

**REPORT OF THE
PUBLIC ACCOUNTS COMMITTEE
ON
THE REPORTS OF THE DIRECTOR OF AUDIT
ON
THE ACCOUNTS OF THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
FOR THE YEAR ENDED
31 MARCH 2008
AND THE RESULTS OF
VALUE FOR MONEY AUDITS (Report No. 51)**

February 2009

P.A.C. Report No. 51

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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 Philip WONG Yu-hong, GBS

Deputy Chairman : Hon Paul CHAN Mo-po, MH, JP

Members : Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Starry LEE Wai-king
Hon WONG Yuk-man

Clerk : Ms Miranda HON Lut-fo

Legal Adviser : Mr Arthur CHEUNG

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
- (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. **Confidentiality undertaking by members of the Committee** To enhance the integrity of the Committee and its work, members of the Public Accounts Committee have signed a confidentiality undertaking. Members agree that, in relation to the consideration of the Director of Audit's reports, they will not disclose any matter relating to the proceedings of the Committee that is classified as confidential, which shall include any evidence or documents presented to the Committee, and any information on discussions or deliberations at its meetings, other than at meetings held in public. Members also agree to take the necessary steps to prevent disclosure of such matter either before or after the Committee presents its report to the Council, unless the confidential classification has been removed by the Committee.

3. A copy of the Confidentiality Undertaking signed by members of the Committee has been uploaded onto the Legislative Council website.

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

- the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2008; and
- the results of value for money audits (Report No. 51),

which were tabled in the Legislative Council on 26 November 2008. 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*.

5. In addition, this Report takes stock of the progress of the action taken by the Administration on the recommendations made in the Committee's Report Nos. 48, 49 and 49A and offers the Committee's views on the action taken. These are detailed in Parts 3, 4 and 5 of this Report.

6. **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.

Laying of the Report Report No. 48 of the Director of Audit on the results of value for money audits was laid in the Legislative Council on 18 April 2007. The Committee's Report (Report No. 48) was subsequently tabled on 11 July 2007, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 48 was laid in the Legislative Council on 17 October 2007. A progress report on matters outstanding in the Government Minute was issued on 29 October 2008. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 7 below.

Administration of short term tenancies
(Chapter 1 of Part 4 of P.A.C. Report No. 48)

3. The Committee was informed that:

- the Government had accepted all the recommendations made by the Director of Audit concerning administration of short term tenancies ("STTs") and had actively responded to them. The progress was reported to the Panel on Development of the Legislative Council on 23 October 2007; and
- most of the recommendations had been implemented. However, there were three recommendations where action was reported to be ongoing, namely: (a) requiring a personal guarantee from a shareholder or director of the company interested in taking up an STT; (b) requiring STT tenderers to provide a statutory declaration of the ownership and directorship of all related companies including those registered overseas; and (c) seeking legal advice on the way forward to share tenants' information among relevant government departments. The Lands Department had considered the implementation issues internally and had sought further advice from the Department of Justice ("D of J"). The Administration would consider how to take these recommendations forward after consulting the D of J.

4. The Committee wishes to be kept informed of the progress of the various courses of action taken by the Administration.

Management of government fresh food wholesale markets
(Chapter 3 of Part 4 of P.A.C. Report No. 48)

5. The Committee was informed that:

Letting of market facilities

Vacant stalls at Cheung Sha Wan Wholesale Food Market ("CSW Market") and Western Wholesale Food Market ("Western Market"); poultry market at Western Market; and letting of market facilities

- the Agriculture, Fisheries and Conservation Department ("AFCD") had continued to implement a series of measures to improve the vacancy position at government wholesale markets. These included:
 - (a) extending uses of vacant egg and fruit stalls to include wholesaling of canned food, kitchen utensils and fruit associated products;
 - (b) widening vacancy advertising coverage through the AFCD's homepage, postings at all government wholesale markets, and quarterly advertisements through wholesale trade organisations and major local newspapers; and
 - (c) arranging for alternative uses of long-standing vacant facilities by other government departments and public organisations through the Government Property Agency ("GPA");
- through the above efforts, the AFCD had rented out 22 of the 99 previously vacant stalls. It had also allocated the vacant poultry market at Western Market to the Hongkong Post as a Speedpost and regional delivery centre;

Four unused market piers at Western Market

- as for the unused piers, the GPA had assessed the commercial viability of disposing the piers through commercial leasing. The assessment revealed that commercialisation would not be viable because of insufficient demand, and high repair and maintenance costs. The Administration was considering demolition of the four piers to save recurrent costs. To this end, the AFCD consulted the wholesaler representatives through the Western Market's Market Management Advisory Committee ("MMAC") in late July 2008. The MMAC was generally supportive of the demolition. The Food, Environment, Hygiene and Works Committee of the Central and Western District Council ("DC") also noted the proposal in early September 2008. The AFCD would further consult the Sub-committee on Harbour Plan Review of the Harbour-front Enhancement Committee ("the HEC Sub-committee") on the proposal;

Collection of rentals

- the AFCD expected to see increased recovery of operating costs with its effort to improve stall vacancy rates. In addition, the AFCD had revised the "Guideline on Recovery and Writing off of Overdue Rents for Government Wholesale Food Markets" with a view to clearly stating how AFCD staff should closely liaise with the Department of Justice ("D of J") and follow up on overdue cases. Out of the 84 cases and \$6.4 million outstanding rental payments recorded at the time of the audit study, 45 cases had either fully repaid, or started repaying in parts or by instalment their outstanding rent, totalling some \$2 million. Another 25 cases involving around \$2.4 million had been written off, primarily because the debtors involved had already been declared bankrupt. The D of J had also commenced proceedings against the remaining 14 cases with a view to recovering their outstanding amount totalling some \$2 million;
- regarding the introduction of a surcharge on overdue rentals, the AFCD had considered various surcharge practices adopted by other departments and devised a proposal of charging interest on late payment for consultation with the wholesalers in December 2007. The wholesalers in all three government wholesale markets raised strong unanimous objection to the proposal. The AFCD would continue to liaise with the wholesalers to take into account their views in refining the proposal. Pending agreement of the stakeholders and successful conclusion of mutually agreed amendment to the tenancy terms, the AFCD intended to introduce the surcharge in 2009;
- the AFCD had also implemented other recommendations made by the Audit Commission. The Treasury's General Demand Note System for the collection of rental had been implemented since 1 October 2007. The guidelines governing the letting of market stalls had been updated and implemented;

Managing daily market operation

- the AFCD was conducting a post-implementation review of the market entry registration system, including its cost-effectiveness and the possibility of further automation;

Outsourcing operation of the North District Temporary Wholesale Market for Agricultural Products ("North District Market")

- the new contractor had assumed the responsibilities of managing the North District Market from 1 April 2007. The AFCD had requested the contractor to provide the required operating/business information as stated in the contract for reference. The AFCD would initiate the next tender exercise at least a year before the current contract expired. Also, the AFCD would

consider setting a reasonable level of minimum premium in the tender documents, with reference to previous contracts and the contractor's business activities;

