and 11 March 2003, in *Appendices 13 and 15*, that:

- of the 13 schools in question, only two had an approved constitution. All the 13 schools did not have their own ordinances;
- the legislative intent of Regulation 76 was to hold the SMC accountable for the appointment and dismissal of teachers and to safeguard that appointment and dismissal of teachers was fair;
- there was no express provision in the Education Ordinance and the Education Regulations that members of an SMC had to give their votes at a meeting. Whether the votes could be taken by circulation of paper or by telephone confirmation depended on the terms of the constitution or the articles of association of the SMC of individual schools; and
- in accordance with Regulation 76, the SMCs of the 13 schools were not allowed to delegate, under their constitutions or by resolution, to their principals or supervisors the authority to appoint and dismiss teaching staff.

49. Noting that only the SMCs of two of the 13 schools had their constitutions approved by the Director of Education, the Committee asked whether the Director of Education had exercised his power under Regulation 75(1) to require the other schools to submit a written constitution for his approval. Furthermore, the Committee understood from the response of one school that its SMC had authorised the school supervisor, under its constitution, to appoint and dismiss teaching staff. As such delegation was not allowed under Regulation 76, and the school's constitution had not been approved by the Director of Education, the Committee enquired about the follow-up actions that the Administration would take.

50. In her letters of 11 March 2003 and 9 April 2003, the **Permanent Secretary for Education and Manpower** stated that:

- Regulation 75(1) of the Education Regulations provided that the Permanent Secretary for Education and Manpower might, by notice in writing to the supervisor, require the managers of any school to prepare, execute and submit to her for her approval a written constitution in accordance with which the school should be managed, and within a time to be specified in such notice the supervisor should comply therewith. The Permanent Secretary for

## Primary education - The administration of primary schools

---

Education and Manpower therefore had the power to make such a request if she considered appropriate but was not obliged to exercise the power in every case; and

- the Administration would withhold the processing of any draft SMC constitutions submitted by schools in view of the introduction of the Education (Amendment) Bill 2002. Upon the enactment of the Bill, the Administration would advise these schools to make amendments to their constitutions, where appropriate, having regard to the requirements of the incorporated management committee (IMC) constitution.

51. It appeared to the Committee that as there was no provision in the Education Regulations explicitly stating how and when the vote of the SMC in respect of the appointment and dismissal of a teacher was to be taken, it became essential that such procedures should be provided in the constitutions of individual schools. However, the Director of Education had not exercised his power to require a written constitution from schools for his approval. The Committee considered that although Regulation 75 did not impose an obligation on the Director of Education to require all schools to submit their constitutions for his approval, it was not contemplated that the Director would only exercise that power in exceptional circumstances. If the Director had exercised his power to require all schools to submit their constitutions for his approval, any doubt on the form or timing of the SMC's approval could have been removed. The Committee sought the Administration's views on its observations and enquired whether it would take any measures to ensure that schools would comply with Regulation 76 in a manner consistent with its legislative intent, including directing schools to submit their constitutions for the Director of Education's approval.

52. The **Permanent Secretary for Education and Manpower** responded in her letter of 9 April 2003 that:

- from 1991 to 1997, public sector schools were invited to join the SMI on a voluntary basis. Participating schools had to fulfill certain requirements within the first two years after joining, including starting the drafting of a formal constitution for the SMC in Year 1. For non-SMI schools, the former Director of Education did not require them to submit a written constitution for his approval. However, any such draft constitution submitted by non-SMI schools of their own accord would also be processed; and



## Primary education - The administration of primary schools

---

- the SMC of an aided school would be required to incorporate under the Education Ordinance within five years after the enactment of the Education (Amendment) Bill 2002, if passed, and an IMC should have a written constitution approved by the Permanent Secretary for Education and Manpower. Upon the enactment of the Bill, the EMB would issue to schools a sample constitution for the IMC, and would draw the attention of schools to the requirement that their draft IMC constitution should not contain any provisions in contravention of the Education Ordinance or the Education Regulations.

53. Turning to the question of scheduling of school holidays, the Committee noted from paragraph 3.14 of the Audit Report that some of the principals of the 18 schools had informed Audit that it would be desirable to distribute school holidays more evenly throughout the school year by shortening the summer holiday and lengthening the duration of other school term breaks. However, the school principals felt that the ED would normally not allow significant rescheduling of school holidays. The Committee therefore asked whether the ED had communicated with school principals about the flexibility in rescheduling school holidays.

54. The **Permanent Secretary for Education and Manpower** provided in her letter of 13 January 2003 a copy of the circular memorandum to non-government schools on the 2002-03 school holiday list. She stated that currently, variations to the school holiday list were allowed. Government schools were given full discretion to grant three discretionary holidays on top of the approved school holiday list. The Administration would seek the views of the school sector in due course and review the distribution of school holidays accordingly.

55. Regarding the issue of outsourcing janitor services in schools, the Committee pointed out that a balance should be struck between achieving greater efficiency and savings and safeguarding the interests of existing janitors. The Committee asked whether the exercise would cause redundancies.

56. The **Director of Education** responded that:

- government schools had outsourced their janitor services. While the ED had seen the benefits of outsourcing, outsourcing only applied to services which could be provided on a contract basis. Generally speaking, government schools could outsource only about 50% or less than 50% of their janitor

## Primary education - The administration of primary schools

---

services. They would only outsource their janitor services upon natural wastage of their janitors;

- the ED would encourage other schools to draw reference from the experience of government schools and assess the costs and benefits of outsourcing their janitor services; and
- the ED agreed with Audit's view on the need for janitors to acquire additional job skills.

### Procurement procedures and asset management

57. Paragraph 4.5 of the Audit Report revealed that three of the 18 schools often procured goods and services without obtaining quotations. Paragraph 4.6 further revealed that six schools had set their own financial limits for oral quotations rather than following the guidelines set by the ED in this regard. The Committee wondered whether the ED had detected these irregularities in its past inspections.

58. The **Assistant Director of Education (School Administration & Support)** said that the staff of the ED's SA Section inspected the accounts of schools annually on a random basis. If schools were found to have breached the ED's guidelines or the SAG, the SA Section would prepare a detailed report and inform the schools concerned of the irregularities and follow-up actions required. Staff of the ED's regional education offices would monitor the follow-up actions taken by the schools concerned.

59. The Committee questioned why the ED was not able to detect, before the commencement of the audit review, the irregularities mentioned in the Audit Report. In his letter of 27 December 2002, the **Director of Education** responded that:

- public-sector schools were required to administer SBM. SBM aimed to enable schools to deploy their resources in an effective and accountable manner so that they could respond proactively to the needs of their students in the delivery of education services, thereby improving the learning outcomes. Hence, the SMCs of aided schools had been devolved with more authorities as well as responsibilities. While enjoying greater management autonomy and flexibility in the use of funds, schools should be accountable for their performance and day-to-day operation, including matters on staff appointment and proper use of public funds. Within the self-managing framework, schools were required to increase their transparency through participatory

## **Primary education - The administration of primary schools**

---

management involving key stakeholders, such as representatives of parents, alumni and teachers;

- guidelines, seminar and workshops had been organised to familiarise school managers and school heads with the underlying principles of SBM and to help them put in place explicit policies as well as a fair, open and transparent system governing financial and personnel matters of their schools. Performance indicators had also been developed for reference by schools in conducting their self-evaluation;
- the ED also undertook inspections and visits to help schools improve their performance. To be in line with the education reform, the school development teams of the ED's regional education offices focused their effort of school visits on school development and improvement. In conducting regularity audit of schools, the ED inspected the accounts of aided and government schools on a sampling and test check basis. Quality assurance inspections were also conducted to give schools an external perspective on their performance in different domains, in particular the domain of learning and teaching. From 2000 to 2002, audit inspections had been carried out to all the 18 schools examined by Audit. Quality assurance inspections had also been conducted to Schools B, D, F, J and K; and
- with increasing transparency in the governance structure of schools and to be in line with the spirit of SBM, management audit involving extensive checking of schools' internal recruitment records was not the ED's priority areas of work. However, investigations would be conducted when the ED received complaints or reports of irregularities. Therefore, the ED had not been able to detect most of the irregularities mentioned in the Audit Report, which would require detailed vetting of schools' internal documents.

60. On the question of letting out of school premises, the Committee noted from paragraph 4.20 of the Audit Report that of the 18 schools visited by Audit, many schools had not let out their school premises. In some cases, the applications for hiring of accommodation from charitable and community service organisations were rejected without proper justifications. However, paragraph 4.19 revealed that School R had allowed a private organisation to use its school premises free of charge. The Committee asked the Director of Education to comment on the phenomenon.

## **Primary education - The administration of primary schools**

---

61. The **Director of Education** stated in his letter of 27 December 2002 that requirements and guidelines on the hire of accommodation in aided schools, including the recommended charges, were stipulated in Finance and Accounts Circular No. 4/2000 on “Hire of Accommodation in Aided Schools”. All along, the ED had been encouraging schools to open up their school premises for community use. Along the line of SBM, the decision on letting out school premises and the levels of hiring charges, i.e. whether charging full rate or concessionary rates or waiving the charge, rested with school supervisors or school heads. Schools were required to keep records of the hiring, whether free or with charge, for inspection by the ED’s school inspection team. Under the existing arrangement of random inspection, School R’s practice of allowing a private organisation to use its school premises free of charge would not be possibly detected immediately.

### **Management of student matters**

62. The Committee noted from paragraph 5.14 of the Audit Report that of the 18 schools visited by Audit, 16 had received donations during the three school years from 1998-99 to 2000-01. Audit’s examination of the schools’ records revealed that there were cases where some schools had accepted donations from their suppliers of goods or services. In the cases concerning Schools D, K and L cited in Table 5 of paragraph 5.14, Audit could not find documentary evidence to show that these three schools had invited tenders or obtained quotations from other suppliers when procuring the goods or services from the suppliers who had made the donations.

63. Against the above background, the Committee was very concerned that there might be a potential conflict of interest in the acceptance of donations by Schools D, K and L. It asked the Administration whether the practices of the three schools were in contravention of any legislation or guidelines.

64. The **Director of Education** said at the public hearing and in his letter of 27 December 2002 that:

- the ED did not accept, encourage and allow schools to accept donations from textbook publishers and other suppliers;
- requirements and guidelines regarding the acceptance of donations by schools were stipulated in Section 15 of the Code of Aid for Primary Schools, Administration Circular No. 2/98 on “The Prevention of Bribery Ordinance, Cap 201” and Section 6.2.2 of the SAG in force at that time. Under the standing practice, schools should seek prior approval before accepting

## Primary education - The administration of primary schools

---

donations which might involve annual recurrent expenditure, and all donations accepted should be reported quarterly to the ED in the prescribed form;

- except for the acceptance of an air-conditioner which incurred recurrent expenditure by School K without the ED's prior approval, no irregularities were involved in all other cases of acceptance of donation because all donations were reported to the ED by the schools concerned. As for the acceptance of the air-conditioner by School K, the ED had not received the school's quarterly report on this donation item although the school head claimed that the school had sent in the quarterly return. While School K had not contravened the provision in the Education Ordinance, it had not observed the requirement of seeking the ED's prior approval for acceptance of donation with recurrent implication as laid down in the Code of Aid for Primary Schools, the Administration Circular No. 2/98 and the SAG. The school had been verbally advised to observe the requirement and rectify the irregularity as soon as possible; and
- in its forthcoming revised version of the circular on acceptance of donations, the ED would further strengthen the message that schools should not receive any donations from suppliers of goods or services unless there were compelling reasons for doing so and with the approval of the SMC. Schools should also record clearly such compelling reasons in their returns of donation records to the ED.

65. In view of the Director of Education's response, the Committee invited the Director of Audit to further comment on the cases of acceptance of donations by schools from their suppliers of goods or services.

66. The **Director of Audit** advised in his letter of 15 January 2003 that:

- he agreed that, strictly speaking, no irregularities were involved in the cases of acceptance of donations by the schools visited by Audit, as schools were in general in compliance with the ED's guidelines on donation, including the "General Guidelines on the Acceptance of Advantages and Related Matters" and the "Guidelines concerning Textbook Selection Procedures and Acceptance of Publishers' Donations by Schools", which were noted by the LegCo Panel on Education at its meeting in July 1998. Audit's examination of School K's records also showed that the school had prepared a quarterly report on the donation of the air-conditioner; and

## Primary education - The administration of primary schools

---

- however, he considered that there was a need to tighten up the control on allowing schools to accept donations from suppliers. This was because, to avoid schools placing themselves in an obligatory position to textbook publishers, the ED had required schools not to accept any donations from textbook publishers unless there were compelling reasons to do so. For donations from other suppliers of goods or services, e.g. uniform suppliers and school bus operators, the ED, however, had not specifically required schools to follow the same principle. Furthermore, the reason “sponsoring students’ activities” was often used by the 16 schools in accepting donations from textbook publishers and other suppliers. Audit had therefore recommended that the ED’s requirement that schools should not accept donations from textbook publishers unless there were compelling reason to do so, should be extended to all other suppliers.

67. In response to the Committee’s query as to whether the relevant requirements and guidelines regarding the acceptance of donations were stringent enough, the **Permanent Secretary for Education and Manpower** advised in her letter of 15 January 2003, in *Appendix 16*, that:

- the acceptance of donations from textbook publishers and other suppliers by schools was governed, where appropriate, by the Codes of Aid and standing circulars on the subject, e.g. Administration Circular No. 2/98 and Schools Curriculum Circular No. 1/2002 on “Notes on Selection of Textbooks and Learning Materials for Use in Schools”. In short, donations from textbook publishers and other suppliers of goods or services were accepted only under exceptional circumstances. This should be fully justified, approved by the SMC and properly documented. SMCs of aided schools must also seek approval from the EMB for accepting donations which would result in additional expenditure either from government or school funds. In addition, they were required to report on a quarterly basis details of donations accepted and to fully record the donations in the schools’ subscription or general funds account for audit purposes;
- to step up current actions and measures, the Administration was revising Administration Circular No. 2/98 with emphasis on the following requirements:
  - (a) SMCs should include in the relevant documents, such as invitations to tenders/quotations and contracts of goods/services, the warning of “not to offer advantages to school staff in their official dealings”;

## Primary education - The administration of primary schools

---

- (b) schools had to include the amount and purpose of the donations in their School Annual Report and record them in an open register accessible by members of the public; and
- (c) SMCs would not be required to report acceptance of donations to the EMB so as to reduce workload on the part of schools, but would be subject to periodic audits to ensure compliance with stipulated accountability requirements; and
- on textbooks selection and publishers' donations, the Administration had incorporated the suggestions of the Independent Commission Against Corruption and the Consumer Council in existing circulars to safeguard consumer rights of parents and students. The Textbook Publishers Organisations had laid down a Code of Practice Regarding Donations to Schools for their members. The EMB had also reminded publishers during regular joint meetings not to offer donations to schools.

68. Regarding tuckshop operations, paragraph 5.20 of the Audit Report stated that according to the ED's guidelines, schools should ensure that tuckshops were operated in the interests of students, and that the prices of items sold in the tuckshops did not exceed the market prices. However, paragraphs 5.24 to 5.29 revealed that school items sold by the tuckshop operator in School N were more expensive than those in other schools. Moreover, although the tuckshop operator had been operating there for more than ten years, School N had not attempted to re-tender the tuckshop operations. The Committee wondered whether School N had ensured that its tuckshop was operated in the interests of students and parents.

69. In his letter of 27 December 2002, the **Director of Education** explained that:

- requirements and guidelines regarding tuckshop operations were stipulated in Administration Circular No. 3/2001 on "Trading Operation in Aided Schools" in force at that time and Section 6.2.2 of the SAG. As a general principle, schools should set up a School Tuckshop Committee, composed of teachers and a representative from the Parent-Teacher Association, to supervise and monitor the operation of the tuckshop to ensure that it was efficiently operated in the interests of students. Matters relating to the renewal of contract for tuckshop operations and monitoring of trading activities, including the items to be sold and control of prices, should be part of the duties of the School Tuckshop Committee. Schools should also ensure that trading activities

## **Primary education - The administration of primary schools**

---

were conducted in a fair, open and transparent manner. In this connection, the practice of offering tuckshop operations to the same operator for more than ten years without going through tendering procedure was not in the best interests of students and parents. To better safeguard the interests of students and parents, the Administration would explicitly spell out the requirement of inviting quotations every three years in the forthcoming revised circular on trading operations; and

- as for the sale of textbooks in School N, the tuckshop operator was approved to provide the service of sale of textbooks on the condition that the service was carried out in accordance with the governing principles of sale of textbooks. According to the school head, the sale of textbooks had been conducted on a voluntary basis in accordance with the guidelines, and about 60% of their students purchased their textbooks from the tuckshop operator. Similar to other trading activities, the school should follow the guidelines in force and review the prices of textbooks regularly to ensure that the prices were reasonable.

70. The **Permanent Secretary for Education and Manpower** informed the Committee in her letter of 5 June 2003 that the EMB had issued a revised circular, i.e. the EMB Circular No. 13/2003 dated 28 March 2003 which superseded Administration Circular No. 3/2001 dated 29 January 2001 on “Trading Operation in Aided Schools”, to draw the attention of schools in receipt of public funds to the fundamental principles for conducting trading operations in schools, which included tuckshop operations, and business or trading undertakings operated by schools’ sponsoring or associated bodies on school premises. In the circular, schools were reminded of the importance of obtaining competitive tenders or quotations in providing procurement services for students and parents.

### **Support from the ED to schools**

71. Referring to the views of school principals on the support provided by the ED as set out in paragraph 6.3 of the Audit Report, the Committee was very concerned that some school principals considered that they were overwhelmed by a large number of circulars and guidelines issued by the ED from time to time. The Committee therefore enquired about:

- the number of circulars and guidelines issued as at 31 December 2002 in respect of the administration of primary schools; and
- the actions that had been and/or would be taken to improve the situation.



## Primary education - The administration of primary schools

---

72. In her letter of 10 January 2003, in *Appendix 17*, the **Permanent Secretary for Education and Manpower** informed the Committee that:

- as at 31 December 2002, a total of 190 circulars and guidelines in respect of the administration of primary schools were in force. They covered a wide range of issues, including financial, staffing, personnel, curriculum, maintenance and safety matters. Some of these circulars and guidelines had been issued in response to an incident, e.g. the death of a student from height leading to the issue of a circular on installation of safety nets at stairwells in school premises. Many of the circulars and guidelines were advisory in nature. Some had been issued in response to demands for guidance or standardised practice following major complaints, e.g. the circular on selection of textbooks and learning materials for use in schools covering donations by publishers; or public outcry, e.g. the circulars and guidelines on reducing the weight of school bags, and tropical cyclones and heavy persistent rain arrangements for kindergartens and day schools. These circulars and guidelines were regularly reviewed to address the concerns of the public;
- circulars and guidelines would only be issued to schools where absolutely necessary. The EMB was reviewing the situation with a view to further reducing the number of circulars by consolidating similar or related subjects into one circular. Occasional announcements with short-term validity were promulgated in the form of circular memorandum, which was normally deleted within 12 months from the date of issue; and
- the SAG made reference to relevant circulars and guidelines in force for easy reference by schools and was regularly updated to reflect the latest situation.

73. The Committee further asked whether an on-line version of the circulars and guidelines was available to schools. The **Director of Education** answered in the affirmative. He said that the ED had been encouraging schools to access all circulars and related documents through the ED's webpage.

74. The Committee considered that schools might encounter difficulties in following the numerous requirements stated in the various circulars and guidelines, specifically those relating to financial management. The Committee asked whether the EMB would provide better support to schools.

## Primary education - The administration of primary schools

---

75. The **Director of Education** said that the EMB hoped to solicit more views from all stakeholders. As far as training was concerned, the EMB had organised many experience-sharing workshops and training courses for SMC members since 2001 to enhance their understanding of matters such as financial management, personnel management and curriculum development with a view to enabling them to administer their schools more effectively.

76. The Committee was concerned that despite the large number of circulars and guidelines, cases of non-compliance appeared to be commonplace among the 18 primary schools selected by Audit for examination. Due to the lack of enforcement action by the Administration, schools did not take the initiative to manage their operations and resources properly. The Committee asked how such mode of management could be changed.

77. The **Permanent Secretary for Education and Manpower** responded that:

- it was now time to change the culture whereby schools relied on the circulars and guidelines issued by the Administration in managing their schools. Hence, there was a need to implement SBM so as to enhance the role of the SMC. The Education (Amendment) Bill 2002 sought to provide a statutory backing for full implementation of SBM in 2003; and
- she believed that with full implementation of SBM, the ED would no longer monitor schools directly. Instead of penalising schools for cases of non-compliance, the ED would disseminate information on good practices of schools in the hope that other schools would draw reference from such practices.

78. According to paragraph 6.3(a) of the Audit Report, some school principals opined that it took time and energy to manage effectively the use of grants provided by the ED as there were too many types of grants. The Permanent Secretary for Education and Manpower said at the public hearing on “Primary education - Delivery of effective primary education” (Chapter 11 of the Director of Audit’s Report No. 39) on 5 December 2002 that the Administration hoped to allocate funds to primary schools through more lump sum grants and allow them to transfer funds between grants. In this connection, the Committee enquired about the actions that had been and/or would be taken by the Administration in this regard.

## **Primary education - The administration of primary schools**

---

79. In her letters of 6 January 2003 and 5 June 2003, the **Permanent Secretary for Education and Manpower** informed the Committee that the Administration was conducting a fundamental review of grants with a view to consolidating various grants into lump sum grants. It aimed to complete the review in 2003. The EMB would consult the school sector on the outcome of the review, and planned to implement the new arrangements with effect from the 2004-05 school year if the proposal was supported by the parties concerned.

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

- expresses serious concern that:
  - (a) although the Education Department (ED) had issued a total of 190 circulars and guidelines as at 31 December 2002, neither the school inspections nor the external audits and the School Management Committees (SMCs) have effectively ensured full compliance of the numerous detailed requirements stated therein; and
  - (b) cases of non-compliance appear to be commonplace among the 18 primary schools selected by Audit for examination;
- acknowledges:
  - (a) the Permanent Secretary for Education and Manpower's statement that:
    - (i) circulars and guidelines will only be issued to schools where absolutely necessary; and
    - (ii) the School Administration Guide makes reference to relevant circulars and guidelines in force for easy reference by schools and is regularly updated to reflect the latest situation; and
  - (b) the Secretary for Education and Manpower's statement that in giving schools more autonomy in managing their own operations and resources, the Administration will, on the one hand, formulate clear and adequate regulatory requirements in respect of the administration of schools and, on the other hand, request schools to put in place a mechanism for self-monitoring;

## **Primary education - The administration of primary schools**

---

### **Strategic planning and financial management**

- expresses concern that:
  - (a) many schools failed to produce longer-term plans and evaluate school programmes;
  - (b) schools with a small number of classes had been given the fixed rate of the Capacity Enhancement Grant (CEG) at \$450,000 per annum, which exceeded the actual needs of the schools;
  - (c) many schools did not have specific plans on how to use the unspent surplus funds and some schools retained very high proportions of surplus funds;
  - (d) the ED had provided schools with information technology (IT) equipment regardless of their actual needs;
  - (e) most of the schools had appointed their existing external auditors for many years without going through a competitive selection process;
  - (f) most of the schools had not agreed with their appointed external auditors on the terms of engagement; and
  - (g) a number of external auditors had not fully complied with all the ED's requirements on external audit arrangements;
- acknowledges that the Education and Manpower Bureau (EMB):
  - (a) has issued a revised Guideline on Annual School Plan and Annual Report early in the 2002-03 school year to assist schools in formulating longer-term plans;
  - (b) will continue to render appropriate assistance to schools, e.g. through Quality Assurance Inspection, regular visits of School Development Officers, seminars and workshops, and issue of resource materials, to help them draw up good school plans and conduct self-evaluation;
  - (c) has obtained the approval of the Finance Committee of the Legislative Council to revise the schedule of rates and introduce more funding levels for the CEG with effect from the 2003-04 school year;

## **Primary education - The administration of primary schools**

---

- (d) will step up measures to help schools make longer-term plans so that students can benefit from the Operating Expenses Block Grant (OEBG) or Subject and Curriculum Block Grant (SCBG), and will also review the need for allowing schools to keep a reserve of 12 months' provision;
  - (e) has agreed that the quantity of IT equipment issued to schools in future should be based on each school's actual need, and will follow up with schools to see how the IT equipment could be put to better use;
  - (f) will ask all schools to report in the summer of 2003 the usage of the IT facilities purchased, and will claw back from them any unexpended balance of the IT grant;
  - (g) will require aided schools to invite audit firms to submit tenders or quotations for appointment of external auditors, and to select them according to the pre-determined criteria, including those mentioned in paragraph 2.46 of the Audit Report; and
  - (h) will enhance the awareness of aided schools of the importance of obtaining an audit engagement letter from external auditors and of the matters to be included in the audit engagement letter, and will conduct independent test checks of the certified accounts of schools to ensure that the external auditors have complied with all the ED's requirements;
- acknowledges the Permanent Secretary for Education and Manpower's statement that the Administration hopes to allocate funds to schools through more lump sum grants and allow them to transfer funds between grants;
  - urges the EMB to consult the Legislative Council and other relevant parties in the course of the review of the need for schools to keep a reserve of 12 months of the OEBG or the SCBG;

### **Human resource management**

- expresses dismay that:
  - (a) some schools had not set up a proper system for recruiting teaching staff and some schools had not conducted the recruitment procedures properly. As a result, there was no assurance that the most suitable candidates had been selected to fill the posts;

## **Primary education - The administration of primary schools**

---

- (b) there is no provision in the Education Regulations explicitly stating how and when the vote of the SMC in respect of the appointment and dismissal of a teacher is to be taken, as a result of which it became essential that such procedures should be provided in the constitutions of individual schools;
  - (c) the Director of Education had not exercised his power under Regulation 75(1) of the Education Regulations to require a written constitution from schools for his approval;
  - (d) the supervisors of the ten schools mentioned in paragraph 3.9 of the Audit Report had signed on the prescribed appointment forms confirming that prior approval of their SMCs had been sought regarding the appointment of teaching staff without there being any documentary proof relating to the SMC's prior approval; and
  - (e) the ED had routinely accepted appointment forms without the date of the SMC's approval;
- considers that if the Director of Education had exercised his power to require all schools to submit their constitutions for his approval, any doubt on the form or timing of the SMC's approval could have been removed;
- acknowledges that:
  - (a) the EMB has scheduled to issue a revised appointment form in June 2003 to clarify the requirements in respect of the appointment of a teacher;
  - (b) in future, the EMB will return to schools appointment forms which had not been completed in compliance with all its requirements; and
  - (c) the Education (Amendment) Bill 2002 is being considered by a Bills Committee of the Legislative Council;
- urges the EMB, after the Education (Amendment) Bill 2002 has passed into law, to carry out an exercise to review the various circulars and guidelines, with a view to further reducing their number within a reasonable time frame and providing schools with easy reference;

## **Primary education - The administration of primary schools**

---

- expresses concern that:
  - (a) senior teachers, after stepping down to the junior post of a class teacher, were still given the salary increments of the senior teacher salary scale; and
  - (b) although there would be substantial savings from outsourcing the janitor services in schools, only one out of the 18 schools visited by Audit had outsourced such services;
- acknowledges that:
  - (a) the EMB will review the distribution of school holidays throughout the school year and seek the views of the school sector in due course;
  - (b) the EMB will withhold the annual increment of stepped-down senior teachers starting from the 2003-04 school year;
  - (c) government schools will only outsource their janitor services upon natural wastage of their janitors, and the EMB will encourage other schools to draw upon the experience of government schools and assess the costs and benefits of outsourcing their janitor services; and
  - (d) the EMB will suggest to schools that they review the duties of janitors to identify areas where the janitors can be of further assistance so as to achieve better utilisation of resources;

## **Procurement procedures and asset management**

- expresses serious concern that:
  - (a) some schools often procured goods and services without obtaining quotations or documenting the details of the quotations. As a result, there was no assurance of securing the best available price for the procurement of goods and services with public funds;
  - (b) most schools, when providing procurement services for students and parents, did not adopt the competitive tendering process to safeguard the interests of students and parents; and

## **Primary education - The administration of primary schools**

---

- (c) some schools had not let out their school premises as a community service to foster better cooperation between schools and the community, and a school had allowed a private organisation to use its school premises free of charge;
- acknowledges that:
  - (a) the EMB will conduct briefing sessions for schools on the procurement of goods and services;
  - (b) the EMB has issued a revised circular to remind schools of the importance of obtaining competitive tenders or quotations in providing procurement services for students and parents; and
  - (c) the government schools take the lead in letting out school accommodation as a service to the community, and the EMB will request aided schools to take similar action in its next revision of the relevant school circular;
- urges the Secretary for Education and Manpower to remind schools that profit-making organisations are not entitled to use the school premises free of charge;

### **Management of student matters**

- expresses concern that:
  - (a) a school's associated body had made considerable profits from the sale of school items to students;
  - (b) some schools had accepted donations from their suppliers of goods or services, which could place themselves in an obligatory position to the suppliers;
  - (c) a school had charged its tuckshop operator a high tuckshop rental, and students had to pay more for the items sold by the tuckshop operator. The school had not re-tendered the tuckshop operations for over 10 years; and
  - (d) one third of the students carried school bags exceeding 15% of their body weights, which was not beneficial to their health;



## **Primary education - The administration of primary schools**

---

- acknowledges that:
  - (a) the EMB has issued a revised circular to draw the attention of schools in receipt of public funds to the fundamental principles for conducting trading operations in schools, which include tuckshop operations, and business or trading undertakings operated by schools' sponsoring or associated bodies on school premises;
  - (b) the EMB has accepted Audit's observations on allowing schools to accept donations from suppliers and will continue to remind schools to observe relevant guidelines, and further strengthen the message that schools should not receive any donations from suppliers of goods or services unless there are compelling reasons for doing so and with the approval of the SMC; and
  - (c) the EMB will include a benchmark on the weight of school bags in future school circulars and/or publicity materials, and alert schools and parents to the need to take more action in reducing the weight of school bags;
- urges the Secretary for Education and Manpower to take action, e.g. through school inspections, to ensure that no excessive profits are made from the sale of school items by schools' sponsoring and associated bodies;

### **Support from the ED to schools**

- acknowledges that the EMB:
  - (a) has taken and will take a series of measures to enhance its support to schools, and is conducting a fundamental review of grants with a view to consolidating various grants into lump sum grants; and
  - (b) will focus inspections on the financial management and procurement of goods and services by schools, and to organise seminar and briefing sessions for school managers, principals and other school personnel to promote awareness of financial management of the school sector; and

### **Follow-up actions**

- wishes to be kept informed of:
  - (a) the actions taken to improve the strategic planning and self-evaluation of schools;

## **Primary education - The administration of primary schools**

---

- (b) the results of the review of the level of surplus funds of the OEBG or the SCBG allowed to be retained by schools, and the measures taken to help schools plan the optimum use of the surplus funds;
- (c) the actions taken to improve the use of IT equipment in schools;
- (d) the actions taken to improve the external audit arrangements of aided schools;
- (e) the actions taken to ensure that schools set up a proper recruitment system for teaching staff in schools, and to ensure that the recruitment procedures of schools are conducted properly;
- (f) the results of the review of the distribution of school holidays throughout the school year;
- (g) the actions taken to improve the arrangements for the stepping down of senior teachers;
- (h) the progress made by schools in outsourcing their janitor services;
- (i) the actions taken to improve the following:
  - (i) the cost-effectiveness of janitor services in schools;
  - (ii) schools' procedures in procuring goods and services, and in providing procurement services for students and parents;
  - (iii) the schools' arrangements for letting out their school premises; and
  - (iv) the control over the sale of school items by schools' sponsoring and associated bodies;
- (j) the progress of the various actions that the Director of Education has undertaken to take as mentioned in paragraph 5.19 of the Audit Report;
- (k) the actions taken to improve tuckshop operations in schools and reduce the weight of school bags; and
- (l) the results of the fundamental review of grants and all other actions taken by the EMB to enhance its support to schools.

## Chapter 2

### Subvention for staff emoluments of The Legislative Council Commission

---

Audit conducted a review on the Government's funding for staff emoluments of The Legislative Council Commission (the LCC).

2. At the public hearing, **Mr Ricky FUNG Choi-cheung, Secretary General of the Legislative Council Secretariat (LCS)**, made an opening statement. Referring to paragraph 2.4(b) of the Audit Report, which stated that it was the responsibility of a Controlling Officer to inform immediately the Secretary for Financial Services and the Treasury where he had reason to believe that funds surplus to requirements existed under a subhead so that the excess might be reserved, the **Secretary General of the LCS** said that:

- the LCC was a statutory corporation established under The Legislative Council Commission Ordinance (the LCCO). Apart from the general provisions of the LCCO, the LCC had entered into the Exchange of Letters (EoL) with the Administration. The EoL set out the general principles and guidelines governing the administrative arrangements for the LCC and its working relationship with the Administration. Paragraph 3.4 of the EoL clearly stated that "Any surplus of income over expenditure at the end of the year may be kept in the Reserves of the Commission." This provision was thought necessary as it was contemplated that under the funding arrangement agreed between the LCC and the Administration as reflected in the EoL which was to give effect to the LCCO, there could be surpluses from provisions made to the LCC from time to time. It would put the Secretary General in an invidious position if he were required to inform the Secretary for Financial Services and the Treasury of surpluses in order that the surpluses might be reserved. Under the LCCO and the EoL, it was for the LCC to decide whether any surplus of income over expenditure at the end of the financial year should be kept in its reserves; and
- in practice, the Financial Services and the Treasury Bureau (FSTB) was aware of the financial position of the LCC. An analysis of the LCC's recurrent account was forwarded to the FSTB in the process of the preparation of the Annual Estimates. As shown in the analysis for the 2003-04 Estimates, in **Appendix 18**, there was an item on "Transfer to/(from) Operating Reserve". In addition, every year the Secretary for Financial Services and the Treasury was given a copy of the LCC's annual report containing the Director of Audit's report on the LCC's accounts.

## Subvention for staff emoluments of The Legislative Council Commission

---

3. Regarding Audit's observations and recommendations generally, the **Secretary General of the LCS** said that:

- the one-line vote (OLV) funding arrangement for the LCC as set out in the EoL reflected the agreement by the Administration to recommendations made by the 1993 President's Working Group. That arrangement was to ensure flexibility in the deployment of resources and to recognise the prestige and special status of the Legislature. It was not for the purpose of treating the LCC on par with other non-government bodies which received funding from the Government under the Government's subvention policy and which were classified as subvented bodies. The LCC served a unique function of providing administrative support and services to the Legislature through the LCS. The enactment of the LCCO was to ensure the LCC's financial and managerial autonomy so that the Legislature could be given the necessary support to carry out its constitutional function independently in an effective and efficient manner. Therefore, the LCC should not be taken as a subvented organisation to which the Government's subvention policy is applicable; and
- since its inception in 1994, the LCC had been acting faithfully within the authority conferred on it by the LCCO in its implementation of the funding arrangement set out in the EoL. In this regard, the Commission had enjoyed the full cooperation of the Administration. There was no question of calculation errors in cash allowance and contract gratuities, or over-requisition of funds.

