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韓律科女士

韓女士：

審計署署長第四十二號報告書
衡工量值式審計結果

第 2 章：對應用研究基金投資項目的撥款

五月十一日的來信收悉。

我們現依次夾附所索閱的資料，以供參考。由於涉及商業敏感資料，我們已把個別公司名稱及個別人士姓名等資料遮蓋。我們亦已在有關費用或管理協議的具體條款等商業敏感的資料劃上記號，謹請小心處理有關資料。

創新科技署署長

(林植廷 代行)

副本分送：工商及科技局局長

財經事務及庫務局局長(經辦人：王明輝先生)

審計署署長

二零零四年五月十九日

20th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong 香港灣仔皇后大道東二一三號胡忠大廈二十樓
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*委員會秘書附註：(c)項的資料並無在此隨附。

(a) 創業資本基金的一般投資回報年期

- 創業資本基金於美國發展超愈 30 年，是一個極之成熟的市場。
- 若以此作為參考，則根據一些就美國的創業資本基金的研究，也顯示了“有近一半獲得創業資本基金投資的公司，無法把其原有潛質兌現，有近三分之一的公司最終消失於市場”¹。
- 根據美國創業資本基金協會(National Venture Capital Association)的資料，一個較早期的投資(“early stage investment”)往往需要 7 至 10 年才趨向成熟期。若然投資於相當成熟期的公司(“late stage investment”)，則也需“數年”時間。該協會亦指出，創業資本基金一般的周期(life span)為 10 – 12 年。
- 另外亦有美國的學者指出，近年來科技公司以初次公開招股作為變現投資及獲取回報的途徑的中位數年期，已由 1999-2000 年時的 4 年期（很多在當時甚至只有 18 個月），逐漸增加至 2001-2002 年時約 9 年²。這亦反映創業資本基金投資回報的年期在近年來顯著延長。

¹ 資料來源：“The Money of Invention: How Venture Capital Creates New Wealth”，by Paul A Goupers and Josh Lerner, Harvard Business School Press, pg. 28。

² 資料來源：2003 年 4 月 12 日美國全國性報章“USA Today”引述 Professor Jay Ritter, University of Florida。

(b) 有關審計署署長第 42 號報告書

第 2 章：對應用研究基金投資項目的撥款

- 審計署報告書第 2.7(a)段至(e)段所提述的數字，截至 2003 年 12 月 31 日的最新修訂如下：
 - (a) 在 2003 年 12 月 31 日，基金管理公司管理的 23 項投資的估值為 1 億 5,760 萬元，佔投資成本總額的 44%。在這些獲投資公司中，有 6 家公司已清盤或以象徵式的價錢售出。
 - (b) 在餘下 17 項在運作中的投資中，有 1 家公司於 2002 年 5 月在創業板上市，另 1 家公司亦於 2000 年 2 月獲 1 家在香港聯合交易所上市的公司收購，而有 4 家公司則獲本地或海外當局頒授著名的科技獎項。另外，於 2004 年 4 月份，有 1 家公司獲 1 家在 NASDAQ 上市的公司收購。
 - (c) 於 2002 年 12 月 31 日時，當時仍在運作的 16 家獲投資公司除獲得應用研究基金的資金外，亦吸引了總額達 8.7 億元的投資。至 2004 年 3 月底為止，應用研究基金再吸引了 750 萬元共同投資；連同已匯報的 8.7 億元共同投資，目前的共同投資總額約為 8 億 7,750 萬元。此數字較截至 2002 年 12 月底的數字（8 億 7,000 萬元）高約 1%，並約為應用研究基金投資於這些公司的投資額的 2.9 倍。

- (d) 於首次獲應用研究基金投資時，有 14 家獲投資公司屬中小型企業，即只聘用少於 50 名僱員。截至 2003 年 12 月底為止，其中 3 家公司所聘用的人員已超出此水平。
- (e) 在聘用基金管理公司後，獲應用研究基金投資的公司有 23 家，核准投資額達 3.78 億元。此核准投資額比對由前工業署管理的 27 宗個案批出的撥款(即 9,700 萬元)高約 3.9 倍。更重要的是，自 1998 年 11 月在體制上安排以聘用基金經理管理撥款計劃，大大改善了以往由前工業署以公務員處理撥款的缺點：更能積極主動地發掘項目；能更具評審工作所需的商業觸覺和專業知識；資助方式以資本參與而非直接貸款為主；對項目的管理和參與更主動；以及更具為投資安排退路的專才。而且，專業基金經理令應用研究局可更佳地支援獲資助的公司，包括除了向接受投資公司提供技術、管理和市場推廣等各方面的專業知識外，亦能夠協助有關公司建立業務上的網絡，從而令核准項目在技術和商業上變得更為可行。這些貢獻雖然難以量化，但都十分重要和具有影響力。