Reprovisioning of outdated wholesale markets

- in response to the recommendation in the Committee's Report, the Food and Health Bureau forwarded to the Committee in January 2008 a progress update and an indicative timetable (in **Appendix 3**) for relocating the Yau Ma Tei Fruit Market ("YMT Fruit Market"). According to the timetable, the Administration would have the new wholesale fruit market operational 53 months after obtaining the fruit traders' and the DCs' agreement to the relocation;
- the Administration recognised that reaching a mutual understanding with the fruit wholesalers was crucial to a smooth relocation of the YMT Fruit Market. The Administration had therefore continued to engage the fruit wholesalers and the DCs concerned through various channels. Pending further discussion with the fruit wholesalers and the relevant DCs on the relocation, the Administration would proceed with the development of the new wholesale fruit market according to the timetable forwarded to the Committee in January 2008;
- in the meantime, relevant government departments, including the Police and the Food and Environmental Hygiene Department, would continue with necessary enforcement actions, with a view to mitigating the traffic and environmental nuisance caused by the operation of the YMT Fruit Market to neighbouring residents. In this regard, the District Office (Yau Tsim Mong) would continue to take a leading role in co-ordinating inter-departmental efforts;

Other areas for improvement

- new performance indicators in respect of wholesale markets, including the number of requests for assistance handled, the number of daily inspections conducted, and the percentage of recovery of rentable revenue in the CSW Market and the Western Market, had been introduced in the Controlling Officer's Report of the AFCD starting from 2008-2009; and
- the AFCD consulted the Harbour-front Enhancement Committee ("HEC") in October 2007 on a draft proposal for letting out market roofs and external walls for commercial advertisements. The HEC members raised strong and unanimous objection to the idea, citing adverse visual impact and conflicts with the harbour planning principles as the primary reasons for objection. The Administration had therefore decided not to pursue this option further.

6. To follow up on some of the issues reported above, the Committee had written to the AFCD and obtained the updated position as set out below:

Letting of market facilities

Vacant stalls at the CSW Market and Western Market; poultry market at Western Market; and letting of market facilities

- in response to the Committee's enquiry as to why only 22 of the 99 vacant stalls had been rented out despite various efforts made by the AFCD to improve the vacancy situation, and about the actions that would be taken by the AFCD to rent out the remaining vacant stalls, the **Director of Agriculture, Fisheries and Conservation** stated in her letter of 7 January 2009, in *Appendix 4*, that:
 - (a) as of 31 December 2008, the AFCD had rented out 24 of the 99 previously vacant stalls. The 75 stalls which had not been leased out included 15 stalls in the Cheung Sha Wan Temporary Wholesale Poultry Market (which would not be further leased out in view of the recent Voluntary Surrender Scheme for the live poultry trade) and nine stalls located in the Western Market (the area where the stalls were situated had been allocated to the Hongkong Post as a Speedpost and regional delivery centre through the assistance of the GPA); and
 - (b) the remaining 51 stalls were mainly located in the egg or fruit sections of the CSW Market and the Western Market. It was observed that importers were increasingly distributing eggs and fruits to supermarkets or retailers direct, i.e. without going through the Government's wholesale markets. As a result, the demand for egg and fruit stalls remained low. That said, the AFCD would continue to closely monitor the vacancy situation and carry on promoting these stalls to attract more tenants;

Four unused market piers at Western Market

- regarding the latest progress of the consultation with the HEC Sub-committee and the expected timeframe for demolition of the piers, the **Director of Agriculture, Fisheries and Conservation** stated in her letter of 29 January 2009, in *Appendix 5*, that:
 - (a) the AFCD consulted the HEC Sub-committee on 24 September 2008. The Sub-committee strongly objected to demolishing the piers (extract of relevant meeting notes in *Appendix 5*); and

- (b) on 20 November 2008, the Culture, Leisure and Social Affairs Committee of the Central and Western DC reiterated its suggestion of developing the area of the vacant piers into leisure facilities for the enjoyment of the public. As one of the measures to beautify and revitalise the harbourfront areas as pledged by the Chief Executive in his 2008-2009 Policy Address, the Development Bureau would study the possible beneficial re-use of piers which had been left idle (including the four unused piers at the Western Market) but could not be replaced under the restriction on reclamation in Victoria Harbour, with a view to enabling these piers to contribute to the vibrancy of the waterfront. To this end, the AFCD stood ready to surrender the four vacant piers for other uses provided that the security, operations and pedestrian safety of the Western Market and its vicinity were not compromised;

Collection of rentals

- in response to the Committee's enquiry about the current progress of the introduction of a surcharge on overdue rentals, the **Director of Agriculture, Fisheries and Conservation** stated in her letter of 7 January 2009 that during the latest consultation with the tenants, the tenants continued to object strongly to the proposal. In view of the latest economic situation and the Government's commitment to revive the economy by supporting small and medium enterprises, the AFCD was considering possible refinements to the proposal and would consult the tenants again in due course; and

Reprovisioning of outdated wholesale markets

- regarding the latest progress of consultation with the fruit traders for relocation of the YMT Fruit Market, and the possibility of expediting the whole process of relocation, the **Director of Agriculture, Fisheries and Conservation** informed the Committee vide her letter 29 January 2009 that consultation with the fruit wholesalers was ongoing. The Administration had been discussing different aspects of the relocation, including the location, mode of operation and design of the new market with the fruit wholesalers through various channels, including the Working Group on Concern for the YMT Fruit Market under the Yau Tsim Mong DC. The tentative timetable submitted to the Committee depicted the general procedures for public works projects. The Administration would explore whether there was any room for compressing the works timetable in due course.

7. The Committee wishes to be kept informed of further development on the subject.

Laying of the Report The Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2007 and his Report No. 49 on the results of value for money audits were laid in the Legislative Council on 28 November 2007. The Committee's Report (Report No. 49) was subsequently tabled on 20 February 2008, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 49 was laid in the Legislative Council on 21 May 2008. A progress report on matters outstanding in the Government Minute was issued on 29 October 2008. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 46 below.

Management of the government fleet
(Paragraphs 3 to 4 of Part 3 of P.A.C. Report No. 49)

3. The Committee was informed that:

Management of in-house maintenance work and staff

- based on the assessment made by the upgraded Government Fleet Information System ("GFIS"), which was capable of comparing the cost-effectiveness of services provided by individual in-house maintenance workshops against those provided by private contractors, the Marine Department ("MD") planned to outsource a forward-base workshop in early 2009 to tie in with the staff natural wastage profile;

Administration of maintenance contracts

- the MD had started a pilot scheme to test the merits of using a term contract for maintenance services for government vessels. Under this pilot scheme, a term contract for the maintenance of seven "Damen" type vessels was awarded with effect from 21 July 2008 for two years. The MD would assess the cost-effectiveness of the term contract in question and where appropriate, extend its application to maintenance services for other types of government vessels; and

Charging on the use of workshops by contractors

- the MD, in consultation with other relevant departments, was finalising a charging scheme for the allocation of workshops at the Government Dockyard for use by contractors. The MD targeted to implement the new charging scheme in the next workshop allocation exercise in mid-2009.