4. After the public hearing, the **Secretary General of the LCS** provided a letter, in *Appendix 19*, on the LCC's response to the major observations and recommendations in the Audit Report.

### **Contract gratuity provided to non-professional and supporting staff**

5. The Committee noted from paragraph 5.8 of the Audit Report that according to the guidelines stipulated in Finance Bureau Circular Memorandum (FBCM) No. 10/99, in view of the financial implications, Controlling Officers should seek the FSTB's prior agreement if they offered to non-professional and supporting staff contract gratuity of more than 10% of the basic salary. However, as the Controlling Officer, the Secretary General of the LCS had not sought the FSTB's prior agreement on offering contract gratuity to newly recruited non-professional and supporting staff at a level of 15% of their basic salary. According to paragraph 5.12, the LCC had informed Audit that, in the view of the Legal Adviser of the LCS, FBCM No. 10/99 did not impose an obligation on the LCC or the Secretary General of the LCS to seek the FSTB's prior agreement.

## Subvention for staff emoluments of The Legislative Council Commission

---

6. The Committee further noted Audit's recommendation in paragraph 5.14 that the Secretary for Financial Services and the Treasury should seek the Department of Justice's advice as to whether the LCCO had conferred discretionary powers on the LCC to offer contract gratuity to staff of the LCS at a level higher than that prescribed by the FSTB, without seeking the FSTB's prior agreement.

7. In response to the Committee's request, the **Secretary for Financial Services and the Treasury** informed the Committee, in his letter of 9 May 2003 in *Appendix 20*, of the legal advice that the FSTB had obtained. He said that, according to the legal advice:

### The powers of the LCC

- section 10 of the LCCO provided for the powers of the LCC. The LCC might, among other powers, "employ staff in the Secretariat, .... and determine their numbers, grading, duties, remuneration and other terms and conditions of service" (section 10(1)(b)). The LCC might also "formulate and execute such managerial and financial policies as the Commission considers expedient to the performance of its functions" (section 10(1)(e)) and "receive and expend funds" (section 10(1)(h));
- the LCC was a statutory body independent of the Government (section 19) and in relation to the formulation and execution of managerial and financial policies, it should not be "subject to any direction or control of any person" (section 17(1)), with the exception of the Legislative Council (LegCo), which might by resolution give directions of a general or specific character to the LCC in relation to the performance of its functions or the exercise of its powers (section 17(2));
- though the LCC enjoyed considerable statutory powers under the LCCO, those discretionary powers were not absolute or unlimited. So far as was relevant to the present problem, the LCC "shall ensure that the grading, remuneration and other terms and conditions of service of staff of the Secretariat are kept, .... **broadly in line** with those applicable to persons employed in the Civil Service of the Government" (section 10(2)). It was worth noting, however, that the LCCO did **not** require the LCC to ensure that the remuneration and other terms and conditions of the Secretariat staff were the same or no better than those employed in the Civil Service. They must only be "broadly in line" with those in the Civil Service. What was "broadly in line" was not defined in the LCCO. It was essentially a question of fact. The remuneration might therefore be fixed at a level exceeding that in the Civil Service and this would not infringe section 10(2) so long as the degree

## Subvention for staff emoluments of The Legislative Council Commission

---

of excess was reasonable. Further, the LCC might also deviate from this general requirement imposed under section 10(2) as this was “subject to the Commission’s discretion to make exceptions in such cases **as it sees fit**”. In short, the LCC enjoyed considerable power in determining remuneration and other terms and conditions of its Secretariat staff;

- however, the LCC was expected to exercise the statutory discretionary powers reasonably. The fixing of an arbitrary sum for wages without regard to existing labour conditions could amount to an improper exercise of the statutory powers. However, in the present case, it appeared that the LCC had carefully considered the level of payment before arriving at the decision. It could not be said that its decision was arbitrary or otherwise irrational, though the Audit Commission had considered that on the basis of the employment market situations the LCC did not have “strong justifications” for its decision (paragraph 5.13 of the Audit Report);

### The legal effect of FBCM No. 10/99

- FBCM No. 19/99 did not prevail over the statutory provisions in the LCCO or the statutory powers enjoyed by the LCC under the LCCO. The memorandum was issued on 27 May 1999 by the then Secretary for the Treasury. It was addressed to Bureau Secretaries and Controlling Officers. (NB The Secretary General of the LCS was designated as a Controlling Officer.) It appeared to be a policy statement which “advises on the level of contract gratuity that subvented organisations may provide to their staff for the purpose of Government subvention” (paragraph 1). The memorandum required the Controlling Officers to “bring this to the attention of subvented organisations under their purview” (paragraph 1). It also required “the Controlling Officers to seek Finance Bureau’s prior agreement in the light of financial implications involved where they support individual cases of appointment in subvented organisations providing gratuity at a level higher than the prescribed levels” (paragraph 7);
- being **administrative** in nature, FBCM No. 10/99 did not and could not override the **statutory** provisions or powers enjoyed by the LCC under the LCCO. More specifically, in determining remunerations, the LCC was only obliged to ensure that they were kept “**broadly in line** with those applicable to persons employed in the Civil Service of the Government” (section 10(2)). Further, section 16(2) of the LCCO expressly provided that the Secretary General of the LCS was not required to obey such a regulation, direction or instruction which was concerned solely with the expenditure of the LCC

## **Subvention for staff emoluments of The Legislative Council Commission**

---

unless the Financial Secretary had consulted the LCC before it was issued. And the LCC had not been consulted in respect of the memorandum; and

- the statutory powers of the LCC under the LCCO had not been reduced or otherwise prejudiced by the FBCM. Nevertheless, the FBCM might have provided guidelines for the LCC in exercising its statutory powers. And the LCC might have considered it before making a decision on the provision of contract gratuity for its non-professional and supporting staff at a higher rate.

8. Referring to the FSTB's legal advice, the Committee enquired whether there were other publicly-funded organisations which enjoyed the same degree of financial autonomy as the LCC. **Mr Stanley YING, Deputy Secretary for Financial Services and the Treasury (Treasury)**, said at the hearing and the **Secretary for Financial Services and the Treasury** stated in his letter of 29 May 2003, in *Appendix 21*, that:

- the statutory financial and administrative autonomy of the LCC was laid down in the LCCO. Relevant provisions included section 10(1)(e), which stipulated that the LCC might “formulate and execute such managerial and financial policies as the Commission considers expedient to the performance of its functions”. Section 16(2) stated that “Section 13 of the Public Finance Ordinance (Cap. 2) shall not apply to the Secretary General in relation to regulations, directions or instructions made or given by the Financial Secretary under section 11 of that Ordinance which are concerned solely with the expenditure of the Commission unless the Financial Secretary has consulted the Commission before such regulations, directions or instructions are made or given”. Sections 17(1) and 17(2) provided that the 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 for those directions given by the LegCo by resolution in relation to the performance of the Commission's functions or the exercise of its powers; and
- the legislation of some subvented organisations provided for certain extent of financial autonomy, but the FSTB was not aware of any subvented organisations whose legislation provided for the same extent of financial autonomy as that stipulated in the LCCO.

## Subvention for staff emoluments of The Legislative Council Commission

---

9. Noting the FSTB's legal advice that FBCM No. 10/99 did not prevail over the statutory provisions in the LCCO or the statutory powers enjoyed by the LCC, the Committee asked whether the guidelines provided in the FBCMs were applicable to the LCC.

10. **Mr Alan LAI Nin, Permanent Secretary for Financial Services and the Treasury (Treasury)**, and the **Deputy Secretary for Financial Services and the Treasury (Treasury)** advised that:

- the LCC was given statutory powers under the LCCO while many subvented organisations were not established under their own legislation. Hence, the LCC should not be treated in the same way as other subvented organisations. Not all the financial guidelines issued to subvented organisations by the Administration were applicable to the LCC; and
- on the other hand, for the sake of financial management, the Administration issued financial guidelines to all organisations which received government funding, including the LCC, and expected them to comply with the guidelines. If they were unable to follow the guidelines due to special reasons, they could discuss with the FSTB. Similarly, if the LCC considered that it should exercise its statutory powers and should not comply with the guidelines, it could set out the reasons and discuss with the FSTB. As a matter of fact, the LCC had followed most of the guidelines issued by the Administration in the past years.

11. In response to the Committee's enquiry, the **Permanent Secretary for Financial Services and the Treasury (Treasury)** supplemented that the LCC was expected to comply with the Standing Accounting Instructions (SAIs) and Financial and Accounting Regulations (FARs) referred to in paragraphs 2.3 and 2.4 of the Audit Report. The LCC could consult the FSTB where it had difficulty in following the instructions and regulations. Normally, the LCC could deviate from the requirements if it could provide justifications.

12. The Committee asked about the action that the LCC would take where it encountered difficulties in following the FSTB's guidelines or where it considered that the guidelines should not be complied with.



## Subvention for staff emoluments of The Legislative Council Commission

---

13. The **Secretary General of the LCS** said that generally, the LCC would follow the financial instructions and regulations. However, he was not required to comply with FAR 320 which required that where Controlling Officers had reasons to believe that funds surplus to requirements existed, they should inform the Secretary for Financial Services and the Treasury of such surplus so that the excess might be reserved. This was because under the LCCO and the EoL, the LCC might keep the surplus funds in its reserves. As a matter of fact, the FSTB was fully aware of the surplus of the LCC as it was reported in the LCC's financial reports and statements submitted to the FSTB every year.

14. The Committee enquired whether the LCS, in cases where it considered that the FSTB's guidelines should not be complied with, would bring the non-compliance to the LCC's attention and provide the justifications for the LCC's final decision. The **Secretary General of the LCS** replied that he would certainly consult the LCC on matters of policy, including non-compliance with the FSTB's guidelines.

15. Regarding the LCC's decision made on 13 April 2000 to offer contract gratuity at 15% of the basic salary, instead of no more than 10% as stipulated in the FSTB's guidelines, to newly recruited non-professional and supporting staff of the LCS, the Committee asked whether:

- in making the decision, the LCC had taken into account the rapid changes in employment market situations;
- the LCC had explained its decision publicly at that time; and
- the LCC would consider reviewing its decision as suggested by Audit.

16. The **Secretary General of the LCS** explained that:

- the LCC's decision of a uniform rate of contract gratuities (i.e. 15% of the basic salary) for all LCS staff recruited since June 1999 was based primarily on equity principles, rather than on employment and market situations. For instance, as mentioned in paragraph 5.5(a) of the Audit Report, the terms and conditions of service of all staff of the LCS, irrespective of their ranks, should be compared with those of civil servants on pensionable terms; and
- the LCC was reviewing the level of contract gratuity for non-professional and supporting staff.

## **Subvention for staff emoluments of The Legislative Council Commission**

---

17. In his letter of 22 May 2003, in *Appendix 22*, the **Secretary General of the LCS** further informed the Committee that:

- meetings of the LCC were not open to the public. The papers and records of such meetings were not distributed to the public, as most issues deliberated by the LCC were in respect of internal management matters concerning the LCS. However, if there were press enquiries on matters discussed by the LCC, the Chairman of the LCC invariably responded to the enquiries, unless they were on issues which were confidential, such as those relating to the Director of Audit's draft report before its tabling in the LegCo;
- one of the features of the LCC's managerial and financial autonomy was reflected in the LCCO by the LCC's power to determine the terms and conditions of its staff, subject to the only condition that such terms and conditions had to be kept broadly in line with those applicable to persons employed in the Civil Service. The so-called "no better than" principle which the Government applied to subvented organisations did not apply to the LCC. Having considered the changes in the terms and conditions of service of civil servants notified to the Secretary General of the LCS through FBCM No. 10/99, the reasons given by the Secretary General in LegCo Paper No. LCC 34/99-00 (reproduced in paragraph 5.5 of the Audit Report) as well as the fact that a number of statutory organisations operated under the OLV system paid contract gratuity to their non-professional and supporting staff at 15% of their basic salary, the LCC made a policy decision on 13 April 2000 that such staff in the LCS should be paid contract gratuity at 15% of their basic salary; and
- in view of the lapse of time since 2000, the LCC had recently reviewed its decision. The LCC had decided at its meeting on 20 May 2003 to lower the rate of contract gratuity for newly appointed non-professional and supporting staff to 10% of their basic salary, having regard to the following factors:
  - (a) the public was concerned about the stringent financial climate in Hong Kong;
  - (b) no apparent adverse impact on the quality of service or recruitment difficulty might result from a lowering of the rate of contract gratuity for such staff in view of the current labour market; and
  - (c) some of the statutory organisations mentioned above had lowered the rate of contract gratuity for such staff.

## Subvention for staff emoluments of The Legislative Council Commission

---

### Reserve of the LCC

18. The Committee referred to the statement of the Secretary General of the LCS that the FSTB was aware of the financial position of the LCC as reported in the LCC's financial reports and statements submitted to the FSTB every year. The Committee enquired whether, in the Administration's opinion, the submission of financial reports and statements to the FSTB was sufficient to draw its attention to the existence of surplus in the LCC's accounts.

19. The Committee further referred to Figure 2 in paragraph 6.3 of the Audit Report, which depicted the balance of the LCC's Operating Reserve Account from 1994-95 to 2001-02. It showed that there had been significant increases in the LCC's reserve since the end of 1998-99. The Committee asked whether the Administration, based on the information provided by the LCC, was able to identify the reasons for the rapid build-up of the LCC's reserve.

20. The **Permanent Secretary for Financial Services and the Treasury (Treasury)** responded that the FSTB was aware of the LCC's surplus and reserve when it discussed with the LCS the LCC's draft estimates of expenditure for the following financial year. However, the FSTB would not ask how the LCC achieved the surplus as the LCC had autonomy in deploying the funds allocated to it. The Administration did not know the reasons for the rapid increases in the level of the LCC's reserve since the end of 1998-99.

21. On the question of whether the Administration had knowledge of the detailed breakdown of the LCC's accounts, **Mr Dominic CHAN Yin-tat, Director of Audit**, commented that:

- according to Audit's examination, the LCS had forwarded the detailed breakdown of its accounts to the FSTB. There was no question of the LCS withholding information. The crux of the matter was whether the FSTB had analysed the information submitted to it; and
- Audit had not suggested that the Administration should micro-manage the funding to the LCC. Instead, the FSTB should exercise the basic funding control by ascertaining the actual requirements of the LCC and adjusting the allocation to the LCC where there were significant changes in circumstances. Otherwise, the OLV funding arrangement could get out of control.

## Subvention for staff emoluments of The Legislative Council Commission

---

22. The Committee enquired about the transparency of the LCC's income and expenditure position. In response, the **Permanent Secretary for Financial Services and the Treasury (Treasury)** and the **Secretary General of the LCS** said that under section 13 of the LCCO, the LCC was required to arrange for its statement of accounts to be audited and for the audited statement of accounts and the auditor's report to be tabled in the LegCo. The Director of Audit was in fact the LCC's auditor. The expenses and surpluses of the LCC were set out clearly in its financial statements which had a high degree of transparency.

23. The Committee noted from paragraph 6.4 of the Audit Report that the maximum level of reserve of the LCC had not been mentioned in the EoL. According to paragraph 6.8, the LCC considered that it would be inconsistent with the rationale of the OLV funding arrangement adopted for the LCC if a maximum level was to be set for its reserve. The existing provisions in the EoL should remain unchanged. The Committee further understood from paragraph 6.10 that for many organisations receiving similar block grant funding, the Government had set different levels of maximum reserve, up to which they were allowed to keep their unspent funds. The Committee therefore asked about:

- the types of publicly-funded organisations that were allowed to keep a reserve and those that were not; and
- the maximum level of reserve in respect of those organisations that were allowed to keep a reserve.

24. In his letter of 29 May 2003, the **Secretary for Financial Services and the Treasury** stated that the arrangement on reserve varied among subvented organisations. He also provided some examples of the range of such arrangements which showed that some organisations, such as the Employees Retraining Board, the Hong Kong Tourism Board and the Hospital Authority, had a ceiling set for their reserve. On the other hand, the Office of The Ombudsman, the Consumer Council, the Hong Kong Trade Development Council, the Equal Opportunities Commission, and the Office of the Privacy Commissioner for Personal Data did not have a ceiling set for their reserve.

25. The Committee asked whether the Secretary General of the LCS had informed the LCC of the high level of reserve and whether the LCC had discussed the appropriateness of the level and the possible uses of its reserve.

## **Subvention for staff emoluments of The Legislative Council Commission**

---

26. The **Secretary General of the LCS** replied that:

- both the LCC and the FSTB were fully aware of the LCC's reserve level. The Government had been providing funds for the LCC entirely in accordance with the agreed funding mechanism. The LCC's reserve had been built up over the past nine years through prudent management of funds;
- as provided in the EoL, the reserve "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". Under such a constraint, the LCC had not spent its reserve in the past nine years. However, given the current stringent financial climate, it was anticipated that the Government might not allocate supplementary provision to fund the LCC's additional services. In the circumstances, the LCC would use its operating reserve to meet unforeseen expenses, such as those in connection with select committees; and
- the LCC had not considered setting a ceiling for its reserve because to do so would be inconsistent with the rationale of the OLV funding arrangement adopted for the LCC.

27. Noting that many organisations which operated under the OLV funding arrangement had a maximum level set for their reserve, the Committee asked whether the Administration agreed to the LCC's view that setting a reserve ceiling was against the spirit of the OLV system.

28. **Hon Frederick MA Si-hang, Secretary for Financial Services and the Treasury**, and the **Permanent Secretary for Financial Services and the Treasury (Treasury)** said that:

- it was not specified in the OLV system whether or not a maximum level should be set for an organisation's reserve or what level of reserve was appropriate; and
- subject to the views of the LCC, the Administration did not have objection to Audit's recommendation that a ceiling be set for the LCC's reserve. However, to implement the proposal, the EoL would have to be amended. Whilst either the Administration or the LCC might propose changes to the EoL, amendments to the EoL could only be made with the agreement of both parties.

## Subvention for staff emoluments of The Legislative Council Commission

---

29. The Committee further asked:

- whether, where there was significant increase in salaries, the LCC could seek additional provision from the Administration or had to fund the increased cost from its reserve;
- why the LCC did not need to fund the operation of select committees from its reserve in the past but had to do so in future; and
- about the LCC's expenditures on select committees in each of the past three financial years.

30. The **Secretary General of the LCS** stated that the Administration would provide additional funds to meet the cost of increased salaries due to Civil Service pay adjustment. Regarding select committees, in the past, the Administration had provided supplementary provisions to meet the costs of such committees. But this might not be the case in future.

31. In his letter of 14 June 2003, in *Appendix 23*, the **Secretary General of the LCS** provided information on the LCC's expenditures on select committees, as follows:

<u>Year</u>	<u>\$ million</u>
2000-01	0.5
2001-02	6.8
2002-03	8.0
<u>Total</u>	<u>15.3</u>

32. In response to the Committee's enquiry on the Government's policy in this regard, the **Permanent Secretary for Financial Services and the Treasury (Treasury)** explained that the Administration had, in the past, allocated supplementary funds to meet additional expenses of the LCC. In assessing the funding requests, the Administration had taken into account the circumstances of each application and the Government's overall financial position. The Administration could not guarantee that additional resources would definitely be allocated to the LCC for select committees. Instead, it was agreed that the LCC should keep a reserve to fund unforeseen activities which did not incur recurrent expenditures.

## **Subvention for staff emoluments of The Legislative Council Commission**

---

33. Regarding the LCC's views on its reserve, the **Secretary General of the LCS**, in his letter of 23 May 2003 in *Appendix 24*, supplemented that:

- the LCC had managerial and financial autonomy conferred on it by the LCCO. When exercising its managerial and financial autonomy, the LCC had always been conscious of the need for economy and had been prudent in the management of its financial resources since its inception nine years ago;
- while mindful of the LCCO's requirement that the terms and conditions of service of staff of the LCS should be broadly in line with those of civil servants, the LCC did vary the terms and conditions of service of LCS staff, which resulted in their being less favourable than those of civil servants in certain cases. Examples included the payment of acting allowance only for acting appointments lasting for more than three months (as opposed to the one-month requirement in the Civil Service), and the non-payment of contract gratuity for temporary staff employed for less than three years (as opposed to the general practice in the Civil Service for paying contract gratuity to temporary staff employed for longer than one year); and
- the LCC would use its reserve to fund activities for which no provision had been made. While this was the principle the LCC had been adhering to in its utilisation of its reserve, the LCC had in fact resolved on 24 October 2002 that it would fund the operation of future select committees from its reserve in order to reduce the Government's expenditure. The LCC had no intention of keeping the reserve purely for the sake of keeping it.

### **Provision of funding for cash allowance and contract gratuity**

34. As stated in paragraph 3.14(a) of the Audit Report, Audit considered that one basic control in any funding system, including the OLV funding arrangement, was a control over the actual funding requirements at the inception of the arrangement and at times when there were significant changes in circumstances. Paragraph 4.17 revealed that the LCS had included in its funding request in May 1995 the contract gratuities for posts that were not filled by contract staff during the period April 1994 to April 1995. The Committee asked:

- whether there had been any significant changes in circumstances which the LCC should have brought to the attention of the FSTB during the past nine years since the inception of the LCC in 1994;

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- why the LCC had not informed the Administration that it was not necessary to allocate funding for the contract gratuities for those posts that were not filled by contract staff; and
- whether, at that time, the Administration knew the pace of the LCC's replacement of seconded civil servants by contract staff.

35. The **Secretary General of the LCS** responded that:

- he did not consider that there had been significant changes in circumstances since 1994; and
- the year 1994-95 was the first year of the LCC's establishment. At that time, the LCC could not accurately estimate the progress of replacing civil servants that could eventually be made in the course of the year. The contract gratuities applied for 1996-97 had been calculated according to the funding method mutually agreed between the then Finance Branch and the LCC.

36. The **Permanent Secretary for Financial Services and the Treasury (Treasury)** said that:

- the OLV funding arrangement agreed between the Administration and the LCC was special. Under such an arrangement, the Administration allocated funding to the LCC based on broad principles instead of specific items of expenditure. The Administration knew how the LCC would spend its resources but did not micro-manage the provisions granted to it. To do so would be inconsistent with the spirit of the OLV funding arrangement; and
- the Administration did not perceive that there had been significant changes in circumstances since the establishment of the LCC. In 1994-95, it fully understood that the LCC would try to replace seconded civil servants by contract staff as soon as possible within one year. Funding for contract gratuity had been provided to the LCC on the basis of this broad principle which was agreed to between the Administration and the LCC.



## Subvention for staff emoluments of The Legislative Council Commission

---

37. The Committee noted Audit's view that the FSTB should have reduced the funding to the LCC for cash allowance, taking into account the significant changes in circumstances, i.e. the reduction in the LCC's funding requirements as a result of the significant decrease in cash allowance rates (CARs) during the nine-year period from 1994-95 to 2002-03 and some staff of the LCS having chosen not to receive the cash allowance.

38. The Committee asked whether:

- under the OLV funding arrangement, the Administration had put in place an adjustment mechanism whereby it would review the actual funding requirements of the LCC after the LCC had been established for a long time; and
- the Administration agreed that the decrease in CARs and the fact that some LCS staff had opted not to receive the cash allowance were significant changes in circumstances that had warranted such a review by the Administration.

39. The **Secretary for Financial Services and the Treasury** said at the public hearing and in his letters of 29 May 2003 and 17 June 2003, in *Appendices 21 and 25* respectively, that:

- as agreed between the LCC and the Administration and as reported to the Finance Committee, funding to the LCC was in the form of an OLV, and not broken down into components of expenditure. In using the OLV method, the LCC and the Administration were conscious that the LCC had the autonomy and flexibility in deploying funds in the OLV among types of expenditure, and was not subject to the Administration's control at the level of components of expenditure. The Administration therefore did not prescribe a provision for a component of expenditure (such as cash allowance), and consequently there was no question of the Administration "over-providing" or "under-providing" the LCC on a component of expenditure such as cash allowance;
- the Administration did not provide additional funding to the LCC when the CARs were revised upwards, nor reduced the funding when the rates were decreased; and

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- since the funding arrangement agreed with the LCC anticipated that any increase or decrease in the LCC's funding requirement for cash allowance would not affect the level of the OLV, such increase or decrease in expenditure on cash allowance was not significant changes in circumstances.

40. The Committee further enquired whether the FSTB had detected that the LCS's funding request had not reflected the decrease in CARs and the reduction in funding requirements as some staff had chosen not to receive the cash allowance.

41. The **Secretary for Financial Services and the Treasury**, in his letter of 17 June 2003, advised that the FSTB had not detected the above circumstances relating to cash allowance. This was mainly because the established OLV funding arrangement for the LCC did not envisage the adjustment of government funding to reflect the LCC's actual expenditure on cash allowance. He further said that the following considerations might also be relevant:

- the cash allowance of an LCS staff member was calculated by multiplying his mid-point salary by the CAR for his category, and the amount of cash allowance was fixed throughout the contract period, which was usually three years. Taking 2002-03 as an example, the changes in CARs for Category I, II and III staff were -3.76%, -1.8% and +0.03% respectively. Assuming one-third of the LCS staff had had their contracts renewed or had been replaced by new recruits, the resultant savings would be \$0.746 million, which amounted to only 0.3% of the 2002-03 approved estimates for the LCS's staff emoluments and general expenses (i.e. \$246.55 million);
- if the Administration were to reduce such savings from the LCC's funding, it would have to keep track of the LCC's contract renewals or recruitment of new staff as and when they happened. That would not be an OLV method, and would involve the Administration's detailed monitoring of the LCC's contracts with staff;
- according to the LCC, some of the LCS staff had chosen not to receive the cash allowance out of compliance with the "prevention of double benefits" rule. But such personal situation of each staff member was not static and as his situation changed, e.g. in his marital status or the employment of his spouse, he might become eligible for the allowance. Conversely, a staff member who had been claiming the allowance might become ineligible for similar reasons. If the Administration were to adjust the funding to the LCC to reflect such changes in the personal situation of each staff member, it

## **Subvention for staff emoluments of The Legislative Council Commission**

---

would again have to engage in detailed monitoring of the LCC over such matters; and

- to be consistent, the Administration would need to extend such detailed monitoring over other types of staffing and expenditure matters of the LCC, so that funding to the LCC could be adjusted in accordance with actual expenditure on these other expenditure components. This, however, would defeat the purpose of having an OLV funding arrangement for the LCC.

42. According to Table 1 in paragraph 3.9 of the Audit Report, there had been over-provision of \$30.5 million to the LCC for cash allowance during 1994-95 to 2002-03. The Committee asked why the FSTB had not adjusted the funding to the LCC despite the consistently significant “over-provision”.

43. The Committee also noted that, according to paragraph 3.2 of the EoL, additional funds would be provided to the LCC to meet the cost of salaries and allowances in accordance with approved rates and scales. The Committee asked why, despite such a provision, the FSTB would not provide additional funding to the LCC when the CARs were revised upwards.

44. In his letter of 25 June 2003 in *Appendix 26*, the **Secretary for Financial Services and the Treasury** explained that:

- the figures listed in Table 1 of the Audit Report would be “over-provisions” if the LCC had been funded not under the OLV but under the line-by-line control or deficiency funding methods. Under those methods, there was, in general, an arrangement for the Government to claw back over-provisions and top up under-provisions. Given such possible fluctuations in demand on government funding, the Government often imposed control over expenditure components;
- paragraph 3.2 of the EoL was a general provision enabling the Secretary General of the LCS to request extra funding from the Government if he felt that such extra funding was required, during the course of a financial year, to meet extra costs in connection with a limited list of items, including “salaries and allowances”; and

## Subvention for staff emoluments of The Legislative Council Commission

---

- in the specific case of cash allowance, over the years, the Secretary General of the LCS had not found that such extra funding was required as a result of increases in CARs, and had not requested extra funding. It had also been the agreed practice between the LCC and the Government that LCC would not request extra funds for cash allowance on account of increases in CARs, considering among other things that an increase in CARs would not immediately increase the LCC's cost on cash allowance given that the cash allowance was fixed by amount during the duration of a contract.

45. Turning to the LCS, the Committee enquired:

- whether it had to perform extra work to keep track of the actual funding requirements for cash allowance; and
- why it had not specifically drawn the attention of the Secretary for Financial Services and the Treasury to the consistently significant "over-provision" of funding for cash allowance.

46. In his letter of 24 June 2003, in *Appendix 27*, the **Secretary General of the LCS** informed the Committee that:

- the LCC kept record of each payment of cash allowance, but did not track the reason for the payment or non-payment for each post;
- non-payment at a certain point in time did not necessarily mean that funding was not required at a future point in time. For example, an LCS staff member might, in compliance with the "double benefit rule", choose not to receive the cash allowance (i.e. opt-out) this year because his/her spouse enjoyed fringe benefits such as housing and/or education allowances from his/her spouse's employment. However, he/she might "opt-in" next year on his/her spouse's cessation, for whatever reason, to enjoy such benefits;
- in order to keep track of the actual funding requirements for cash allowance, the LCS had to identify the reasons for all the payments and non-payments of cash allowance, e.g. staff choosing not to receive cash allowance, temporary vacancies, frozen posts, staff on no-pay leave not entitled to cash allowance or posts filled by temporary staff not entitled to cash allowance. To do so would involve extra work;

## Subvention for staff emoluments of The Legislative Council Commission

---

- to make such extra work meaningful, apart from tracking the reason for the payment or otherwise of cash allowance for each post, it would also be necessary to determine whether appropriate adjustments should be made to the funding requirements. However, such comparison of the cash allowance provision for each post with the cash allowance expenditure for that post was unwarranted and uncalled for under the OLV funding arrangement. If such tracking was required, other “components” of expenditure would also have to be tracked in order to ascertain whether each and every component was over-funded or otherwise;
- fundamentally, the OLV funding arrangement for the LCC did not separate the annual financial provision under subhead 367 (salaries and allowances for staff and general expenses of the LCC) into different components. Separate “funding for cash allowance” did not exist; and
- setting aside the conceptual disagreement as to whether there was any over-provision, the so-called “over-provision” of \$30.5 million amounted to only 1.6% of the total provision under subhead 367 in the nine years between 1994-95 and 2002-03 (the total provision was \$1,863.4 million). As funding for cash allowance was not itemised, there was no question of “over provision” of funding for cash allowance.

47. In response to the views of the Secretary for Financial Services and the Treasury and the Secretary General of the LCS on the provision of funding for cash allowance, the Director of Audit offered detailed comments in his letters of 24 June 2003 (in *Appendix 28*), 25 June 2003 (in *Appendix 29*) and 26 June 2003 (in *Appendix 30*). In short, the **Director of Audit** said that:

- Audit’s evidence showed that the LCS had all the details of the reduction in funding requirements for cash allowance due to the decrease in CARs and the fact that some staff of the LCS chose not to receive the cash allowance. The actual funding requirements for cash allowance were, in fact, reflected in the LCC’s budget which included breakdown of expenditure submitted to the FSTB every year. The FSTB would not have over-provided funds to the LCC, if it had adjusted the funding to the LCC for cash allowance according to the LCC’s budget;
- as the LCS had full details of the actual funding requirements for cash allowance and such details were submitted to the FSTB every year, there would not be any extra work for the LCS or the FSTB to keep track of the actual requirements for cash allowance;

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- according to paragraph 3.2 of the EoL, the provision to the LCC would be increased where additional funds were required to meet the cost of cash allowance in accordance with the CARs. However, if the funds provided exceeded the requirement in respect of cash allowance in accordance with the CARs, it was only reasonable and logical to expect that the funding would be reduced. Therefore, the FSTB should have adjusted the funding to the LCC for cash allowance to take into account the reduction in funding requirements as a result of the significant decrease in CARs and the fact that some staff of the LCS chose not to receive cash allowance; and
- under normal circumstances, the LCC might not need to segregate and earmark money for different expenditure components. However, when there were significant changes in circumstances, the funding requirements must be re-assessed. At these times, thorough vetting by the FSTB was necessary on the expenditure components to ensure the adequacy and reasonableness of funding. Without this basic funding control, the OLV funding arrangement would be deficient and could get out of control.

48. As regards funding for contract gratuities for new posts and posts not filled by contract staff, the Committee noted Audit's observations in paragraph 4.16 that in respect of the new posts creating during 1996-97 to 1998-99, the percentages of the annual contract gratuities included in the funding to the LCC had been wrongly calculated and, in most cases, a double provision (i.e. additional 85% per year) for such posts had been made. Audit also stated in paragraph 4.17 that the FSTB should not have provided funding to the LCC for contract gratuities for the posts which were not filled by contract staff.

49. Against the above background, the Committee enquired whether the FSTB had discovered and brought up the following circumstances for discussion with the LCC:

- the LCS's annual submissions since 1997-98 had included 100% (instead of 15%) of the contract gratuities in respect of the new posts created during 1996-97 to 1998-99; and
- the LCS's submission in May 1995 had included the contract gratuities for posts that were not filled by contract staff.

## Subvention for staff emoluments of The Legislative Council Commission

---

50. Regarding the calculation of funding requirement of contract gratuities in respect of the new posts supported during 1996-97 to 1998-99 and in respect of posts not filled by contract staff during April 1994 to April 1995, the **Secretary for Financial Services and the Treasury**, in his letters of 17 June 2003 and 25 June 2003, advised that:

- the FSTB had no records of discussion with the LCS on such issues. This was also because of the OLV concept and method. The agreed method for determining the funding for contract gratuities for inclusion into the OLV was the “three-year funding cycle”. It represented a broadbrush approach, using projected establishment as the basis for projecting the funding to be included for contract gratuities;
- allocation under the Resource Allocation Exercise (RAE) was a separate funding process. The allocation provided under the RAE represented the resources supported for providing additional services or enhancing existing ones. In line with general practice, for successful bids for resources from the LCC, the FSTB used the full-year salary, cash allowance and 100% of the year’s contract gratuity as a reference to calculate the resources required for supporting the new services or improved services. Upon RAE allocation, the LCC was free to deploy the resources supported in the most economical way as it saw fit so long as the services were provided as specified in the resource bid;
- according to the “three-year funding cycle” method:
  - (a) the provisions for contract gratuity for 1994-95 and 1995-96 had been 15% respectively of the projected yearly contract gratuities of the estimated staff establishment of 280 for 1994-95; and
  - (b) in addition to the 15% mentioned above, a provision of 255% of the projected contract gratuities of the estimated staff establishment of 286 for 1995-96 (the latest establishment estimate available when preparing the 1996-97 baseline in May 1995) had been added to the provision; and
- under this method, there was no need to adjust the funding for gratuities to the LCC to reflect changes in actual requirements, such as whether contract staff had replaced civil servants seconded to the LCC or whether there were vacant posts during 1994-95. To do so would be inconsistent with the OLV funding arrangement. If the FSTB compared the actual expenditure of the LCC with the funding of a specific component and claw back underspending, it could be argued that the FSTB should also provide additional funds in case the actual expenditure on a component was larger than the level included for the

## Subvention for staff emoluments of The Legislative Council Commission

---

component in the block grant. It would defeat the purpose of the OLV for the organisation to flexibly redeploy resources between components of expenditure.