(d) 市場上的創業資本基金和應用研究基金對比

- 我們希望指出，雖然有市場統計可供參考（例如香港創業資本基金投資組合總值，香港以集資階段計的投放額度，投放予香港公司的融資等），這些統計數字必須小心處理。因為有關何謂“香港的創業資本基金”或何謂“香港公司”，皆沒有很確切的範圍，因而影響有關數字的精確性。
- 應用研究基金和市場提供的創業資本基金很不同。前者只可投資於具有商業發展潛質的科技開發項目和研究發展活動，而又必須和香港有重大關連；後者則可投資於在香港以外的“香港公司”。
- 因應上述理由，我們認為應謹慎解讀下述數字。
- 就我們所知，業內統計顯示於 2002 年年底，香港的創業資本投資組合總值達 108 億 1,700 萬美元¹。
- 但業內資料亦顯示，大概只有 11% 是投放到香港公司²。
- 另外，根據業內統計，大概有 46% 投放於和科技比較有緊密關係的行業³，例如和電腦相關的行業、電子、資訊科技、醫療/生物科技和電訊行業。

¹ 資料來源：Asian Private Equity 300 (15th Edition) : The 2004 Guide to Venture Capital in Asia。

² 資料來源：The 2003 Guide to Venture Capital in Asia。有關數字是指 2001 年。

³ 資料來源：The 2003 Guide to Venture Capital in Asia。有關數字是指 2001 年。

- 在此基礎上，於 2002 年年底香港的創業資本投資組合約有 5 億 4,700 萬美元⁴投放於和科技相關行業的“香港公司”。而相應於 2002 年底應用研究基金的投放，則約為 2,960 萬美元⁵。
- 故此，應用研究基金的投資，約為市場整體的 5.4%⁶。
- 雖然 5.4%這數字可能顯示應用研究基金的投資，只佔創業資本基金投資於科技有關的公司的一個小部份，但我們希望指出，根據業內統計，大約只有 23%的香港的創業資本基金，是投放於種籽或新成立公司的階段⁷，而這個階段的投資，正正是應用研究基金的焦點，也是公共基金如應用研究基金，可以在最關鍵及有用的時刻，以創業資金形式支援及增強任何其它來源的資助。
- 因此，如我們把上述的數字再限定於應用研究基金集中投資的階段，則在 2002 年年底時，投資於香港公司予科技相關的行業，並投資在種籽或新成立公司階段的創業資本基金，大概是 1.26 億美元⁸。而應用研究基金投資，大概佔投資於香港公司予科技相關的行業，並投資在種籽或新成立公司階段的創業資本基金的 23%⁹。

⁴ 547 億美元 = 108.17 億美元 x 11% x 46%。由於未有有關 2002 年的數字，故此我們在此項計算中，引用了 11% 和 46%這兩項屬於 2001 年的數字。

⁵ 見審計署報告書第 2.7(a)段，當中引述了在 2002 年 12 月 31 日，基金管理公司管理的 21 項投資，其估值為 2.31 億港元。

⁶ 5.4% = 2,960 萬美元 / 5 億 4,700 萬美元 x 100%。

⁷ 資料來源: The 2003 Guide to Venture Capital in Asia. 有關數字是指 2001 年。

⁸ 1.26 億美元 = 5.47 億美元 x 23%。由於未有有關 2002 年的數字，故此我們在此項計算中，引用了 23%這項屬於 2001 年的數字。

⁹ 23% = 2,960 萬美元 / 1.26 億美元 x 100%。

(e) 由基金管理公司管理的六個最成功投資項目

- 現付上由基金管理公司管理的六個最成功投資項目的詳細資料。
- 就應用研究基金投資項目脫手的時機，以及投資項目可否為基金帶來回報，我們認為是難以預測。把有關投資項目脫手的時間及其結果受多個因素影響，如商業周期、金融市場環境、科技市場表現及全球經濟走勢等。
- 正如我們就(a)項的答覆所述，初次公開招股是把創業投資項目脫手的重要途徑，最近以科技為本的公司要發展至初次公開招股階段的年期中位數，已延長至約九年之久。不過，應用研究局已於相關的管理協議中訂明，基金管理公司須在合理範圍內盡其能力，確保在管理協議屆滿之前所有投資項目均須變現。正如審計報告第 3.6 段指出，現行管理協議到 2007-08 年度將會屆滿。

應用研究基金 六個最成功案例

個案 A

- 基金管理公司於 1998 年 11 月建議應用研究局投資 A 公司；該投資被認為符合應用研究基金的公眾使命。
- 在應用研究局投資時，A 公司是一家網絡設備分銷商。
- 隨著應用研究局於 1998 年投資後，A 公司成功轉型，成為網絡基礎建設集成系統供應商，並在網絡軟件方面擁有良好的研發能力。
- 於 2002 年 5 月 17 日，A 公司於創業板上市，是應用研究局首間公開上市的獲投資公司。而初次公開招股一般被認為是創業基金投資的重要里程碑。
- A 公司目前正致力發展新一代網絡，把聲音、數據、圖像的傳送結合於同一網絡，有潛力成為未來通訊行業的新模式。
- A 公司獲得應用研究局投資共 4,670 萬元；已套現 3,040 萬元。