4. The Committee wishes to be kept informed of further development on the subject.

Provision of public museum services

(Paragraphs 5 to 6 of Part 3 of P.A.C. Report No. 49)

5. The Committee was informed that:

Acquisition and management of museum collection items

- the Leisure and Cultural Services Department ("LCSD") continued its efforts to clear the backlog of collection items pending accession in the Hong Kong Museum of History ("HKMH"), the Hong Kong Heritage Museum ("HKHM") and the Hong Kong Film Archive ("HKFA"). Of the 257,780 backlog items, the HKMH had processed most of them, leaving about 1,921 items to be accessioned. As for the HKHM, up to July 2008, a total of 13,851 backlog items were accessioned, leaving 4,899 items to be processed. Both the HKMH and the HKHM aimed to clear the remaining backlog items by mid-2010. The HKFA would have about 164,000 backlog items accessioned by September 2008 and the remaining 272,000 items were expected to be cleared by the end of 2010. The task group formed to monitor the progress of clearing collection items pending accession conducted three site inspections from September 2007 to August 2008, and would continue to closely monitor the progress of the accessioning work;
- regarding the proposed Central Museum Collection Repository to be built in Tuen Mun, the LCSD submitted in June 2008 a Project Definition Statement to the Architectural Services Department. A feasibility study of the project would be carried out. Funding for the construction of the repository would be sought in accordance with established procedures;
- the LCSD submitted a bid in November 2007 for additional temporary storage space at Yip Shing Street, Kwai Chung, for use by the HKMH and the bid was being considered by the Government Property Agency;
- upon the completion of the renovation work of the storage space at Cornwall House in Quarry Bay, the HKFA moved in the collection and film-related items in August 2008; and

Performance of LCSD museums

- the LCSD had implemented various improvement measures to enhance museum operation and management as recommended by the Committee on Museums. The LCSD completed the public opinion survey on museum services in September 2008 and was finalising the survey report. Starting

from 2008-2009, the LCSD had drawn up annual marketing and publicity plans to further promote the image of museums and to boost the patronage of museum programmes. A new computer-based Management Information System was also launched in April 2008 for collecting monthly statistics that would be used to facilitate planning of museum programmes which met the needs and aspirations of the public.

6. The Committee wishes to be kept informed of further development on the subject.

Provision of aquatic recreational and sports facilities

(Paragraphs 5 to 6 of Part 4 of P.A.C. Report No. 49)

7. The Committee was informed that:

Improving water quality of the gazetted beaches in Tsuen Wan District

- the Administration was advancing part of the Harbour Area Treatment Scheme Stage 2A disinfection facilities for commissioning in 2009. The construction works of the advance disinfection facilities commenced in April 2008. The water quality of the gazetted beaches in Tsuen Wan would improve when the advance disinfection facilities were in operation, targeted for October 2009;

De-gazetting of the Kiu Tsui Beach on Sharp Island

- the Lands Department ("Lands D") was awaiting the proposal from the private developer on the development of Sharp Island. Meanwhile, the clearance of unauthorised structures on the site by the private developer was underway. The Lands D would consult other relevant government departments, including the Leisure and Cultural Services Department ("LCSD"), upon receipt of the development proposal from the developer. The Environmental Protection Department would continue to monitor the water quality of the sandy beach adjacent to the Kiu Tsui Beach;

Alignment of fees and charges of all swimming pool complexes

- the LCSD had set up a Working Group to review all fees and charges of leisure services. The Working Group had conducted meetings to review the fee structure of recreation and sports facilities, including the alignment of fees and charges of all swimming pool complexes; and

Swimming training courses

- the Working Group had conducted meetings to review the fee level of recreation and sports programmes, including the fee level of swimming training courses.

8. The Committee wishes to be kept informed of further development on the subject.

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

(Paragraphs 7 to 8 of Part 4 of P.A.C. Report No. 49)

9. The Committee was informed that the Court of the University of Hong Kong ("HKU") resolved in December 2005 that the University of Hong Kong Ordinance should be amended so that the descriptions of the respective roles of the Council and the Court therein would be consistent with their powers as set out in the relevant statutes. The proposal for the relevant legislative amendments was discussed by the Legislative Council ("LegCo") Panel on Education on 12 June 2008. The HKU intended to submit the legislative proposal to the LegCo in the 2008-2009 legislative session.

10. The Committee wishes to be kept informed of further development on the subject.

University Grants Committee funded institutions — General administrative services

(Paragraphs 9 to 10 of Part 4 of P.A.C. Report No. 49)

11. The Committee was informed that:

Provision of senior staff quarters

The University Grants Committee ("UGC") Working Group on Housing Arrangement After Deregulation of University Salaries

- the Administration and the Secretary-General, UGC, had examined the joint proposal put forward by UGC-funded institutions regarding the funding arrangement for staff housing benefits after deregulation of salaries. A revised proposal would be submitted to the Working Group on Housing Arrangement After Deregulation of University Salaries for consideration as soon as possible; and

Student hostels

Review of the existing policy on students' grants and loans

- the advisory committee that advised the Administration on the operation of the Tertiary Student Finance Scheme — Publicly-funded Programmes (formerly named as Local Student Finance Scheme) had previously recommended, among other things, that needy students should be provided with an accommodation expenses loan. This recommendation would be considered in the context of a consultancy study on the establishment of a simpler, more viable and sustainable mechanism for setting and adjusting the levels of student financial assistance.

12. The Committee wishes to be kept informed of further development on the subject.

University Grants Committee funded institutions — Staff remuneration packages and stipends

(Paragraphs 11 to 12 of Part 4 of P.A.C. Report No. 49)

13. The Committee was informed that the Hong Kong Polytechnic University ("PolyU") submitted a revised proposal to the Administration in December 2007 to amend the relevant provisions of The Hong Kong Polytechnic University Ordinance to define more clearly the PolyU Council's role in drawing up the University's policy governing the terms and conditions of service of staff. The PolyU intended to introduce the legislative amendments to the Legislative Council in early 2009.

14. The Committee wishes to be kept informed of further development on the subject.

Services provided by the Official Receiver's Office

(Paragraphs 15 to 16 of Part 4 of P.A.C. Report No. 49)

15. The Committee was informed that the Official Receiver's Office ("ORO") had implemented a pilot scheme since May 2008 to outsource debtor-petition bankruptcy cases with estimated realisable assets of not more than \$200,000 to private sector insolvency practitioners ("PIPs") on a small scale, and had started to review the cost of operation. When the pilot scheme was evaluated in the future, the ORO would also consider the proposed "cab-rank" system and some form of authorisation of PIPs.

16. The Committee wishes to be kept informed of further development on this subject.

Recoverability of the outstanding advances to the UNHCR
(Paragraphs 17 to 18 of Part 4 of P.A.C. Report No. 49)

17. The Committee was informed that:

- the Administration had continued to urge the United Nations High Commissioner for Refugees ("UNHCR") to make renewed efforts to appeal to the international community for donations to allow early repayment of the outstanding advances, which remained at \$1,162 million. Apart from raising the issue when meeting with the UNHCR representatives in July 2008, the Security Bureau wrote to the Head of Hong Kong Sub-office of the UNHCR again in August 2008 for the purpose; and
- the UNHCR expressed that as their financial situation had not improved, it was not optimistic that repayment could be made in the foreseeable future. Nevertheless, the Administration would continue to pursue repayment of the outstanding advances.