51. The Committee asked whether the LCC would, in the light of Audit's observations on the provision for the LCC for contract gratuities in respect of the new posts created during 1996-97 to 1998-99, reduce its funding requests for the coming financial year by the amount which, according to Audit, had been "over-provided".

52. In his letter of 14 June 2003, the **Secretary General of the LCS** replied that:

- the LCC's funding request for the coming financial year would not be reduced as recommended by Audit, because the funding so far provided for the LCC had been made in accordance with the arrangements mutually agreed between the Administration and the LCC; and
- the funding requests made by the LCC and agreed to by the Administration were not in respect of **posts** to be created but in respect of **services** to be provided or enhanced. The funds finally provided for the LCC were not itemised for specific components, and not even allocated separately for staff emoluments and general expenses. Consequently, the number of posts and the levels of staff employed at a certain point in time had no direct relationship with an earlier funding application and the subsequent allocation. Therefore, the question of incorrect calculation or over-provision of funds in respect of those posts created during the years 1996-97 to 1998-99 did not arise.

53. Referring to the statement of the Secretary General of the LCS that the LCC's funding requests were not in respect of posts to be created but in respect of services to be provided or enhanced, the Committee enquired:

- about the basis of the statement;
- about the information provided by the LCC to the FSTB to support funding applications in respect of existing and new or enhanced services; and
- whether cash allowance and contract gratuity for staff were relevant information in the LCC's funding applications.



## **Subvention for staff emoluments of The Legislative Council Commission**

---

54. The **Secretary General of the LCS**, in his letter of 19 June 2003 in *Appendix 31*, explained that:

### Funding requests in respect of services

- to ensure the managerial and financial autonomy of the LCC, the Administration did not control the staff establishment of the LCC or the way the LCC delivered its services. Requests for additional funding in each RAE were in respect of new or improved services, and not for the creation of posts. This conceptual framework was laid down in the EoL. Paragraphs 4 and 5 of the EoL were particularly relevant;
- new funds were not earmarked for any posts, and the LCC had the freedom to deploy new resources allocated through an RAE. This was illustrated by the notification of funding application results from the Secretary for Financial Services and the Treasury;

### Supporting information for the FSTB in relation to funding applications

- the funding for existing services was based on the approved financial provision for the LCC's recurrent expenses in the previous year (i.e. baseline expenditure);
- to support the funding requests for new or improved services, the LCC estimated the service level to be achieved and the plans for delivering such services. The plan could be additional staff, use of technologies and/or hiring of outside services. It was for budgetary purposes and could be changed in the implementation stage;

### Relevance of cash allowances and contract gratuity in funding applications

- funding for existing services did not take into account the amount of cash allowances and contract gratuities payable by the LCC. Such funding was based on the financial provision approved in the previous year; and
- regarding funding requests for new or improved services, if the plan was to employ additional staff, the estimated staff costs would be used for budgeting the resources required. Salary, cash allowance and contract gratuity involved were taken into account in estimating the staff costs. However, the LCC's funding requests were in respect of the overall cost for the new or improved services, and not for any specific components.

## Subvention for staff emoluments of The Legislative Council Commission

---

55. On the question of whether the funding allocated to the LCC under the RAE was in respect of services to be provided/enhanced or posts to be created, the **Director of Audit**, in his letter of 19 June 2003 in *Appendix 32*, commented that:

- every year when the Star Chamber considered whether additional resources were to be allocated in respect of **services**, the amount of allocation was, in fact, determined with reference to the new **posts** to be created for the services; and
- although the funds finally provided for the LCC had not been itemised for specific components, the amount of funds to be allocated was derived by adding together specific components, including cash allowance and 100% of contract gratuities for the new posts. As pointed out in paragraph 4.20(c) of the Audit Report, Audit observed that, notwithstanding that full funding for contract gratuities for the new posts had already been included in the normal funding, the LCS had subsequently made a double request for the funding for 85% of contract gratuities per year for such posts.

56. The Committee asked the FSTB whether:

- it allocated funding for new or enhanced services to the LCC in terms of posts or services; and
- the components of cash allowance and contract gratuity were relevant to its consideration of the LCC's funding applications in respect of existing and new or enhanced services.

57. In his letter of 19 June 2003, in *Appendix 33*, the **Secretary for Financial Services and the Treasury** advised that:

- the funding allocated to the LCC under the RAE process represented the resources supported for new or enhanced services. The resources allocated became part of the OLV and the LCC had the flexibility to deploy funds among expenditure components in the most economical way as it saw fit, so long as the services were provided as specified in the LCC's resource bid. Furthermore, as the LCC was not under the Administration's establishment controls, it determined the staff mix, ranks and grades, and number of posts at its own discretion and had the flexibility to create or delete posts to suit its operational expedience; and

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- when the LCC submitted bids for new resources, apart from justifications for the bids, the amount of new money requested would have to be supported by cost estimates. These might be expressed in terms of staff cost and other day-to-day operational expenses. Staff cost data might include salaries and other salary-related costs such as cash allowance and contract gratuity. All these cost estimates would be taken into account in assessing the amount of resources to be allocated. However, once the new resources had been allocated for a particular new or enhanced service, the resources formed part of the OLV and there was no requirement that the LCC must spend the resources allocated in accordance with the cost estimates in the resource bid.

58. To ascertain whether the LCC had used appropriate percentages in applying for funds for contract gratuities in respect of the new posts in question, the Committee enquired:

- about the correct percentage of contract gratuities that, in the LCC's opinion, should be included in the normal funding to the LCC; and
- whether the LCC agreed that when new resources were allocated according to the estimated staff costs, such new resources had already included a provision to cover the contract gratuities required. Hence, there was no need to request funds for contract gratuities in addition to the new resources approved in the RAE.

59. In his letter of 24 June 2003, the **Secretary General of the LCS** responded that:

- in order to reflect the true cost implications of a new service, the LCC considered that the estimated total cost should be used in funding applications;
- if it was planned that the new service for which new resources were applied was to be provided by additional staff, the new resources allocated would include a provision to cover an element of contract gratuities. However, the decision of whether to employ additional staff to implement the new service in question or what staff should be employed to implement the new service would depend on prevailing circumstances. Therefore, whether and how much of the new resources allocated would be used to pay contract gratuities would depend on how the new service was to be delivered; and

## Subvention for staff emoluments of The Legislative Council Commission

---

- the application for resources to pay contract gratuities was made according to the funding mechanism agreed between the Administration and the LCC. Under the agreed mechanism, funds applied for were based on the staff establishment of the LCS at the beginning of the second year of the three-year contract gratuity funding cycle and were not **directly related** to the new resources approved in the RAEs.

60. The Committee noted that in the notification to the LCC for the new resources allocated in the 1997 RAE for 1998-99 (i.e. the then Secretary for the Treasury's letter of 23 August 1997 in *Appendix 34*), it was stated that should the Secretary General of the LCS "redeploy resources from the bids supported by Star Chamber to other purposes, you will not normally be allowed to repeat the request for funds for the same purpose in subsequent years". On the other hand, paragraph 4.3 of the Audit Report revealed that 100% of the annual contract gratuities for the new posts created after 1994-95 had been included in the normal funding to the LCC and, for the third year of the funding cycle, an additional amount equalled to 255% of the year's contract gratuities had been further provided to the LCC based on the LCS's staff establishment at the beginning of the second year of the funding cycle (including the new posts created in the second year and all previous years).

61. The Committee asked whether the LCC agreed:

- that the request for the 255% of the year's contract gratuities in respect of the new posts was a request for funds for the same purpose; and
- to Audit's view that it had made double requests for the funding for 85% of contract gratuities per year for the new posts created during the years 1996-97 to 1998-99.

62. The **Secretary General of the LCS**, in his letter of 24 June 2003, replied that:

- according to the funding mechanism for staff contract gratuities agreed with the Administration, the 255% (85% + 85% + 85%) funding for contract gratuities requested in the third year of each three-year contract gratuity funding cycle was applied en bloc to the total projected salaries for permanent posts in the establishment in the second year of the cycle. The year in which the posts were created was not relevant to the calculation of the remaining funding, because the number and grading of posts might vary in the course of time as circumstances dictated and might be completely different from the implementation plans prepared at the funding application stage;

## Subvention for staff emoluments of The Legislative Council Commission

---

- obtaining the 255% cycle-end funding was in accordance with the funding mechanism agreed with the Administration. It was not an application for new resources and was not made in relation to any specific posts supported in a particular RAE. The LCC did not therefore accept that it was a request for funds for the same purpose. It should be pointed out that the then Secretary for the Treasury's advice that repeating a request for funds for the same purpose was not allowed in subsequent years meant that the LCC was not allowed to ask for funds again to deliver **the same service**; and
- the funding request for 85% of contract gratuities per year for the posts created in previous years was in accordance with the funding mechanism agreed with the Administration. Therefore, there was no question of the LCC making double requests for funding of contract gratuities.

63. On the question of whether the LCC had made double requests for funds in respect of contract gratuity, the **Director of Audit**, in his letters of 24 and 25 June 2003, stated that:

- while the LCC's funding requests were in respect of the overall cost for the new or improved services, and not for any specific components, it was an undeniable fact that the funds allocated in RAEs for the new posts created during the period 1996-97 to 1998-99 had included an element intended to cover 100% of the year's contract gratuities for the new posts. Therefore, after a bid for new posts had been approved, the LCS should have adjusted the amount of new resources required so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method. The LCS's failure to do so had resulted in the over-provision of funds for contract gratuities; and
- in Audit's view, unless the amount of new resources for the new posts had been adjusted so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method, the double request for the funding for 85% of contract gratuities per year for the new posts was a duplication of the request for funds for the same purpose. This was because the posts concerned provided the same service as the service which was used to justify the creation of such posts in the RAE.

## Subvention for staff emoluments of The Legislative Council Commission

---

64. In his letters of 24, 25 and 26 June 2003, the **Director of Audit** informed the Committee of his consolidated views on the OLV funding arrangement and the allocation of funds to the LCC for cash allowance and contract gratuity. He stated that:

- Audit was fully aware that the OLV funding arrangement for the LCC provided flexibility in the deployment of resources while recognising the special status of the Legislature. Audit appreciated the merits of flexibility in the deployment of resources under such an arrangement. However, Audit maintained the view that such flexibility should not be accorded at the expense of basic controls to any funding scheme. A basic control which should be incorporated into any funding scheme, including the OLV arrangement, was a control over the actual funding requirements at the inception of the arrangement and at times when there were significant changes in circumstances. At such times, thorough vetting by the Administration was necessary on the expenditure items to ensure that the funding was reasonable and adequate but was not more than that required by the LCC;
- under the OLV funding arrangement:
  - (a) funds were not segregated and earmarked for individual expenditure components such as cash allowance and contract gratuity; and
  - (b) government provision to the LCC for its recurrent expenditure for each financial year was determined simply by adjusting the addition or reduction of resources to the LCC and then applying to the total amount a price adjustment factor prescribed by the FSTB, without ascertaining the actual funding requirements of individual expenditure components;
- ascertaining the actual funding requirements was an essential control which should be incorporated into any funding scheme, including the OLV arrangement. The deficiency of the OLV arrangement for the LCC was that the Administration had not exercised the basic funding control by ascertaining the LCC's actual funding requirements for cash allowance and contract gratuity. This had resulted in the over-provision of funding to the LCC; and
- as stated in paragraph 1.14 of the Audit Report, there was a mechanism whereby the FSTB would provide additional funds to the LCC in case the funding requirement on an expenditure component (such as cash allowance and contract gratuity) was larger than the funding for the expenditure component included in the OLV. However, there was no mechanism for the

## Subvention for staff emoluments of The Legislative Council Commission

---

FSTB to reduce the provision to the LCC if the funding requirement on an expenditure component was smaller than the funding for the expenditure component included in the OLV. This was clearly an unsatisfactory funding arrangement.

65. To better understand how the FSTB exercised basic control in the OLV system, the Committee asked, under the OLV funding arrangement:

- whether the FSTB reviewed the LCC's budget which contained the breakdown of expenditure to ascertain if there were any significant changes in the actual funding requirements of the LCC's individual expenditure components;
- how the FSTB prevented over-provision of funding to the LCC's individual expenditure components; and
- whether the FSTB agreed that if the information provided by the LCC was not reviewed periodically, basic control over the level of provision to the LCC was lost and the OLV arrangement could get out of control.

66. In his letter of 25 June 2003, the **Secretary for Financial Services and the Treasury** advised that:

- under the EoL, the Secretary General of the LCS prepared the LCC's annual draft estimates of expenditure for inclusion in the Government's draft annual Estimates of Expenditure. For the purpose of these estimates, since, under *Head 112 Legislative Council Commission*, the relevant subhead (previously *Subhead 367 Salaries and allowances for staff and general expenses*, and in the 2003-04 Estimates *Subhead 000 Operational Expenses*) was not broken down into components such as salaries or cash allowance, strictly speaking there was no need for the LCC to supply such breakdown to the Government. There was no express requirement for such information in the EoL. In practice, however, the LCC provided the Government with its own budgets for information, which were broken down into components;
- under the agreed funding method, the LCC was not subject to the Government's financial control at the level of expenditure components. Therefore, the FSTB did not seek and use information on the LCC's finances (e.g. in its own budget, or in its annual accounts tabled in the LegCo) **for the purpose** of preventing "over-provision" to the LCC's individual expenditure

## **Subvention for staff emoluments of The Legislative Council Commission**

---

components. But it did use the LCC's financial information in other contexts, e.g. the baseline-plus exercise, or the RAE if the LCC bid for new resources;

- if appropriate, the FSTB's information on the LCC's financial position might be relevant when, e.g. it processed the LCC's RAE bids. In the past years, the Government had decided not to fund some of the LCC's bids, or fund only partially some other bids; and
- as for the scenario of the funding arrangement for the LCC getting out of control, the FSTB envisaged that with the information it maintained on the LCC's finances, it would not allow such a situation to happen, and would definitely take pre-emptive actions, where necessary, after discussion with the LCC. The FSTB also envisaged that for its part, the LCC would exercise its statutory autonomy responsibly so that the situation would not get out of hand. Conversely, the FSTB did not think it necessary for the Government to maintain component-by-component control over the LCC in order to prevent such a scenario.

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

- acknowledges that:
  - (a) The Legislative Council Commission (the LCC) is given financial and managerial autonomy under The Legislative Council Commission Ordinance and the funding arrangement for the LCC is laid down in the Exchange of Letters (EoL) signed between the Administration and the LCC; any amendments to the EoL have to be mutually agreed;
  - (b) as agreed between the LCC and the Administration, funding to the LCC is in the form of a one-line vote (OLV) and not broken down into components of expenditure. Under such an arrangement, the LCC has the autonomy and flexibility in deploying funds among types of expenditure, and its components of expenditure are not subject to the Administration's control; and
  - (c) the Administration does not prescribe the components of expenditure of the LCC. If the LCC spends more or less on a particular component, the Administration does not provide additional funds to meet the shortfall or claw back any surplus;



## **Subvention for staff emoluments of The Legislative Council Commission**

---

- expresses concern that:
  - (a) since 1994, the funding for staff emoluments and general expenses of the LCC has been greater than its actual requirement, leading to the rapid build-up of the LCC's reserve; and
  - (b) the LCC, in offering non-professional and supporting staff contract gratuities at a level of 15% of their basic salary instead of no more than 10% as stipulated in the Financial Services and the Treasury Bureau's (FSTB's) guidelines, had not taken into account the continuous rapid changes in employment market situations after the last review in 1999;
- notes that the OLV funding arrangement as is presently designed has partly contributed to the surpluses of funding for staff emoluments and general expenses because it had failed to recognise the following:
  - (a) the significant decrease in cash allowance rates during the period 1994-95 to 2002-03 and the reduction in the LCC's funding requirements as some staff of the Legislative Council Secretariat (LCS) chose not to receive the cash allowance;
  - (b) the LCS's annual submissions since 1997-98 had included 100% (instead of 15%) of the contract gratuities in respect of the new posts created during 1996-97 to 1998-99; and
  - (c) the LCS's submission in May 1995 had included the contract gratuities for posts that were not filled by contract staff during the period April 1994 to April 1995;
- considers that:
  - (a) although the LCC enjoys a high degree of financial autonomy, it should follow as closely as possible the guidelines on the best management practices as provided in the Finance Bureau Circular Memorandums (FBCMs), and any decision to deviate from the guidelines should be made with strong justifications;
  - (b) the LCC should specifically inform the FSTB of material deviations from the guidelines in the FBCMs and consider establishing a suitable avenue to explain such deviations publicly;

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- (c) under the OLV funding arrangement, where the funding to the LCC has been surplus to requirements and no fundamental review has been carried out over a long period of time to ascertain the LCC's actual requirements, this could lead to the build-up of a substantial amount of reserve by the LCC which cannot be justified by its expenditure requirements within a reasonable time frame; and
  - (d) the LCC should exercise its statutory autonomy responsibly so that the situation would not get out of control;
- acknowledges that:
  - (a) the LCC had decided on 20 May 2003 to lower the rate of contract gratuity for newly recruited non-professional and supporting staff to 10% of their basic salary; and
  - (b) the LCC had resolved on 24 October 2002 that it would fund the operation of future select committees from its reserve in order to reduce the Government's expenditure;
- notes that:
  - (a) while some subvented organisations' reserve is subject to a ceiling, there are exceptions to the rule, such as the Office of The Ombudsman, Consumer Council, Hong Kong Trade Development Council, Equal Opportunities Commission, and Office of the Privacy Commissioner for Personal Data; and
  - (b) if a ceiling is to be set for the LCC's reserve, the EoL needs to be amended with the mutual agreement of the LCC and the Administration;
- recommends that the Secretary for Financial Services and the Treasury should discuss with the LCC whether or not a ceiling for the LCC's reserve should be set, having regard to the following:
  - (a) the constitutional status of the Legislature;
  - (b) the long-standing policy to accord the LCC financial autonomy;
  - (c) some subvented organisations do not have a ceiling set for their reserve; and

## **Subvention for staff emoluments of The Legislative Council Commission**

---

- (d) the LCC's operational needs, its past spending pattern, its decision to fund the operation of future select committees from its reserve and other possible uses of its reserve;
- recommends that the LCC should:
  - (a) in the light of its substantial reserve, provide to the FSTB justifications for maintaining a reserve at such a level vis-à-vis its future expenditure requirements;
  - (b) if it agrees to set a ceiling for its reserve, and at the end of a financial year the level of reserve exceeds the ceiling, return the excess amount to the Government; or
  - (c) if it is agreed not to set a ceiling for its reserve and its reserve level is higher than future expenditure and contingency requirements, consider making a voluntary offer to make a one-off payment of the excess amount to the Government; and
- wishes to be kept informed of the discussion between the FSTB and the LCC on the setting of a ceiling for the LCC's reserve.

## **Chapter 3**

### **University Grants Committee funded institutions - Governance, strategic planning and financial and performance reporting**

---

The Committee held a public hearing on 2 June 2003 to receive evidence on this subject. The Committee also received additional information from the witnesses after the public hearing.

2. To allow itself more time to consider the various issues involved and the additional information provided by the witnesses, the Committee has decided to defer a full report on this subject.

## **Chapter 4**

### **University Grants Committee funded institutions - General administrative services**

---

The Committee held a public hearing on 2 June 2003 to receive evidence on this subject. The Committee also received additional information from the witnesses after the public hearing.

2. To allow itself more time to consider the various issues involved and the additional information provided by the witnesses, the Committee has decided to defer a full report on this subject.

## **Chapter 5**

### **University Grants Committee funded institutions - Staff remuneration packages and stipends**

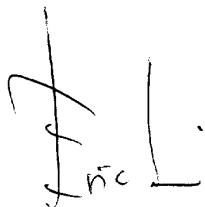
---

The Committee held a public hearing on 14 May 2003 to receive evidence on this subject. The Committee also received additional information from the witnesses after the public hearing.

2. To allow itself more time to consider the various issues involved and the additional information provided by the witnesses, the Committee has decided to defer a full report on this subject.

**SIGNATURES OF THE CHAIRMAN, DEPUTY CHAIRMAN AND  
MEMBERS OF THE COMMITTEE**

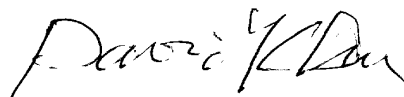
---



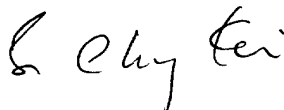
Eric LI Ka-cheung  
(Chairman)



Emily LAU Wai-hing  
(Deputy Chairman)



David CHU Yu-lin



SIN Chung-kai



LAU Kong-wah



Abraham SHEK Lai-him



Tommy CHEUNG Yu-yan

18 June 2003

**CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NOS. 39 AND 40  
DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT**

**Director of  
Audit's Report  
No. 39**

**P.A.C.  
Report  
No. 40**

**Chapter**

**Subject**

**Chapter**

10

Primary education - The administration of primary schools

1

**Director of  
Audit's Report  
No. 40**

**Chapter**

5

Subvention for staff emoluments of The Legislative Council Commission

2

8

University Grants Committee funded institutions - Governance, strategic planning and financial and performance reporting

3

9

University Grants Committee funded institutions - General administrative services

4

10

University Grants Committee funded institutions - Staff remuneration packages and stipends

5



**RULES OF PROCEDURE OF  
THE LEGISLATIVE COUNCIL OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**72. Public Accounts Committee**

(1) There shall be a standing committee, to be called the Public Accounts Committee, to consider reports of the Director of Audit –

- (a) on the accounts of the Government;
- (b) on such other accounts required to be laid before the Council as the committee may think fit; and
- (c) on any matter incidental to the performance of his duties or the exercise of his powers as the committee may think fit.

(2) The committee shall also consider any report of the Director of Audit laid on the Table of the Council which deals with examinations (value for money audit) carried out by the Director relating to the economy, efficiency and effectiveness of any Government department or public body or any organization to which his functions as Director of Audit extend by virtue of any Ordinance or which receives public moneys by way of subvention.

(3) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. The chairman and 2 other members shall constitute a quorum.

(4) A report mentioned in subrules (1) and (2) shall be deemed to have been referred by the Council to the committee when it is laid on the Table of the Council.

(5) Unless the chairman otherwise orders, members of the press and of the public shall be admitted as spectators at meetings of the committee attended by any person invited by the committee under subrule (8).

(6) The committee shall meet at the time and the place determined by the chairman. Written notice of every meeting shall be given to the members and to any person invited to attend a meeting at least 5 clear days before the day of the meeting but shorter notice may be given in any case where the chairman so directs.

(7) All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.

(8) The chairman or the committee may invite any public officer, or, in the case of a report on the accounts of or relating to a non-government body or organization, any member or employee of that body or organization, to give information or any explanation or to produce any records or documents which the committee may require in the performance of its duties; and the committee may also invite any other person to assist the committee in relation to any such information, explanation, records or documents.

(9) The committee shall make their report upon the report of the Director of Audit on the accounts of the Government within 3 months (or such longer period as may be determined under section 12 of the Audit Ordinance (Cap. 122)) of the date on which the Director's report is laid on the Table of the Council.

(10) The committee shall make their report upon the report of the Director of Audit mentioned in subrule (2) within 3 months (or such longer period as may be determined by the Council) of the date on which the Director's report is laid on the Table of the Council.

(11) Subject to these Rules of Procedure, the practice and procedure of the committee shall be determined by the committee.

**Paper presented to the Provisional Legislative Council  
by the Chairman of the Public Accounts Committee  
at the meeting on 11 February 1998 on  
Scope of Government Audit in the  
Hong Kong Special Administrative Region -  
'Value for Money Audits'**

**SCOPE OF WORK**

1. The Director of Audit may carry out examinations into the economy, efficiency and effectiveness with which any bureau, department, agency, other public body, public office, or audited organisation has discharged its functions.
2. The term “audited organisation” shall include -
  - (i) any person, body corporate or other body whose accounts the Director of Audit is empowered under any Ordinance to audit;
  - (ii) any organisation which receives more than half its income from public moneys (this should not preclude the Director from carrying out similar examinations in any organisation which receives less than half its income from public moneys by virtue of an agreement made as a condition of subvention); and
  - (iii) any organisation the accounts and records of which the Director is authorised in writing by the Chief Executive to audit in the public interest under section 15 of the Audit Ordinance (Cap. 122).
3. This definition of scope of work shall not be construed as entitling the Director of Audit to question the merits of the policy objectives of any bureau, department, agency, other public body, public office, or audited organisation in respect of which an examination is being carried out or, subject to the following Guidelines, the methods by which such policy objectives have been sought, but he may question the economy, efficiency and effectiveness of the means used to achieve them.

## **GUIDELINES**

4. The Director of Audit should have great freedom in presenting his reports to the Legislative Council. He may draw attention to any circumstance which comes to his knowledge in the course of audit, and point out its financial implications. Subject to these Guidelines, he will not comment on policy decisions of the Executive Council and the Legislative Council, save from the point of view of their effect on the public purse.

5. In the event that the Director of Audit, during the course of carrying out an examination into the implementation of policy objectives, reasonably believes that at the time policy objectives were set and decisions made there may have been a lack of sufficient, relevant and reliable financial and other data available upon which to set such policy objectives or to make such decisions, and that critical underlying assumptions may not have been made explicit, he may carry out an investigation as to whether that belief is well founded. If it appears to be so, he should bring the matter to the attention of the Legislative Council with a view to further inquiry by the Public Accounts Committee. As such an investigation may involve consideration of the methods by which policy objectives have been sought, the Director should, in his report to the Legislative Council on the matter in question, not make any judgement on the issue, but rather present facts upon which the Public Accounts Committee may make inquiry.

6. The Director of Audit may also -

- (i) consider as to whether policy objectives have been determined, and policy decisions taken, with appropriate authority;
- (ii) consider whether there are satisfactory arrangements for considering alternative options in the implementation of policy, including the identification, selection and evaluation of such options;
- (iii) consider as to whether established policy aims and objectives have been clearly set out; whether subsequent decisions on the implementation of policy are consistent with the approved aims and objectives, and have been taken with proper authority at the appropriate level; and whether the resultant instructions to staff accord with the approved policy aims and decisions and are clearly understood by those concerned;

- (iv) consider as to whether there is conflict or potential conflict between different policy aims or objectives, or between the means chosen to implement them;
- (v) consider how far, and how effectively, policy aims and objectives have been translated into operational targets and measures of performance and whether the costs of alternative levels of service and other relevant factors have been considered, and are reviewed as costs change; and
- (vi) be entitled to exercise the powers given to him under section 9 of the Audit Ordinance (Cap. 122).

## **PROCEDURES**

7. The Director of Audit shall report his findings on value for money audits in the Legislative Council twice each year. The first report shall be submitted to the President of the Legislative Council within seven months of the end of the financial year, or such longer period as the Chief Executive may determine. Within one month, or such longer period as the President may determine, copies shall be laid before the Legislative Council. The second report shall be submitted to the President of the Legislative Council by the 7th of April each year, or such date as the Chief Executive may determine. By the 30th April, or such date as the President may determine, copies shall be laid before the Legislative Council.

8. The Director's report shall be referred to the Public Accounts Committee for consideration when it is laid on the table of the Legislative Council. The Public Accounts Committee shall follow the rules governing the procedures of the Legislative Council in considering the Director's reports.

9. A Government minute commenting on the action Government proposes to take in respect of the Public Accounts Committee's report shall 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.

10. In this paper, reference to the Legislative Council shall, during the existence of the Provisional Legislative Council, be construed as the Provisional Legislative Council.

**Witnesses who appeared before the Committee  
(in order of appearance)**

Prof Hon Arthur LI Kwok-cheung, GBS, JP	Secretary for Education and Manpower
Mrs Fanny LAW, GBS, JP	Permanent Secretary for Education and Manpower
Mr LEE Hing-fai, BBS, JP	Director of Education
Mr CHENG Man-yiu, JP	Deputy Secretary for Education and Manpower (formerly Deputy Director of Education)
Mrs Betty IP	Principal Assistant Secretary for Education and Manpower (School Administration & Support) (formerly Assistant Director of Education (School Administration & Support))
Hon Frederick MA Si-hang, JP	Secretary for Financial Services and the Treasury
Mr Alan LAI Nin, GBS, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Mr Stanley YING, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)
Mr Ricky FUNG Choi-cheung, JP	Secretary General of the Legislative Council Secretariat
Mr Joseph KWONG Pak-cheong	Accountant of the Legislative Council Secretariat

**Introductory remarks by the  
Chairman of the Public Accounts Committee,  
Hon Eric LI Ka-cheung, JP,  
at the first public hearing of the Committee  
on Monday, 12 May 2003**

Good morning, ladies and gentlemen. Welcome to the Public Accounts Committee's first public hearing relating to Report No. 40 of the Director of Audit on the results of value for money audits, which was tabled in the Legislative Council on 30 April 2003.

The Public Accounts Committee is a standing committee of the Legislative Council. It plays the role of a watchdog over public expenditure through consideration of the reports of the Director of Audit laid before the Council on the Government's accounts and the results of value for money audits of the Government and those organisations which receive funding from the Government. The purposes of the Committee's considering the Director's reports are to receive evidence relevant to the reports in order to ensure that the facts contained in the Director's reports are accurate, and to draw conclusions and make recommendations in a constructive spirit and forward-looking manner. I also wish to stress that the objective of the whole exercise is such that the lessons learned from past experience and our comments on the performance of the public officers concerned will enable the Government to improve its control over the expenditure of public funds, with due regard to economy, efficiency and effectiveness.

The consideration of the Director's reports follows an established process of public hearings where necessary, internal deliberations and publication of the Committee's report. The Committee has an established procedure for ensuring that the parties concerned have a reasonable opportunity to be heard. After the Committee is satisfied that it has ascertained the relevant facts, it will proceed to form its views on those facts, followed by a process of formulating its conclusions and recommendations to be included in its report. In accordance with Rule 72 of the Rules of Procedure of the Legislative Council, the Committee is required to make its report on the Director's report to the Legislative Council within three months of the date at which the Director's report is laid on the Table of the Council. Before then, we will not, as a committee or individually, be making any public comment on our conclusions.

Following a preliminary study of the Director of Audit's Report No. 40, the Committee has decided, in respect of three chapters in the Report, to invite the relevant public officers and parties concerned to appear before the Committee and answer our questions. We have, apart from this morning's hearing, also set aside the morning of 14 May for the public hearings.

Finally, I would like to draw your attention to the fact that my colleagues, Hon Emily LAU Wai-hing and Hon LAU Kong-wah, have declared interest in respect of Chapter 5 of Report No. 40 which concerns "Subvention for staff emoluments of The Legislative Council Commission". Hon Emily LAU Wai-hing has declared that she is a serving member of The Legislative Council Commission. Hon LAU Kong-wah has declared that he was a member of The Provisional Legislative Council Commission from 1 July 1997 to 30 June 1998. The Committee considers that it is proper for them to make the declaration because:

- (a) Hon Emily LAU Wai-hing, being a serving member of The Legislative Council Commission, is directly involved in some of the issues examined in this chapter; and
- (b) Hon LAU Kong-wah was involved as a Member of The Provisional Legislative Council Commission in matters referred to in this chapter which relate to the funding of The Provisional Legislative Council Commission for cash allowance and contract gratuity of staff of the Legislative Council Secretariat.

In line with the Committee's practice, the members concerned have disclosed their personal interest in this particular subject, so as to avoid any conflict of interest and in order that the impartiality and integrity of the Committee may be maintained. The Committee has agreed that Hon Emily LAU Wai-hing and Hon LAU Kong-wah be exempted from the examination of this particular chapter. They will not participate in the public hearing, nor in the discussion and compilation of the Committee's report on this chapter. Neither will they make any public comment on the issues relating to this chapter.

I now declare the Committee to be in formal session.





教育署  
Education Department

APPENDIX 5

本署檔號 Our ref: (35) in ED(SAS)/F&A/35/1 (N) Pt.2  
來函檔號, Your ref: CB(3)/PAC/R39  
電話 Tel. No.: 2892 6683  
圖文傳真 Fax No.: 2574 1128  
e-mail: ed@ed.gcn.gov.hk

27 December, 2002

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
HONG KONG

Dear Miss CHU,

***The Director of Audit's Report on the  
result of value for money audits (Report No. 39)  
Chapter 10: Primary Education – The Administration of Primary Schools***

I refer to your letter dated 9 December on the caption and would like to thank you for agreeing to postpone the deadline of submission of the response in English to today, 27 December.

***Enclosed*** please find the additional information in the attached Appendix as requested for the consideration of the Public Accounts Committee. A soft copy of the Appendix has also been emailed to you for your deployment. The Chinese version of the reply is being prepared and will be forwarded to you as soon as possible.

Yours sincerely,

( H.F. LEE )

Director of Education

cc Secretary for Education and Manpower  
Director of Audit

香港 皇后大道東 213 號 胡忠大廈 16 樓  
Wu Chung House, 16/F, 213 Queen's Road East, Wanchai, Hong Kong



## Appendix

### **Additional Information on The Director of Audit's Report on the results of value for money audits (Report No. 39)**

#### *Chapter 10: Primary Education – The Administration of Primary Schools*

- (a) With reference to paragraph 2.17 of the Audit Report, whether the Education Department (ED) has clawed back the unspent balance of the Capacity Enhancement Grant (CEG) from the school which asked for some \$180,000 for employing two temporary teachers but were still granted the full amount of 450,000; if so, the exact amount of the unspent balance, and the details of the mechanism for granting the CEG to primary schools.**

CEG is provided to schools for the purpose of enhancing teachers' capacity to implement the education reform. To give schools flexibility in planning the use of funds, CEG is placed under the Operating Expense Block Grant (OEBG) and schools may use the CEG carried forward from the previous year(s) or deploy surplus from the General Domain of the OEBG to make up the funding requirement according to their own circumstances and priorities. As schools' decision on the use of CEG should be part of the school development planning process, since the introduction of CEG in the 2000/01 school year, schools have been required to submit to the Education Department (ED) a separate plan on how to make use of CEG. The plan serves as an indicative deployment of funds, which may vary in the light of the actual implementation and schools' changing needs. Hence, payment of CEG will be disbursed to the school in full rates upon receipt of a school's CEG plan which shows that funding is to be spent in accordance with the conditions as set out in the relevant school circular. Claw back will be effected if the surplus under OEBG exceeds the provision of 12 months (the 12-month rule).