個案 B

- 基金管理公司於 1998 年 11 月建議應用研究局投資 B 公司，該投資被認為符合應用研究基金的公眾使命。
- B 公司是從事即時金融報價系統及證券交易系統服務，可供專業投資者透過互聯網及專線獲得有關金融資訊，包括上市公司資料、恆生指數及期貨、股票報價、中英文財經新聞及評論等。
- 於 2000 年 2 月，B 公司獲得另外一間於香港聯合交易所上市的公司收購。該公司是從事銷售傳呼機、資訊機及財經資訊服務。而獲創業基金投資的公司，能夠為上市公司收購，一般被認為是達到重要的里程碑。
- 應用研究局就此項投資的核准撥款額為 800 萬港元。

個案 C

- 基金管理公司於 1999 年 3 月建議應用研究局投資 C 公司，該投資被認為符合應用研究基金的公眾使命。
- C 公司從事開發增強數據庫性能的軟件工具。
- C 公司於 1999 年贏得由香港電腦協會頒發的「資訊科技卓越成就產品組金獎」及於 2000 年贏得「香港工業獎：科技成就」獎項。C 公司亦於 2000 年榮獲美國創業培育中心協會頒發的「2000 年培育計劃卓越大獎（畢業成員組）」，成為首家非美國公司獲此殊榮的公司。
- 2004 年 4 月，C 公司被一家於美國 NASDAQ 上市的公司收購。該美國公司主要從事開發與銷售增加應用軟件及數據庫性能的軟件工具。該公司 2003 年的營業額約為 3 億美元，市值約 12 億美元。在收購 C 公司後，該美國公司計劃將部份數據庫性能軟件的開發工作集中在香港。
- C 公司獲得應用研究局投資共 2,459 萬元。

個案 D

- 基金管理公司於 1998 年 12 月向應用研究局建議投資 D 公司，該投資被認為符合應用研究基金的公眾使命。
- D 公司是從事開發語音識別系統。
- D 公司在 1999 年應用研究局注資時，D 公司全年營業額約為 65 萬美元，截至 2003 年 12 月，D 公司在 2003 年度營業額增至每年約 130 萬美元。
- D 公司作為先進的多語種交談式語音技術的提供商，其開發的語音識別系統技術曾經獲得獎項，包括「2001／02 年度新加坡國家資訊通訊獎」，及「2001 年度亞太資訊及通訊大獎」。
- 這些獎項主要是表揚 D 公司在國際語音技術領域的創新和貢獻及肯定其在市場上的地位。
- D 公司獲得應用研究局的核准投資約為 2,416 萬港元。

個案 E

- 基金管理公司於 2002 年 8 月建議應用研究局投資 E 公司，該投資被認為符合應用研究基金的公眾使命。
- E 公司從事研究有關人體血漿內的遺傳基因物質的檢驗，這些血漿基因對於檢驗和診斷多種癌症、懷孕期的疾病及其他病情等，均是非常有價值的。例如，E 公司的技術可用於無創傷性懷孕期測試，來偵查胎兒疾病。
- E 公司的技術源於大學的科研。現時 E 公司繼續開發先天性及其他癌症疾病診斷及測試。E 公司是一個投資例子，透過應用研究基金幫助大學的科研技術商品化。應用研究局投資 E 公司時，該公司的營業額約為 85 萬港元，而在 2003 年時，營業額約為 180 萬元。
- 應用研究局就 E 公司的核准投資為 1,170 萬港元。

個案 F

- 基金管理公司於 1999 年 7 月建議應用研究局投資 F 公司，該建議被認為符合應用研究基金的公眾使命。
- F 公司是從本地一所大學衍生出來的科技公司，從事電子資訊匯集及發放以中文為本的電子資訊內容。在應用研究局投資至今，F 公司的營業額由 69 萬元，擴展了約 40 倍至 2003 年的 2,800 萬元。F 公司的中文電子剪報服務，亦相當普及。
- F 公司是一個投資例子，透過應用研究基金幫助大學的科研技術商品化。
- F 公司獲得應用研究局投資共 3,384 萬元。

**(f) Minutes of meeting of
the Applied Research Council (ARC)
held on 15 September 2000
related to Case A**

(b)

9. pointed out that two investee companies managed by were experiencing difficulties. They were I and and the details had been set out in the covering paper. She drew Directors' attention that that the Council had lost a total of \$23 million in Besides, had proposed to sell off the Council's shares in as soon as practicable and this could mean another loss of \$12 million. commented that those were serious cases and Directors might wish to gather more information from representative and decide whether any actions would be needed.

of attended the meeting for this item]

10. briefly reported to the Directors the latest position of the investee companies managed by

11. Directors asked for more information on the three problematic cases, i.e. and On , Directors asked the details of the market change that had caused a failure of the company and how had come to the conclusion that we should sell the company. Directors further asked why was willing to buy if the company had no future as commented by Moreover, Directors considered that even if the Council did not sell our shares, it would not make any difference to the Council in terms of liability and financial outcome, i.e. the Council would lose all our investments in the company. Besides, Directors asked why had not provided any details to the Council before or after that major decision to sell the Council's shares. said that she had not been involved in the handling of this case personally and therefore did not know the answers to such detailed questions. But, she remarked that the situation for had developed in a very short period of time and it had not been possible for them to inform the Council beforehand.