18. As the matter had been outstanding for a long time, and the efforts made by the Administration to pursue the repayment appeared to be in vain, the Committee asked whether the Administration would take other actions to pursue the repayment, and about the Administration's assessment of the recoverability of the outstanding advances. In reply, the **Secretary for Security** stated in his letter of 23 January 2009, in **Appendix 6**, that:

- the Administration had been making every effort to recover the outstanding advances through various means. For example:
 - (a) the Security Bureau wrote to the Head of the UNHCR Hong Kong Sub-Office in March 2006, February 2007, September 2007, March 2008 and August 2008 to urge the UNHCR to make renewed efforts to appeal to the international community for donations to allow early repayment of the outstanding advances. In the letters, the Security Bureau also registered the Hong Kong community's expectation of an early recovery of the advances as well as the Legislative Council's concern on the matter;

- (b) four meetings were held in January 2007, September 2007, March 2008 and July 2008 between the representatives of the Government of the Hong Kong Special Administrative Region ("HKSARG") and the UNHCR Hong Kong Sub-Office. The issue was raised at these meetings; and
- (c) the issue was also raised at a meeting between the HKSARG and the UNHCR headquarters in November 2008;
- the UNHCR had repeatedly conveyed the message that since they had to handle increasing number of refugees and asylum seekers globally, it was not optimistic that repayment could be made in the foreseeable future. On the other hand, the UNHCR had not withdrawn its commitment to repay such advances. It remained the Administration's understanding that the UNHCR's reimbursement to Hong Kong would be subject to availability of funds; and
- the Administration's assessment was that it was not optimistic that full recovery of the amount due, or partial recovery could be achieved in the near future. That said, the Administration would continue to urge the UNHCR to repay the advances.

19. The Committee wishes to be kept informed of the action taken by the Administration in pursuing the repayment of the outstanding advances to the HKSARG.

Footbridge connections between five commercial buildings in the Central District
(Paragraphs 19 to 20 of Part 4 of P.A.C. Report No. 49)

20. The Committee was informed that under the Shatin to Central Link ("SCL") project to be proceeded with by the MTR Corporation Limited ("MTRCL"), the SCL Central South Station would be deferred until a suitable site for it could be identified and the provision of its station adit and entrance would be subject to need and detailed design. Hence, the MTRCL had advised that it no longer objected to the footbridge proposal. The Lands Department was further liaising with the owners of the two concerned buildings to explore if there was any feasible solution to materialise the footbridge proposal.

21. The Committee wishes to be kept informed of further discussions with the owners of the two concerned buildings for any feasible solution to materialise the footbridge proposal.

Residential services for the elderly

(Paragraphs 21 to 22 of Part 4 of P.A.C. Report No. 49)

22. The Committee was informed that taking into account the comments from the Elderly Commission and the Legislative Council Panel on Welfare Services on the proposal to provide infirm care to medically stable infirm elders in a non-hospital setting, the latest plan of the Administration was to upgrade some of the places in subvented residential care homes for the elderly to provide infirm care. The Administration was discussing with the sector the various requirements in relation to the upgrading exercise (e.g. staffing requirements) and considering the way forward. The Administration aimed to report progress to the Panel on Welfare Services in the second quarter of 2009.

23. The Committee wishes to be kept informed of further development on the subject.

Small house grants in the New Territories

(Paragraphs 25 to 27 of Part 4 of P.A.C. Report No. 49)

24. The Committee was informed that in taking forward the small house policy review, the Administration had identified and considered a wide range of issues. Some proposals had been formulated and put into implementation. The remaining issues, which were complex in nature, required further and careful deliberations within the Administration.

25. As the position of the small house policy review remained the same as that reported in the Government Minute in May 2008, the Committee enquired about whether there was any progress made by the Administration as well as the action plan and expected timeframe for taking forward the review. In summary, the **Secretary for Development** responded in her letter of 29 January 2009, in **Appendix 7**, that:

- as the Administration had reported to the Committee and the Legislative Council Panel on Development, it was deliberating on the review of the small house policy, including a number of measures to optimise the implementation of the small house policy;
- the rural setting had changed significantly since the introduction of the small house policy in 1972. These changes had raised concern over the small house policy in the context of effective land resources utilisation, land use planning and environmental sustainability. On the other hand, the complicated and inter-woven issues involved in different aspects of the small house policy could not be under-estimated. These included the legal and human right considerations, the environmental impact caused by small house developments, the lack of proper planning and public land for provision of

public facilities in villages, the existence of unauthorised building works in small houses, and the persistently strong demand for land for small house developments;

- the complexity and far-reaching implications of the above considerations underlined that the review would be time-consuming. The Administration was also approaching the issue in a pragmatic manner. It was discussing with the Heung Yee Kuk on how to streamline the process of resolving objections to small house applications, improve the mechanism for reviewing the land reservation for open space and other public facilities on village layout plans, and rationalise unauthorised building works in New Territories Exempted Houses, including, among other things, small houses. Furthermore, the Administration was also exploring the feasibility of whether and how some suitable Village Expansion Area projects could be taken forward, subject to the availability of necessary funding; and
- the Administration would continue its efforts on the review of the small house policy. Taking account of the complexity and difficulty of the issues involved, the Administration would adopt a practical approach in putting forward proposals on the relevant aspects of the small house policy for consultation with the Heung Yee Kuk and the community at large.

26. The Committee wishes to be kept informed of further development on the review of the small house policy.

Public markets managed by the Food and Environmental Hygiene Department
(Paragraphs 28 to 29 of Part 4 of P.A.C. Report No. 49)

27. The Committee was informed that on 11 November 2008, the Food and Health Bureau ("FHB") and the Food and Environmental Hygiene Department ("FEHD") informed the Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene of the feedback of the District Councils ("DCs") on the review of the provision of public markets. The following were the salient points:

- *Public markets with viability problems:* The FHB and the FEHD had identified four public markets with the problems of "consistently high vacancy rate exceeding 60%" and "big deficits". These markets were the Bridges Street Market, the Mong Kok Market, the Kwong Choi Market and the Tang Lung Chau Market. There were divergent views from the DCs on closing down markets with high vacancy rates and deficits. Two DCs supported the closure of the markets in their districts whereas two others had reservation or did not support the market closure proposal;

- *Closure of the Mong Kok Market:* In order to provide assistance to the affected tenants on moving out arrangements, the Administration would provide ex-gratia payments equivalent to 24 months of rental (calculated based on the monthly rental of the stall set out in the current tenancy agreement) for tenants who chose to continue business in other FEHD markets. They would also enjoy 3-month rental waiver and be allowed to bid for new stalls in other existing public markets at 50% of the Open Market Rental as upset auction price. For those who chose to cease business, the Administration would provide ex-gratia payments equivalent to 27 months of rental (also calculated based on the monthly rental of the stall set out in the current tenancy agreement). With the support of the DC on the market closure proposal, the Administration was discussing with the tenants concerned on the moving out arrangements;
- *Planning standard for provision of public markets:* With the support from the DCs, the FHB and the FEHD would liaise with the Planning Department on the revision of the existing planning standard. Furthermore, the FEHD would formulate internal guidelines on planning of public markets, setting out clearly that viability studies should be conducted in assessing the need to construct new public markets. Viability studies would take into account demographic mix, business environment, opinion survey and supporting infrastructure (such as geographical location of the selected market site, surrounding transportation network, direction of pedestrian flows, and planning and development of the district). Suitable flexibility would also be incorporated into the design of a new public market to cater for changes in the retail environment with a view to sustaining the market viability; and
- *Way forward:* The fact that a market with the majority of stalls not being able to be let out for a considerably long time and with low patronage reflected that its role as a market was gradually diminishing in the local context. Under such circumstances, it was necessary for the Government to review whether the operation of such a market should continue to be subsidised, and to see whether the market site could be better utilised for other purposes so as to put the land to more gainful use for the benefit of the community. In the review of public markets with viability problems, the FHB and the FEHD would fully listen to the views at the district level, discuss with the relevant DCs on possible improvement proposals and consider the feasibility and cost-effectiveness of those proposals.