- (b) Since the introduction of the CEG , the number of applications received from primary schools, the total amount of the grant applied in each of the school years 2000/01 and 2001/02 and the number of primary schools which applied for amounts less than the standard rates in the same period.**

Information requested is summarized as follows :

School Year	No. of Eligible Primary Schools	Amount of CEG indicated in CEG Plans [% against the full CEG rates]				
		100% or above	90% or above	80 % or above	50% or above	Less than 50%
2000/01	686	466 (68%)	622 (90.7%)	649 (94.6%)	673 (98.1%)	13 (1.9%)
2001/02	680	582 (85.6%)	660 (97.1%)	667 (98.1%)	678 (99.7%)	2 (0.3%)

The figures indicate clearly that the overwhelming majority of schools (over 97% in 2001/02) have made initial proposals to use 90% or more of the full amount of CEG. A great majority of them also proposed to use the surplus funding carried forward from the 2000/01 school year to make up the funding requirement of the 2001/02 school year.

- (c) **With reference to paragraph 2.38 of the Audit Report, copies of circulars issued by the ED on the provision of projectors to schools and the requirement for schools to fully utilize the projectors or report the actual requirement for projectors.**

Circular Memorandum No. 16/98 on *Information Technology in Education* is attached (Annex 1). The arrangement for accommodating 3 projection systems has been set out in the suggested accommodation plan in Appendix 3 to the circular. Subsequently in Circular Memorandum No. 316/99 (Annex 2), we have provided flexibility to schools in acquiring IT-related equipment in accordance with schools' own needs. Paragraph 7 of the said circular is relevant. Schools have been encouraged to make their own plan for the progressive implementation of IT initiatives which fit in with their respective teaching and learning environment.

Moreover, in the seminars organized in April 1999 on the "IT in Education" project, schools were reminded to exercise flexibility in fully utilizing the IT-related equipment made available to them, taking into account the IT readiness of both their teachers and students.

- (d) With reference to the cases of School Q and School R referred to in paragraphs 3.3 and 3.6 of the Audit Report, whether the practices in question were in breach of any legislation or guidelines, if so, copies of the documents.**

Relevant documents governing the appointment of teaching staff in aided schools are :

- Annex 3 - Administration Circular No. 32/2000 on *Appointment of Staff in Aided Schools* issued on 26 June 2000; and
- Annex 4 - Section 7.1 to 7.4 of School Administration Guide (SAG), October 2001;

### School Q

It is suggested in Administration Circular No. 32/2000 and Section 7.3.2 of the SAG that schools should have a selection panel to conduct recruitment interviews. The selection panel may comprise a member of the school management committee (SMC), the school head, a senior teacher or a senior member of the administrative staff, depending on the job requirements of the vacant post. The appointment of two part-time teachers by School Q for the 2001/02 school year, however, was determined by the school head alone without going through a selection procedure as set out in the Circular and SAG.

Furthermore, School Q did not advertise vacancies of the teaching posts in the press as required in Section 7.3 of SAG which states that all vacancies should either be advertised in the press or circulated by internal circulars as appropriate. However, according to the school head, he did screen more than 40 self-recommended application letters from suitable candidates and contact them for interviews.

### School R

Administration Circular No. 32/2000 and Section 7.3 of the SAG stipulate that shortlisting criteria should be pre-determined and documented after endorsement by the SMC. In addition, assessment of candidates should be properly documented and such records should be kept for a specified period. School R did not keep any record of the selection criteria, the interviews and the assessment on the applicants. Such practice was not in line with the principles on staff selection as laid down in the said Circular and the SAG. However, starting from the 2002/03 school year, the school has developed document for selection criteria and has kept written

records of all the interviews conducted, including the assessment on the applicants.

**(e) Whether the ED had managed to detect, before the commencement of the Audit review, the irregularities in the following cases stated in the Audit Report; if not, why not.**

Public sector schools are required to administer school-based management. School-based management aims to enable schools to deploy their resources in an effective and accountable manner so that they can respond proactively to the needs of their students in the delivery of education services and thus improve the learning outcomes. Hence, the management committees of aided schools have been devolved with more authorities as well as responsibilities. Whilst enjoying greater management autonomy and flexibility in the use of funds, schools should be accountable for their performance and day-to-day operation including matters on staff appointment and proper use of public funds. Within the self-managing framework, schools are required to increase the transparency of the school through participatory management involving key stakeholders such as representatives of parents, alumni and teachers.

Guidelines, seminar and workshops have been organized to familiarize school managers and school heads with the underlying principles of school-based management and help them put in place explicit policies and a fair, open and transparent system governing financial and personnel matters. Performance indicators have also been developed for the schools' reference in conducting their self-evaluation.

ED also undertake inspections and visits to help schools improve their performance. To be in line with the education reform, the school development teams of our regional education offices (REOs) focus their effort of school visits on school development and improvement. To conduct regularity audit of schools, we inspect the accounts of aided and government schools on a sampling and test check basis. Quality assurance inspections are also conducted to give schools an external perspective on their performance in different domains, in particular the domain of learning and teaching. From 2000 to 2002, audit inspections were carried to all of the 18 schools selected by the Audit Commission. Quality assurance inspections have been conducted to Schools B, D, F, J and K.

With increasing transparency in the governance structure of schools and to be in line with the spirit of school-based management, management audit involving extensive checking of internal recruitment records of a school is not our priority areas of work. However, investigations would be conducted when we receive complaints or reports of irregularities. Therefore, we have not been able to detect most of the irregularities mentioned in the Audit Report which would involve detailed vetting of schools' internal documents. Further information about the cases is given below.

***(i) over-provision of the CEG to a primary school which applied for some \$180,000 (with reference to paragraph 2.17 of the Audit Report).***

No irregularity involved. Please see explanations in (a) above.

***(ii) over-provision of funds to School C for paying electricity charges (with reference to paragraphs 2.31 to 2.35 of the Audit Report).***

School C commenced operation in 2000/01 school year. It is a new whole day school combining two bi-sessional government schools. Since it is the first of its kind in government primary schools with Year 2000 design, no reference could be drawn from other government primary schools on the consumption of electricity when preparing the 2001/02 estimates in September 2000. The school, therefore, could only provide an approximate estimation on the electricity charge in the draft estimates.

In September 2001 when the draft estimates for 2002/03 financial year was prepared, the actual expenditure for 2001/02 financial year of the school, which could more fully reflect the spending pattern on electricity consumption was not yet available for reference. As a developing school, School C had the capacity of operating additional classes and further opening up the premises to support community services. All such factors that would incur higher electricity consumption had been taken into account when preparing the 2002/03 estimates. Before the commencement of the 2002/03 school year, we noted from the actual expenditure for the 2001/02 financial year that there was room for downward adjusting the amount of funding allocated to School C for payment of electricity charges. As such, \$280,000 was clawed back in October 2002. The provisional allocation for electricity charges for 2003/04

financial year was also prepared with reference to its spending pattern for 2001/02 financial year.

Upon providing schools with greater freedom in the use of school funds under the spirit of school-based management, schools have also been delegated the responsibility to exercise good financial management and make effective use of funds allocated. In November 2002 school heads and SMCs of government schools have been reminded to exercise good budget control and to ensure that the funds are managed in line with the departmental circulars and guidelines on accounting and financial control.

***(iii) under-utilization of the projectors by School Q (with reference to paragraph 2.39 of the Audit Report).***

Since the provision of IT equipment including projectors to schools in 2000, ED has been conducting visits to schools on a randomly-selected basis to observe the utilization of the equipment and implementation of the IT in Education project at the schools. At the time when the Audit Review commenced, our visits had not yet covered School Q. Our visit to School Q was conducted in October 2002. The school is situated in a very remote rural area. It has three classrooms with one being converted to a computer classroom fitted with burglar alarm system whereas the other two classrooms are located a distance away without strengthened security measures. It has revealed that the school has been fully utilizing the three projectors provided to them; only that for security reason, two of the projectors are packed and stored in the school's computer classroom as observed by the Audit Commission when they are not in use. We consider this practice acceptable.

We will continue to monitor the use of projectors and other IT equipment in schools and will request the return of any surplus equipment where under-utilization is observed. We will also continue to advise schools on the ways to put the equipment into better use for teaching and learning purposes.

***(iv) absence of audit engagement letters between most of the 16 aided schools and their external auditors (with reference to paragraph 2.48 of the Audit Report).***

- (v) errors in respect of the surplus balances in the audited accounts of School L and School N (with reference to paragraph 2.49 of the Audit Report).***
- (ix) procurement by School D without obtaining quotations (with reference to paragraph 4.5 and Appendix D of the Audit Report).***
- (x) non-compliance of six schools with the financial limits for procurement set by the ED (with reference to paragraph 4.6 of the Audit Report).***
- (xi) failure of School Q to document procurement quotations (with reference to paragraph 4.7 and Appendix D of the Audit Report).***
- (xii) failure of 15 schools to adopt the process of competitive tendering of quotations in procurement services for students and parents (with reference to paragraph 4.13 of the Audit Report).***

In 2000 and 2001, we conducted audit inspections for 12 out of the 18 schools selected by the Audit Commission. The remaining six schools were inspected in 2002. At the end of each audit inspection, the school principal and staff engaged in financial and accounting duties were briefed of inspection findings and recommendations, followed by a management letter to the school supervisor.

Apart from the different samples of schools which we inspected during the period concerned, owing to the different samples of transactions/records selected for test checks, it is not possible to have the same set of findings/irregularities as pointed out by the Audit Commission. Similarly, the Audit Commission may not come to the same findings/irregularities as ours. For example, in respect of error in charging accounts, we found that School H had wrongly charged the cost of a multimedia projector of \$44,200 to the Newly Arrived Children Grant Account but there is no mention of the same error in the Audit Report.

Regarding the absence of audit engagement letters, we have relied on the information submitted by the schools through the Internal Control Questionnaires before the commencement of audit.



We agree there is an area where further improvement can be made.

As regards whether ED had managed to detect the errors in respect of the surplus balances in the audited accounts of School L and School N before the commencement of the Audit Review, we wish to point out that the audited accounts serve mainly for the purpose of claw back of surplus beyond the approved limit. We do not check the audited accounts submitted by schools as these accounts have already been certified by the schools' auditors. Nonetheless, the kind of errors as detected by the Audit Commission may surface during our school inspections when our audit teams examine the books of account.

***(vi) non-compliance of School Q with requirements on recruitment of two part-time teachers (with reference to paragraph 3.3 of the Audit Report).***

***(vii) failure of School R to document the assessment of applicants (with reference to paragraph 3.6 of the Audit Report).***

***(viii) offer of appointment of new teachers by 10 schools without prior approval of their School Management Committees (with reference to paragraph 3.9 of the Audit Report).***

As explained above, we have not conducted management audit to vet the recruitment documents and minutes of SMC meetings of School Q and School R. Likewise, no checking of records has been carried out in relation to the appointments of teachers by the ten schools mentioned in the Audit Report. The appointments were reported to ED in the prescribed forms duly endorsed by the school supervisor on behalf of the SMC in accordance with section 39 of the Education Ordinance (Annex 5). They were accepted as proper documents for that specific purpose.

Nonetheless, we consider there is an area where further improvement can be made. We will revise the appointment form to require the school supervisor to declare that the appointment of the staff has been made in accordance with the relevant guiding principles in the SAG and relevant provision of the Education Ordinance and Education Regulations.

***(xiii) School R's allowing a private organization to use its school premises free of charge (with reference to paragraph 4.19 of the Audit Report).***

Requirements/guidelines on the hire of accommodation in aided schools including the recommended charges are stated in Finance and Accounts Circular No. 4/2000 on *Hire of Accommodation in Aided Schools* (an updated version of the circular, School Finance and Accounts Circular No. 11/2002 is at Annex 6). All along, ED has been encouraging schools to open up their schools premises for community use. Along the lines of school-based management, the decision on hiring out the school premises and the rates of hiring charges (i.e. whether charging full rate or concession rates or waiving the charge altogether) rests with the school supervisors/heads. Schools need to keep records of the hiring (whether free or chargeable) which are subject to inspection by this Department's school inspection team. Under the existing arrangement of random inspection, the said practice of School N's allowing a private organization to use its school premises free of charge would not be possibly detected immediately.

***(xv) School N's allowing the tuckshop operator to sell textbooks and failure of the school to re-tender the tuckshop operations (with reference to paragraphs 5.24 to 5.29 of the Audit Report).***

Requirements/guidelines regarding tuckshop operation were stipulated in Administration Circular No. 3/2001 on *Trading Operation in Aided Schools* in force at that time (Annex 7) and Section 6.2.2 of the SAG (Annex 8). As a general principle, schools should set up a School Tuckshop Committee, composed of teachers and representative from the Parent-Teacher Association, to supervise and monitor the operation of the tuckshop to ensure that the tuckshop is efficiently operated in the interest of the pupils. Matters relating to renewal of tuckshop contract and monitoring of trading activities (including the items to be sold and control of price etc.) should be part of the duties of the School Tuckshop Committee. Schools should also ensure that trading activities are conducted in a fair, open and transparent manner. In this connection, the practice of offering the tuckshop operation to the same operator for more than ten years without going through tendering procedure is not in the best interest of the students and parents. To better safeguard the interests of students and parents, we will explicitly spell out the requirement of

inviting quotations every three years in the forthcoming revised circular on trading operation.

As for the sale of textbooks in school N, the tuckshop operator was approved to provide the service of sale of textbooks on the condition that the service was carried out in accordance with the governing principles of sale of textbooks. According to the school head, the sale of textbook has been conducted on a voluntary in accordance with the guidelines and about 60% of their students purchased their textbooks from the tuckshop operator. Similar to other trading activities, the school should observe the principles in the guidelines in force and review the prices of textbooks regularly to ensure that the prices are reasonable.

**(e)(xiv) acceptance of donations by Schools D, K and L from their suppliers of goods or services (with references to paragraph 5.14 and Table 5 of the Audit Report); and**

**(f) Regarding (e)(xiv) above, whether the practices of the three schools were in breach of any legislation or guidelines; if so, copies of the relevant documents, including a copy of the legal advice, and follow-up actions taken by ED.**

Requirements/guidelines regarding the acceptance of donations by schools were stipulated in Section 15 of the Code of Aid for Primary Schools (Annex 9), Administration Circular No. 2/98 on *The Prevention of Bribery Ordinance, Cap 201*(Annex 10) and Section 6.2.2 of the SAG (Annex 11) in force at that time. Under the standing practice in force, schools should seek prior approval before accepting donations which may involve annual recurrent expenditure, and all donations accepted should be reported quarterly to ED in the prescribed form.

Except for the acceptance of an air-conditioner which incurred recurrent expenditure by School K without ED's prior approval, no irregularities were involved in all other cases of acceptance of donation because all donations were reported to ED by the schools concerned. As for the acceptance of the air-conditioner by School K, we had not received school's quarterly report on this donation item although the school head claimed that the school had sent in the quarterly return. While School K has not contravened the provision in the Education Ordinance, it has not observed the requirement of seeking ED's prior approval for acceptance of donation with recurrent implication as laid down in the Code of Aid for

Primary Schools, the Administration Circular No. 2/98 and the SAG. The school has been verbally advised to observe the requirement and rectify the irregularity as soon as possible.

We will further strengthen the message that schools should not receive any donations from suppliers unless there are compelling reasons for doing so and with the approval from the SMC. Schools should also record clearly such compelling reasons in their returns of donation records to ED in our forthcoming revised version of circular on acceptance of donations.

***\*Note by Clerk, PAC: Annexes 1 to 11 not attached.***

教育統籌局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: (12) in EMB(SAS)/F&A/35/01(CON)(4)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
電話 Telephone: 2892 6688  
傳真 Faxline:

6 January 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
HONG KONG

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 31 December 2002 on the caption and furnish the following additional information as requested -

- (a) A comprehensive review of the Capacity Enhancement Grant will be completed in December 2003. Notwithstanding this, in view of the Audit recommendation that more levels of funding should be introduced, the Administration is examining the various options of introducing more levels of provision to schools and will consult the school sector of our final proposal for implementation in September 2003. The approval of the Finance Committee of the Legislative Council will be sought before implementation.

/(b) We are conducting .....

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

- (b) We are conducting a fundamental review of grants with a view to consolidating various grants into lump sum grants. We aim to complete the review in 2003 and will consult the school sector of our final proposal before implementation.

I would also like to confirm that I have no objection to the Committee making reference to my evidence given at the public hearing on "Primary education – Delivery of effective primary education" (Chapter 11) in its Report on the subject "Primary education – The administration of primary schools".

Yours sincerely,



( Mrs Fanny Law )

Permanent Secretary for Education & Manpower

c.c. Secretary for Education and Manpower  
Director of Audit



中華人民共和國香港特別行政區政府總部教育統籌局  
Education and Manpower Bureau  
Government Secretariat, Government of the Hong Kong Special Administrative Region  
The People's Republic of China

本局檔號 Our Ref. : EMB(SAS)/F&A/35/01(CON)(7)  
來函檔號 Your Ref. : CB(3)/PAC/R39

電話 Telephone : 2892 6683  
傳真 Fax Line : 2574 1128

5 June 2003

Clerk, Public Accounts Committee  
(Attn: Ms Dora WAI)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Ms Wai,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education -- Administration of Primary Schools**

I refer to your letter dated 26 May 2003 on the caption and would like to provide the following information for the consideration of the Public Accounts Committee -

(i) Your para. (a)

Reviewing the circulars and guidelines in force with a view to consolidating similar or related subjects into one circular is an on-going process. While so doing, we need to ensure that schools can locate easily specific subjects to which they need to refer. Our regular update of the School Administration Guide keeps schools updated of the latest state of development of the subjects of their concern and provides schools with easy reference to circulars and guidelines.

(ii) Your para. (b)

The fundamental review of grants is still in progress. We will consult the school sector on the outcome of our review. If supported by parties concerned, we plan to implement the new arrangements with effect from the 2004/05 school year.

(iii) Your para. (c)

— We agree to the Director of Audit's recommendation that more funding levels for the Capacity Enhancement Grant (CEG) should be introduced. Our proposal to refine the existing schedule of rates for implementation with effect from the 2003/04 school year was approved by the Finance Committee of the Legislative Council on 3 June 2003. Attached at Annex I is the new schedule of CEG rates at the price level of the 2002/03 school year, which have yet to be adjusted for the 2003/04 school year in accordance with the movement of the Composite Consumer Price Index between June 2002 and June 2003.

(iv) Your para. (d)

We have scheduled to issue the revised appointment form to aided schools within this month.

(v) Your paras (e) to (g)

— Education and Manpower Bureau Circular No. 13/2003 dated 28 March 2003 draws the attention of schools in receipt of public funds to the fundamental principles they need to observe when they operate or permit to operate on the school premises any business or trading undertaking, or enter into business or trading arrangement with any person. The points included in your paras (e) to (g) have been duly covered in the above circular which is at Annex II for your reference.

Yours sincerely,



( M Y CHENG )

for Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower )  
Secretary for Financial Services and the Treasury ) w/e  
(Attn : Mr Manfred WONG) )  
Director of Audit )



**Schedule of Revised Rates of Capacity Enhancement Grant for  
Implementation in 2003/04 School Year**

The revised rates of the Capacity Enhancement Grant for the 2003/04 school year at the price level of the 2002/03 school year are set out below <sup>Note</sup> -

	<u>Secondary (per annum)</u>	<u>Primary (per annum)</u>	<u>Special (per annum)</u>
Basic rate	\$240,067 (first 12 classes)	\$151,600 (first 6 classes)	\$151,600 (first 5 classes)
Maximum provision	\$430,363 (24 or more classes)	\$526,000 (24 or more classes)	\$526,000 (19 or more classes)
Rate per class for classes in addition to the threshold number	\$15,858	\$20,800	\$26,743

---

<sup>Note</sup> These rates are still subject to price adjustment in the 2003/04 school year according to the movement of the Composite Consumer Price Index between June 2002 and June 2003.

Ref. : EMB(SCH)T/6/80

Government of the HKSAR  
Education and Manpower Bureau  
28 March 2003

**Education and Manpower Bureau Circular No. 13/2003**

**Fundamental Principles for Conducting Trading Operations in  
Schools in Receipt of Public Funds**

[Note : This circular should be read by -

- (a) Supervisors/heads of aided schools, caput schools and schools under the Direct Subsidy Scheme and the English Schools Foundation -- for necessary action; and
- (b) Supervisors/heads of government schools and private schools and heads of sections -- for information]

**Summary**

This circular serves to draw the attention of schools in receipt of public funds to the fundamental principles they need to observe when they operate or permit to operate on the school premises any business or trading undertaking, or enter into business or trading arrangement with any person (the afore-said activities are hereafter referred as trading operations).

**Details**

***Trading Operations***

2. According to Regulation 99A(1) of the Education Regulations, no supervisor, manager or management committee of a school in receipt of public funds shall, without the prior permission in writing of the Permanent Secretary for Education and Manpower (PSEM), operate or permit to operate on the school premises, or enter into with any person, any trading operations.

3. In a recent value for money audit on primary education, the Audit Commission has made recommendations on matters relating to trading operations in aided primary schools, e.g. in providing procurement services for students and parents, schools should follow the practice of obtaining competitive tenders or quotations so as to obtain the best available prices.

4. In order to safeguard the interests of parents and students, we have updated the guidelines on trading activities to ensure that trading operations are properly conducted. Schools are required to seek prior approval from PSEM when they decide to conduct/enter into any trading operations. Applications from schools should be endorsed by the School Management Committees (SMCs) and forwarded to the respective Senior School Development Officers for processing. A sample application form for reference/use by aided schools is at Appendix 1. Subsequent changes to the approved trading operations (e.g. change of trading operator/supplier, changes to the terms of the agreement with the trading operator/supplier as reported earlier via Appendix 1) also require PSEM's prior permission.

5. Schools should observe the arrangements detailed at Appendix 2 in handling various types of trading operations. In short, schools are strongly advised to set up monitoring committee(s) to monitor and steer various types of trading operations conducted/entered into, and should observe the fundamental principles contained therein. Schools may also make reference to specific principles in respect of certain trading operations via the following website -

[http://www.emb.gov.hk/eng/content\\_schools.asp](http://www.emb.gov.hk/eng/content_schools.asp)

### ***Donations from Trading Operators/Suppliers***

6. Schools are reminded to observe the general principles on acceptance of advantages and donations set out in the Education and Manpower Bureau Circular on Acceptance of Advantages and Donations by Schools and Their Staff and the *Notes on Selection of Textbooks and Learning Materials for Use in Schools* attached to the Schools Curriculum Circular on the same subject currently in force. Schools, in principle, should not accept any advantages or donations from trading operators/suppliers (including publishers). In exceptional circumstances, where there are compelling reasons to accept such donations, they should be fully justified, approved by the SMCs in advance and documented. In any case, schools should not allow the choice of trading operators/suppliers to be in any way influenced by a donation or any other form of advantages. Also, parents and students should be notified of the donations or advantages received from trading operators/suppliers. Schools should record

such donations or advantages in a register, which should be made available to members of the public. In addition, aided schools should include details of donations in their Annual Report.

### ***Conflict of Interests***

7. In accordance with the Education and Manpower Bureau Circular on Acceptance of Advantages and Donations by Schools and Their Staff currently in force, SMC members and school staff are required to report any situations where they or their immediate family or personal friends have an interest, financial or otherwise, in any matter under consideration by their schools or in any company or organization which has or likely to have business dealings with the schools. Any declarations made and necessary action taken to avoid any actual or perceived conflict should be properly recorded. This requirement on conflict of interests should be strictly observed when schools handle any trading operations. In this connection, aided schools should also make reference to Appendix 9 on *Conflict of Interest* under Section 7 of the School Administration Guide.

### ***Profits Arising from Trading Operations***

8. Under regulation 99A(3) of the Education Regulations, any profits or net income arising from any trading operations shall not be used for any purpose not directly benefiting their students without PSEM's prior written permission.

### ***Enquiry***

9. Any enquiry about this circular should be directed to your respective Senior School Development Officers.

10. This circular supersedes Administration Circular No. 3/2001 dated 29 January 2001.

Mrs Betty IP  
for Secretary for Education and Manpower

School Name : \_\_\_\_\_

School Address : \_\_\_\_\_

Date : \_\_\_\_\_

To : SSDO ( )

**Application for Permission to Conduct/Enter into Business or Trading Undertaking/Arrangement**

My school would like to apply for permission to conduct/enter into the following business or trading undertaking/arrangement with effect from (date) \_\_\_\_\_ -

**(A) Type of Business and Name of Trading Operator/Supplier**

Please tick as appropriate	Item no.	Type of business/trading undertaking/arrangement	Name of operator/supplier (e.g. conducted by school itself, xxx Fast Food Shop)
<input type="checkbox"/>	(1)	Exercise books	
<input type="checkbox"/>	(2)	Stationery and school accessories	
<input type="checkbox"/>	(3)	Textbooks	
<input type="checkbox"/>	(4)	School uniforms, badges and ties	
<input type="checkbox"/>	(5)	Physical education kits	
<input type="checkbox"/>	(6)	Lunch boxes	
<input type="checkbox"/>	(7)	School bus service	
<input type="checkbox"/>	(8)	School Tuckshop	
<input type="checkbox"/>	(9)	Newspaper	
<input type="checkbox"/>	(10)	Others (Please specify. Use separate sheets if required) :	

(B) Other details (Please complete, where applicable)

Item no.#	Details			
	Rental (Please specify the amount per month or per annum as appropriate.)	Utilities charges (such as water, gas, electricity) (Please indicate the amount to be paid/reimbursed by the operator/supplier on the basis of actual consumption <u>or</u> at a fixed sum per month/annum as appropriate.)	Agreement with operator/supplier	
			Commencement date	Termination date

# The same item no. used under (A) above should be adopted.

- ☐\* Regarding our application for conducting/entering into the above business or trading undertaking/arrangement, I confirm that our school will observe the requirements laid down in the Education and Manpower Bureau Circular on Fundamental Principles for Conducting Trading Operations in Schools in Receipt of Public Funds currently in force and will ensure that the trading operation(s) will be conducted in an open, fair and just manner. I further confirm that the profit/net income arising will be used for purposes benefiting the students.

OR

- ☐\* Regarding our application for conducting/entering into the above business or trading undertaking/arrangement, our school will adopt arrangement(s) not following the requirements laid down in the Education and Manpower Bureau Circular on Fundamental Principles for Conducting Trading Operations in Schools in Receipt of Public Funds currently in force. Details and justifications are given as follows -

---

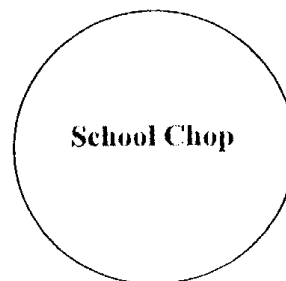
---

---

---

---

\* Please put a "✓" in the appropriate box.



\_\_\_\_\_  
(Signature of Supervisor)

\_\_\_\_\_  
(Name of Supervisor)

### **Guidelines on Conducting/Entering into Business or Trading Undertaking/Arrangement**

Schools are strongly advised to set up a Monitoring Committee on Trading Operations to monitor and steer various types of business or trading undertaking/arrangement (trading operations), such as sale of textbooks/exercise books, tuckshop operation, school bus service and supply of lunch boxes and school uniforms. They may, if they so wish, set up different committees to monitor different types of trading operations instead. This appendix details the recommended composition of the committee(s) and the general duties to be assumed by it/them. It also provides schools with the fundamental principles for conducting/entering into trading operations.

#### **(A) Setting Up of Committee(s) to Monitor Trading Operations**

1. Schools are strongly advised to form a Monitoring Committee on Trading Operations or, in its stead, specific committees for different types of trading operations.

#### **Recommended Composition**

2. The composition of the Monitoring Committee on Trading Operations or the specific committees set up for different types of trading operations is recommended as follows, with a view to upholding the spirit of school-based management, which aims at putting in place a more open, accountable and participatory school management structure -

- Chairman : A senior member of the teaching staff appointed by the School Head, who acts under the delegated authority of the School Management Committee (SMC)
- Members : (a) At least two other members of the staff appointed by the School Head, who acts under the delegated authority of the SMC; and
- (b) Two representatives from the Parent-Teacher-Association (PTA) if there is one, or two parents from the school if no PTA has been set up

A bi-sessional primary school with different School Heads may set up one Monitoring Committee on Trading Operations or two separate such Committees, or, as the case may be, one specific committee for each type of trading operations or two separate such specific committees. In the case of one committee for the two sessions with different School Heads.



- (a) the AM and the PM sessions should take turn to appoint a senior member of their teaching staff to chair the Monitoring Committee on Trading Operations or the specific committees for different types of trading operations; and
- (b) other members should include staff of both sessions and a parent from each session.

3. The Monitoring Committee on Trading Operations or the specific committees should be responsible to the School Head or both School Heads in case it/they serve(s) both the AM and the PM sessions with different School Heads. Under the delegated authority of the SMC, the School Head(s) should oversee the operation of the committee(s) to ensure that operation is open, fair and just.

#### Duties

4. In general, duties of the Monitoring Committee on Trading Operations or the specific committees should include the following -

- (a) To adopt an open, fair and competitive system in the selection of trading operators/suppliers by calling for written/verbal quotations or tenders as appropriate, following the provisions stipulated in the Administration Circular on Tendering and Purchasing Procedures in Aided Schools currently in force;
- (b) To conduct quotation/tender exercises to compare prices and quality of goods/services and reliability at appropriate intervals of at least once every three years, or before renewal of a contract as appropriate;
- (c) To have all selection exercises properly documented;
- (d) To have direct control of prices and to consider and approve price revision proposals made by the trading operators/suppliers;
- (e) To review regularly the types of goods/services provided by the trading operators/suppliers and check their quality;
- (f) To consider suggestions from the school and parents on trading operations;
- (g) To hold regular meetings<sup>Note</sup> to review issues relating to trading operations and to keep proper record of these meetings, including the resolutions made, for future reference; and
- (h) To investigate into complaints about trading operations, and to take appropriate action, if necessary.

---

<sup>Note</sup> School Head(s) may be invited to attend committee meetings. If required, the trading operators/suppliers should attend committee meetings to answer queries.

## **(B) Fundamental Principles**

1. When a school operates or permits to operate on the school premises, or enter into with any person (directly or indirectly), any trading operations (e.g. recommending a lunch box supplier to parents), it should observe the following principles-

- (a) No purchase or acceptance of paid services should be compulsory, and parents should be informed accordingly.
- (b) Parents should be informed properly of the prices of the goods/services provided by the trading operators/suppliers.
- (c) An adequate description of the items for sale and paid services provided should be given so that parents/students can exercise discretion as to whether to acquire these items/paid services elsewhere or not. If items are made up in packages, each item should be made available for sale separately at reasonable times throughout the year with individual prices clearly shown.
- (d) Items for the exclusive use of students in one particular school (e.g. items bearing special insignia) should be kept to the minimum.
- (e) Subject to sound educational practice, the total cost of items needed by students to pursue their course of study should be kept as low as possible.
- (f) Prices should be negotiated with the trading operators/suppliers annually, where appropriate. The negotiation process (including the date, persons involved and the negotiated price, etc) should be properly documented and SMC approval to the negotiated price should be sought. Items/paid services should be sold/provided at the minimum feasible price and should not be above the market price.
- (g) The profit from sale of exercise books, school uniforms, stationery, equipment and other items (other than textbooks) should be limited to 15% of the cost price at which they are purchased from the suppliers. The profit limit of 15% should also cover paid services provided to students. All profits or net income obtained by schools arising from any trading operations should be used for the benefit of students unless prior approval has been sought from the Education and Manpower Bureau.
- (h) For sale of textbooks, the Education and Manpower Bureau holds the stand that financial burden upon parents should be reduced whenever possible, and profit generated from sale of textbooks should not be allowed. While we understand that some schools may not be able to implement this no-profit policy immediately, a school should arrange to rectify the situation as soon as possible. In the interim, any discount or

block sum of money received from a bookseller/textbook supplier by a school should not in any case exceed the percentage of rebate it previously obtained. Moreover, parents and students should be informed in advance of the discount or block sum of money received by the school and the discount passed onto students, and that any difference or sum of money received will be used for the benefit of students later. The discount or block sum of money received from a bookseller/textbook supplier through sale of textbooks should be either passed onto students immediately or entered into the "Sales of Textbooks" account to be used later for the benefit of students. The year-end balance of the account should be carried forward to the following year. Also, the "Sales of Textbooks" account should be available to parents and the public upon request, or put on the Internet.

- (i) For the sale of other items/provision of paid services, where an arrangement is made with any supplier and a discount or block sum of money is received, parents and students should be informed of such in advance and the discount or block sum of money should be entered into an appropriate account (e.g. the Subscriptions (Tong Fai)/General Funds Account for aided schools) as an item of income.
- (j) Proper books of accounts must be kept. They should reflect all sales and purchases, including the provision of paid services. All account books are subject to inspection by officers of the Education and Manpower Bureau.
- (k) Any offers of donation or advantage from trading operators/suppliers should only be accepted in accordance with the general principles on acceptance of advantages and donations set out in the Education and Manpower Bureau Circular on Acceptance of Advantages and Donations by Schools and Their Staff currently in force. Schools, in principle, should not accept any donations or other advantages from trading operators/suppliers/publishers. In exceptional circumstances, where there are compelling reasons to accept such donations, they should be fully justified, documented and approved by the SMCs. In any case, schools should not allow the choice of trading operators/suppliers/publishers to be in any way influenced by a donation or any other form of advantages. Parents and students should be notified of the donations or advantages received from trading operators/suppliers. Schools should record such donations or advantages received in a register, which should be made available to members of the public. Aided schools should also include details of donations in their Annual Report. In addition, the provisions on consideration of donations by publishers and acceptance of such attached to the Schools Curriculum Circular on Notes on Selection of Textbooks Learning Materials for Use in Schools currently in force

should be observed by all schools. Schools should also comply with the requirements to avoid or to declare conflict of interests as specified in the afore-mentioned circular on Acceptance of Advantages and Donations by Schools and Their Staff. Aided schools should also make reference to Appendix 9 on Conflict of Interest under Section 7 of the School Administration Guide.