12. On , Directors asked why had held back their decision in investing in the company. Directors also asked why had valued the Council's shares in this company at zero and would like to know whether / was very pessimistic about the situation. explained that a new business model was being tried out in this company and / would only sell the Council's shares if the new model was not working. In the meantime, / had to be cautious and had therefore valued the Council's shares at zero.

13. On , Directors asked why the company required as much money as \$90 million to support its activities from end June to end 2000. / undertook to check and revert.

14. / also asked for clearer information on the calculations of internal rates of return.

15. In response to question on what / had learned from those problematic cases, / indicated that the lesson for them was that they would have to monitor the spending of their investee companies more closely. / remarked that it was a surprise to him that /, which was such a well-established company, still needed to go through such experience to 'learn' this lesson.

16. In response to / question on whether / had any new investment plans in the near future, / indicated that there was nothing concrete at the moment. / asked whether

Executive Director of / would be available to give a more detailed account of the events to the Council. / indicated that / would be back to Hong Kong the following Wednesday. / suggested and Directors agreed that should withhold all new investments until the Council had been provided with details of the problematic cases and were satisfied with the explanations.

[/ left the meeting.]

17. Directors were very concerned with the three problematic cases and that the Council had not been consulted or informed of the major decisions (such as selling our shares in /) in a timely manner. / clarified that the agreement provided the fund manager with the full discretion to make any changes to the investments so long as

the public mission was not affected. But, she also found it highly undesirable that / did not inform the Council or even the of the incident immediately after their major decision about had only come to know the incident when she was reading the normal quarterly report. She further disclosed that unlike other fund managers, / maintained little day to day contacts with the Secretariat. / also pointed out that he had gathered from the newspapers that had moved its operation to the USA and this appeared to be in breach of the public mission. Besides, / pointed out that while / mentioned in their report that the Council had only invested \$16 million in /, the Council had indeed invested a total of \$24 million.

18. / also pointed out that the quality of work was not satisfactory. For example, the financial reports of some investee companies in / quarterly reports contained so little information that it was hardly useful to the Directors.

19. / considered that we now had a *prima facie* case for possible breach of the Council's trust on / and the Council should intervene despite the agreement provided for much discretion to fund managers. He suggested and some Directors agreed that the Council might have to consider requesting / to seek the Council's prior approval before making any major decisions such as buying or selling shares. / also considered that we might need to make it a condition for our fund managers that the Council should only put in our investments until all the other co-investors had done so.

20. Directors agreed that the situation was serious and that / should be asked to submit a detailed report on the three problematic cases in three weeks' time. An emergency meeting should be held with / presence to discuss the detailed reports in one month's time. Until and unless the Council was satisfied with / explanations, / should not be allowed to make any new investments. Directors also requested that the Secretariat provide background papers on how the three cases had been approved in the first instance.

(Action :)

21. While Directors recalled that when our fund managers were appointed, / was supposed to assume the more risky businesses while / was more on traditional technology companies, / asked whether we should revise our guidelines for the fund managers so

as to prescribe the level of risks that our fund managers could take on.

22. suggested and Directors agreed that the Secretariat write to pointing out the problems and that the Council was not satisfied with its performance. The Secretariat should take a fairly firm position.

**(f) Minutes of meeting of
the Applied Research Council (ARC)
held on 30 October 2000
related to Case A**

_____ briefed the Directors on the purpose of this emergency meeting. At the last meeting in September, the Directors noticed that three investee companies managed by _____ had experienced difficulties. However, the representative of _____ was not able to provide satisfactory explanations to the Directors. Therefore, it was decided that Mr. _____, Executive Director of _____, should come for an emergency meeting to explain the details to the Directors.

2. _____ commented that it was obvious that _____ was not performing a proper monitoring work. He invited the Directors to exchange ideas on what questions to ask Mr. _____ before inviting him to join the meeting.

3. Mr. _____ said that the mission of ARF was to fund Hong Kong-based technology start-ups. Taking _____ as an example, the company had invested little in technology development and he was not sure why funding had been approved for this type of company. He also asked whether the marketing activities, which was strictly speaking not related to technology development, should be funded. _____ explained that the original ambit of the Council was to fund R&D activities in the manufacturing sectors. But, given the change in our economic structure, starting from 1998-99, internet-based companies had also been considered. After the appointment of fund managers, the focus of the ARF was on the whole portfolio of investments. So, human resources development and marketing were also supported. _____ added that it was true that _____ focused on investing dotcom companies and it seemed to him that the most important concern for ARC at the moment was the monitoring of the remaining investee companies managed by

4. _____ pointed out that the most unsatisfactory point was this Council had not been kept informed in a timely manner.

_____ reported that _____ had admitted that _____ had not been communicating well with the Council. _____ said that the Directors might also ask for account statements or audit reports of _____ to see if the company was still in a sound financial position as _____ might have also invested into the three problematic companies.

[attended the meeting]

5. [] admitted that there had been a lack of communication between his Company and the Council but he stressed that things had been moving very fast. On [] ; [] explained that it had also been a hard time for []. They evaluated the company as the superstar of their portfolio especially when [] and [] had also invested in []. They had planned to list the company in March – June 2000. He admitted that as they evaluated the company positively, they allowed it to spend ahead of time and it had proved to be a wrong bet.