28. The Committee wishes to be kept informed of further development on the subject.

The acquisition and clearance of shipyard sites

(Paragraphs 30 to 31 of Part 4 of P.A.C. Report No. 49)

29. The Committee was informed that:

Resumption and clearance of the North Tsing Yi shipyard site

- given the fact that some tenants of short-term tenancies might have genuine financial and practical difficulties in arranging for the demolition of their structures, there might be a need to exempt certain clearers from the self-demolition requirement on compassionate grounds. The relevant bureaux and departments were examining this matter. Subject to the outcome of the foregoing exercise, the Director of Lands would amend the Lands Administration Office Instructions as recommended by the Director of Audit; and

Assessment of contamination at the Penny's Bay shipyard site

- the Lands Tribunal heard certain points of law as preliminary issues to facilitate the determination of the appropriate valuation basis for assessing compensation for the Penny's Bay shipyard site, and handed down its judgement on 25 May 2007, ruling in favour of the Administration. The ex-lessee subsequently filed an appeal, which was heard by the Court of Appeal in September 2008. The judgement was expected to be available in mid-November 2008.

30. In response to the Committee's enquiry about the judgement of the Court of Appeal, the **Director of Lands** stated in her letter of 22 January 2009, in **Appendix 8**, that the judgement was handed down on 8 January 2009 which, by majority decision of the Court of Appeal (with two of the three decisions including that of the Vice-President of the Court of Appeal allowing the appeal and one dismissing it), allowed the appeal. The Administration was seriously considering the merits of lodging an application for leave to appeal against the majority decision of the Court of Appeal to the Court of Final Appeal.

31. The Committee wishes to be kept informed of the progress of the various courses of action taken by the Administration.

Funding of tertiary education

(Paragraphs 32 to 33 of Part 4 of P.A.C. Report No. 49)

32. On the funding of self-financing activities, the Committee was informed that the University Grants Committee ("UGC") was ascertaining the amount of overhead charges involved in student hostel operation and would examine how such charges should be dealt with in consultation with the institutions. The UGC aimed to complete the process within 2008.

33. The Committee wishes to be kept informed of further development on the subject.

Government subsidies to the English Schools Foundation

(Paragraphs 34 to 35 of Part 4 of P.A.C. Report No. 49)

34. The Committee was informed that the Administration would start substantive discussions with the English Schools Foundation ("ESF") on a review of the subvention arrangements after the ESF had implemented its governance reform and put in place a sound governance structure. With the recent passage of The English Schools Foundation (Amendment) Bill 2007, the Administration expected to start the discussion later in 2008 when the new governing body for the ESF was in place.

35. In view of the above, the Committee wrote to the Secretary for Education to enquire about the timetable for taking forward the review of the subvention arrangements for the ESF. In his letter of 30 January 2009, in **Appendix 9**, the **Secretary for Education** said that with the enactment of The English Schools Foundation (Amendment) Ordinance 2008, the new governing structure of the ESF was put in place in late 2008. The Administration had commenced preliminary exchange with the ESF on the tentative workplan and scope of the subvention review since December 2008. Bearing in mind that the review was a complex matter involving various issues and had a wide implication on the educational landscape, the Administration needed to examine the matter carefully with the ESF in order to achieve a mutually acceptable solution. It was hoped that consensus could be reached with the ESF by around mid-2009 on the issues to be covered and the broad principles, which would form the basis of further discussion with the ESF on details of the substantive issues from mid-2009 to mid-2010. The Administration would keep the Legislative Council informed of the progress in due course.

36. The Committee wishes to be kept informed of further development on the subject.

Corporate governance and Headquarters administration of the English Schools Foundation

(Paragraphs 36 to 37 of Part 4 of P.A.C. Report No. 49)

37. The Committee was informed that:

Corporate governance

- the English Schools Foundation (Amendment) Bill 2007 was passed on 12 March 2008. The English Schools Foundation (Amendment) Ordinance 2008 introduced amendments to The English Schools Foundation Ordinance so as to give effect to a new governance framework, which would include the following features:
 - (a) a Board of Governors would be established in which parents, School Council Chairmen and representatives of the wider community would form a substantial majority;
 - (b) there would be provisions to encourage members to attend Board meetings regularly. A code of conduct would also be drawn up requiring members to declare any interest; and
 - (c) Standing Committees would be established to audit the Foundation's management processes, to make recommendations on remuneration and terms and conditions of service for staff and to advise on a financial strategy. No employees would sit on the Audit Committee nor the Remuneration Committee;
- separately, the English Schools Foundation ("ESF") had made a new regulation under the ESF Ordinance which had been approved by the Legislative Council;
- the Amendment Ordinance commenced operation on 18 April 2008 and the new governance framework would be fully implemented before the end of 2008; and

Action plan

- the ESF had updated its action plan as at September 2008, in **Appendix 10**. Action had been taken to repeal section 10(2) of the ESF Ordinance and address the issue of low attendance rates of members. For the rest of the recommendations of the Committee, full implementation would take place after the changes to the governance framework as effected by the Amendment Ordinance came into operation.

38. The Committee wishes to be kept informed of further development on the subject.

Grant of land at Discovery Bay and Yi Long Wan
(Paragraphs 38 to 39 of Part 4 of P.A.C. Report No. 49)

39. The Committee was informed that:

Site boundaries of Discovery Bay and Yi Long Wan development

- following extensive and protracted consultations with the industry and related professionals regarding the implementation of practical and effective measures to deter encroachments by private developments on government land, a practice note on the matter was issued in June 2008; and
- in view of the complexity of the issues involved, the Lands Department ("Lands D") had obtained outside counsel's advice through the Department of Justice ("D of J") on how to tackle the land encroachment problems of the Yi Long Wan development. The Lands D, in conjunction with the D of J, was considering the counsel's advice.

40. The Committee wishes to be kept informed of the progress of the various courses of action taken by the Administration.

Development of a site at Sai Wan Ho
(Paragraphs 40 to 41 of Part 4 of P.A.C. Report No. 49)

41. The Committee was informed that:

- the Administration was continuing with its review on gross floor area ("GFA") concessions granted under the Buildings Ordinance. The Government would seek the views of stakeholders from various sectors before finalising its proposals; and
- the Administration had reviewed whether it was appropriate to impose a maximum GFA clause in the leases of future sale sites of government land. In formulating the land sale arrangement, one of the key guiding principles was the need for a clear and predictable government policy on land supply for private development, to provide certainty, clarity and consistency to the trade and to the public. For the 2008-2009 Application List, the Administration would specify the maximum GFA or plot ratio (or equivalent) in the conditions of sale of each sale site on the List.