- (l) Schools should observe the following principles when operating tuckshops -
  - (i) In determining the award of tender for tuckshop operation, schools should pay due regard to the prices of items sold in addition to the amount of rental payable.
  - (ii) A separate electricity meter must be installed by the tuckshop operator, who is responsible for the electricity charges. For aided schools, any reimbursement of electricity or water charges should be credited to the School and Class Grant Account.
  - (iii) The tuckshop operator should be responsible for the rates and the government rent in respect of the tuckshop area. The school should include such term in its contract/agreement with the tuckshop operator. In this connection, the school will not be eligible for any refund of the rates and the government rent for the area of the school tuckshop. Regarding the apportionment of rates and government rent for the tuckshop area, schools should seek advice direct from the Rating and Valuation Department.

2. When schools call for quotations/tenders in selecting a suitable trading operator/supplier, they should include the following prevention of bribery clause in the call for quotations/tenders from potential trading operators/suppliers –

*“The bidder, its employees and agents shall not offer any advantage (as defined in the Prevention of Bribery Ordinance, Cap. 201) to the school employees, SMC members, or any parent or student representative in a committee responsible for the selection of the operator. Any such offer by the bidder or his employees or agent will render the contract null and void. The school may also cancel the contract awarded and hold the bidder liable for any loss or damage the school may sustain.”*

3. Schools are also required to include a similar prevention of bribery clause in the contract with a trading operator/supplier -

*"The operator, its employees and agents shall not offer any advantage (as defined in the Prevention of Bribery Ordinance, Cap. 201) to the school employees, SMC members, or any parent or student representative in any committee responsible for considering any matters relating to this contract. If the operator, its employees and agents commit any offence under the Prevention of Bribery Ordinance in relation to this contract, the school may cancel the contract and hold the operator liable for any loss or damage which the school may thereby sustain."*



**教育署**  
**Education Department**

本署檔號 Our ref: ED(SAS)F&A/35/1 (N) Pt. 2

來函檔號 Your ref:

電話 Tel. No.: 2892 6683

圖文傳真 Fax No.: 2574 1128

e-mail: ed@ed.gcn.gov.hk

30 December 2002

Clerk, Public Accounts Committee,  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
HONG KONG

Dear Miss Chu,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 39)  
*Chapter 10 : Primary Education – Administration of Primary Schools***

I refer to your letter dated 13 December on the caption and would like to furnish the following additional information as requested :

- (a) The Education Department has not yet discussed with primary schools Audit's recommendations on the surplus funds of the Operating Expenses Block Grant (OEBG) retained by them. To decide the suitable arrangement for surplus of OEBG, we need to examine closely the utilization rate and spending pattern of the OEBG for more than one year. The OEBG was introduced in September 2000, and only data for the first year of implementation are available and the great majority of those for the second year (i.e. the 2001/02 school year) will not be available until 2003. We will seek the views of the school sector at a later stage when more hard data on the OEBG spending are available for analysis; and

/(b) The fundamental review ...

香港 皇后大道東 213 號 胡忠大廈 16 樓

Wu Chung House, 16/F, 213 Queen's Road East, Wanchai, Hong Kong



- (b) The fundamental review of grants is still in progress. While we have not yet come up with any concrete proposal, all the factors and possible alternatives, including the level of surplus to be retained by schools, will be considered in the review. We will consult the school sector of our proposal in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'H.F. Lee', written over the printed name.

( H.F. LEE )

Director of Education

cc Secretary for Education and Manpower  
Director of Audit

教育統籌局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: ED(SAS)/F&A/35/01(CON)(4)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
電話 Telephone: 2892 6683  
傳真 Faxline: 2574 1128

13 January 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 31 December 2002 on the caption and thank you for agreeing to postpone the deadline for the submission of our response to 13 January.

Please find enclosed in the attached Annex the additional information as requested for the consideration of the Public Accounts Committee. The Chinese version of the Annex is being prepared and will be forwarded to you as soon as possible.

Yours sincerely,

( Mrs Fanny Law )

Permanent Secretary for Education & Manpower

c.c. Secretary for Education and Manpower  
Director of Audit

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong



**Additional Information on Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools  
(with reference to letter dated 31 December 2002 from Clerk,  
Public Accounts Committee in response to  
ED letter dated 27 December 2002)**

(a) *with reference to item (e)(iii) in the Appendix to ED letter dated 27 December 2002,*

- (i) *whether ED conducted any survey to determine the number of projectors provided to all primary schools, and if so, the results of the survey and the rationale for choosing to provide three projectors*

No survey was conducted to determine the number of projection systems to be provided to each primary school. Professionally, we consider that three projection systems are the basic provision to each primary school with six levels of classes.

- (ii) *copies of specific circulars/notices on the provision of three projectors to all primary schools, including documents informing the schools of the arrangement*

Circular Memorandum (CM) No. 16/98, CM No. 316/99 and an information note of April 1999 were sent to schools. (The first two documents were forwarded to PAC earlier and the information note is attached at Appendix A.) CM No. 16/98 is about the arrangement for accommodating the projection systems, CM No. 316/99 about the flexibility to acquire IT-related equipment and the information note about the procurement arrangement for projection systems. In the information note, schools were also invited to indicate whether they would like to procure the equipment through the Education Department's central tender or self-arranged tendering; and if the former was chosen, the required quantity of the equipment.

## Annex

- (iii) *in the light of ED statement that School Q has three classrooms and has been fully utilizing the three projectors provided to them, whether any test has been conducted to ascertain their utilization; if so, the results of the test; and if not, the evidence for supporting ED observation on the utilization of the projectors*

We consider that effective utilization is achieved when teachers use the projection systems whenever the learning and teaching process requires. We have to rely on the schools to make the best use of resources and facilities provided. We will continue to advise them on the ways to put the equipment into better use for learning and teaching purposes.

- (b) *according to ED response under items (e)(vi), (vii) and (viii), the appointments of new teachers were reported to ED in the prescribed forms duly endorsed by the school supervisor on behalf of the School Management Committee (SMC) in accordance with section 39 of the Education Ordinance; in this connection, a copy of the specimen form; whether the school supervisors and the school principals concerned knew, when signing the forms, if prior approval of the SMCs had been sought regarding the appointments of new teachers; and if not, the penalty on them for their failure to ensure compliance with the requirement of seeking prior approval of the SMCs*

A copy of the prescribed form for appointment of teaching staff in aided schools is attached to Administration Circular No. 32/2000 which has already been forwarded to PAC earlier and is now attached at Appendix B for easy reference. The form has been so devised as to require the school principal to indicate on the form that the SMC has approved the appointment before the form is endorsed and signed by the school supervisor, confirming that the appointment is in accordance with the provisions in the Education Ordinance, Education Regulations, the Code of Aid and the relevant circulars.

## Annex

The Education Ordinance includes a penalty on any person who contravenes section 39(2)(d) or (3), which stipulates that the school supervisor shall within one month after the happening of such event give notice in writing to the Director of Education if, amongst others, any teacher commences to teach or is employed to teach at the school. The person that contravenes the section(s) concerned shall be liable on conviction to a fine at level 5 and to imprisonment for two years.

- (c) *with reference to the statement by the Assistant Director of Education (School Administration & Support) at the public hearing that schools are required to obtain oral quotations when making procurement of goods and services below \$30,000, the number of primary schools which are required to go through such a selection process for obtaining external audit services*

All aided primary schools are required to obtain oral quotations for procurement of services below \$30,000, including external audit services. For government primary schools, there is no need to engage external audit services as their accounts are subject to audit by the Audit Commission.

- (d) *with reference to paragraph 3.14 of the Audit Report, whether the ED has communicated with school principals of primary schools about the flexibility in rescheduling school holidays, and if so, copies of the relevant documents*

Currently, variations to the school holiday list are allowed. Attached at Appendix C is the Circular Memorandum to non-government schools on the 2002/03 school holiday list. Government schools are given full discretion for granting three discretionary holidays on top of the approved school holiday list. We will seek the views of the school sector in due course, and review the distribution of school holidays accordingly.



**IT in Education Project**  
**Procurement of Projection Systems and Portable Screens**  
**Information Sheet**

The purpose of this information sheet is to inform Heads of public sector schools regarding the arrangement for procurement of projection systems under the IT in Education Project.

2. Besides the Central Tender for the procurement of IT facilities, including computer and network equipment, the Education Department is preparing to issue a separate tender for the provision of projection systems and portable screens.

3. Two items will be included in this new tender: (a) projection systems with minimum 800 ANSI Lumens; and (b) portable screen (60" x 60"). The recommended quantities for different types of schools are as follows:

	Primary (Note 1)	Secondary	Small Special (Note 2)	Large Special (Note 3)
No. of Projection Systems	3	6	3	5
No. of Portable Screens	3	6	3	5

**Notes:**

1. Bi-sessional primary schools will be counted as one single school site. Therefore, the total number of projection systems and portable screens for both A.M. and P.M. sessions will be 3 accordingly.
2. A special school with 14 or less operating classes will be categorized as a Small Special school.
3. A special school with 15 or more operating classes will be categorized as a Large Special school.

4. Schools are invited to choose either one of the following two options in the procurement:

Option 1: The Education Department arranges the procurement of projection systems and portable screens on behalf of school. Tentatively, the tender will be awarded in December 1999.

Option 2: School arranges its procurement of projection systems and portable screens through self-arranged tendering. School will be provided with a Cash Grant based on the tender price of the Central Tender mentioned in Option 1. For this reason, this Grant will be issued to school after award of contract in Option 1.

5. To facilitate the planning of this new tender, schools are requested to indicate their option and the required quantities (if Option 1 is chosen) on the Commitment Form at the back of this Information Sheet. The completed Form must be returned to the Information Technology Education Resource Centre, Education Department by post to 23/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong or by fax to 2575 8952 on or before 3 May 1999.

6. For enquiries, please contact the Information Technology Education Resource Centre on 2961 7306 and 2961 7307.

**Education Department**  
**April 1999**



**Tender for Projection Systems and Portable Screens  
Commitment Form**

**Part A: Particulars of School**

School Type ( Please tick a box ) :

☐

Primary

☐

Secondary

☐

Special

Name of school :

\_\_\_\_\_

\* a.m. bi-sessional / p.m. bi-sessional / whole day  
\* Please delete whichever is inappropriate

School ID No. :

--	--	--	--	--	--

(School Chop)

Email Address :

\_\_\_\_\_

**Part B: Select An Option**

My school chooses the following arrangement in the procurement of projection systems and portable screens (Please tick a box):

☐

Option 1: Central Tender

Please fill in the required quantities and expected delivery date:

	Quantity (Note A)	Expected Delivery Date (Note B)
Projection System		
Portable Screen		

Notes:

- A. School may be allowed to purchase the quantity in excess of the recommended quantity as stated in para. 3 of the Information Sheet with school's own funds. However, school must confirm the availability of funds in the declaration below.
- B. The tender is expected to be awarded in December 1999.

☐

Option 2: School's own tender

**I understand that this is a firm commitment of my school and funds are available for the additional requirement (if any) exceeding the quantities recommended by the Government.**

**Signature of School Head :**

\_\_\_\_\_

**Date :**

\_\_\_\_\_

Original - Funds Section, Education Department

Duplicate - District Education Office, Education Department

Triplicate - School's Records

\* Please delete whichever is inappropriate

☐ Please ✓ as appropriate

For E.D. Funds Section use only										
Received on	SRN								( )	
	Action		Initial		Date					
	Pre-Input Jobs Completed									
	EDPAY Input Prepared									
		EDPAY Input Checked								

### APPOINTMENT OF TEACHING STAFF IN AIDED SCHOOL

School Name  School Code

#### Section I (To be completed by the appointee)

##### A. Personal Particulars

Name \*Mr/Miss/Mrs/Ms  (in English)  (in Chinese)

HK Identity Card No.  ( ) Date of Birth  (DD/MM/YYYY)

Valid \*Permitted Teacher Reference/Teacher Registration No.

Address  Tel. No.

##### B. Appointment Particulars

##### Academic Qualifications (Use a separate sheet if necessary)

College/University/Institute	Certificate/Diploma/Degree obtained	Date of Award	Major & Minor Subject(s)

##### Professional Training

School/College/University/Institute	Certificate/Diploma/Degree obtained	Date of Award	Course/Subject

##### Teaching Experience (If part-time only, state fraction)

School/Institute	Type Aided/Govt./Private	Post	From Day/Month/Year	To Day/Month/Year	Full or Part-time

##### Reference Information (If the appointee's last service was with an aided, government, caput or BPS school)

Last Salary \$  MPS Pt.  \*Delinked/Adjusted Incremental Date  (DD/MM)

Note : The data collected above is used for processing Salaries Grant payment and calculation of provident fund contribution and donation. The provision of information is obligatory. The information collected may be disclosed to other Government Departments/agencies authorized to process personal data for audit and statistical purpose. Request for personal data access and correction should be made in writing to the officer of the District Education Office.

Date

Signature of Appointee



## CIRCULAR MEMORANDUM NO. 146/2002

From : Director of Education  
 Ref : ED(GR) SAD/30/77(3)  
 Tel. : 2892 6163  
 Date : 6 May 2002

To : Supervisors/Heads of Schools  
 (excluding government schools)

---

**School Holiday List 2002/2003 for Non-Government Schools**

Schools Supervisors are requested to comply with Regulation 79 of the Education Regulations (Cap. 279) and to submit a proposed list of holidays for the school year 2002/2003 to their respective **Chief School Development Officer** before 15 August 2002. The Regulation reads :

"The Supervisor shall send to the Director before the 15 August in each year notice of all holidays it is intended to give in the coming school year, including any special holidays given in honour of any particular event, and of all dates on which the usual work of the school be suspended."

2. In accordance with Regulation 82, it is intended to specify the following dates (all dates inclusive) as school holidays in the school year 2002/2003 (from 1.9.2002 to 31.8.2003). School Supervisors should normally include these days in the holiday list forwarded under Regulation 79 :

*The day following Chinese Mid-Autumn Festival .....	Saturday	21.9.2002	1 day
National Day .....	Tuesday	1.10.2002	1 day
Chung Yeung Festival .....	Monday	14.10.2002	1 day
Dr Sun Yat-sen's Birthday .....	Tuesday	12.11.2002	1 day
Christmas and New Year Holidays..... (Christmas Day - Wednesday 25.12.2002) (New Year's Day - Wednesday 1.1.2003)	Tuesday to Thursday	24.12.2002 to 2.1.2003	10 days
Lunar New Year Holidays..... (Lunar New Year's Day - Saturday 1.2.2003)	Thursday to Saturday	30.1.2003 to 8.2.2003	10 days
Ching Ming Festival .....	Saturday	5.4.2003	1 day
Easter Holidays..... (Good Friday - Friday 18.4.2003)	Wednesday to Thursday	16.4.2003 to 24.4.2003	9 days
Labour Day.....	Thursday	1.5.2003	1 day
The Buddha's Birthday.....	Thursday	8.5.2003	1 day
Tuen Ng Festival .....	Wednesday	4.6.2003	1 day
The HKSAR Establishment Day.....	Tuesday	1.7.2003	1 day



Summer Vacation .....	Thursday	10.7.2003	52 days
	to	to	
	Saturday	30.8.2003	<u>          </u>
		Total :	90 days

3. A small number of additional holidays, or minor variations in the list at paragraph 2 above, may be approved. But Supervisors must ensure that the following days, which are general holidays, are included in their list of holidays :-

Every Sunday .....	Sunday	-
*The day following Chinese Mid-Autumn Festival .....	Saturday	21.9.2002
National Day .....	Tuesday	1.10.2002
Chung Yeung Festival .....	Monday	14.10.2002
Christmas Day .....	Wednesday	25.12.2002
The first week-day after Christmas Day .....	Thursday	26.12.2002
The first day of January .....	Wednesday	1.1.2003
Lunar New Year's Day .....	Saturday	1.2.2003
#The second day of the Lunar New Year .....	Friday	31.1.2003
The third day of the Lunar New Year .....	Monday	3.2.2003
Ching Ming Festival .....	Saturday	5.4.2003
Good Friday .....	Friday	18.4.2003
The day following Good Friday .....	Saturday	19.4.2003
Easter Monday .....	Monday	21.4.2003
Labour Day .....	Thursday	1.5.2003
The Buddha's Birthday .....	Thursday	8.5.2003
Tuen Ng Festival .....	Wednesday	4.6.2003
The HKSAR Establishment Day .....	Tuesday	1.7.2003

(K C Lam)  
for Director of Education

c.c. Heads of Sections and the English Schools Foundation for information

\* As the day following Chinese Mid-Autumn Festival falls on a Sunday, the day of the festival has been designated as an additional general holiday.

# As the day falls on a Sunday, the day preceding the Lunar New Year's Day will be designated as an additional general holiday.



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

電話 Telephone : 2829 4303

本署檔號 Our Ref. : UB/PAC/ENG/39-3

來函檔號 Your Ref. : CB(3)/PAC/R39

15 January 2003

Clerk, Public Accounts Committee  
(Attn.: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 39)**

**Chapter 10: Primary education — The administration of primary schools**

Thank you for your letter dated 31 December 2002 inviting my comments on the contents of the Director of Education's letter to the PAC dated 27 December 2002. My comments are as follows:

***Under-utilisation of the projectors by School Q — item (e)(iii)  
(paragraph 2.39 of the Audit Report)***

As stated in paragraph 2.43(a) of the audit report, the Director of Education has said that the Education Department (ED) provided to all primary schools three projectors to ensure a more effective delivery of teaching and learning activities through IT. The number of projectors provided was determined after collecting views from schools that three would be the minimum number of projectors required.

In the Director of Education's letter of 27 December 2002, the Director said that School Q had been fully utilising the three projectors provided to them. For security reason, two of the projectors were packed and stored in the school's computer classroom as observed by my staff when they were not in use.

On 7 January 2003, my staff asked the head of School Q to clarify the position regarding the use of the three projectors allocated to the school. He informed my staff that prior to September 2000, when the computer room had not yet been set up, two projectors were used once in the classrooms. After September 2000, one projector was installed in the computer room and had been in use since then, while the other two projectors had not been used and were stored in the computer room for security reason. He also said that there was no need for his school to have three projectors, and that he would have no objection if the ED decided to withdraw two projectors from his school. It is evident that the two projectors at School Q, which had a student population of only ten in 2000 (eight in January 2003), have been under-utilised.

***Whether the practices of acceptance of donations by schools D, K and L from their suppliers of goods or services were in breach of any legislation or guidelines — item (e)(xiv) (paragraph 5.14 and Table 5 of the Audit Report)***

In the Director of Education's letter of 27 December 2002, the Director has said that except for the acceptance of an air-conditioner which incurred recurrent expenditure by School K without the ED's prior approval, no irregularities were involved in all other cases of acceptance of donation because all donations were reported to the ED by the schools concerned. As for the acceptance of the air-conditioner by School K, the ED had not received the school's quarterly report on this donation item.

I agree that, strictly speaking, there were no irregularities involved in the cases of acceptance of donation by schools visited by my staff, as schools were in general in compliance with the ED's guidelines on donation, including the "General Guidelines on the Acceptance of Advantages and Related Matters" and the "Guidelines concerning Textbook Selection Procedures and Acceptance of Publishers' Donations by Schools" which were noted by the Legislative Council Panel on Education at its meeting in July 1998. Our examination of School K's records also showed that the school had prepared a quarterly report on the donation of the air-conditioner.

However, I consider that there is a need to tighten up the control on allowing schools to accept donations from suppliers. This is because, to avoid schools placing themselves in an obligatory position to the textbook publishers, the ED requires schools not to accept any donations from textbook publishers unless there are compelling reasons to do so. For donations from other suppliers of goods and services (e.g. uniform suppliers, school bus operators), however, the ED has not specifically required schools to follow the same principle. Furthermore, the reason "sponsoring students' activities" was often quoted by the 16 schools in accepting donations from textbook publishers and other suppliers. I have therefore recommended that the Director of Education should extend the ED's requirement, that schools should not accept donations from textbook publishers unless there are compelling reason to do so, to all other suppliers (paragraph 5.18(c) of the Audit Report refers).

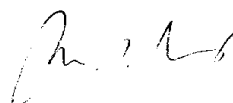
***Offer of appointment of new teachers by  
10 schools without prior approval of their  
School Management Committees (SMCs) — item (e)(viii)  
(paragraph 3.9 of the Audit Report)***

In response to the PAC's further enquiry in paragraph 2(b) of their letter dated 31 December 2002, the Permanent Secretary for Education and Manpower has said in her letter to the PAC dated 13 January 2003 (Ref.: ED(SAS)/F&A/35/01(CON)(4)) that the form for appointment of teaching staff in aided schools has been so devised as to require the school principal to indicate on the form that the SMC has approved the appointment before the form is endorsed and signed by the school supervisor, confirming that the appointment is in accordance with the provisions in the Education Ordinance, Education Regulations, the Code of Aid and the relevant circulars.

The School Administration Guide requires schools to observe Regulation 76 of the Education Regulations, which stipulates that the appointment and dismissal of any member of the teaching staff of any school shall be determined by a majority of vote of all the members of that school's SMC. While the form requires the confirmation that the SMC has approved the filling of post, in ten schools visited by my staff, we could not find evidence that these schools had sought approval from their SMCs regarding the appointment of applicants. In some instances, the selection panels or the principals informed the members of the SMC at a meeting that new teachers had been appointed, but formal approval from the SMC regarding the appointment of new teachers had not been sought in the recruitment process.

The Chinese version of this reply is being prepared and will be forwarded to you as soon as possible.

Yours sincerely,



(David M T LEUNG)  
for Director of Audit

c.c. Secretary for Education and Manpower

教育統籌局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: EMB(SAS)/F&A/35/01(CON)(5)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
電話 Telephone: 2892 6688  
傳真 Faxline: 2530 3780

23 January 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education -- Administration of Primary Schools**

I refer to your letter dated 16 January 2003 on the caption and would like to provide the following additional information for the consideration of the Public Accounts Committee –

*(a) Appointment of New Teachers in Aided Primary Schools*

- (i) For the 10 schools quoted in paragraph 3.9 of the Audit Report, we have looked into each of these cases. We have noted that some schools had obtained informal agreement from their School Management Committees (SMCs) beforehand for the new teacher appointments and some had given covering approval/endorsement to the new appointments at subsequent SMC meetings. However, there is no documentary proof from the schools regarding the grant of prior approval by the SMCs before the supervisors signed on the prescribed appointment forms. Details of our findings are at the Annex. Irrespective of all these, we have given due advice to these schools that they should follow all the appropriate procedures for the appointment of new teachers.

/(ii) Regulation

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

- (ii) Regulation 76 of the Education Regulations stipulates that the appointment and dismissal of any member of the teaching staff of any school shall be determined by a majority vote of all the members of the management committee of that school. Section 32 of the Education Ordinance also provides that every school shall be managed by its management committee. Notwithstanding regulation 76, regulation 75 stipulates that the powers and duties of the managers shall be defined in the constitution of the SMC and that every such constitution when approved by the Director of Education shall be binding upon the school and the managers and teachers thereof and shall not be altered or amended without the prior approval in writing of the Director. The requirement for the SMC to approve teacher appointments may therefore be subject to the powers and duties of managers as defined in the constitution of the SMC as approved by the Director.
- (iii) There is no penalty clause in the Education Regulations on the violation of regulation 76. But, section 82(1)(a) of the Education Ordinance stipulates that the Director may, if it appears to him that a school is not managed satisfactorily, by notice in writing give such directions as he thinks necessary in order that the school will be operated satisfactorily. Section 82(2) further provides that the notice under subsection (1) may be served on the supervisor and every other manager of the school concerned; and may specify a period of time within which the directions shall be complied with. Section 87(1)(i) provides that any person who, being a supervisor or any other manager of a school, fails to comply with any notice served on him under section 82 shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 2 years.

/ (iv) Under

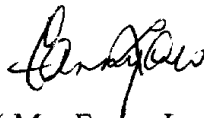
- (iv) Under school-based management, schools, in return for the greater authority delegated to them by the Administration, are subject to greater accountability under a more open, accountable and participatory school management structure. Our Education (Amendment) Bill 2002 aiming at providing tighter legislation, stronger enforcement action and more accountability on the part of schools, if passed, will provide us with the necessary legislative backing.
- (v) Whilst it is not our priority area to conduct management audit to schools, we will conduct investigation into reported cases of irregularity. If found substantiated, schools concerned will be given appropriate advice, and we will follow up to ensure that remedial action is taken. For repeated occurrences of the irregularity, we will serve written warning to schools and will monitor all reported cases of irregularity closely to ensure early rectification by schools concerned.
- (b) *Range of fees for external audit services by number of aided primary schools*

We have received 489 audited accounts from aided primary schools for the 2000-01 school year. Please note that aided bi-sessional primary schools are only required to provide one set of audited accounts covering both the AM and PM sessions. The range of audit fees is as follows :

/ Amount of fees .....

<u>Amount of fees</u>	<u>No. of schools</u>
Free of charges	3
Below \$5,000	8
\$5,000 to \$10,000	174
\$10,001 to \$15,000	181
\$15,001 to \$20,000	97
\$20,001 to \$25,000	11
\$25,001 to \$30,000	10
\$30,001 to \$50,000	5
above \$50,000	0
	<hr/>
	489

Yours sincerely,



( Mrs Fanny Law )

Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower  
Director of Audit



## Summary on Irregularity on Teacher Appointments in the 10 Schools Identified by Audit

<i>School</i>	<i>Investigation conducted and advice given in December 2002 and further follow-up in January 2003 by EMB</i>	<i>For teacher appointments in 2001/02 school year</i>	<i>For teacher appointments in 2002/03 school year</i>
School A	Yes	For outstanding cases, covering approval was granted by SMC and documented properly by school.	For outstanding cases, covering approval was granted by SMC and documented properly by school.
School B	Yes	Most SMC members were then away from HK. They had informally granted Supervisor and the School Head the right to select suitable candidates for appointment. School had overlooked the need for proper documentation.	Informal approval was granted by SMC to the teacher appointments for the 2002/03 school year without proper documentation.
School D	Yes	Prior verbal approval was sought from SMC with no proper documentation. Formal covering endorsement was given by SMC at a subsequent meeting.	School followed the requirements for teacher appointments.
School F	Yes	SMC approval was not sought. In fact, advice was given as early as on 30 October 2002 in connection with a complaint case on teacher appointment.	School did not follow the requirements for teacher appointments, and due advice was given to school.
School H	Yes	SMC approval was not sought.	School followed the requirements for teacher appointments.

<i>School</i>	<i>Investigation conducted and advice given in December 2002 and further follow-up in January 2003 by EMB</i>	<i>For teacher appointments in 2001/02 school year</i>	<i>For teacher appointments in 2002/03 school year</i>
School K	Yes	SMC approval was not sought.	Covering endorsement was given by SMC at a meeting in October 2002. Due advice was given to school.
School L	Yes	SMC approval was not sought.	School did not follow the requirements for teacher appointments, and due advice was given to school
School N	Yes	No written records on SMC approval to teacher appointments were kept.	Not applicable as there was no new teacher appointment in the 2002/03 school year.
School O	Yes	SMC's covering approval to teacher appointments for the 2001/02 school year was granted at the SMC meeting on 20 January 2003.	SMC's covering approval to teacher appointments for the 2002/03 school year was granted at the SMC meeting on 20 January 2003.
School R	Yes	Prior verbal approval was sought from SMC with no proper documentation.	School followed the requirements for teacher appointments.



中華人民共和國香港特別行政區政府總部教育統籌局  
Education and Manpower Bureau  
Government Secretariat, Government of the Hong Kong Special Administrative Region  
The People's Republic of China

本局檔號 Our Ref. : EMB(SAS)/F&A/35/01(CON)(7) 電話 Telephone : 2892 6683  
來函檔號 Your Ref. : CB(3)/PAC/R39 傳真 Fax Line : 2574 1128

9 April 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 26 March 2003 on the caption and would like to provide the following additional information for the consideration of the Public Accounts Committee -

- (a) From 1991 to 1997, public sector schools were invited to join the School Management Initiative (SMI) on a voluntary basis. Participating schools had to fulfill certain requirements within the first two years after joining, including to start drafting a formal constitution for the School Management Committee (SMC) in Year 1. For non-SMI schools, the former Director of Education did not require them to submit a written constitution for approval. However, any such draft constitution submitted by non-SMI schools of their own accord would also be processed. The submissions from PLK Stanley Ho Sau Nan Primary School, which was an SMI school, and HKSYC&IA Chan Lai So Chun Memorial School, which was a non-SMI school, were examples of these two situations.

/The Government gazetted .....

The Government gazetted the Education (Amendment) Bill 2002 on 22 November 2002, aiming at introducing the school-based management governance framework to all aided schools. A Bills Committee has been set up to scrutinize the Bill. The management committee of an aided school will be required to incorporate under the Education Ordinance within five years after the enactment of the Bill and an incorporated management committee (IMC) shall have a written constitution approved by the Permanent Secretary for Education and Manpower (PSEM). We shall issue to schools a sample constitution for IMC when the Bill is passed, and draw to the attention of schools that their draft IMC constitution should not contain any provisions which contravene with those of the Education Ordinance or the Education Regulations.

- (b) Under Section III of the prescribed appointment form, the Supervisor of an aided school is required to declare that the appointment of the teacher concerned is conducted in accordance with the provisions in the Education Ordinance, Education Regulations, Code of Aid and standing circulars. Regulation 76 of the Education Regulations is therefore included under this statement. To ensure that aided schools observe this particular requirement, we will revise the prescribed appointment form shortly to include a clause that requires the Supervisor to declare that the appointment has been approved by the majority of the SMC, and that his/her school has followed our guidelines for staff appointment, including adopting an open, fair and competitive appointment system.
- (c) Aided schools are required to report to us the particulars of the SMC approval (including the date of approval) in respect of their teaching staff via the prescribed appointment form starting from the 2000/01 school year. For the initial year or so when the arrangement was new, we adopted a flexible practice – an appointment form without the date of SMC approval was accepted if it was endorsed by the Supervisor in order not to delay the payment of salaries to teachers. We have tightened up our practice subsequently. Currently, appointment forms that have not included the SMC approval date are returned to schools and the outstanding particulars need be filled in before the appointment forms are further processed.

/(d) (i) To facilitate .....

- (d) (i) To facilitate redundant teachers in aided primary schools to seek teaching posts, all teaching vacancies in aided primary schools were "frozen" around April in the past years until all redundant teachers were placed. The dates of "defreezing" were 16 August and 8 August in the years 2000 and 2001 respectively. During the "frozen" period, aided primary schools were not allowed to enter into formal appointment contracts with non-redundant teachers in respect of their vacant posts though they might interview prospective candidates. In spite of the "freezing" arrangement, schools should ensure that the recruitment procedures were in compliance with the relevant regulations and requirements. For the year 2003, we have revised the arrangements for redundant teachers with a view to completing the exercise in early July.
- (ii) We have noted that some schools obtained covering approval/endorsement to new teacher appointments at subsequent SMC meetings. As prior approval by the SMCs was required, we have advised these schools to follow the appropriate procedures for appointment of new teachers.
- (iii) School authorities have the responsibility to ensure that all the regulations currently in force are complied with. Training courses for school managers and new school heads are organized regularly, which cover, among others, appointment and personnel matters.
- (iv) Appointment of new teachers reported via the prescribed appointment form, be these teachers temporary or regular, is subject to the same appointment procedures.

/(e) Please see the part .....

- (e) Please see the part on sample constitution for IMC under (a) above.

We will withhold processing any draft SMC constitutions submitted by schools, including that from St Paul's Catholic Primary School in view of the introduction of the Education (Amendment) Bill 2002. Upon the enactment of the Bill, we will advise these schools to make amendments where appropriate, having regard to the requirements of the IMC constitution.

Yours sincerely,



( M Y CHENG )

for Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower  
Secretary for Financial Services and the Treasury  
(Attn : Mr Manfred WONG)  
Director of Audit

教 育 統 籌 局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: EMB(SAS)/F&A/35/01(CON)(6)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
電話 Telephone: 2892 6683  
傳真 Faxline: 2574 1128

5 March 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 24 February 2003 on the caption and would like to provide the following additional information for the consideration of the Public Accounts Committee -

- (a) At Annex 1 is a copy of the “Appointment Form for Teacher in Aided School” that was replaced by the prescribed form for appointment of teaching staff in aided schools attached to Administration Circular No. 32/2000.
- (b) A total of 79 copies of the prescribed forms for appointment of teaching staff in the concerned aided schools in the school years 2000/01 and 2001/02 that had been submitted to us are at Annex 2.
- 

/(c) Of the 13 schools .....

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

- 
- (c) Of the 13 schools in question, only PLK Stanley Ho Sau Nan Primary School (i.e. the former PLK Stanley Ho Sau Nan PM School) is under a central school management committee (SMC) with an approved constitution. A copy of the approved constitution is at Annex 3.
- (d) At present, the Education Ordinance does not provide for the incorporation of SMCs. The Education (Amendment) Bill 2002 on the school-based management governance framework was introduced into the Legislative Council on 4 December 2002 and is not yet passed.
- (e) The policy intent of regulation 76 of the Education Regulations is to hold the SMC accountable for the appointment and dismissal of teachers and to safeguard that appointment and dismissal of teachers is fair.

In accordance with regulation 76, the SMC of the 13 schools is not allowed to delegate, under its constitution or by resolution, to the Principal or the Supervisor of the School the authority to appoint and dismiss teaching staff.

As pointed out in your letter that our reply may be included as an Appendix in the PAC's Report, we trust that any release of personal particulars will be dealt with in accordance with the Personal Data (Privacy) Ordinance.

Yours sincerely,



( M Y CHENG )

for Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower

Director of Audit )

Secretary for Financial Services and the Treasury ) w/o encl

(Attn.: Mr Manfred WONG) )

*\*Note by Clerk, PAC: Annexes 1, 2 and 3 not attached.*



教 育 統 籌 局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: EMB(SAS)/F&A/35/01(CON)(5) 電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
來函檔號 Your Ref.: CB(3)/PAC/R39 電話 Telephone: 2892 6683  
傳真 Faxline: 2574 1128

10 February 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 30 January 2003 on the caption and would like to provide the following additional information for the consideration of the Public Accounts Committee –

- (a) A summary of the various requirements relating to the appointment of teaching staff specified in the Education Ordinance, the Education Regulations, the Code of Aid and standing circulars referred to in Section III of the prescribed form for appointment of teaching staff in aided schools together with a copy each of the relevant provisions/requirements is at the Annex.

(b) It is laid down .....