6. [] asked when [] had first discovered the problem. [] replied that it was March – April 2000 when the revenue had been flattening out. However, at that time their investment evaluation had mainly been on the technology but not the revenue. Moreover, it was quite beyond the expectation of [] ; Board that the Company had to spend around US\$3 million to settle a legal and accounting bill relating to an acquisition. [] asked whether the Council had been put in a similar position as the other investors of []. [] replied that all investors had been treated equally.

7. On [] said that [] had signed agreements with [] and [] and everything had been fine. But the two companies had not kept their promise to invest into []. [] had been talking to the lawyers to sue the two companies concerned. [] asked when [] sensed that there might have been some troubles. [] replied that it was in March 2000 when [] dragged on their investments for three to four months and suggested putting in shares and services instead. In response to []'s query, [] had also explained briefly the reasons that he had gathered as to why [] had changed so suddenly.

8. On [] said that the company was doing well in developing convenient internet plugs for the hotel industry. They had managed to obtain master contracts with major hotel groups. However, the time needed to raise funds had been longer than expected and the company was running out of cash. The company was at the risk of not being able to honour their commitments in the contracts. Therefore, [] would propose to the Council to inject bridge loan at the third round financing for [] shortly.

9. noted from the latest figures of] that the revenue for the company was so low that the company would not be able to pay off their investments. He was worried that when 3G came, the entire investment would be totally wasted. He therefore did not consider that the company was in a financial healthy situation.] further asked if the Council could sell its shares to other investors with some discount.

replied that it was possible but would probably hurt the company since other investors would lose confidence in the company.

asked about the chance for other investors to invest if ARC invested in the third round financing. replied that ARC was the largest investor at the moment and another existing shareholder] had indicated that they would also invest about HK\$8 million. Other new investors like , would put in money.

10. I asked about the minimum amount of money that would be needed to be invested in before the company could become viable.] replied that it would need about \$234 million to complete the next round of financing. When asked by] indicated that he was reasonably confident that the \$234 million would be forthcoming. In particular, the financing was overseen by I which had never failed though he admitted that nothing had been signed at the moment.

11. : asked why the company needed so much money for bridge financing.] replied that the company had all along run on a minimal subsistence level and it was not installing new hotel rooms. The company was running the danger of violating their contracts with the hotels. The company had also stopped sales and marketing activities. The bridge financing would be able to help the company to fulfill the minimum obligations.

12. commented that it was a sign of bad management as the company took on a very high burn rate before they were sure of the outcome of the next round of financing.] commented that it would not be useful to provide just \$2 million if it did not help the company to reach the critical point. responded that it was likely that the breakeven point would happen in April 2001. In response to] ,] responded that 's revenue in Q3 2000 was about \$8-9 million because of the large number of hotels installed in March/April 2000. suggested spending more time to work on this proposal before submitting it to the Council.

13. I asked if was happy with the management of

the ARC cases. _____ indicated that he was reasonably happy with the _____ case. For _____, he considered that the _____ Board was to be blamed. In response to _____'s question as to how much time _____ spent on monitoring the cases, _____ clarified that he did not travel much. He sat on the boards of five to seven investee companies and in particular on the boards for _____ and _____.

The boards normally met on a monthly or quarterly basis.

_____ also got accounting staff to monitor the accounts and cashflow of the investee companies. They also got six investment staff in Hong Kong.

14. _____ asked for the current situation of other investments. On _____] _____

_____ replied that they managed to bring in investors from Beijing and it seemed that the company would soon be ready to go public. He considered that the company was substantially a profitable company and there was no need for new money at the moment. The problem was how to enable it to grow fast enough as the company had more projects than they could probably handle and they might need more money in future. At the moment, the company needed to conserve cash and be more prudent in their expansion plan. _____ had been approached by a large system integrator for acquiring the entire company and the negotiations had started.

15. _____ pointed out that it might be difficult for _____ to penetrate the Mainland market. The majority of the banks there were happy with the proprietary products which were fine for day-to-day operations. He had also gathered that the CEO and most of the staff of _____ had left the company and he was not sure whether the skills could be retained.

[_____ left the meeting]

16. _____ asked which investments _____ considered to be the most successful. _____ replied that they were _____ and (formerly known as _____) which had the best valuations.

17. As regards _____ asked whether the Council could sell our shares. _____ said that we could but he was disappointed with _____ and a proper listing might be done for _____ later. On _____, I _____ said that the company was growing slowly and _____ was helping it to strengthen its sales and marketing by bringing in a sales director from _____ and a marketing manager from _____

18. _____ asked how A would improve the situation in the future. I said that they would tighten up the monitoring work. They had started to monitor and police the financial side of the investee companies four months ago. In the past, they just monitored the operation side. Moreover, they would not allow investee companies to spend aggressively as the ability to raise money could be seriously hampered by the market situations.

19. _____ asked whether A itself was involved in the problematic investments. _____ said that for the fund called , managed by / , out of the fund size of US\$1 million, US\$ million came from the staff and management of . This Fund had been able to yield a return which was more than the losses. As regards another fund called , managed by / , out of the fund size of US\$ million, US\$ million came from / ; staff and management. At present, again, the return was more than the fund size.