42. The Committee wishes to be kept informed of the progress of the various courses of action taken by the Administration.

Four small and medium enterprise funding schemes
(Paragraphs 44 to 45 of Part 4 of P.A.C. Report No. 49)

43. The Committee was informed that:

Small and Medium Enterprises Export Marketing Fund ("EMF")

Setting up a mechanism to collect information on benefits gained by small and medium enterprises ("SMEs")

- the Trade and Industry Department ("TID") had engaged an independent institution to conduct a survey among the SMEs which had received grants from the EMF to collect information on the benefits gained. The survey report had been completed. Similar surveys would be carried out from time to time to gauge the views of SME beneficiaries;

Conducting an effectiveness review of EMF

- in the light of the findings collected from SME beneficiaries, the TID had reviewed the overall effectiveness of the EMF. According to the survey, 84% of the respondents were satisfied with the EMF, 77% considered it helpful to their business, and 85% agreed that the EMF could help their companies increase marketing activities. In addition, 68% of the respondents indicated that the EMF had helped them improve or expand their business within one year following receipt of the grants. When assessing how the EMF had helped their businesses, over 80% of the respondents reported increase in sales revenue, profits, number of customers and orders, as well as getting new types of customers. In view of this, the TID considered that the EMF was effective in helping SMEs expand their overseas markets through participation in export promotion activities and was worth continuing. Findings of the review would be submitted to the Small and Medium Enterprises Committee ("SMEC") for endorsement in late 2008;

SME Loan Guarantee Scheme ("SGS")

Assessing the additional impacts of SGS

- the TID had engaged an independent institution to conduct a survey among the SMEs which had obtained loan guarantee under the SGS to find out, among other things, the number of additional jobs created due to the help of the SGS. The survey report had been completed. According to the survey, 63% of the respondents indicated that they had hired one or more additional

staff with the support of the loan guarantees obtained under the SGS. The TID considered that the SGS had effectively facilitated the SMEs in job creation. Findings of the review would be submitted to the SMEC for endorsement in late 2008; and

Drawing on overseas experience in measuring the performance of SGS

- following the audit review in 2006, the Administration had included two new performance indicators for the SGS in the Controlling Officer's Report, namely applications received and processed as well as number of SME beneficiaries, in addition to the original indicator (i.e. amount of government guarantees issued). According to the findings of the survey report mentioned above, the current performance indicators for the SGS were broadly comparable with those adopted in other countries for similar loan guarantee schemes, showing that the Administration was generally in line with international practice.

44. The Committee wishes to be kept informed of further development on the subject.

Outsourcing of the management of public rental housing estates
(Chapter 3 of Part 7 of P.A.C. Report No. 49)

45. The Committee was informed that:

Protection of non-skilled workers engaged in outsourcing contracts

- the Housing Department ("HD") had sought the views of the Financial Services and the Treasury Bureau ("FSTB") on the five-year suspension period for defaulting service contractors. In consultation with the Food and Environmental Hygiene Department, the Leisure and Cultural Services Department and the Labour Department, the FSTB had advised the HD that the existing measures as set out in Financial Circular No. 4/2006 on tender assessment and management of contractors of service contracts (excluding construction service contracts) that relied heavily on the deployment of non-skilled workers would be maintained. Noting that the Housing Authority ("HA") could decide its own procurement policy, the Audit Commission advised the HD in July 2008 that they had no further comment on the HA's policy. The HD would report the matter to the HA's Tender Committee ("TC") again by the end of 2008. At the same time, the HD would draw the TC's attention to the action taken by the HD to renew a service contract with a convicted contractor due to special circumstances and seek the TC's directions on actions to be taken on similar contracts in future;

Procurement of services and contract administration

- the HD had commissioned a new consultancy study to review the HA's procurement systems for works contractors and property services agents ("PSAs"), including the deduction of marks from non-financial scores during the tender evaluation of service contracts for demerit points received by tenderers. The study started in April 2008 and would take about six months. The HD would submit the recommendations of the consultancy study, including the feasibility of making the number of Default Notices issued (with or without demerit points given) as an assessment criterion in tender evaluation, to the TC by the end of 2008 for its consideration;

Monitoring the performance of PSAs

- to address the Committee's concern on the effectiveness of PSAs in tackling illegal hawking activities, the HD had promulgated an enhanced and streamlined work plan which was drawn up in accordance with the inter-departmental action plan for hawker control and after taking into account the recommendations of the consultancy study facilitated by the Efficiency Unit ("EU") in April 2008. The HD would take over the responsibilities of hawker control from the PSAs in case of need; and

Performance management and contingency planning

- the HD had kept the cost-effectiveness of different outsourcing models under regular review. Having considered the recommendations of the EU's consultancy study, the HD had drawn up a contingency plan by incorporating the standby contractor arrangement and risk management measures to cope with the situation of service disruption of property services contracts.

46. The Committee wishes to be kept informed of further development on the subject.

Laying of the Report Report No. 49 of the Director of Audit on the results of value for money audits was laid in the Legislative Council on 28 November 2007. The Committee's supplemental report (Report No. 49A) on Chapters 5 and 6 of the Director of Audit's Report was tabled on 30 April 2008.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 49A was laid in the Legislative Council on 9 July 2008. A progress report on matters outstanding in the Government Minute was issued on 29 October 2008. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 4 below.

Hong Kong Tourism Board: Corporate governance and administrative issues, and Hong Kong Tourism Board: Planning, execution and evaluation of marketing activities

(Paragraphs 1 to 293 of Part 4 of P.A.C. Report No. 49A)

3. The Committee was informed that:

Improvement measures in response to the Director of Audit's Report

- of the 75 improvement measures proposed by the Hong Kong Tourism Board ("HKTB") in response to the Director of Audit's Report, the HKTB had already implemented 67. Another eight improvement measures would be completed within the 2008-2009 financial year. Progress in implementing the audit recommendations was reported in the Government Minute tabled at the Legislative Council on 9 July 2008. Further progress on outstanding actions by the HKTB was set out in **Appendix 11**. Actions by the Administration had been completed as reported in **Appendix 12**. The Administration would continue to monitor the HKTB's operations and progress in implementing these improvement measures to ensure prudent use of public resources;

Corporate governance

- the Administration had asked the HKTB to formalise the mechanism whereby cases of violation of internal rules, if any, would be reported to the Board or the relevant committees. The HKTB was working on this mechanism, with a view to having it implemented by the end of the 2008-2009 financial year;

Review of the role and responsibility of the government officials sitting on the governing bodies and committees of publicly-funded statutory organisations