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

- \_\_\_\_\_ (b) It is laid down in Appendix A to Administration Circular No. 2/98 (copied at Attachment 4(b) to the Annex) that school management committees should require their members and school staff to report any situations where they or their immediate family members have an interest in any matter under consideration by the school (including staff appointment), and should, on receipt of any disclosure of interests, consider whether or not the member or school staff concerned should be directed to withdraw from participating in the further consideration of the matter in respect of which the conflict arises. The *Points to Note in Handling Appointment Matters* attached to Administration Circular No. 32/2000 (copied at Attachment 4(c)) repeats the need for the selection panel members to declare any conflict of interest that may arise in staff appointment situations. It further states that any person who and whose family member has an interest in the appointment must be excluded from the selection panel. It also includes other specific circumstances that may constitute a conflict of interest.
- \_\_\_\_\_ (c) In addition to the confirmation made by the Supervisor currently included in Section III of the prescribed appointment form, we shall insert a clause that requires the Supervisor to declare that the appointment has been approved by the majority of the SMC, and that his/her school has followed our guidelines for staff appointment, including adopting an open, fair and competitive appointment system. A warning clause will be included to alert supervisors that making false declaration is maladministration. According to the Education Ordinance, if a school is found not being managed satisfactorily, the Director of Education may serve a notice to the supervisor and every other manager of the school concerned. Any person failing to comply with any notice served shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 2 years. We plan to have the revised appointment form ready for use by aided schools in April/May 2003 when appointment of new teachers for the coming school year is expected to commence. Our proposed insertion serves to forewarn schools that they should ensure strict observance of the relevant provisions/requirements before making any offer of appointment.

/It is not our .....

It is not our priority area to conduct management audit to schools. However, we will continue to conduct investigation into reported cases of irregularity and take appropriate follow-up action. As schools are now operating under a more open, accountable and participatory management structure, they should be held accountable for any malpractices.

Yours sincerely,



( M. Y. CHENG )

for Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower  
Director of Audit

**Summary of Provisions/Requirements Relating to  
Teacher Appointment in Education Ordinance, Education Regulations,  
Codes of Aid and Standing Circulars**

<i>Reference of provision(s) and requirement(s)</i>	<i>Summary of provision(s)/requirement(s)</i>	<i>Attachment</i>
(I) Education Ordinance		1
(i) section 39(2)(d) and (e)	The supervisor shall within 1 month after the happening of such event give notice to the Director if – <ul style="list-style-type: none"> <li>any teacher commences to teach or is employed to teach at the school; and</li> <li>any teacher ceases to teach or ceases to be employed to teach in the school.</li> </ul>	
(ii) section 42(1) and (2)	No person shall teach in a school unless he is a registered teacher or a permitted teacher. No permitted teacher shall teach in a school otherwise than in accordance with the conditions or limitations specified in the permit to teach issued in respect of such teacher.	
(iii) section 48	An application to employ a permitted teacher may only be made if there is no suitable registered teacher available for employment as a teacher in the school.	
(iv) section 58A	Employment of persons who would be aged 60 years or more at the commencement of employment as a permanent teacher within the teaching staff establishment of an aided school is prohibited.	
(II) Education Regulations		2
(i) regulation 68	The qualifications for a registered teacher shall be the qualifications specified in Part I of the Second Schedule.	
(ii) regulation 69	The qualifications for a permitted teacher, other than a permitted teacher to whom regulation 70 ... applies, shall be qualifications specified in Part II of the Second Schedule.	
(iii) regulation 70	The qualifications for a permitted teacher teaching English shall be the qualifications specified in Part III of the Second Schedule.	

<i>Reference of provision(s) and requirement(s)</i>	<i>Summary of provision(s)/requirement(s)</i>	<i>Attachment</i>
(iv) regulation 76	The appointment ... of any member of the teaching staff of any school shall be determined by a majority vote of all the members of the management committee of that school.	
(v) regulation 77	The supervisor shall be responsible for issuing to all teachers letters of appointment, which shall set out the conditions of service, salary scale and conditions of termination of appointment.	
(vi) regulation 78	The supervisor shall be responsible for ensuring that the salaries of all teachers are paid in full when due.	
(III) Code of Aid for Primary Schools		3
(i) section 49	Staff appointment shall be in accordance with regulations 76, 77 and 78 of the Education Regulations, in conformity with the Code of Aid and in accordance with such instructions and the Director may from time to time issue.	
(ii) section 50	The approval of the Director is required for the appointment of a Head.	
(iii) section 51(a) and (b)	All teachers (other than supply teachers) shall, before appointment, undergo a medical examination and a chest X-ray examination. Serving registered teachers on transfer from one aided school to another without break of service will not be required to attend an X-ray examination or present a medical certificate on appointment.	
(iv) section 53	The Head shall inquire into, examine and verify the qualifications and previous experience of an applicant for appointment as a teacher. He shall also verify the date of birth of any person employed as a teacher.	
(v) section 54	This section sets out the qualifications required for eligibility for employment as a teacher.	
(IV) Standing Circulars		
(i) Administration Circular	Schools are advised to require each staff member, before appointment, to undergo a medical examination, including	4(a)

<i>Reference of provision(s) and requirement(s)</i>	<i>Summary of provision(s)/requirement(s)</i>	<i>Attachment</i>
No. 48/97	a chest X-ray examination. X-ray examination may, however, be exempted under certain circumstances.	
(ii) Administration Circular No. 2/98	Appendix A to this Administration Circular provides general guidelines on the acceptance of advantages and related matters. It includes that the SMC of a school should never accept or permit an advantage connected with the appointment of school staff. Also, the SMC should require their members and school staff to report any situations where they or their immediate family have an interest, financial or otherwise, in any matter under consideration by the school. On receipt of any disclosure of interests, the SMC should consider whether or not the member of school staff concerned should be directed to withdraw from participating in the further consideration of the matter in respect of which the conflict arises.	4(b)
(iii) Administration Circular No. 32/2000	The authority to approve appointments and salaries of staff on the Salaries Grant payroll (except for certain categories of teachers) in accordance with the conditions of the Code of Aid and standing circulars has been devolved to the School Management Committees (SMCs) of aided schools. The circular further provides a <i>Points to Note in Handling Appointment Matters</i> so as to enable aided schools to formulate a set of open, fair and formal procedures, including handling of applications received, short-listing of candidates, setting up of selection panels and assessment of candidates, etc.	4(c)
(iv) Administration Circular No. 36/2002	This circular announces the revised procedures for registration of teachers, whereby teachers of aided schools, etc are no longer required to attend interview with the Registration Section during the vetting process if their teacher registration applications are accompanied by photocopies of specific documents endorsed "Original seen" by school supervisors/heads. In this connection, schools are reminded to check that the qualifications and experience claimed by an applicant for appointment or registration as a teacher are genuine. Further, no medical/X-ray report needs to be attached to the application forms though schools should check the validity of such.	4(d)

**\*Note by Clerk, PAC:** Attachments to Annex not attached.

教育統籌局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: EMB(SAS)/F&A/35/01(CON)(7)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gov.hk  
電話 Telephone: 2892 6683  
傳真 Faxline: 2574 1128

11 March 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 6 March 2003 on the caption and would like to provide the following additional information for the consideration of the Public Accounts Committee -

- (a) Regulation 75(1) of the Education Regulations provides that the Permanent Secretary for Education and Manpower (PSEM) may, by notice in writing to the supervisor, require the managers of any school to prepare, execute and submit to her for her approval a written constitution in accordance with which the school shall be managed, and within a time to be specified in such notice the supervisor shall comply therewith. PSEM therefore has the power to make such a request if she considers appropriate and is not obliged to exercise the power in every case.

/Pending the outcome .....

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

Pending the outcome of the legislation of the school-based management governance framework, PSEM has not required schools to submit a written constitution for approval.

- (b) There is no express provision in the Education Ordinance and the Education Regulations that members of the management committee have to hold a meeting and give their votes at the meeting. Whether the votes can be taken by circulation of paper or by telephone confirmation depends on the terms of the written constitution or the articles of association of the management committee of an individual school.
- (c) The 13 primary schools in question do not have their own private ordinances.

Regarding point (c) of my letter dated 5 March 2003, I would like to supplement that in addition to PLK Stanley Ho Sau Nan Primary School, the constitution of the school management committee of HKSYC&IA Chan Lai So Chun Memorial School has also been approved. A copy of the constitution is at the Annex. Please accept my apology for the inconvenience thus caused.

Yours sincerely,



(M Y CHENG)

for Permanent Secretary for Education and Manpower

c.c. Secretary for Education and Manpower  
Secretary for Financial Services and the Treasury  
(Attn: Mr Manfred WONG)  
Director of Audit

*\*Note by Clerk, PAC: Annex not attached.*



教 育 統 籌 局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: ED(SAS)/F&A/35/01(CON)(4)  
來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
電話 Telephone: 2892 6688  
傳真 Faxline: 25303780

15 January 2003

Clerk, Public Accounts Committee  
(Attn: Miss Sandy CHU)  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
Results of Value for Money Audits (Report No. 39)  
Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 9 January 2003 on the caption.

The acceptance of donations from textbook publishers and other suppliers by schools is governed, where appropriate, by the Codes of Aid and standing circulars on the subject (e.g. Administration Circular (AC) No. 2/98 on The Prevention of Bribery Ordinance, Cap 201 and Schools Curriculum Circular No. 1/2002 on Notes on Selection of Textbooks and Learning Materials for Use in Schools, which are attached as Annex 10 to our earlier letter to you dated 27 December 2002). In short, donations from textbook publishers and other suppliers of goods and services are accepted only under exceptional circumstances. This should be fully justified, approved by the School Management Committees (SMCs) and properly documented. Also, SMCs of aided schools must seek approval from this Bureau for accepting donations, which would result in additional expenditure either from government or school funds. In addition, they are required to report on a quarterly basis details about donations accepted and to fully record the donations in the schools' subscription/general funds account for audit purposes.

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

To step up current actions/measures, we are now revising AC No. 2/98 with emphasis on the following requirements -

- (a) SMCs should include, in the relevant documents such as invitations to tenders/quotations and contracts of goods/services, the warning of "not to offer advantages to school staff in their official dealings".
- (b) Schools have to include the amount and the purpose of the donations in their School Annual Report and record in an open register which can be accessed by members of the public.
- (c) SMCs will not be required to report acceptance of donations to this Bureau so as to reduce workload on the part of schools, but will be subject to periodic audits to ensure compliance with stipulated accountability requirements.

Specifically, on textbooks selection and publishers' donations we have incorporated the suggestions of the Independent Commission Against Corruption and the Consumer Council in existing circulars to safeguard consumer rights of parents/students. You may also wish to note that the Textbook Publishers Organizations have laid down a Code of Practice Regarding Donations to Schools for their members. This Bureau also reminds publishers not to offer donations to schools during regular joint meetings with them.

Yours sincerely,



( Mrs Fanny Law )

Permanent Secretary for Education and Manpower

c.c. Secretary for Education & Manpower  
Director of Audit

教育統籌局



EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: ED(SAS)/F&A/35/01(CON)(4)  
 來函檔號 Your Ref.: CB(3)/PAC/R39

電子郵件 E-mail: embinfo@emb.gcn.gov.hk  
 電話 Telephone: 2892 6683  
 傳真 Faxline: 2574 1128

10 January 2003

Clerk, Public Accounts Committee  
 (Attn: Miss Sandy CHU)  
 Legislative Council  
 Legislative Council Building  
 8 Jackson Road  
 Hong Kong

Dear Miss Chu,

**Director of Audit's Report on  
 Results of Value for Money Audits (Report No. 39)  
 Chapter 10 : Primary Education – Administration of Primary Schools**

I refer to your letter dated 2 January 2003 on the caption.

As at 31 December 2002, a total of 190 circulars and guidelines in respect of the administration of primary schools to government and/or aided primary schools were in force. They cover a wide range of issues, including financial, staffing, personnel, curriculum, maintenance and safety matters. Some of these circulars and guidelines were issued in response to an incident, e.g. the death of a student from height leading to our issue of a circular on installation of safety nets at stairwells in school premises. Many of the circulars and guidelines are advisory in nature. Some were issued in response to demands for guidance or standardised practice following major complaints (e.g. the circular on selection of textbooks and learning materials for use in schools covering donations by publishers) or public outcry (e.g. the circulars on guidelines on reducing the weight of school bags and tropical cyclones and heavy persistent rain arrangements for kindergartens and day schools which are regularly reviewed to address the concerns of the public).

/We trust .....

香港灣仔皇后大道東 213 號胡忠大廈 16 字樓  
 16/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

We trust that the Public Accounts Committee, in proposing to provide public sector schools with more flexibility in deployment of resources, is also keen to ensure that public funds are well spent to achieve the maximum benefit for students. To achieve this balance, it is of utmost importance that schools should know the scope of their responsibility and the limit of their authority. In line with the spirit of school-based management, the Administration will delegate to schools more authority over the deployment of resources and the operation of schools. In return, the community will demand greater transparency and accountability. Circulars and guidelines will only be issued to schools where absolutely necessary. We are in the process of reviewing the situation with a view to further reducing the number of circulars by consolidating similar or related subjects into one circular. Occasional announcements with short-term validity are promulgated in the form of circular memorandum, which is normally deleted within 12 months from the date of issue.

In addition to the above, you may wish to note that our School Administration Guide (SAG) makes reference to relevant circulars and guidelines in force for easy reference by schools. The SAG is regularly updated to reflect the latest situation.

Yours sincerely,



( Mrs Fanny Law )

Permanent Secretary for Education & Manpower

c.c. Secretary for Education and Manpower  
Director of Audit

**Head: 112 Legislative Council Commission**  
**Analysis of Recurrent Account for 2003/2004 Estimates**

Sub- Head (Code)	2003-2004 Proposed <u>Estimate</u> (\$'000)
<b>Recurrent Account</b>	
<b>V Subventions</b>	
366 <b>Remuneration and reimbursements for Members of the Legislative Council</b>	<b><u>129,248</u></b>
367 <b>Salaries and allowances for staff and general expenses of The Legislative Council Commission</b>	
Salaries	147,989
Cash allowances	24,755
Gratuities	31,015
Job-related allowances	1,239
MPF contributions	3,487
Provision for leave pay	-
<b>Staff Costs</b>	<b><u>208,485</u></b>
Staff-related expenses	805
Office supplies	3,104
Communication	1,731
Information services	2,254
Publications and publicity	534
Hired services	9,893
Travelling and duty visits	2,375
Liaison, refreshments for meetings and entertainment	762
Office accommodation	5,620
Fixed assets related expenses	3,004
Office equipment & computers	900
Financial Expenses	6
<b>General Expenses</b>	<b><u>30,988</u></b>
<b>Interest and sundry income</b>	<b><u>(763)</u></b>
<b>Transfer to/(from) Operating Reserve</b>	<b><u>756</u></b>
<b>Subhead 367 total</b>	<b><u>239,466</u></b>
<b>Total, Recurrent Account</b>	<b><u>368,714</u></b>



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.



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

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.

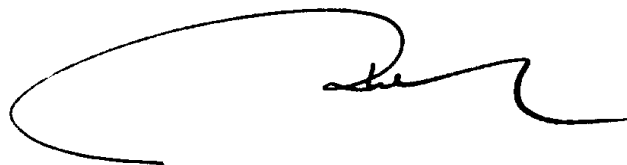
PAC conducted a public hearing on the captioned value for money audit on 12 May 2003. In view of the wide press coverage on the hearing (see Appendix I for press reports and comments), the Commission decided to forward its responses to the draft reports (Appendices II and III) to Members of the Council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

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<sup>(Note)</sup>.”

(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

*g/admin/lcc/paper/02-03/Response to Audit Report(2) (Date).doc*

**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

財經事務及庫務局  
(庫務科)

香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND THE  
TREASURY BUREAU  
(The Treasury Branch)  
Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2179-5456  
電話號碼 Tel. No. : 2810-2365  
本函檔號 Our Ref. : FINCR 2/2191/01 Pt 2  
來函檔號 Your Ref. : CB(3)/PAC/R40

9 May 2003

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 40)**

**Chapter 5: Subvention for Staff Emoluments  
of the Legislative Council Commission**

The Director of Audit's report recommends FSTB to seek legal advice as to whether the Legislative Council Commission Ordinance, Cap. 443, confers discretionary powers on the LCC to offer contract gratuity to staff of the LegCo Secretariat at a level higher than that prescribed by the FSTB, without seeking the FSTB's prior agreement. I attach for your reference a note summarising the legal advice that we have received.

Yours sincerely,

(Ms Jennifer Chan)  
for Secretary for Financial Services and the Treasury

Encl.

**A Note on the Legal Advice  
on the Powers of The Legislative Council Commission  
to Offer Contract Gratuity to Staff of the LegCo Secretariat**

Director of Audit has conducted a value for money audit on the subvention for staff emoluments of the Legislative Council Commission ("LCC"). Para. 5.14 of the Director of Audit's report ("the Audit Report") recommends that the Financial Services and Treasury Bureau (FSTB) seek legal advice as to whether the Legislative Council Commission Ordinance, Cap. 443 ("LCCO"), confers discretionary powers on the LCC to offer contract gratuity to staff of the LegCo Secretariat at a level higher than that prescribed by the FSTB, without seeking the FSTB's prior agreement. This note summarises the legal advice that we have received.

**The powers of the LCC**

2. According to our legal advice, s.10 of the LCCO provides for the powers of the LCC. The LCC may, among other powers, "employ staff in the Secretariat, .... and determine their numbers, grading, duties, remuneration and other terms and conditions of service" (s.10(1)(b)). The LCC may also "formulate and execute such managerial and financial policies as the Commission considers expedient to the performance of its functions" (s.10(1)(e)) and "receive and expend funds" (s.10(1)(h)).
3. The LCC is a statutory body independent of the Government (s.19) and in relation to the formulation and execution of managerial and financial policies, it shall not be "subject to any direction or control of any person" (s.17(1)), with the exception of the LegCo who may by resolution give directions of a general or specific character to the LCC in relation to the performance of its functions or the exercise of its powers (s.17(2)).
4. Though the LCC enjoys considerable statutory powers under the LCCO, those discretionary powers are not absolute or unlimited. So far as is relevant to the present problem, the LCC "shall ensure that the grading, remuneration and other terms and conditions of service of staff of the Secretariat are kept, .... **broadly in line** with those applicable to persons employed in the Civil Service of the Government" (s.10(2)). It is worth noting, however, that the LCCO does not require the LCC to ensure that the remuneration and other terms and conditions of the Secretariat staff are the same or no better than those employed in the Civil Service. They must only be "broadly in line" with those in the Civil Service. What is "broadly in line" is not defined in the LCCO. It is essentially a question of fact. The remuneration may therefore be fixed at a level exceeding that in the civil service and this will not infringe s.10(2) so long as the degree of excess is reasonable. Further,

the LCC may also deviate from this general requirement imposed under s.10(2) as this is "subject to the Commission's discretion to make exceptions in such cases as it sees fit". In short, the LCC enjoys considerable power in determining remuneration and other terms and conditions of its Secretariat staff.

5. However, the LCC is expected to exercise the statutory discretionary powers reasonably. The fixing of an arbitrary sum for wages without regard to existing labour conditions could amount to an improper exercise of the statutory powers. However, in the present case it appears that the LCC had carefully considered the level of payment before arriving at the decision. It cannot be said that its decision was arbitrary or otherwise irrational, though the Audit Commission has considered that on the basis of the employment market situations the LCC did not have "strong justifications" for its decision (para. 5.13 of the Audit Report).

#### **The legal effects of FBCM No. 10/99**

6. FBCM No. 19/99 does not prevail over the statutory provisions in LCCO or statutory powers enjoyed by the LCC under the LCCO. The memorandum was issued on 27 May 1999 by the then Secretary for the Treasury. It was addressed to Bureau Secretaries and Controlling Officers. (NB The Secretary General of the LCCO is designated as a Controlling Officer.) It appears to be a policy statement which "advises on the level of contract gratuity that subvented organisations may provide to their staff for the purpose of Government subvention" (para. 1). The memorandum requires the Controlling Officers to "bring this to the attention of subvented organisations under their purview" (para. 1). The memorandum also requires "the Controlling Officers to seek Finance Bureau's prior agreement in the light of financial implications involved where they support individual cases of appointment in subvented organisations providing gratuity at a level higher than the prescribed levels" (para. 7).

7. Being **administrative** in nature, FBCM No. 10/99 did not and could not override the **statutory** provisions or powers enjoyed by the LCC under the LCCO. More specifically, in determining remunerations the LCC is only obliged to ensure that they are kept "**broadly in line** with those applicable to persons employed in the Civil Service of the Government" (s.10(2)). Further, s.16(2) of the LCCO expressly provides that the Secretary General of the LCC is not required to obey such a regulation, direction or instruction which is concerned solely with the expenditure of the LCC unless the FS has consulted the LCC before it is issued. And the LCC had not been consulted in respect of the memorandum.

8. The statutory powers of the LCC under the LCC have not been reduced or otherwise prejudiced by the FBCM. Nevertheless, the FBCM might have provided guidelines for the LCC in exercising its statutory powers. And the LCC might have considered it before making a decision on the provision of contract gratuity for its non-professional and supporting staff at a higher rate.

Financial Services and Treasury Bureau  
May 2003



財 經 事 務 及 庫 務 局  
( 庫 務 科 )

香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND THE  
TREASURY BUREAU  
(The Treasury Branch)

Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2596 0729  
電話號碼 Tel. No. : 2810 2283  
本函檔號 Our Ref. : FINCR 2/2191/01 Pt 2  
來函檔號 Your Ref. : CB(3)/PAC/R40

29 May 2003

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 40)**

**Chapter 5: Subvention for Staff Emoluments  
of the Legislative Council Commission (LCC)**

Thank you for your letter of 15 May 2003. The information requested by the Public Accounts Committee is set out below.

Item (a)

2. The statutory financial and administrative autonomy of the LCC is laid down in the LCC Ordinance (Cap. 443). Relevant provisions include S.10(1)(e), which stipulates that the LCC may “formulate and execute such managerial and financial policies as the Commission considers expedient to the performance of its functions”. S.16(2) states that “S.13 of the Public Finance Ordinance (Cap. 2) shall not apply to the Secretary General in relation to regulations, directions or instructions made or given by the Financial Secretary under section 11 of that Ordinance which are concerned solely with the expenditure of the Commission unless the Financial Secretary has consulted the Commission before such regulations, directions or instructions are made or given”. S.17(1) and 17(2) provide that the 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 for those

directions given by the Council by resolution in relation to the performance of the Commission's functions or the exercise of its powers.

3. The legislation of some subvented organisations provides for certain extent of financial autonomy, but we are not aware of any subvented organisations whose legislation provides for the same extent of financial autonomy as that stipulated in the LCC Ordinance.

Items (b) & (c)

4. On the question of reserves, the arrangement varies among subvented organisations. The table at Annex gives some examples of the range of such arrangements for subvented organisations.

Item (d)

5. As agreed between the LCC and the Administration and as reported to the Finance Committee, funding to the LCC is in the form of a one-line vote, and not broken into components of expenditure. In using the one-line vote method, LCC and the Administration are conscious that LCC has the autonomy and flexibility in deploying funds in the one-line vote among types of expenditure, and is not subject to the Administration's control at the level of components of expenditure. The Administration therefore does not prescribe a provision for a component of expenditure (such as cash allowance), and consequently there is no question of the Administration "over-providing" or "under-providing" the LCC on a component of expenditure such as cash allowance. If the LCC spends more or less on cash allowance, the Administration does not provide additional funds to meet "under-provision" or claw back any "over-provision".

6. Since the funding arrangement agreed with LCC anticipates that any increase/decrease in LCC's funding requirement for cash allowance will not affect the level of the one-line vote, such increase/decrease in expenditure on cash allowance is not significant changes in circumstances.

Yours sincerely,



( Stanley Ying )  
for Secretary for Financial Services and the Treasury

Encl.

Organisation receiving government subvention	Agreed arrangement on reserve
Office of the Ombudsman	Agreed that the organisation's reserve should not be subject to a ceiling
Consumer Council	There has been no agreement on whether the organisation's reserve should be subject to a ceiling
Hong Kong Trade Development Council	There has been no agreement on whether the organisation's reserve should be subject to a ceiling
Equal Opportunities Commission	Agreed that the organisation can keep reserve with the approval of the Secretary for Home Affairs after consultation with the Secretary for Financial Services and the Treasury
Office of the Privacy Commissioner for Personal Data	Agreed that the organisation can keep reserve with the approval of the Secretary for Home Affairs after consultation with the Secretary for Financial Services and the Treasury
Employees Retraining Board	Up to 50% of annual subvention
Hong Kong Tourism Board	Up to 4 months' operating expenditure
Welfare NGOs subvented under the Lump Sum Grant (150 NGOs)	Up to 25% of an NGO's operating expenditure in that year
Hong Kong Applied Science and Technology Research Institute	Up to 25% of annual subvention
HK Chinese Orchestra	Up to 25% of annual subvention
HK Dance Company	Up to 25% of annual subvention
HK Repertory Theatre	Up to 25% of annual subvention
HK Philharmonic Society	Up to 20% of annual subvention
HK Arts Festival Society Ltd	Up to 20% of approved budget
University Grants Committee - funded institutions	Up to 20% of subvention in previous triennium
HK Academy for Performing Arts	Up to 15% of annual subvention
Vocational Training Council (excluding skills centre)	Up to 15% of annual subvention
Hong Kong Productivity Council	Up to 15% of annual subvention
Hospital Authority	Up to 5% of its budgeted annual recurrent expenditure
Aided schools - (a) for salary-related expenditure (b) for non-salary-related expenditure (i) Operating Expenses Block Grant (OEBG) (ii) other than OEBG	No reserve  Up to 12 months' OEBG provision  Different arrangements may apply in respect of retention of unspent funds. For example, for Composite Furniture and Equipment Grant (CFEG), schools may retain unspent funds up to an amount equivalent to five times the provision of CFEG in the current year.



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 : CB(3)/PAC/R40  
本函檔號 OUR REF : AM 12/03/03  
電 話 TELEPHONE : 2869 9203  
圖文傳真 FACSIMILE : 2877 9600

22 May 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Thank you for your letter ref. CB(3)/PAC/R40 dated 15 May 2003 requesting additional information relating to Chapter 5 of the above-mentioned report for the consideration of the Public Accounts Committee (PAC).

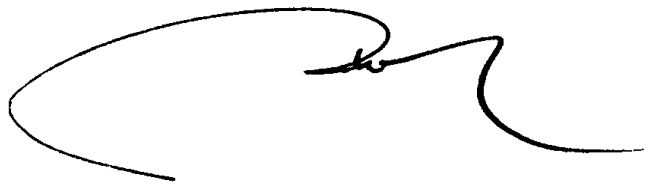
I forward the following information as requested -

- (a) Meetings of The Legislative Council Commission (the Commission) are not open to the public. The papers and records of such meetings are not distributed to the public, as most issues deliberated by the Commission are in respect of internal management matters concerning the Legislative Council Secretariat. However, if there are press enquiries on matters discussed by the Commission, the Chairman of the Commission invariably responds to these enquiries, unless they are on issues which are confidential, such as those relating to the Director of Audit's draft report before its tabling in the Legislative Council.

- (b) The Commission is given managerial and financial autonomy in organising its own administration and support facilities under The Legislative Council Commission Ordinance (the Ordinance) (Cap 443). One of the features of that autonomy is reflected in the Ordinance by the Commission's power to determine the terms and conditions of its staff, subject to the only condition that these terms and conditions have to be kept broadly in line with those applicable to persons employed in the Civil Service. The so-called "no better than" principle which Government applies to subvented organizations does not apply to the Commission. Having considered the changes in the terms and conditions of service of civil servants notified to the Secretary General of the Legislative Council Secretariat through FBCM No. 10/99, the reasons given by the Secretary General in LegCo Paper No. LCC 34/99-00 (reproduced in paragraph 5.5 of the Audit Report) as well as the fact that a number of statutory organizations operated under the one-line vote system paid contract gratuity to their non-professional and supporting staff at 15% of their basic salary, the Commission made a policy decision on 13 April 2000 that such staff in the Secretariat should be paid contract gratuity at 15% of their basic salary.
- (c) The actual amounts of the annual expenditure of the Legislative Council Secretariat on contract gratuities and cash allowance for the period 1994-95 to 2002-03 are shown in **Appendices I and II** respectively.
- (d) In view of the lapse of time since 2000, the Commission recently reviewed its decision on the rate of contract gratuity for non-professional and supporting staff of the Secretariat. The Commission decided at its meeting on 20 May 2003 to lower the rate of contract gratuity for such staff to 10% of their basic salary, having regard to the following factors:
- (i) the public is concerned about the stringent financial climate in Hong Kong;
  - (ii) no apparent adverse impact on the quality of service or recruitment difficulty may result from a lowering of the rate of contract gratuity for such staff in view of the current labour market; and
  - (iii) some of the statutory organizations referred to in (b) above have lowered the rate of contract gratuity for such staff.

I shall separately be providing additional information to PAC to assist its study of the report. I shall also be happy to provide any further information that PAC may require.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

(Ricky C C Fung)  
Secretary General

Encls.

g/admin/achung/letter/Audit10.doc

## Appendix I

### The Legislative Council Commission

#### Expenditure on Contract Gratuities in the years 1994/1995 to 2002/2003

Year	Payment during the year	Gratuities incurred but not yet due for payment on 31 March 2003
	\$million	\$million
1994/95	2.7 <sup>(1)</sup>	
1995/96	1.4 <sup>(1)</sup>	
1996/97	14.2	
1997/98	42.7 <sup>(2)</sup>	
1998/99	12.1	
1999/00	17.5	
2000/01	58.5 <sup>(2)</sup>	
2001/02	20.7	
2002/03	14.2	60.0
Total	244.0	

<sup>(1)</sup> Gratuities in respect of contracts transferred from the Commission's predecessor (The Office of Members of the Legislative Council (OMLEGCO)) were paid by the Commission, including those incurred by the predecessor but not yet due for payment at the time of handover.

<sup>(2)</sup> Majority of contracts were entered into in 1994/95 and renewed in 1997/98. Therefore payments in 1997/98 and 2000/01 were higher when these 3-year contracts expired.

## Appendix II

### The Legislative Council Commission

#### Expenditure on Cash Allowances in the years 1994/1995 to 2002/2003

Year	\$million
1994/95	25.2 <sup>(1)</sup>
1995/96	19.5
1996/97	20.6
1997/98	21.3
1998/99	23.6
1999/00	23.9
2000/01	24.0
2001/02	24.8
2002/03	25.8
Total	208.7

- <sup>(1)</sup> The expenditure included \$12.9 million of government secondee on-costs charged for the secondees' services provided during the transitional period after the setting up of the new Legislative Council Secretariat in April 1994.





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 : CB(3)/PAC/R40  
本函檔號 OUR REF : AM 12/03/03  
電話 TELEPHONE : 2869 9203  
圖文傳真 FACSIMILE : 2877 9600

14 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Thank you for your letter dated 5 June 2003. As requested, the following additional information is provided for the Public Accounts Committee:

- (a) The Legislative Council Commission's (LCC's) expenditures on select committees in each of the past three financial years were —

Year	\$ million
2000-01	0.5
2001-02	6.8
2002-03	8.0
<b>Total</b>	<b>15.3</b>

- (b) LCC's funding request for the coming financial year will not be reduced as recommended by the Director of Audit, because the funding so far provided for LCC has been made in accordance with the arrangements mutually agreed between the Administration and LCC (para 4.19 of the Audit Report refers). It must be stressed that, the funding requests made by LCC and agreed to by the Administration are not in respect of *posts* to be created but in respect of *services* to be provided or enhanced. The funds finally provided for LCC are not itemized for specific components, and not even allocated separately for personal emoluments and departmental expenses. Consequently, the number of posts and the levels of staff employed at a certain point in time have no direct relationship with an earlier funding application and the subsequent allocation. Therefore, the question of incorrect calculation or over-provision of funds in respect of those *posts* created during the years 1996-97 to 1998-99 does not arise.

I should be grateful if you would forward the above information to PAC.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a series of smaller, connected strokes that end in a long, horizontal tail.

(Ricky C C Fung)  
Secretary General



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 : CB(3)/PAC/R40  
本函檔號 OUR REF : AM 12/03/03  
電話 TELEPHONE : 2869 9203  
圖文傳真 FACSIMILE : 2877 9600

23 May 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Further to my letter in the same series of yesterday's date, I wish to provide additional information for the consideration of the Public Accounts Committee (PAC) in its study of the above-mentioned report.

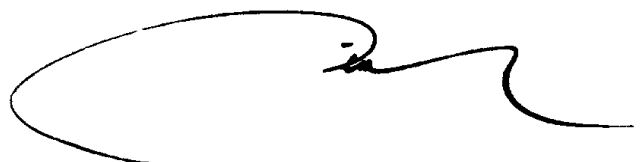
As mentioned in my letter dated 22 May 2003, The Legislative Council Commission has managerial and financial autonomy conferred on it by The Legislative Council Commission Ordinance (LCCO). When exercising its managerial and financial autonomy, the Commission has always been conscious of the need for economy and has been prudent in the management of its financial resources since its inception nine years ago.

While mindful of LCCO's requirement that the terms and conditions of service of staff of the Secretariat should be broadly in line with those of civil servants, the Commission did vary the terms and conditions of service of Secretariat staff which resulted in their being less favourable than those of civil servants in certain cases. Examples include the payment of acting allowance only for acting appointments lasting for more than three months (as opposed to the one-month requirement in the Civil Service), and the non-payment of contract gratuity for temporary staff employed for less than three years (as opposed to the general practice in the Civil Service for paying contract gratuity to temporary staff employed for longer than one year).

I mentioned at the public hearing on 12 May 2003 that the Commission would use its Reserve to fund activities for which no provision had been made. While this is the principle the Commission has been adhering to in its utilization of its Reserve, the Commission had in fact resolved on 24 October 2002 that it would fund operation of future select committees from its Reserve in order to reduce Government's expenditure. The Commission has no intention of keeping the Reserve purely for the sake of keeping it.

I should be grateful if you would forward the above information to PAC for its consideration.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

(Ricky C C Fung)  
Secretary General

財經事務及庫務局  
(庫務科)

香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
(The Treasury Branch)

Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2596 0729  
電話號碼 Tel. No. : 2810 2283  
本函檔號 Our Ref. : FINCR 2/2191/01 Pt 2  
來函檔號 Your Ref. : CB(3)/PAC/R40

17 June 2003

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 40)**

**Chapter 5: Subvention for Staff Emoluments  
of the Legislative Council Commission (LCC)**

Thank you for your letters of 6 and 10 June 2003. The information requested by the Public Accounts Committee is set out below.

--- 2. Annex A shows for each of the five subvented organisations the amount of its **reserve** at the end of the 2002-03 financial year and the percentage of this reserve to the subvention for 2003-04.