20. _____ further asked how the communications between A and the Council could be improved. He also requested for more frequent reports. _____ responded that they could prepare exceptional reports to the Council when there were major events such as writing off an investment, public offering or another round of financing. Also, as discussed with the / , he could come to the ARC Board Meetings quarterly instead of half-yearly.

21. _____ requested that , alert the Directors whenever there were irregularities even when the situation was fluid. They should provide a 2-3 page summary to the Secretariat who would then circulate it to the Directors. I agreed and indicated that he would work out a proper format.

22. I requested , to have a tighter control on the financial situation of the investee companies and _____ should provide the information to the Council on a regular basis. further requested that the financial information be presented in a way that was more easily understood by laymen and that the issues of interest to the management should be highlighted.

23. _____ suggested _____ to have a better support from his own company. When his colleague I came to the meeting last time, she was not able to give proper answers to the questions raised.

[I left the meeting]

24. commented that / was a small firm with poor management. When the industry flourished, they were very busy in finding new investments but overlooked the monitoring work of the existing investments. further said that it was obvious that the reports on the problematic cases had just come too late.

25. _____ said that for t, it had come to his knowledge that it had planned to go for IPO but had recently withdrawn and would turn to ARC for another round of financing. , said that it indicated that the company had no underwriter at the moment and it was a bad sign. He further added that he was not convinced of the business model of:

26. I asked if / knew that the mission of ARC was to assist Hong Kong-technology companies but not to earn large sums of money. said that had not done anything wrong purely from a profit-making point of view. In response to some Directors' suggestion to maintain a tighter control over indicated that it was stated in our agreements with the Fund Managers that the Council would only comments on the public mission but not the revenue model of a proposed investment. said that the interpretation of public mission should give the Council sufficient leeway to comment on the proposals. But, I opined that if the Council should only assess the public mission, Directors should not look at the investment details then. However, considered that it would be more prudent for Directors to raise objections to the proposed investments if we found anything wrong.

27. considered that the Council should now consider how to exercise control on / and whether its new investments should be freezed. I said that as bound by the Agreement with n, the Council could not freeze any proposed investments put forward by . However, a closer monitoring of its work was necessary. also added that the Council should be careful in handling the matter to avoid projecting a negative image on the Council.

28. After some discussions, it was agreed that a consensus would be needed from the Directors before any approval for new or follow-on investment proposal from was granted. If such a consensus could not be reached, an urgent meeting should be held to resolve the matter. Also, should come to the Board meeting quarterly.

asked that a letter be sent to [redacted] informing him of the decision of the Council and urged him to improve communications with the Council in future.

(g) (i) 個案 A：共同投資建議書內有否和如何推行措施，
以解決在初步投資建議書中聲明的利益衝突問題，
以及相關管理協議內的共同投資條文應如何執行

處理共同投資建議及利益衝突的制度

- 就制度和程序而言，管理協議規定基金管理公司可自行或替其他客戶在任何投資項目進行共同投資，惟該項共同投資必須按照適用於有關投資項目的相若商業條款進行。
- 管理協議亦規定基金管理公司不得違反的事項，包括在未得應用研究局事先書面同意及批准的情況下，不得把應用研究基金投資到已由同一基金管理公司管理的其他投資項目，而該局不會無理拒絕請求。
- 就應用研究局較早時期於 1998 年 11 月簽訂的三份管理協議而言，當中並沒有要求共同投資。但是，當應用研究局於 2000 年 3 月聘用第四個基金經理，有關的管理協議則訂明要求有共同投資。
- 透過管理協議，應用研究局委任基金管理公司，而基金管理公司亦同意按照管理協議的條款以應用研究基金的管理公司的身分行事。
- 根據相關的管理協議，基金管理公司必須在合理範圍內盡其能力，在處理應用研究基金及／或投資項目時，以符合該局最佳利益的方式行事。

- 此外，根據管理協議，基金管理公司獲授權限、權力及權利，代表應用研究局負責以其名義購買或以其他方式收購、或出售、處置、轉換或更改投資項目，又或在有關投資項目進行注資等。
- 因此，應用研究局與基金管理公司的關係是建立於雙方誠信的基礎上。應用研究局的角色是保持監督角色，以及監察基金管理公司的表現。該局信任其基金管理公司，並不干預基金管理公司的管理細節。

個案 A

- 基金管理公司已於一九九九年七月的初步投資建議書中就多項事情作出聲明，當中包括：
 - (a) 希望透過由 X 及 Y 組成的第三方領導投資集團所定立的條款及條件，共同投資到公司 A，藉以解決利益衝突問題；以及
 - (b) 不會“參與 X 及 Y 就訂立條款及條件所進行的商討…”。
- 基金管理公司擬利用由 X 及 Y 組成的第三方資金來源進行共同投資，是一項作為解決潛在利益衝突的機制。