- the outcome of the review on the role and responsibility of government officials sitting on the governing bodies of publicly-funded statutory organisations as well as corporate governance and management in publicly-funded statutory organisations, which the Administration had undertaken in response to the recommendations contained in the Committee's Report Nos. 48 and 49A, was submitted to the Chairman of the Committee on 17 July 2008 (in *Appendix 13*);
- following the review, the Administration had promulgated a set of guidelines advising bureaux and departments on the broad principles of good governance, so as to facilitate Controlling Officers in the discharge of their funding control responsibilities over the publicly-funded statutory organisations. A General Circular (No. 8/2008) on "Governance of Government-owned or Funded Statutory Bodies", in *Appendix 14*, was issued on 12 December 2008 for reference by Directors of Bureaux and Controlling Officers;

The Committee's recommendation about ensuring that Controlling Officers for publicly-funded organisations effectively perform their roles and responsibilities

- the Administration had asked the HKTb to provide quarterly reports to the Controlling Officer on its work and use of the subvention. The HKTb submitted the first quarterly report covering July to September 2008 to the Controlling Officer in November 2008;

The Committee's recommendation about clearly stating the intended roles and responsibilities of government representatives and other members appointed to sit on the governing bodies of publicly-funded statutory organisations when appointing them

- the Administration had advised bureaux and departments, through the above General Circular No. 8/2008, to clearly spell out the intended roles and responsibilities of government representatives and other members appointed to sit on the governing bodies of these organisations when appointing them;
- the Administration had also invited the HKTb to review the operation of the four committees established under the Board with a view to strengthening corporate governance and the mechanism for the committees to advise the Board. The HKTb's Audit Committee revised its Terms of Reference in July 2008 to set out more clearly its authority and duties. The HKTb was reviewing the operation of the other three committees, namely the Staff and Finance Committee, the Product and Event Committee and the Marketing and Business Development Committee, and aimed to complete the review by the end of the 2008-2009 financial year;

Measures to ensure that members of governing bodies and the chief executive officers of publicly-funded statutory organisations effectively perform their roles and responsibilities

- the Tourism Commission conducted a briefing on 7 August 2008 to acquaint the senior management of the HKTb with relevant due processes/procedures governing the use of public funding and the Administration's expectation of compliance;
- on the Administration's recommendation, the HKTb would stipulate in the relevant human resources management policy and procedure for hiring senior staff at General Manager level or above, a requirement that candidates contending for such posts should have good reference on personal integrity and corporate governance from previous employers; and

Progress made by the HKTb in developing specific guidelines on the authority to enter into sponsorship agreements

- the HKTb had developed specific guidelines on the authority to enter into sponsorship agreements, in particular the arrangement for agreements which involved a substantial amount of money and spanned across more than one year.

4. The Committee wishes to be kept informed of further development on the subject.

Consideration of the Director of Audit's Report tabled in the Legislative Council on 26 November 2008 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 has therefore only selected those chapters in the Director of Audit's Report No. 51 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 15 meetings and five public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of 19 witnesses, including three Directors of Bureau and four Heads of Department. The names of the witnesses are listed in *Appendix 15* to this Report. A copy of the Chairman's introductory remarks at the first public hearing on 9 December 2008 is in *Appendix 16*.

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 Report, are set out in Chapters 1 to 4 of Part 8 below.

4. The audio record of the proceedings of the Committee's public hearing is available on the Legislative Council web site 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 Adviser 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.

Observations of the Public Accounts Committee on the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2008

The Committee received a briefing by the Director of Audit on the issues relating to government financial reporting, and exchanged views with the Director of Audit on his Report on the Accounts of the Government of the Hong Kong Special Administrative Region ("HKSARG") for the year ended 31 March 2008. The Committee noted that the Director of Audit had expressed an unqualified opinion on the Accounts of the HKSARG for the year ended 31 March 2008.

A. Introduction

The Audit Commission ("Audit") conducted a review to examine the economy, efficiency and effectiveness of the administration of the DesignSmart Initiative ("DSI") managed by the Innovation and Technology Commission ("ITC"). The review focused on the following areas:

- corporate governance and administration of the HKDC;
- management of projects funded by the Design Support Programme ("DSP");
- promotion of design by the Hong Kong Design Centre ("HKDC");
- administration of the Design Incubation Programme; and
- overseas practices in the promotion of design.

B. Corporate governance and administration of the HKDC

Attendance of directors at Board/Committee meetings

2. The Committee noted that the HKDC, established in 2001, was governed by a Board of Directors ("Board"). The Finance and Administration Committee ("FAC") and the Business Development Committee of the HKDC were set up in June 2007 to assist the Board to conduct its business. As revealed in paragraph 4.5 of the Director of Audit's Report ("Audit Report"), from March 2007 to June 2008, the attendance rates of some directors at Board/Committee meetings were low. Furthermore, at three (60%) of the five FAC meetings held during the period, the quorum requirement was not met. This might render the decisions made at these meetings invalid.

3. The Committee also noted Audit's concern in paragraph 4.6 of the Audit Report that the overall effectiveness of the Board/Committee might be compromised if a large number of directors representing different sectors of the community did not attend meetings to participate in the decision-making process.

4. Against the above background, the Committee enquired about:

- the views of the HKDC on the poor attendance of some directors at Board/Committee meetings;
- the measures that the HKDC would take to improve the situation and ensure that the quorum requirement would always be met at all meetings in future; and

- for the decisions made at the three FAC meetings without the necessary quorum, the follow-up actions that had been taken by the HKDC.

5. **Hon Victor LO Chung-wing, Chairman, Board of Directors ("Board Chairman"), HKDC**, stated that:

- the HKDC was very concerned about the low attendance rates of its directors. He had issued a letter to all directors to urge them to make efforts to attend future Board/Committee meetings; and
- the directors were prominent individuals with experience and professional knowledge in the design and creative industries and related fields. They included Executive Council members, Legislative Council members and owners of small design firms, etc. They had a lot of business commitments and some travelled overseas frequently. Hence, it was difficult for them to attend Board/Committee meetings. To improve the situation, different measures had been taken, including setting the date and time of meetings three months ahead so that members could plan their schedules in advance.

6. **Mr Allan CHIANG, Chief Executive Officer, HKDC**, stated that:

- the attendance rates at the last two Board meetings had increased to more than 70%;
- apart from attending Board/Committee meetings, the directors also contributed to the work of the HKDC through other means. For example, they provided expert views on strategic issues, directly participated in promotional campaigns such as fund-raising activities, and assisted the HKDC through their personal and professional networks; and
- the issues considered by the FAC were mostly proposals and the FAC's decisions had to be reported to the Board for approval. The HKDC had reviewed the decisions made at the three FAC meetings without a quorum and found that, except for the issue mentioned in paragraphs 4.31 and 4.32 of the Audit Report, no rectification was required for other decisions as they had either been re-affirmed by the Board or superseded by subsequent events. The quorum requirement was met at all FAC meetings held subsequently.

7. In response to the Committee's enquiries, the **Chief Executive Officer, HKDC** stated at the public hearing and in his letter of 9 January 2009 (in *Appendix 17*) that:

- at present, the HKDC did not publish the attendance records of Board/Committee meetings in its annual reports. He considered this a good idea and would put it up to the Board for consideration;
- in addition to the measures set out in paragraph 4.16(a) of the Audit Report, the following measures had been taken to improve the attendance of directors at Board/Committee meetings:
 - (a) choosing a meeting venue that better suited the convenience of the majority of the directors. It had now been decided that half of the meetings would be held at the HKDC office in Kowloon Tong and the rest in Wan Chai, which would be a more convenient location;
 - (b) sending reminders to the directors before the meetings; and
 - (c) exploring the use of tele-conferencing facilities to secure the participation of directors who could not be present at the meetings; and
- to ensure that the quorum requirement would be met at all meetings in future, the HKDC would confirm the number of directors available to attend the meetings two days in advance of the respective meetings.