3. On **cash allowance** we had not detected that the Legislative Council Secretariat (LCS) had not adjusted its funding request to take into account changes in the rates for cash allowance (CARs) during 1994-95 to 2002-03 and the reduction in requirement as some staff chose not to receive cash allowance. This is mainly because the established funding arrangement for the Legislative Council Commission (LCC) does not envisage the adjustment of government funding to reflect the LCC's actual expenditure on cash allowance.

4. In my 29 May reply to your letter of 15 May, we have already explained the concept and method of the one-line vote (OLV) funding arrangement for the LCC. To recapitulate the main points –

- (i) OLV is given with only one line, which by definition means it is not broken down into components of expenditure such as cash allowance. In adopting the OLV method, both LCC and the Administration were conscious that LCC had the autonomy and flexibility in deploying funds in the OLV among expenditure components, and was not subject to the Administration's control at the level of expenditure components; and
  - (ii) Under the OLV arrangement we will not increase funding if LCC spends in excess of government funding, whether in aggregate or in respect of particular expenditure components such as cash allowance, and will not claw back funding if LCC spends less, except under some specified circumstances such as civil service pay adjustment. Accordingly we did not provide addition subvention to the LCC when the CARS rates were revised upwards, nor reduced the subvention when the rates were decreased.
5. The following considerations may also be relevant -
- (i) An LCS staff's cash allowances is calculated by multiplying his mid-point salary by the CAR for his category, and the amount of cash allowance is fixed throughout the contract period, which is usually three years. Take 2002-03 as an example, the changes in CARs for Category I, II and III staff were -3.76%, -1.8% and +0.03% respectively. Assuming one third of the LCS staff had their contracts renewed or were replaced by new recruits, the resultant savings would be \$0.746 million, which amounts to only 0.3% of the 2002-03 approved estimates of the LegCo Secretariat (\$246.55 million);
  - (ii) If we were to reduce such savings from the LCC's funding, the Government would have to keep track of LCC's contract renewals or recruitment of new staff as and when they happen. That would not be an OLV method, and would involve the Government's detailed monitoring of the LCC's contracts with staff;
  - (iii) According to LCC, some of their staff have chosen not to receive cash allowance out of compliance with the "prevention of double benefits" rule. But such personal situation of each staff is not static and as his situation changes, e.g. in his marital status or the employment of his spouse, he may become eligible for the allowance. Conversely a staff who has been claiming the allowance may become ineligible for similar reasons. If we were to adjust our funding to LCC to reflect such changes in the personal situation of each staff, the Government would again have to engage in detailed monitoring of the LCC over such matters; and
  - (iv) To be consistent we would need to extend such detailed monitoring by the Government over other types of staffing and expenditure matters of the LCC, so that funding to LCC can be adjusted in accordance with actual expenditure on these other expenditure components. This

however would defeat the purpose of having an OLV funding for the LCC.

6. On the calculation of funding requirement of **contract gratuities** in respect of the new posts supported during 1996-97 to 1998-99 and in respect of posts not filled by contract staff during April 1994 to April 1995, we have no records of discussion with LCS on these issues. This again is because of the OLV concept and method explained above. In the case of contract gratuities, the agreed method for determining the funding for contract gratuities for inclusion into the OLV was the "three-year funding cycle" method explained in Annex B. This represents a broadbrush approach, using projected establishment as the basis for projecting the funding to be included for contract gratuities.

7. Allocation under Resource Allocation Exercise (RAE) is a separate funding process. The allocation provided under RAE represents the resources supported for providing additional services or enhancing existing ones. In line with our general practice, for successful bids for resources from the LCC, we use the full-year salary, cash allowance and 100% of the year's contract gratuity as a reference to calculate the resources required for supporting the new services or improved services. Upon RAE allocation, the LCC is free to deploy the resources supported in the most economical way as it sees fit so long as the services are provided as specified in the resource bid.

--- 8. As shown in Annex B, according to the "three-year funding cycle" method –

- the provisions for contract gratuity for 1994-95 and 1995-96 were 15% respectively of the projected yearly contract gratuities of the estimated staff establishment of 280 for 1994-95.
- in addition to this 15% mentioned above, a provision of 255% of the projected contract gratuities of the estimated staff establishment of 286 for 1995-96 (the latest establishment estimate available when preparing the 1996-97 baseline in May 1995) was added to the subvention.

Under this method and for similar reasons given in the above discussion on the matter of cash allowance, there was no need to adjust the funding for gratuities to the LCC to reflect changes in actual requirement such as whether contract staff have replaced civil servants seconded to the LCC or whether there were vacant posts during 1994-95.

Yours sincerely,



( Stanley Ying )

for Secretary for Financial Services and the Treasury

Encl.

## Annex A

Subvented body	Amount of Reserve at the end of 2002-03 (\$)  (a)	Total of recurrent subvention for 2003-04 (\$)  (b)	Percentage of reserve to government subvention  (a) / (b)
Office of The Ombudsman	52,964,000	93,369,000	57%
Consumer Council	424	66,189,000	0%
Hong Kong Trade Development Council*	1,172,610,000	368,240,000	318%
Equal Opportunities Commission	11,210,000	77,964,000	14%
Office of the Privacy Commissioner for Personal Data	0	38,387,000	0%

\* For the Trade Development Council, please note that government subvention in 2002-03 amounts to only about 24% of the HKTDC's total budget in that year. The percentage of subvention as against HKTDC's total gross expenditure has been on the decrease especially over the past decade or so, from over 40% before 1998-99 to around 24% in recent years, with the rest of the expenditure covered by HKTDC's self-generated income.



## Annex B

<b>Year of Estimates</b>	<b>Basis of calculation of contract gratuities provision in the subvention</b>
1994-95	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95)
1995-96	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95)
1996-97	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95) plus 255% of projected yearly contract gratuity of 286 staff (projected establishment for 95-96)
1997-98	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95)
1998-99	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95)
1999-2000	15% of projected yearly contract gratuity of 280 staff (projected establishment for 94-95) plus 255% of projected yearly contract gratuity of 321 staff (projected establishment for 98-99)

財經事務及庫務局  
(庫務科)

香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
(The Treasury Branch)

Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2596 0729  
電話號碼 Tel. No. : 2810 2283  
本函檔號 Our Ref. : FINCR 2/2191/01 Pt 2  
來函檔號 Your Ref. : CB(3)/PAC/R40

25 June 2003

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 40)**

**Chapter 5: Subvention for Staff Emoluments  
of the Legislative Council Commission (LCC)**

I refer to your letter of 21 June 2003 and apologise for having missed your deadline.

2. The additional information required by the Public Accounts Committee  
is set out in the Annex.

---

Yours sincerely,

( Stanley Ying )  
for Secretary for Financial Services and the Treasury

We note that many of the questions raised in the letter under reference (LUR) hinge on the basic questions of whether the One-Line Vote (OLV) funding arrangement is appropriate for the LCC, and whether other funding arrangements will better comply with relevant provisions in the LCC Ordinance providing for the LCC's autonomy in areas including financial and managerial matters. In previous correspondence we have elaborated on the concept and methods of the OLV as applied to the LCC. The following information avoids repeating such earlier correspondence save where it is necessary.

**Basic control in the One-Line Vote (OLV) funding arrangement**

- (a) Under the Exchange of Letters (EOL) between LCC and the Government, the Secretary General (SG) prepares LCC's annual draft estimates of expenditure for inclusion in the Government's draft annual Estimates of Expenditure. For the purpose of these estimates, since under *Head 112 Legislative Council Commission* the relevant subhead (previously *Subhead 367 Salaries and allowances for staff and general expenses*, and in the 2003-04 Estimates *Subhead 000 Operational Expenses*) is not broken down into components such as salaries or cash allowance, strictly speaking there is no need for LCC to supply such breakdown to the Government. There is no express requirement for such information in the EOL. In practice, however, LCC provides the Government with its own budgets for information, which is broken down into components.
- (i) As explained previously, under the agreed funding method LCC is not subject to the Government's financial control at the level of expenditure components. Therefore we do not seek and use information on LCC's finances (eg., in its own budget, or in its annual accounts tabled at LegCo) **for the purpose of** preventing "over-provision" to LCC's individual expenditure components. But we do use LCC's financial information in other contexts, eg., the baseline-plus exercise, or the Resource Allocation Exercise (RAE) if LCC bids for new resources.
- (ii) If appropriate our information on LCC's financial position may be relevant when, e.g., we process LCC's RAE bids. In the past years the Government has decided not to fund some of LCC's bids, or fund only partially some other bids. As for the scenario of the funding arrangement for LCC getting out of control, we envisage that with the information we maintain on LCC's finances we would not allow such a situation to happen, and would definitely take pre-emptive actions where necessary after discussion with LCC. We also envisage that for its part LCC would exercise its statutory autonomy responsibly so that situation would not get out of hand. Conversely, we do not think it is necessary for the Government to maintain component-by-component control over LCC in order to prevent such a scenario.

### **Subvention for cash allowance**

- (b) FSTB's memo of 30 March 2001 to LCC was basically to advise LCC of the reduced cash allowance rates (CARS). The memo did also mention that LCC's baseline would be adjusted in the light of actual savings achieved. In the event we did not make such adjustments, as we subsequently noted that there was no basis for such adjustment under the agreed arrangement with LCC.
- (c) On the question of whether the Government has "over-provided" LCC for cash allowance, we have explained the analysis from the perspectives of LCC's statutory provisions and the OLV arrangement (please see FSTB's letters of 29 May and 17 June). The figures listed in (c), LUR, would be "over-provisions" if LCC had been funded not under OLV but under the line-by-line control or deficiency funding methods. Under these other methods there is in general an arrangement for the Government to claw back over-provisions and top up under-provisions. Given such possible fluctuations in demand on Government funding, the Government often imposes control over expenditure components.
- (d) It is correct that we do not provide additional subvention to LCC when the CARS are revised upwards, nor reduce subvention when the CARS decrease. Clause 3.2 of the EOL is a general provision enabling the SG to request extra funding from the Government if he feels such extra funding is required, during the course of a financial year, to meet extra costs in connection with a limited list of items, including "salaries and allowances".

In the specific case of cash allowance, over the years SG has not found that such extra funding is required as a result of increases in CARS, and has not requested extra funding. It has also been the agreed practice between LCC and the Government that LCC will not request extra funds for cash allowance on account of increases in CARS, considering among other things that an increase in CARS will not immediately increase LCC's cost on cash allowance given that cash allowance is fixed by amount during the duration of a contract.

- (e) We have not verified the figures. But it is a fact that \$4.8mn is more significant than \$0.746mn.

### **Subvention for contract gratuities for new posts and posts not filled by contract staff**

- (f) We have addressed the question in previous correspondence. To recapitulate, both the '3-year funding cycle' and 'Pay-as-you-go' method represent a broadbrush approach agreed between the Administration and the LCC in arriving at the projection of the required provision. We consider that adjusting the funding for contract gratuities to reflect the actual requirement would be inconsistent with the OLV arrangement. If we compare the actual expenditure of LCC with the subvention of a specific component and claw back

underspending, it could be argued that we should also provide additional funds in case the actual expenditure on a component is larger than the level included for the component in the block grant. It would defeat the purpose of the OLV for the organisation to flexibly redeploy resources between components of expenditure. The information in (c) above is also relevant.



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 : CB(3)/PAC/R40  
本函檔號 OUR REF : AM 12/03/03  
電話 TELEPHONE : 2869 9203  
圖文傳真 FACSIMILE : 2877 9600

24 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

As requested in your letter dated 21 June 2003, I would like to provide the following information for the Public Accounts Committee (PAC) in the same order as the questions are raised in your letter :

Funding for cash allowances

(a) General comments :

The projected salaries and cash allowances shown in the Annex to your letter were drawn up in October 1997 in the course of preparing the 1998-99 budget. The information contained therein was an estimate of the cash allowance required to be paid in 1998-99, which was projected on the basis of the information available at that point in time.

Response to specific points :

- (i) LCC keeps record of each payment of cash allowance, but it does not track the reason for the payment or non-payment for each post.
- (ii) It should be pointed out that non-payment at a certain point in time does not necessarily mean that funding is not required at a future point in time. For example, a staff member may, in compliance with the ‘double benefit rule’, choose not to receive cash allowance (i.e. opt-out) this year because his/her spouse enjoys fringe benefits such as housing and/or education allowances from his/her spouse’s employment. However, he/she may ‘opt-in’ next year on his/her spouse’s cessation, for whatever reason, to enjoy such benefits. In order to keep track of the actual funding requirements for cash allowance, the LegCo Secretariat needs to identify the reasons for all the payments and non-payments of cash allowance, e.g. staff choosing not to receive cash allowance, temporary vacancies, frozen posts, staff on no-pay leave not entitled to cash allowance or posts filled by temporary staff not entitled to cash allowance. To do so involves extra work. Also, to make such extra work meaningful, apart from tracking the reason for the payment or otherwise of cash allowance for each post, it would also be necessary to determine whether appropriate adjustments should be made to the funding requirements.

However, such comparison of the cash allowance provision for each post with the cash allowance expenditure for that post is unwarranted and uncalled for under the one-line vote funding arrangement. If such tracking is required, other “components” of expenditure would also have to be tracked in order to ascertain whether each and every component is over-funded or otherwise.

(b) General comments :

Fundamentally, the one-line vote funding arrangement for LCC does not separate the annual financial provision under subhead 367 (salaries and allowances for staff and general expenses of LCC) into different components. Separate “funding for cash allowance” does not exist.

Response to specific point :

Setting aside the conceptual disagreement as to whether there was any over-provision, the so-called 'over-provision' of \$30.5 million amounted to only 1.6% of the total provision under subhead 367 in the nine years between 1994-95 and 2002-03 (total provision was \$1,863.4 million as per Appendix A to the Audit Report).

As funding for cash allowance is not itemized, there is no question of 'over provision' of funding for cash allowance.

Funding for contract gratuities for new posts and posts not filled by contract staff

(c) General comments :

Applications for additional funds have always been prepared on a full-cost basis, so that the expected financial implications can be considered in perspective. LCC's annual applications for additional funding are considered in the context of Resource Allocation Exercise (RAE) by the Star Chamber.

Response to specific points :

- (i) The use of 15% instead of 100% of a full year's contract gratuity in the 1994 RAE was a special arrangement arrived at after the Star Chamber had been requested to reconsider the funding allocation for LCC for 1995-96. LCC put in nine applications for a total of \$18.24 million in RAE. In accordance with normal practice, these RAE applications were prepared on a full-cost basis (100% contract gratuity). While the Star Chamber agreed to endorse two of the nine applications, it invited the LegCo Secretariat to comment on the proposed arrangement whereby full year provision would not be made for the two items, the reason being that lead time would be required for recruitment. Having regard to the timing of our recruitment exercises, we suggested that full year provision for salaries and cash allowances be reconsidered. As for contract gratuities, we suggested provision at 15% of the yearly entitlement for the first year. The suggestion was accepted by the then Secretary for the Treasury. My letter ref. (8) in LM to D3/01/25(94) of 27 July 1994 to the then Secretary for the Treasury and his letter ref. FIN CR 4/581/94 of 3 August 1994 notifying the LegCo Secretariat of the funding allocation for 1995-96 are attached.
- (ii) In order to reflect the true cost implications of a new service, LCC considers that the estimated total cost should be used in funding applications. (Paragraph 4.19(c) of the Audit Report refers.)



(d) General comments :

According to the funding mechanism for staff contract gratuities agreed with the Administration, the 255% (85% + 85% + 85%) funding for contract gratuities requested in the third year of each three-year contract gratuity funding cycle is applied en bloc to the total projected salaries for permanent posts in the establishment in the second year of the cycle. The year in which the posts are created is not relevant to the calculation of this remaining funding, because the number and grading of posts may vary in the course of time as circumstances dictate and may be completely different from the implementation plans prepared at the funding application stage.

The following fictitious example illustrates why the funding mechanism for contract gratuities should not take into account the amount of funding provided in any particular RAE. Funds for a new service involving two additional Chief Assistant Secretary posts may be endorsed in an RAE. Instead, three Senior Assistant Secretaries (SAS) may be employed at a later stage for various reasons. Afterwards, one of the SASs may resign, and the post may be deleted and replaced by an Assistant Secretary and some temporary staff.

In this example, not only is the total cost of the service different from the initial funding (the level of which may have been set some years ago), the amounts and proportion of the cost components (i.e. salary, cash allowance and gratuity) are also different, because they vary according to the grading of staff employed, the timing of first appointment of the staff and whether the staff concerned are temporary staff who are not entitled to cash allowance and gratuity.

If a post is deleted before the second year of any three-year contract gratuity funding cycle, the remaining 255% funding for contract gratuities in respect of this post cannot be obtained as the post is no longer on the establishment at the beginning of the second year. Similarly, if a post is downgraded, the remaining 255% funding for contract gratuities will be reduced, because of the lower salaries (on which contract gratuities are calculated) of a junior employee.

Reply to specific points :

- (i) Obtaining the 255% cycle-end funding was in accordance with a funding mechanism agreed with the Administration. It was not an application for new resources and was not made in relation to any specific posts supported in a particular RAE. LCC does not therefore accept that it was a request for funds for the same purpose. It should be pointed out that the then Secretary for the Treasury's advice that repeating a request for funds for the same purpose is not allowed in subsequent years means that we are not allowed to ask for funds again to deliver *the same service*.
- (ii) As the funding was made in accordance with an agreed funding mechanism, there was no breach of any funding condition.

(e) General comments :

To recapitulate, the funding for LCC is for new or improved services and not for the creation of earmarked posts. As explained in paragraph (d) above, the costs for implementing a service may vary from time to time. They may take the form of staff costs if staff are employed. They may also take the form of service fees if outside services are employed. This is why when new funds are allocated, they are not separated into components. The conceptual framework of pooling of resources and funding by an averaging method is important and relevant to the case in point.

Response to specific points :

- (i) If it is planned that the new service for which new resources are applied is to be provided by additional staff, the new resources allocated will include a provision to cover an element of contract gratuities. However, it must be pointed out that the decision whether to employ additional staff to implement the new service in question or what staff should be employed to implement the new service would depend on prevailing circumstances as has been explained in paragraph (d) above. Therefore, whether and how much of the new resources allocated would be used to pay contract gratuities would depend on how the new service is to be delivered.
- (ii) Application for resources to pay contract gratuities is made according to the funding mechanism agreed between the Administration and LCC. Under the agreed mechanism, funds applied for are based on the staff establishment of the LegCo Secretariat at the beginning of the second year of the three-year contract gratuity funding cycle and are not **directly related** to the new resources approved in RAEs.

(f) General comments :


Every funding application for new or improved services must be supported by full justifications and with breakdowns of resources required, such as costs for equipment, additional posts etc. Inevitably, in determining the amount of funds to be allocated, the different cost components necessary for the delivery of the new or improved services have to be taken into account by the Star Chamber.

Response to specific points :

- (i) As stated in paragraph (d), the funding request for 85% of contract gratuities per year for the posts created in previous years was in accordance with the funding mechanism agreed with the Administration. Therefore, there is no question of LCC making double requests for funding of contract gratuities.

- (ii) LCC considers it relevant to forward to PAC a copy of the then Secretary for the Treasury's letter dated 23 August 1997 because that was the **final official notification of approval** for the allocation of funds by the Star Chamber for the 1997 RAE. LCC did not forward to PAC the earlier letters dated 13 September 1996 and 8 August 1997 because the letters were only about provisional allocation. Moreover, as stated in my letter of 19 June 2003, the purpose of my forwarding the then Secretary for the Treasury's letter dated 23 August 1997 to PAC was to illustrate that (i) the amount allocated was in respect of four *services* and (ii) under the one-line vote arrangement, LCC is free to deploy resources as it sees fit. The two earlier letters dated 13 September 1996 and 8 August 1997 are irrelevant in this context.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

(Ricky C C Fung)  
Secretary General

Encls

***\*Note by Clerk, PAC:** The Secretary General of the Legislative Council Secretariat's letter of ref. (8) in LM to D3/01/25(94) of 27 July 1994 to the then Secretary for the Treasury, and the then Secretary for the Treasury's letter of ref. FIN CR 4/581/94 of 3 August 1994 not attached.*



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

電話 Telephone : 2829 4272

本署檔號 Our Ref. : UB/PAC/VFM/40

來函檔號 Your Ref. : CB(3)/PAC/R40

24 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Thank you for your letter of 20 June 2003 seeking my comments (including proposed questions) on the letters from the Secretary for Financial Services and the Treasury and the Secretary General of the Legislative Council Secretariat.

I forwarded to you the proposed questions requested by the Public Accounts Committee on 21 June 2003.

My comments on the letters dated 17 and 19 June 2003 from the Secretary for Financial Services and the Treasury are set out in Appendixes I and II respectively. My comments on the letter dated 19 June 2003 from the Secretary General of the Legislative Council Secretariat are set out in Appendix III.

During the meeting of 20 June 2003, the Committee asked whether Audit would like to consolidate its views on the captioned subject so as to facilitate the Committee's deliberations. Audit's consolidated views are set out in Appendix IV.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

  
(Patrick K Y LEUNG)  
for Director of Audit

**Audit comments on the letter from  
the Secretary for Financial Services and the Treasury  
to the PAC dated 17 June 2003**

**Paragraph 3**

***FSTB's view***

The established funding arrangement for The Legislative Council Commission (the LCC) does not envisage the adjustment of government funding to reflect the LCC's actual expenditure on cash allowance.

***Audit comments***

*In March 2001, the Financial Services and the Treasury Bureau (FSTB) informed the LCC that, because of the adoption of a new set of lower cash allowance rates (CARs) for new recruits, government subvention to the LCC would be adjusted in the light of actual savings (which were anticipated to be small) achieved (see para. 3.6 of the Audit Report). Audit considers that this indicates that the established funding arrangement for the LCC does not rule out the need to adjust the government funding to reflect the LCC's actual expenditure on cash allowance. Any effective funding arrangement should allow for adjustments of funding when there are significant changes in circumstances.*

**Paragraph 4(i)**

***FSTB's view***

In adopting the one-line vote (OLV) arrangement, the Administration was conscious that the LCC had the autonomy and flexibility in deploying funds in the OLV among expenditure components, and was not subject to the Administration's control at the level of expenditure components.

*Audit comments*

*Audit appreciates the merits of flexibility in the deployment of resources under the OLV arrangement. However, Audit considers that such flexibility should not be accorded at the expense of basic controls if it leads to significant over-provision of subvention, particularly at the present time of severe budget deficits (see Note 2 to para. 1.22 of the Audit Report). Audit notes that the LCC may not need to segregate and earmark money for different expenditure components. However, when there are significant changes in circumstances, the subvention requirements for individual expenditure components must be re-assessed. The creation of new posts and the secondment of civil servants to the Legislative Council Secretariat (LCS) were such changes. At these times, the actual subvention requirements for contract gratuities should have been calculated accurately (see para. 4.20(a) of the Audit Report). It would be contrary to the principle of prudent financial management if the OLV arrangement precludes the Government from making an adjustment to the subvention to the LCC, even though there was evidence of a major and continual change in the subvention requirements (during the period 1994-95 to 2002-03) for cash allowance. There is a need to establish an adjustment mechanism (see para. 3.17(b) of the Audit Report). Audit evidence has shown that due to the provision of government funds for expenditure which was actually not required by the LCC (see Table 5 in para. 6.5 of the Audit Report), there had been over-provisions of subvention under the OLV arrangement totalling \$50.9 million over the past nine years. The FSTB's failure to adjust the subvention, despite being aware of the decrease in the subvention requirements for cash allowance and the over-provision of subvention for contract gratuities, had led to the unjustified building up of the LCC's reserve (see para. 6.9 of the Audit Report).*

**Paragraph 4(ii)**

*FSTB's view*

The FSTB did not provide additional subvention to the LCC when the CARs were revised upwards, nor reduced the subvention when the CARs were decreased.

*Audit comments*

*According to the Exchange of Letters (EOL), additional funds will be provided to the LCC to meet the cost of salaries and allowances in accordance with approved rates and scales (see para. 1.14(a) of the Audit Report). In fact, since the LCC's establishment in April 1994, its subvention requirements as reflected in the budget have never exceeded its subvention for cash allowance (see Table 1 in para 3.9 of the Audit Report).*

**Paragraph 5(i)**

***FSTB's view***

Taking 2002-03 as an example, the changes in CARs for Category I, II and III staff were -3.76%, -1.8% and +0.03% respectively. Assuming one-third of the LCS staff had their contracts renewed or were replaced by new recruits, the resultant savings would be \$0.746 million, which amounted to only 0.3% of the LCC's 2002-03 approved estimates of \$246.6 million for staff emoluments and general expenses.

***Audit comments***

*The cumulative effect of the decrease in CARs from 1994-95 to 2002-03 has led to an over-provision of \$4.8 million for 2002-03, representing 2% of the LCC's approved estimates for staff emoluments and general expenses for that year (see Table 2 in paragraph 3.10 of the Audit Report). The over-provision of subvention for cash allowance for the period 1994-95 to 2002-03 as a result of the significant decrease in CARs and some staff of the LCS having chosen not to receive cash allowance, amounted to \$30.5 million (see Table 1 in para. 3.9 of the Audit Report). The following table shows the over-provision as a percentage of the subvention for cash allowance for each year.*

**Percentage of over-provision of subvention for cash allowance  
for the period 1994-95 to 2002-03**

Year	Subvention	Over-provision	Percentage of over-provision
	(a)	(b)	(c) = $\frac{(b)}{(a)} \times 100\%$
	(\$ million)	(\$ million)	(%)
1994-95	19.5	—	—
1995-96	22.1	1.1	5.0%
1996-97	23.0	1.7	7.4%
1997-98	25.7	2.9	11.3%
1998-99	28.5	4.0	14.0%
1999-2000	29.6	5.5	18.6%
2000-01	29.6	5.3	17.9%
2001-02	30.7	4.6	15.0%
2002-03	31.7	5.4	17.0%
<b>Overall</b>	<b>240.4</b>	<b>30.5</b>	<b>12.7%</b>



*It can be seen in the above table that the over-provision has exceeded 10% of the subvention to the LCC for cash allowance since 1997-98 and has been 14% or more of such subvention since 1998-99. Audit considers that the resultant savings due to the cumulative decrease in CARs since 1994-95 are significant.*

**Paragraph 5(ii) and 5(iii)**

***FSTB's view***

If the FSTB were to reduce savings resulting from the decrease in CARs and having regard to the fact that some staff of the LCS chose not to receive cash allowance from the LCC's funding, the Government would have to keep track of the LCC's contract renewals, recruitment of new staff and the changes in personal situation of each staff. That would not be an OLV arrangement, and would involve the Government's detail monitoring of the LCC's contracts with staff.

***Audit comments***

*Audit evidence shows that the LCS has all the details of the reduction in subvention requirements for cash allowance due to the decrease in CARs and the fact that some staff of the LCS chose not to receive cash allowance. The actual subvention requirements for cash allowance are in fact reflected in the LCC's budget which includes breakdown of expenditure submitted to the FSTB every year (see Annex to the Appendix to the letter from the Director of Audit to the PAC dated 21 June 2003). The FSTB would not have over-provided funds to the LCC, if it had adjusted the subvention to the LCC for cash allowance according to the LCC's budget (see Table 1 in para. 3.9 of the Audit Report). As the LCS has full details of the actual subvention requirements for cash allowance and such details are submitted to the FSTB every year, there will not be any extra work for the LCS or the FSTB to keep track of the actual requirements for cash allowance.*

**Paragraph 5(iv)**

***FSTB's view***

The adjustment of funding to the LCC according to the actual expenditure on other expenditure components would defeat the purpose of having an OLV funding arrangement for the LCC.

***Audit comments***

*Audit considers that ascertaining the actual subvention requirements is an essential control which should be incorporated into any funding scheme (particularly for organisations which receive their funding solely from the Government), including the OLV arrangement (see para. 3.17(a) of the Audit Report). It would be contrary to the principle of prudent financial management if the OLV arrangement precludes the Government from making an adjustment to the subvention to the LCC, even though there was evidence of a major and continual change in the subvention requirements (during the period 1994-95 to 2002-03). There is a need to establish an adjustment mechanism (see para. 3.17(b) of the Audit Report).*

**Paragraph 6**

***FSTB's view***

The three-year funding method represented a broadbrush approach, using projected establishment as the basis for projecting the funding to be included for contract gratuities.

***Audit comments***

*Audit evidence shows that in May 1995, in accepting the funding requests submitted to the FSTB by the LCS for contract gratuities including the contract gratuities for posts not filled by contract staff during the period April 1994 to April 1995, the FSTB knew that the LCC did not need to pay contract gratuities for the large number of non-contract staff (see para. 4.23(c) and Appendix D of the Audit Report).*

## Paragraph 7

### *FSTB's view*

In line with the FSTB's general practice, for successful bids for resources by the LCC, the FSTB uses 100% of the year's contract gratuities as a reference to calculate the resources required for supporting the new services or improved services. Upon Resource Allocation Exercise (RAE) allocation, the LCC is free to deploy the resources supported in the most economical way as it sees fit so long as the services are provided as specified in the resource bid.

### *Audit comments*

*Audit wishes to point out that, after a bid for new posts had been approved, the LCS should have adjusted the amount of new resources so that the normal funding to the LCC included only the percentage of the annual contract gratuities adopted by the three-year funding method. The LCS's failure to do so had resulted in the over-provision of subvention for contract gratuities for the new posts. This is because, notwithstanding that full funding for contract gratuities for the new posts had already been included in the normal funding, the LCS subsequently made a double request for the funding for 85% of contract gratuities per year for such posts (see para. 4.20 (c) of the Audit Report). Furthermore, although upon RAE allocation, the LCC is free to deploy the resources supported in the most economical way as it sees fit, as indicated in the third paragraph in the letter from the then Secretary for the Treasury to the Secretary General of the LCS dated 23 August 1997 (on the 1997 RAE), the then Secretary for the Treasury stated that the Secretary General would not normally be allowed to repeat the request for funds for the same purpose in subsequent years (see the third paragraph of Appendix II to the letter from the Secretary General of the LCS to the PAC dated 19 June 2003).*

*Audit considers that, unless the amount of new resources for the new posts had been adjusted so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method, the double request for the funding for 85% of contract gratuities per year for the new posts is a duplication of the request for funds for the same purpose. This has in fact breached the Secretary's condition of approval of new resources for the new posts.*

**Paragraph 8**

***FSTB's view***

Under the three-year funding method, there was no need to adjust the funding for contract gratuities to the LCC to reflect changes in actual requirements.

***Audit comments***

*Audit considers that the funding to the LCC for contract gratuities had exceeded the LCC's actual requirements for contract gratuities. Audit evidence has shown that due to the provision of government funds for expenditure which was actually not required by the LCC (see Table 5 in para. 6.5 of the Audit Report), there had been over-provisions of subvention for contract gratuities under the OLV arrangement totalling \$20.4 million over the past nine years. The FSTB's failure to adjust the subvention had led to the unjustified building up of the LCC's reserve (see para. 6.9 of the Audit Report).*

Audit Commission  
24 June 2003

**Audit comments on the letter from  
the Secretary for Financial Services and the Treasury  
to the PAC dated 19 June 2003**

**Paragraphs 2 and 3**

***FSTB's view***

The resources allocated to the LCC under the RAE in respect of new or enhanced services become part of the OLV and the LCC has the flexibility to deploy funds in the OLV among expenditure components in the most economical way as it sees fit, so long as the services are provided as specified in the LCC's resource bid. Furthermore, there is no requirement that the LCC must spend the resources allocated in accordance with the cost estimates in the resource bid.

***Audit comments***

*Audit recognises that the resources allocated to the LCC in RAEs become part of the OLV and the LCC has the flexibility to deploy funds among expenditure components. However, Audit considers that, although the LCC can deploy the funds in the way as it sees fit, it is an undeniable fact that the funds allocated in RAEs for the new posts created in 1996-97 to 1998-99 included an element intended to cover 100% of the year's contract gratuities for the new posts. Therefore, after a bid for new posts had been approved, the LCS should have adjusted the amount of new resources required so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method. The LCS's failure to do so had resulted in the over-provision of subvention for contract gratuities for the new posts. This is because, notwithstanding that full funding for contract gratuities for the new posts had already been included in the normal funding, the LCS subsequently made a double request for the funding for 85% of contract gratuities per year for such posts (see para. 4.20(c) of the Audit Report).*

*Furthermore, as indicated in the third paragraph of his letter to the Secretary General of the LCS dated 23 August 1997 (on the 1997 RAE), the then Secretary for the Treasury stated that the LCC would not normally be allowed to repeat the request for funds for the same purpose in subsequent years. Audit considers that, unless the amount of new resources for the new posts had been adjusted so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method, the double request for the funding for 85% of contract gratuities per year for the new posts is a duplication of the request for funds for the same purpose. This has in fact breached the Secretary's condition of approval for new resources for the new posts.*

Audit Commission  
24 June 2003

**Audit comments on the letter from  
the Secretary General of the Legislative Council Secretariat  
to the PAC dated 19 June 2003**

**Whether funding requests are in respect of services or in respect of posts**

*LCC's view*

Requests for additional funding in each RAE are in respect of new or improved services, and not for the creation of posts. New funds are not earmarked for any posts, and the LCC has the freedom to deploy new resources allocated through an RAE.

*Audit comments*

*Audit wishes to point out that every year when the Star Chamber considered whether additional resources were to be allocated in respect of services, the amount of allocation was, in fact, determined with reference to the new posts to be created for the services. This is indicated:*

- (a) in the letter dated 13 September 1996 and the fax dated 20 September 1996 on the 1996 RAE (for new posts to be created in 1997-98); and*
- (b) in the letter dated 8 August 1997 on the 1997 RAE (for new posts to be created in 1998-99)*

*from the then Secretary for the Treasury to the Secretary General of the LCS (see Appendixes IA, IB and II to the Director of Audit's letter to the PAC dated 19 June 2003).*

*Furthermore, although the LCC is free to deploy new resources allocated in RAEs, as indicated in the third paragraph in his letter to the Secretary General of the LCS dated 23 August 1997 (on the 1997 RAE), the then Secretary for the Treasury stated that the LCC would not normally be allowed to repeat the request for funds for the same purpose in subsequent years. Audit considers that, unless the amount of new resources for the new posts had been adjusted so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method, the double request for the funding for 85% of contract gratuities per year for the new posts is a duplication of the request for funds for the same purpose. This has in fact breached the Secretary's condition of approval for new resources for the new posts.*

## **Information submitted to the FSTB to support funding applications**

### ***LCC's view***

To support funding requests for new or improved services, the LCC estimates the service level to be achieved and the plans for delivering such services. The plan can be additional staff, use of technologies and/or hiring of outside services. It is for budgetary purposes and can be changed in the implementation stage.