- 另一項擬解決潛在利益衝突的措施，是由兩個第三方領導投資集團 X 及 Y 商討投資事宜的條款及條件。
- 鑑於上述保障措施，應用研究局董事局當時對建議投資項目並無懷疑。
- 在一九九九年七月至九月的季度報告中，基金管理公司匯報“在九月，我們(即基金管理公司 A)已完成 … 公司 A … 的投資。”¹ 而在一九九九年十月至十二月的季度報告中，基金管理公司匯報“在一九九九年九月，應用研究局已把 1,600 萬港元的投資金額悉數投入公司 A。X 及 Y 亦已在同一輪集資活動中各投資了 1,600 萬港元”²。由此可見當時的確有其他資金來源共同投資。
- 應用研究局核准注入公司 A 的初步投資金額為 1,600 萬港元，佔該公司 8.93% 股份³。X 及 Y 亦各自持有公司 A 的 8.93% 股份。⁴ 根據個案 A 的跟進投資建議書，X 及 Y 各自持有公司 A 的 8.93% 股份⁴。
- 審計署報告書指出，公司 A 的另一股東提出接管該公司的收購建議，而基金管理公司以 1 美元的價錢，把應用研究局擁有的

¹ 見相關季度報告的第 2 頁。

² 見相關季度報告的第 9 頁。

³ 見二零零四年五月七日提交政府帳目委員會有關個案 A 的跟進投資建議書第 3 頁，應用研究基金所佔的 8.93% 數目。

⁴ 在二零零四年五月七日提交政府帳目委員會有關個案 A 的跟進投資建議書版本中，X 及 Y 的名稱已經遮蓋。

公司 A 股份出售⁵。應用研究局董事局曾於二零零零年九月十五日討論基金管理公司就二零零零年四月至六月所撰寫的季度報告，而基金管理公司當時在報告中匯報，收購條款對所有股東均為相同⁶。根據同一份季度報告，收購公司 A 的股東亦建議向公司 A 注資 500 萬美元，以承擔所有股份交易的一切責任和負債。當時公司 A 仍然欠債 400 萬美元。⁷

- 應用研究基金的公眾使命是資助科技企業推行具有商業發展潛質的科技開發及科研項目，從而刺激本港的科技發展。由這個角度出發，倘若基金管理公司是按照當時的市場情況作出專業判斷，把應用研究局的股份以象徵式價錢售予買家，而不選擇把公司清盤，則該公司及有關人員仍有繼續發展的機會。
- 基金管理公司 A 的管理協議並無訂立共同投資的規定。
- 倘若基金管理公司嚴重觸犯管理協議內的任何條文，或未能執行和履行其主要的職責或義務，應用研究局可終止管理協議。
- 就個案 A 而言，應用研究局董事局認為個案並無涉及任何刑事或欺詐成份，但卻對有關基金管理公司的實效表示關注。該局已採取行動，終止管理協議，該基金管理公司亦於二零零二年五月起停止代表應用研究局管理應用研究基金。

⁵ 見審計署報告書第 16 頁 (j)(iii)項。

⁶ 見相關季度報告的第 9 頁。

⁷ 同上。

(g)(ii) 就個案 A 及 B 當局已經
和將會採取的跟進行動

個案 A

- 如審計報告所述，應用研究局曾召開董事局會議討論此事。其後該局與基金管理公司也就此事進行了多次討論。
- 討論引發的跟進行動，當中包括應用研究局秘書處向基金管理公司 A 發出函件，向該公司表示應用研究局對此事的關注（附件 A）；董事局亦同意探討與基金管理公司 A 解除合約的可能性（附件 B）；同時該局亦向基金管理公司 A 再發出另一函件，對其表現表示非常關注（附件 C）。
- 應用研究局董事局認為個案並無涉及任何刑事或欺詐成份，但對基金管理公司的實效表示關注。
- 應用研究局採取行動終止有關管理協議，由二零零二年五月三日起，該基金管理公司終止代表應用研究局管理應用研究基金（請見附件 D的新聞公報）。

個案 B

- 至於處置個案 B 一事，我們認為基金管理公司是根據其對市場環境的專業判斷而處理有關項目。

- 基金管理公司 B 於二零零三年四月三十日向應用研究局董事局匯報有關處置基金事宜。董事局認為個案 B 並無涉及任何刑事或欺詐成份。
- 應用研究局秘書處也曾要求基金管理公司 B，就有報導表示公司 B 成功吸引了來自美國的投資 1,600 萬美元¹，作出解釋。基金管理公司 B 於二零零三年十月二十九日向應用研究局秘書處解釋有關情況（附件 E），並於二零零三年十一月十七日與秘書處會面。
- 公司的解釋重點如下：報章報導中所提及的投資 1,600 萬美元，並非注入公司 B 的新資金。該筆資金是用以向一家新公司提供備用資金，因為在未來 24 至 36 個月，該公司在經營時可能會出現虧損。該公司員工由公司 B 的創辦人組成，以嶄新的商業策略從事截然不同的產品業務，以美國的有線系統業者為顧客對象。簡而言之，該筆 1,600 萬美元的投資不應被視為公司 B 的估值。
- 無論如何，應用研究局在過往兩年已採取行動，修訂管理協議條款，務求更妥善保障應用研究局，其中包括減少管理費用；應用研究局可給予預先通知，然後收回所有尚未動用／未定用途的基金；以及應用研究局有絕對酌情決定權，否決任何投資建議。（請閱載於附件 F的管理協議及補充協議）。