### ***Audit comments***

*Upon review of the information submitted by the LCS to support the funding bids in RAEs. Audit found that funding requests were made with reference to the new posts to be created for the services. This is indicated in the letter from the Secretary General of the LCS to the then Secretary for the Treasury dated 12 June 1997 on the 1997 RAE (for posts to be created in 1998-99 — see Annex).*

## **Whether cash allowances and contract gratuities are relevant information in funding applications**

### ***LCC's view***

Funding for existing services did not take into account the amount of cash allowance and contract gratuities payable by the LCC. Funding was based on the financial provision approved in the previous year. Regarding funding requests for new or improved services, if the plan is to employ additional staff, the estimated staff costs will be used for budgeting the resources required. Salary, cash allowance and contract gratuities involved are taken into account in estimating the staff costs. However, the LCC's funding requests are in respect of the overall cost for the new or improved services, and not for any specific components.

*Audit comments*

*Because funding for existing services did not take into account the amount of cash allowance and contract gratuities required by the LCC, government funds were provided to the LCC which was actually not required by the LCC. There had been over-provisions of subvention under the OLV arrangement totalling \$50.9 million over the past nine years (see para. 6.9 of the Audit Report).*

*The LCC said that the LCC's funding requests were in respect of the overall cost for the new or improved services, and not for any specific components. However, it is an undeniable fact that the funds allocated in RAEs for the new posts created in 1996-97 to 1998-99 included an element intended to cover 100% of the year's contract gratuities for the new posts. Therefore, after a bid for new posts had been approved, the LCS should have adjusted the amount of new resources required so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method. The LCS's failure to do so had resulted in the over-provision of subvention for contract gratuities for the new posts. This is because, notwithstanding that full funding for contract gratuities for the new posts had already been included in the normal funding, the LCS subsequently made a double request for the funding for 85% of contract gratuities per year for such posts (see para. 4.20(c) of the Audit Report).*

*Furthermore, as indicated in the third paragraph of his letter to the Secretary General of the LCS dated 23 August 1997 (on the 1997 RAE), the then Secretary for the Treasury stated that the LCC would not normally be allowed to repeat the request for funds for the same purpose in subsequent years. Audit considers that, unless the amount of new resources for the new posts had been adjusted so that the normal funding to the LCC included only the percentage (i.e. 15%) of the annual contract gratuities adopted by the three-year funding method, the double request for the funding for 85% of contract gratuities per year for the new posts is a duplication of the request for funds for the same purpose. This has in fact breached the Secretary's condition of approval for new resources for the new posts.*

Audit Commission  
24 June 20093

*\*Note by Clerk, PAC: Annex to Appendix III not attached.*



### Audit's consolidated views

Audit is fully aware that the OLV funding arrangement for the LCC as set out in the EOL with the Administration provides flexibility in the deployment of resources while recognising the special status of the Legislature. Audit appreciates the merits of flexibility in the deployment of resources under such arrangement. However, Audit maintains the view that such flexibility should not be accorded at the expense of basic controls to any funding scheme. A basic control which should be incorporated into any funding scheme (particularly for organisations which are solely funded by public money), including the OLV arrangement, is a control over the actual funding requirements at the inception of the arrangement and at times when there are significant changes in circumstances.

At the time of inception and at times when there are significant changes in circumstances, thorough vetting by the Administration is necessary on the expenditure items to ensure that the funding is reasonable and adequate but is not more than that required by the LCC. Audit evidence indicates that, despite the significant decreases in CARs for staff of the LCS during the period 1994-95 to 2002-03 (as shown in Figure 1 in para. 3.5 of the Audit Report), the Administration failed to exercise the basic funding control by ascertaining the LCC's actual funding requirements and adjusting the subvention for the years following the changes. Audit's calculation has shown that each year, the over-provision of funds resulting from the LCC's reduced actual funding requirements has exceeded 10% of the subvention to the LCC for cash allowance since 1997-98 and has increased to 14% or more of such subvention since 1998-99.

Audit evidence also indicates that the provisions of funds for contract gratuities for staff of the LCS have exceeded the LCC's actual funding requirements both in respect of the new posts created during the period 1996-97 to 1998-99 for introducing new or enhanced services and in respect of a large number of posts of the LCS not filled by contract staff during the period April 1994 to April 1995 (see Appendix D of the Audit Report). As full funding for contract gratuities had already been included in the normal funding to the LCC for the new posts created during the period 1996-97 to 1998-99 (see Appendix C of the Audit Report), the LCS's subsequent funding requests for 85% of contract gratuities per year for such new posts clearly resulted in the over-provision of subvention to the LCC. In Audit's view, the LCS should have reduced the contract gratuities included in the new resources for such new posts to *only* 15% of the year's contract gratuities to avoid over-provision. This is what the LCC had *correctly* done for the new posts created in 1995-96. Audit has also found that, at the time of the LCS's funding request made in May 1995 for 255% of the year's contract gratuities for the period April 1994 to March 1997, it was clearly known to both the LCC and the Administration that a large number of posts were not filled by contract staff during the period April 1994 to April 1995.

Under the OLV arrangement:

- (a) funds are not segregated and earmarked for individual expenditure components such as cash allowance and contract gratuities (see paras. 3.13(a) and 3.16(b) of the Audit Report); and
- (b) government subvention to the LCC for its recurrent expenditure for each financial year is determined simply by adjusting the addition or reduction of resources to the LCC and then applying to the total amount a price adjustment factor prescribed by the FSTB, without ascertaining the actual funding requirements of individual expenditure components (see para. 1.11 of the Audit Report).

Ascertaining the actual funding requirements is an essential control which should be incorporated into any funding scheme, including the OLV arrangement. The deficiency of the OLV arrangement for the LCC is that the Administration has not exercised the basic funding control by ascertaining the LCC's actual funding requirements for cash allowance and contract gratuities. This has resulted in the over-provision of subvention to the LCC. **Audit considers that the Administration should exercise the basic control by ascertaining the LCC's actual funding requirement so as to ensure that the LCC would not be provided with funds which are not required.**

It is worthy of note that, since the LCC's establishment in April 1994, as the Secretary General of the LCS informed the PAC at the public hearing on 12 May 2003, there has never been any occasion that the LCC needs to use its reserve to meet any unforeseen requirements. The recurrent over-provision of subvention will lead to further increase in the LCC's reserve. **Therefore, Audit considers that urgent action should be taken by the Administration, in consultation with the LCC, to address the issues of over-provision of funds and the consequential rapid building up of the LCC's reserve by ten folds from \$10.1 million to \$101.6 million during the four financial years 1998-99 to 2001-02.** If the problems of over-provision of subvention for cash allowance and for contract gratuities for new posts are not addressed, they will lead to recurrent over-provision of subvention amounting to \$7.95 million a year, based on the data of the four financial years 1999-2000 to 2002-03. This annual over-provision is made up of:

- (a) \$5.2 million for cash allowance (see Table 1 in para. 3.9 of the Audit Report); and
- (b) \$2.75 million for contract gratuities for new posts (see Appendix E of the Audit Report).

**Audit considers that this amount of over-provision should be deducted from the annual subvention to the LCC.**

Audit Commission  
24 June 2003



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

電話 Telephone : 2829 4272

本署檔號 Our Ref. : UB/PAC/VFM/40

來函檔號 Your Ref. : CB(3)/PAC/R40

25 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

I refer to the letter dated 24 June 2003 from the Secretary General of the Legislative Council Secretariat (LCS) to the Public Accounts Committee (PAC) on the captioned subject. My comments on the views of The Legislative Council Commission (the LCC) are set out in the Appendix.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Patrick K Y LEUNG)  
for Director of Audit

**Audit comments on the letter from  
the Secretary General of the Legislative Council Secretariat  
to the PAC dated 24 June 2003**

**Paragraph (a)**

*LCC's view*

The LCC keeps record of each payment of cash allowance, but it does not track the reason for the payment or non-payment for each post.

*Audit comments*

*It is contrary to prudent financial management if the LCC does not keep track of the reason for the payment or non-payment for each post. The LCC has details on the LCS staff who chose not to receive cash allowance from the LCC. It also keeps details of cash allowance paid to each LCS staff member. These records are sufficient to keep track of the actual subvention requirements for cash allowance, even though the LCC does not track the reason for the payment or non-payment of cash allowance for each post. For the period 1994-95 to 2002-03, the LCC's budget on cash allowance was, in fact, an accurate projection of the actual subvention requirements for cash allowance. The subvention to the LCC for cash allowance for this period exceeded the LCC's budget by \$30.5 million. For each year during the period 1994-95 to 2001-02 (the 2002-03 figures not yet available), the amount of cash allowance actually paid by the LCC had never exceeded the LCC's budget (see Note 3 and Table 1 in para. 3.9 of the Audit Report).*

*LCC's view*

Comparison of the cash allowance provision for each post with the cash allowance expenditure for that post is unwarranted and uncalled for under the one-line vote (OLV) arrangement.

*Audit comments*

*Audit considers that it is necessary to compare the LCC's subvention requirements for cash allowance as a whole with the total subvention to the LCC for cash allowance. Regarding the cash allowance for each post, the LCS already has the details on cash allowance payments and the entitlement to such payments. Audit considers that ascertaining the actual subvention requirements is an essential control which should be incorporated into any funding scheme, including the OLV arrangement (see para. 3.17(a) of the Audit Report).*

## Paragraph (b)

### *LCC's view*

The OLV arrangement does not separate the annual provision under subhead 367 into different components. Separate “funding for cash allowance” does not exist. The so-called “over-provision” of \$30.5 million amounted to only 1.6% of the total provision under subhead 367 for the period 1994-95 to 2002-03.

### *Audit comments*

*Under normal circumstances, the LCC may not need to segregate and earmark money for different expenditure components. However, when there are significant changes in circumstances, the subvention requirements must be re-assessed (see para. 4.20(a) in the Audit Report). At these times, thorough vetting by the Financial Services and the Treasury Bureau (FSTB) is necessary on the expenditure components to ensure the adequacy and reasonableness of funding. Without this basic funding control, the OLV arrangement would be deficient and could get out of control (see para. 3.14(a) in the Audit Report). On the percentage of over-provision, Audit considers that it is reasonable and logical to compare, on a like-with-like basis, the over-provision of subvention for cash allowance with the subvention for cash allowance, instead of the total subvention under subhead 367. The over-provision has exceeded 10% of the subvention to the LCC for cash allowance since 1997-98 and has been 14% or more of such subvention since 1998-99 (see Audit comments on para. 5(i) in Appendix I to the letter from the Director of Audit to the PAC dated 24 June 2003).*

## Paragraph (c)

### *LCC's view*

The use of 15%, instead of 100%, of a full year's contract gratuities in the 1994 Resource Allocation Exercise (RAE) was a special arrangement arrived at after the Star Chamber had been requested to reconsider the funding allocation for the LCC for 1995-96. In the 1994 RAE, while the Star Chamber agreed to endorse two of the nine applications, it invited the LCS to comment on whether full year provision would be needed because lead time would be required for recruitment. The LCS suggested that, having regard to the timing of recruitment, full year provision for salaries and cash allowances be provided for 1995-96. The LCS also suggested that 15% of the year's contract gratuities be included in the first year.

*Audit comments*

*Audit considers that the inclusion of 15% of a year's contract gratuities in the 1994 RAE should not be regarded as a special arrangement which was not applicable to the RAE in years subsequent to 1994. This is because, having regard to the fact that the additional staff could report for duty on or shortly after 1 April 1995, the LCS suggested that full year provision for salaries and cash allowances be provided for 1995-96. The LCS also suggested that, in applying the formula agreed with the then Finance Branch, 15% of the year's contract gratuities be included for 1995-96 (see the second and third paragraphs of the letter from the Secretary General of the LCS to the then Secretary for the Treasury dated 27 July 1994 attached to the Secretary General's letter under reference). This suggestion of the LCS reflected that even if 100% of the year's salaries and cash allowances were provided for 1995-96, the correct percentage of the year's contract gratuities, which was agreed with the then Finance Branch to be provided for 1995-96, should be 15%.*

**Paragraph (d)**

*LCC's view*

If a post is deleted before the second year of any three-year contract gratuity funding cycle, the remaining 255% funding for contract gratuities in respect of the post cannot be obtained as the post is no longer on the establishment at the beginning of the second year. Similarly, if a post is downgraded, the remaining 255% funding for contract gratuities will be reduced.

*Audit comments*

*As full funding for contract gratuities had already been included in the normal funding to the LCC for the new posts created during the period 1996-97 to 1998-99, unless all such new posts were deleted from the establishment of the LCC, any subsequent funding requests for contract gratuities for such new posts in addition to normal funding to the LCC would result in over-provision of subvention for contract gratuities. Audit evidence shows that the LCS has made requests for contract gratuities for all such (28) new posts in addition to the 100% of the year's contract gratuities included in the annual normal funding to the LCC. The double requests made by the LCC had resulted in over-provision of subvention for contract gratuities for such new posts amounting to \$15.3 million (see Appendix E of the Audit Report).*

*LCC's view*

Obtaining the 255% cycle-end funding was in accordance with a funding mechanism agreed with the Administration. It was not an application for new resources and was not made in relation to any specific posts supported in a particular RAE. The LCC does not accept that it was a request for funds for the same purpose.

*Audit comments*

*Full funding for contract gratuities for the new posts to be created during the period 1996-97 to 1998-99, supported by the Star Chamber in RAEs, for new or enhanced services had already been included in the normal funding to the LCC every year. The LCC's further request for funds, in addition to the annual normal funding, for the new posts is a request for funds for the same purpose because the posts concerned provide the same service as the service which was used to justify the creation of such posts in the RAE. The LCC's request is, in fact, a breach of the then Secretary of the Treasury's condition of funding approval that the Secretary General would not normally be allowed to repeat the request for funds for the same purpose in subsequent years.*

**Paragraph (e)**

*LCC's view*

Whether and how much of the new resources allocated in RAEs would be used to pay contract gratuities would depend on how the new service is to be delivered. Under the agreed funding mechanism, funds applied for are based on the staff establishment of the LCS at the beginning of the second year of the three-year funding cycle. The funds are not directly related to the new resources approved in RAEs.

*Audit comments*

*The crux of the matter is that the LCC has disregarded the fact that full funding for contract gratuities had already been provided in the normal funding to the LCC each year for the new posts created during the period 1996-97 to 1998-99. As a result, the subvention for contract gratuities for such new posts was over-provided each year by at least 85% (see Table 4 in para. 4.6 in the Audit Report).*

**Paragraph (f)**

*LCC's view*

The funding request for 85% of contract gratuities per year for the posts created in previous years was in accordance with the funding mechanism agreed with the Administration. Therefore, there is no question of the LCC making double requests for funding of contract gratuities.

*Audit comments*

*Please refer to Audit's comments on paragraph (d) above. As full funding for contract gratuities had already been included in the normal funding to the LCC every year for the new posts created during the period 1996-97 to 1998-99, the subsequent funding requests for contract gratuities for such new posts in addition to the normal funding to the LCC were, in fact, double requests for funding for contract gratuities and had resulted in over-provision of subvention for contract gratuities.*

*LCC's view*

The LCC forwarded to the PAC a copy of the then Secretary for the Treasury's letter dated 23 August 1997 because that was the final notification of approval for the allocation of funds by the Star Chamber. The letters dated 13 September 1996 and 8 August 1997 are only about provisional allocation and are irrelevant to show that the amount allocated was in respect of four services and under the OLV arrangement, the LCC is free to deploy resources as it sees fit.

*Audit comments*

*The letters from the then Secretary for the Treasury dated 13 September 1996 (together with the fax dated 20 September 1996) and 8 August 1997 indicated that every year, when the Star Chamber considered whether additional resources were to be allocated in respect of services, the amount of allocation was, in fact, determined with reference to the new posts to be created for the services. The Secretary General's statement that the letters are about provisional allocation is irrelevant in this context. Although the Secretary's letter dated 23 August 1997 was the final official notification of approval for the 1997 RAE, the details were reflected in the letter dated 8 August 1997. Because the amount of allocation was determined with reference to the new posts to be created and included full funding for contract gratuities for the new posts, the LCS should not request 85% of the year's contract gratuities each year in addition to the resources allocated by the Star Chamber, irrespective of whether or not the LCC is free to deploy resources allocated to it.*

**General Audit comments**

*It is worthy of note that, according to the unaudited accounts of the LCC for the year ended 31 March 2003, the reserve of the LCC increased by a further 17.3% from \$101.6 million as at 31 March 2002 to \$119.2 million as at 31 March 2003. Audit considers that urgent action should be taken by the Administration, in consultation with the LCC, to address the issues of over-provision of funds and the consequential rapid building up of the LCC's reserve.*





審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
三十六樓

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

電話 Telephone : 2829 4272

本署檔號 Our Ref. : UB/PAC/VFM/40

來函檔號 Your Ref. : CB(3)/PAC/R40

26 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

I refer to the letter dated 25 June 2003 from the Secretary for Financial Services and the Treasury to the Public Accounts Committee (PAC) on the captioned subject. My comments on the views of the Financial Services and the Treasury Bureau (FSTB) are set out in the Appendix.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Patrick K Y LEUNG)  
for Director of Audit

**Audit comments on the letter from  
the Secretary for Financial Services and the Treasury  
to the PAC dated 25 June 2003**

**Paragraph (a)(i)**

*FSTB's view*

Under the agreed funding method, The Legislative Council Commission (the LCC) is not subject to the Government's financial control at the level of expenditure components. Therefore, the FSTB does not seek and use information on the LCC's finances for the purpose of preventing "over-provision" to the LCC for individual expenditure components.

*Audit comments*

*As already explained in the fourth paragraph of Appendix IV to the letter from the Director of Audit to the PAC dated 24 June 2003, ascertaining the actual funding requirements is an essential control which should be incorporated into any funding scheme, including the one-line vote (OLV) arrangement. The deficiency of the OLV arrangement for the LCC is that the Administration has not exercised the basic funding control by ascertaining the LCC's actual funding requirements for cash allowance and contract gratuities. This funding arrangement lacks effective control. This has resulted in the over-provision of subvention to the LCC totalling \$50.9 million during the period 1994-95 to 2002-03 (see para. 6.5 of the Audit Report).*

**Paragraph (a)(ii)**

*FSTB's view*

As for the scenario of the funding arrangement for the LCC getting out of control, the FSTB envisages that with the information the FSTB maintains on the LCC's finances, the FSTB would not allow such a situation to happen, and would definitely take pre-emptive actions where necessary after discussion with the LCC. The FSTB also envisages that for its part, the LCC would exercise its statutory autonomy responsibly so that situation would not get out of control. Conversely, the FSTB does not think that it is necessary for the Government to maintain component-by-component control over the LCC to prevent such a scenario.

*Audit comments*

*There is adequate evidence to show that the FSTB's failure to adjust the subvention to the LCC, despite being aware of the decrease in the LCC's requirements for cash allowance and the over-provision of subvention for contract gratuities, had led to the unjustified building up of the LCC's reserve. Furthermore, as pointed out previously in the Appendix to the letter from the Director of Audit to the PAC dated 25 June 2003 (see the paragraph under the heading "General Audit comments" in the Appendix), according to the unaudited accounts of the LCC for the year ended 31 March 2003, the reserve of the LCC increased by a further 17.3% in 2002-03, from \$101.6 million as at 31 March 2002 to \$119.2 million as at 31 March 2003. According to the Exchange of Letters (EOL), the reserve may be spent at the discretion of the LCC so long as no such expenditure shall create a commitment on government funds without the approval of the Secretary for Financial Services and the Treasury. Under these circumstances, the OLV arrangement is ineffective and has got out of control (see paras. 6.7 and 6.9 of the Audit Report). Deliberate over-provision of funds to the LCC year after year is contrary to the principle of prudent financial management, particularly at the present time of severe budget deficits.*

**Paragraph (d)**

*FSTB's view*

It is correct that the FSTB does not provide additional subvention to the LCC when the cash allowance rates (CARs) are revised upwards, nor reduces subvention when the CARs decrease. Clause 3.2 of the EOL is a general provision enabling the Secretary General of the Legislative Council Secretariat (LCS) to request extra funding from the Government, if the Secretary General feels that such extra funding is required, during the course of a financial year, to meet extra costs in connection with a limited list of items, including salaries and allowance.

*Audit comments*

*According to Clause 3.2 of the EOL, the subvention to the LCC will be increased where additional funds are required to meet the cost of cash allowance in accordance with the CARs (see para. 1.14 of the Audit Report). However, if the subvention exceeds the requirement in respect of cash allowance in accordance with the CARs, it is only reasonable and logical to expect that the subvention would be reduced. Therefore, the FSTB should have adjusted the subvention to the LCC for cash allowance to take into account the reduction in subvention requirements as a result of the significant decrease in CARs and the fact that some staff of the LCS chose not to receive cash allowance.*

***FSTB's view***

Over the years, the LCC has not found that extra funding is required as a result of increases in CARs, and has not requested extra funding. It has also been the agreed practice that the LCC will not request extra funds for cash allowance on account of increase in CARs, considering, among other things, that an increase in CARs will not immediately increase the LCC's cost on cash allowance.

***Audit comments***

*According to the EOL, the subvention to the LCC will be increased if additional funds are required to meet the cost of cash allowance in accordance with the CARs (see para. 1.14 of the Audit Report).*

**Paragraph (e)**

***FSTB's view***

The FSTB has not verified the figures. But it is a fact that \$4.8 million is more significant than \$0.746 million.

***Audit comments***

*The amount of over-provision in 2002-03 due to the decrease in CARs amounted to \$4.8 million (see Table 2 in paragraph 3.10 of the Audit Report). This table had been included in the draft audit report (as Table 4 in para. 2.9), which was forwarded to the FSTB on 23 January 2003 for comments and verification.*

**Paragraph (f)**

***FSTB's view***

The FSTB considers that adjusting the subvention to the LCC for contract gratuities to reflect the actual subvention requirements would be inconsistent with the OLV arrangement. If the FSTB compares the actual expenditure of the LCC with the subvention of a special expenditure component and claw back under-spending, it could be argued that the FSTB should also provide additional funds in case the actual expenditure on an expenditure component is larger than the level included for the component in the block grant.

*Audit comments*

*It would be contrary to the principle of prudent financial management if the OLV arrangement precludes the Government from making an adjustment to the subvention to the LCC, even though there was adequate evidence of a major and continual change in the actual subvention requirements. There is a need to establish an adjustment mechanism (see para. 3.17(b) of the Audit Report).*

*Furthermore, there is a mechanism whereby the FSTB would provide additional funds in case the funding requirement on an expenditure component (such as cash allowance and contract gratuities) is larger than the subvention for the expenditure component included in the OLV. According to the EOL, subvention to the LCC will be increased where additional funds are required to meet the cost of (see para. 1.14 of the Audit Report):*

- (a) salaries and allowances in accordance with approved rates and scales;*
- (b) benefits for staff of the LCS in the event of duty-related death or injury under an option for those affected staff to receive the same level of entitlements as civil servants;*
- (c) reimbursement of medical expenses incurred by staff of the LCS during duty visits or training outside Hong Kong;*
- (d) payments for statutory or employment obligations; and*
- (e) new or additional services introduced by the LCC at the request of the Administration.*

*However, there is no mechanism for the FSTB to reduce the subvention to the LCC if the funding requirement on an expenditure component is smaller than the subvention for the expenditure component included in the OLV. This is clearly an unsatisfactory funding arrangement.*



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 : CB(3)/PAC/R40  
本函檔號 OUR REF : AM 12/03/03  
電話 TELEPHONE : 2869 9203  
圖文傳真 FACSIMILE : 2877 9600

19 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Thank you for your letter dated 17 June 2003. As requested, the following information is provided for the Public Accounts Committee:

**(a) Funding requests in respect of services**

To ensure the managerial and financial autonomy of LCC, the Administration does not control the staff establishment of LCC or the way LCC delivers its services. Requests for additional funding in each Resource Allocation Exercise (RAE) are in respect of new or improved services, and not for the creation of posts. This conceptual framework is laid down in the Exchange of Letters (EoL) agreed between the Administration and LCC. Paragraphs 4 and 5 of EoL are particularly relevant (**Appendix I**).

New funds are not earmarked for any posts, and the Commission has the freedom to deploy new resources allocated through an RAE. This is illustrated by the notification of funding application results from the Secretary for Financial Services and the Treasury. Please see as an example notification for the new resources allocated in the 1997 RAE for 1998-99 (paragraph 4.5 of the Audit Report refers) in **Appendix II**. Annex B to Appendix II shows that the amount allocated was in respect of four services. Paragraph 3 of Appendix II affirmed that “under a one-line vote arrangement, you (LCC) are, of course, free to deploy resources as you see fit”.

**(b) Supporting information for Financial Services and the Treasury Bureau (FSTB) in relation to funding applications**

The funding for existing services is based on the approved financial provision for LCC’s recurrent expenses in the previous year (i.e baseline expenditure as mentioned in paragraph 4.2(b) of Appendix I).

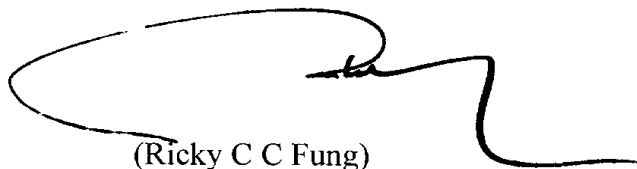
To support the funding requests for new or improved services, LCC estimates the service level to be achieved and the plans for delivering such services. The plan can be additional staff, use of technologies and/or hiring of outside services. It is for budgetary purposes and can be changed in the implementation stage.

**(c) Whether cash allowances and contract gratuities are relevant information in funding applications**

Funding for existing services does not take into account the amount of cash allowances and contract gratuities payable by LCC. As stated in paragraph (b) above, funding is based on the financial provision approved in the previous year.

Regarding funding requests for new or improved services, if the plan is to employ additional staff, the estimated staff costs will be used for budgeting the resources required. Salary, cash allowance and contract gratuity involved are taken into account in estimating the staff costs. However, LCC’s funding requests are in respect of the overall cost for the new or improved services, and not for any specific components.

Yours sincerely



(Ricky C C Fung)  
Secretary General

Encls.

c.c. Secretary for Financial Services and the Treasury  
Director of Audit

***\*Note by Clerk, PAC: Appendix II not attached.***

**Extract from Exchange of Letters between the Administration and  
The Legislative Council Commission**

**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 referred to in paragraph 5 below; and
  - (e) any charges imposed by the Government on the Commission for services which it hitherto provides free of charge to the Commission (see paragraph 9.1 below).

**5. New or improved services**

Where the Commission requires additional funds for introducing new or improved services, it will submit bids in the annual Resource Allocation Exercise. Such bids will be considered by the Administration in competition with other bids for public funding.





審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

圖文傳真 Facsimile : 2583 9063

電話 Telephone : 2829 4272

本署檔號 Our Ref. : UB/PAC/VFM/40

來函檔號 Your Ref. : CB(3)/PAC/R40

19 June 2003

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms HON,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 40)**

**Chapter 5: Subvention for staff emoluments  
of The Legislative Council Commission**

Thank you for your letter of 16 June 2003 seeking my comments on the letter of 14 June 2003 from the Secretary General of the Legislative Council Secretariat (LCS) providing additional information on the captioned chapter of the Audit Report.

**The Legislative Council Commission's expenditure  
on select committees in the past three financial years**

I have no comments on the additional information provided by the Secretary General.

**Contract gratuities for the new posts  
created during the period 1996-97 to 1998-99**

In paragraph (b) of the Secretary General's letter, he stated that the funding requests made by The Legislative Council Commission (the LCC) and agreed to by the Administration were not in respect of *posts* to be created but in respect of *services* to be provided or enhanced. I wish to point out that every year when the Star Chamber considered whether additional resources were to be allocated in respect of *services*, the amount of allocation was, in fact, determined with reference to the new *posts* to be created for the services. This is indicated:

- ..... (a) in the letter dated 13 September 1996 (Appendix IA) and the fax dated  
..... 20 September 1996 (Appendix IB) on the 1996 Resource Allocation  
Exercise (for new posts to be created in 1997-98); and
- ..... (b) in the letter dated 8 August 1997 (Appendix II) on the 1997 Resource  
Allocation Exercise (for new posts to be created in 1998-99)

from the then Secretary for the Treasury to the Secretary General.

Although the funds finally provided for the LCC were not itemised for specific components, the amount of funds to be allocated was derived by adding together specific components, including cash allowance and 100% of contract gratuities for the new posts (see para. 4.19(c) of the Audit Report). As pointed out in paragraph 4.20(c) of the Audit Report, Audit observed that, notwithstanding that full funding for contract gratuities for the new posts had already been included in the normal funding, the LCS subsequently made a double request for the funding for 85% of contract gratuities per year for such posts.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,



(Patrick K Y LEUNG)  
for Director of Audit

***\*Note by Clerk, PAC: Appendices IA, IB and II not attached.***

財經事務及庫務局  
(庫務科)

香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
(The Treasury Branch)

Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2596 0729  
電話號碼 Tel. No. : 2810 2283  
本函檔號 Our Ref. : FINCR 2/2191/01 Pt 2  
來函檔號 Your Ref. : CB(3)/PAC/R40

19 June 2003

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 40)**

**Chapter 5: Subvention for Staff Emoluments  
of the Legislative Council Commission (LCC)**

Thank you for your letter of 17 June 2003. The information requested by the Public Accounts Committee is set out below.

Item (a)

2. The funding we allocate to the Legislative Council Commission (LCC) under the Resource Allocation Exercise (RAE) process represents the resources supported for new or enhanced services. The resources allocated become part of the one-line vote (OLV) and the LCC has the flexibility to deploy funds among expenditure components in the most economical way as it sees fit, so long as the services are provided as specified in LCC's resource bid. Furthermore, as the LCC is not under the Administration's establishment controls, it determines the staff mix, ranks and grades, and number of posts at its own discretion and has the flexibility to create or delete posts to suit its operational expedience.

Item (b)

3. When LCC submits bids for new resources, apart from justifications for the bids, the amount of new money requested will have to be supported by cost estimates. These may be expressed in terms of staff cost and other day-to-day operational expenses. Staff cost data may include salaries and other salary-related costs such as cash allowance and contract gratuity. All these cost estimates will be taken into account in assessing the amount of resources to be allocated. However, as mentioned in para. 2 above, once the new resources have been allocated for a particular new or enhanced service, the resources form part of the OLV and there is no requirement that the LCC must spend the resources allocated in accordance with the cost estimates in the resource bid.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Sp.' or a stylized version of the name Stanley Ying.

( Stanley Ying )  
for Secretary for Financial Services and the Treasury

庫務局局長  
香港下亞厘畢道  
中區政府合署



SECRETARY FOR THE TREASURY  
Central Government Offices,  
Lower Albert Road,  
Hong Kong.

23 August 1997

Mr Ricky C C Fung  
Secretary General  
Provisional Legislative Council Commission  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

*Dear Ricky*

**1997 Recurrent Allocation Exercise: Recurrent Account**

Star Chamber has decided your global allocation for 1998-99 and the planning totals for subsequent years, as shown at Annex A.

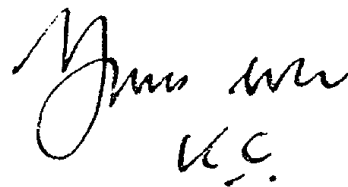
The global allocation for 1998-99 comprises the baseline-plus and an additional allocation by Star Chamber of \$3.76 million for 1998-99 and for the subsequent years. The additional allocation by Star Chamber is earmarked for the purposes specified in Annex B.

Under a one-line vote arrangement, you are, of course, free to deploy resources as you see fit. However, should you redeploy resources from the bids supported by Star Chamber to other purposes, you will not normally be allowed to repeat the request for funds for the same purpose in subsequent years.

The planning totals under the Recurrent Account from 1999-2000 to 2001-02 are indicative only. The cashflow requirements for the period will need to be reviewed in the preparation of next year's baseline-

plus forecast. However, subject to economic and budgetary conditions at the time, it can be assumed that the allocation agreed by Star Chamber will be reflected in the baseline-plus forecast for 1999-2000.

Finally, may I draw your attention to the need to keep the decisions of Star Chamber strictly confidential at this stage so as to avoid any press comment or speculation in advance of the Chief Executive's Policy Address to be delivered to the Provisional Legislative Council in October. I should be grateful if you would ensure that the contents of this letter are treated in strict confidence and made known only to those whose assistance is essential to the preparation of the necessary returns.

A handwritten signature in black ink, appearing to read 'K C Kwong' with a stylized flourish.

(K C Kwong)  
Secretary for the Treasury

c.c. PAS(Tsy)D

**Annex A**

**1997 Resource Allocation Exercise: Recurrent Account**

**Global Allocation for 1998-99 &  
Planning Totals for Future Years**

Policy Secretary/Controlling Officer: Secretary General, Provisional  
Legislative Council Commission

	<b>1998-99 (\$M)</b>	<b>1999-2000 (\$M)</b>	<b>2000-01 (\$M)</b>	<b>2001-02 (\$M)</b>
<b>A. 1997-98 Baseline Outturn</b>	277.660	277.660	277.660	277.660
<b>B. Earmarked Growth</b>	4.115	5.662	7.516	8.753
<b>C. Baseline-Plus (A+B)</b>	281.775	283.322	285.176	286.413
<b>D. Additional Allocation by Star Chamber</b>	3.760	3.760	3.760	3.760
<b>E. Global Allocation (C+D)</b>	285.535	287.082	288.936	290.173
<b>F. Redeployment/savings retained</b>	0	0	0	0
<b>G. Amount available for new or improved services (D+F)</b>	3.760	3.760	3.760	3.760

*Note: The allocations are on the same price basis as the 1997-98 printed Estimates. Price adjustments for the PE and other recurrent components will be made centrally when the Provisional Acceptable Levels (PALs) are issued.*

**Annex B**

**1997 Resource Allocation Exercise: Recurrent Account**

**Initiatives to be Funded by Additional  
Allocation and Savings**

**Policy Secretary/Controlling Officer: Secretary General, Provisional  
Legislative Council Commission**

	<b>Bids Selected</b>	<b>1998-99 (\$M)</b>	<b>1999-2000 (\$M)</b>	<b>2000-01 (\$M)</b>	<b>2001-02 (\$M)</b>
1	Management and development of computerization	0.986	0.986	0.986	0.986
2	Legal service	1.505	1.505	1.505	1.505
3	Research and library service	0.644	0.644	0.644	0.644
4	Public information service	0.625	0.625	0.625	0.625
	<b>Total</b>	<b>3.760</b>	<b>3.760</b>	<b>3.760</b>	<b>3.760</b>