¹ 見審計報告第 25 頁項目(p)。

其他跟進行動

- 應用研究局曾與現時的基金管理公司討論，研究如何加強對基金管理公司處置其管理的投資項目的管制（請見附件 G）。應用研究局會在適當及必要的範圍內，考慮市場慣例。
- 其中一家基金管理公司已原則上同意加強對基金管理公司處置其管理的投資項目的管制(附件 H)。截至二零零四年五月十九日為止，我們仍在草擬所需的法律文件。
- 應用研究局會在切實可行的範圍內盡快與各基金管理公司議定有關事宜。

完

*委員會秘書附註：附件 A 至 H 並無在此隨附。

(h) 遵從相關管理協議的共同投資條文

- 就制度和程序而言，管理協議規定基金管理公司可自行或替其他客戶在任何投資項目進行共同投資，惟該項共同投資必須按照適用於有關投資項目的相若商業條款進行。
- 管理協議亦規定基金管理公司不得違反的事項，包括在未得應用研究局事先書面同意及批准的情況下，不得把應用研究基金投資到已由同一基金管理公司管理的其他投資項目，而該局不會無理拒絕請求。
- 就應用研究局較早時期於 1998 年 11 月簽訂的三份管理協議而言，當中並沒有要求共同投資。
- 但是，當應用研究局於 2000 年 3 月聘用第四個基金經理（即下述以及審計報告提及的基金經理 B），有關的管理協議則訂明要求有共同投資。
- 以個案 B 為例，有關的管理協議規定要有共同投資。根據個案 B 的原定投資建議書，由該基金管理公司管理的另一基金（並非應用研究基金）將會作出共同投資¹。在二零零零年十月至十二月的季度報告中，基金管理公司匯報，應用研究局已向公司 B 投資 100 萬美元，而由該基金管理公司管理的另一個基

¹ 請參閱二零零零年十二月十三日的原定投資建議書第 1 頁(c)段，該建議書已於二零零四年五月七日提交政府帳目委員會。該建議書顯示應用研究局於注資後將持有 166,667 股(即 1.57% 股份)；而由該基金管理公司管理的另一基金（並非應用研究基金）共同投資而持有的股份數目於注資後將為 416,667 股(即佔 3.94% 股份)。在二零零四年五月七日提交政府帳目委員會的版本中，該基金管理公司的名稱已經遮蓋。

金，亦以同等條款向公司 B 投資另外的 250 萬美元²。

- 個案 B 的跟進投資建議書所述情況相若。根據該份跟進投資建議書，由該基金管理公司管理的另一基金(並非應用研究基金)將會作出共同投資，金額為 100 萬美元³。在二零零二年一月至三月的季度報告中，基金管理公司匯報“在這一輪與……的集資項目中，我們共籌集了 400 萬美元，X 基金⁴注入資金 100 萬美元，而應用研究基金亦注入資金 100 萬美元”⁵。應用研究局並無特別理由去懷疑該基金管理公司有否遵從共同投資的條文。
- 不過，若有懷疑，應用研究局會以其認為適合的方式採取行動，例如拒絕投資建議，倘若基金管理公司嚴重觸犯管理協議內的任何條文，或未能執行和履行其主要的職責或義務，應用研究局可終止管理協議。

完

² 請參閱有關季度報告的第 4 頁。

³ 請參閱二零零二年二月一日的跟進投資建議書第 1 頁第三段，該建議書已於二零零四年五月七日提交政府帳目委員會。建議書提及“… 將承擔 100 萬美元。…的投資委員會已批准進行本投資項目。”作出這項投資的是由該基金管理公司管理的另一基金(並非應用研究基金)。在二零零四年五月七日提交政府帳目委員會的版本中，該基金管理公司的名稱已經遮蓋。

⁴ “X 基金”是由有關的基金公司所管理的另一基金(並非應用研究基金)。

⁵ 請參閱有關季度報告的第 2 頁。

(i) 提高應用研究基金剩餘資金的回報率

- 正如審計署報告書第 4.6 段所述，創新科技署已表示願意就超出必要的流動現金水平的資金，考慮審計署以提高應用研究基金剩餘資金的回報率的建議。
- 我們現正考慮聘用專業投資公司負責管理剩餘資金的可能性。但我們初步認為，雖然這方案有其可能性，我們亦關注實施此方案除要支付聘用專業投資公司的成本外，亦有可能同時令基金承受風險。我們認為需要進一步仔細分析。以決定是否採納此方案。
- 應用研究局在考慮如何提高應用研究基金的剩餘資金的回報率時，會考慮各種因素，例如期望回報，承受風險的能力、相關的成本費用以及所需要的資金流動性。該局在這些因素上需要求取最佳平衡，以最乎合基金的運作、性質和目的為依歸。應用研究局可能考慮把現行以銀行存款方式處置剩餘資金的方法多元化，例如考慮債券，存款證或外匯基金票據。這些將需要與應用研究局再進行分析和商討。我們希望能在切實可行的範圍內儘快就此事宜作出決定。

完