8. According to paragraph 4.5(b) of the Audit Report, during his tenure as one of the two government directors, the Deputy Secretary for Home Affairs had attended only three (43%) of the seven Board meetings. Moreover, six non-government directors had a low attendance rate (below 40%) at Board/Committee meetings. In particular, three of them had an attendance rate of 25% or below. The Committee asked the Secretary for Commerce and Economic Development:

- whether she was satisfied with such a low attendance rate;
- the criteria for appointing directors to the Board of the HKDC; and
- whether she would still consider reappointing those directors with poor attendance record to the Board upon expiry of their current tenure.

9. **Hon Mrs Rita LAU NG Wai-lan, Secretary for Commerce and Economic Development**, responded that:

- it was the Government's objective to develop Hong Kong as the region's design hub and the HKDC had been the Government's main partner in promoting design. To achieve its objective, the Government had to draw on the expertise and experience of Hong Kong's design talents. In considering

the appointment and reappointment of the directors of the HKDC, her primary concern would be the individuals' qualifications and experience, as well as their ability to make positive contribution to the Board, having regard to the need of the Board;

- she would certainly take into account the attendance rates of the directors in considering approval of their reappointment in future, but this would not be the only factor of consideration. While directors should have been informed of the date and time of a meeting in advance, it did happen sometimes that they could not attend the meeting due to other urgent business. Hence, their reasons for absence should also be taken into consideration; and
- the Commissioner for Innovation and Technology was one of the two government directors on the Board and served as the link between the Board and the Government. The Commissioner had the responsibility to report to her the operation of the Board and to see to it that a mechanism was in place to ensure proper use of the public funds allocated to the HKDC.

10. The **Board Chairman, HKDC** supplemented that:

- during the reorganisation of the Board in 2007, he had had detailed discussion with the Commissioner for Innovation and Technology about the requirements of Board members. It was agreed that Board members should be experienced individuals from the creative industries, design enterprises or relevant education institutions. It was also recognised that they should have concepts of management of public funds as the HKDC received a large amount of government funds and ran many government-subsidised projects; and
- for those individuals who were well-qualified but could not afford the time or might not be suitable to serve as directors, the HKDC would still enlist their assistance through other means, such as by setting up committees at different levels and inviting them to join.

11. As reported in Note 5 of paragraph 4.2 of the Audit Report, the Deputy Secretary for Home Affairs ceased to be a director of the HKDC in March 2008. Paragraph 4.15(b) further stated that the ITC and the Home Affairs Bureau ("HAB") had been in discussion on the more appropriate capacity for any representative of the HAB to hold on the Board. The Committee asked about the result of the discussion.

12. In his letter of 30 December 2008 in *Appendix 18*, the **Secretary for Home Affairs** informed the Committee that the HAB had held preliminary discussion with the ITC. The ITC was agreeable to the HAB sending a representative to sit on the Board of the HKDC in the capacity of an observer. The ITC would consult the Board of the HKDC further before institutionalising the arrangement.

13. The Committee noted that the HKDC, being an organisation in the creative industries, should enjoy a high degree of freedom and flexibility. At the same time, being a government-funded organisation, it was expected to observe government rules and regulations. The Committee asked how the Administration struck a fair balance in designing the governance structure of the HKDC.

14. **Mr Eddy CHAN Yuk-tak, Commissioner for Innovation and Technology**, responded that he was only one of the 20-odd directors on the Board of the HKDC. His role was to set clear guidelines on the amount of funds to be allocated to each project and to ensure proper utilisation of the public funds allocated to the HKDC.

15. The **Secretary for Commerce and Economic Development** added that:

- there should not be a conflict between promotion of design and being accountable in spending public money as long as the powers and responsibilities of different parties were clearly stipulated. For instance, it was acceptable for the Board to delegate certain authority to a committee or director provided that the decision was made with transparency, free from personal influence; and
- regarding the HKDC's formulation of policy on development of design, the Administration believed that it should rely on talents in the trade to take the lead and should not intervene. On the other hand, as public money was involved, the government directors on the Board had the responsibility to put in place a proper system and mechanism to ensure that public funds were well-spent.

Hiring of staff

16. The Committee noted that according to the HKDC's Corporate Governance Manual, all staff should be appointed through an open recruitment process. The Board's prior approval was needed for the creation of new posts. The ITC's approval was also needed if the creation of new post constituted a manpower variation. However, Audit found that in a case involving the creation of new post, which constituted a manpower variation, approvals of the Board and the ITC were only sought after the appointee had

started working in the HKDC, and open recruitment had not been conducted (paragraphs 2.59 and 4.19 of the Audit Report refer). The Committee asked why the HKDC did not comply with the requirements of its Corporate Governance Manual and how the HKDC would rectify the situation.

17. The **Chief Executive Officer, HKDC** explained that:

- the case referred to in paragraph 2.59 of the Audit Report was very exceptional. It involved the recruitment of the HKDC's project director in March 2007. Before being offered the new permanent project director post, the staff concerned had been a contract consultant for the Business of Design Week ("BODW"), the flagship project of the HKDC, for two years. The HKDC decided in March 2007 that it would hold the next BODW in December 2007. Because of the urgency of the situation, the need to ensure work continuity and knowledge retention/transfer, as well as the robust job market at the time, the HKDC considered that open recruitment would unlikely yield a better candidate. Prior approval from the Board and the ITC was not obtained in time because of the urgent need to recruit the staff; and
- the exceptional arrangement had been approved by the FAC, and covering approval was subsequently granted by the ITC. The HKDC would ensure that requirements regarding the hiring of staff as stipulated in the Corporate Governance Manual would always be complied with in the future.

The Administration's responsibility

18. To ascertain whether the ITC had properly discharged its responsibility of monitoring the HKDC to ensure proper utilisation of public funds, the Committee asked about the actions that the ITC had taken to improve the administration of the HKDC since the reorganisation of the Board structure in March 2007.

19. The **Commissioner for Innovation and Technology** stated at the public hearing and in his letter of 7 January 2009 in **Appendix 19** that:

- the HKDC was a private non-profit making company formed in 2001 by founding design associations. Since the establishment of the HKDC, the Commissioner for Innovation and Technology had been participating in its governing institutions to provide Board level advice and oversight to the company. For instance, in 2006, the ITC provided substantial input in revamping the Corporate Governance Manual of the company. However, the daily operations of the HKDC, as for any private company, were the responsibilities of the management;

- before the incumbent Chief Executive Officer of the HKDC was employed in June 2007, the HKDC did not have a full-time chief executive officer. A lot of problems had occurred in the HKDC's operations. The systems and management of the HKDC had improved since July 2007 under the supervision of a full-time chief executive officer;
- when the Administration sought the Legislative Council's approval in May 2007 to provide \$100 million to support the HKDC's operations, the Administration proposed that there should be an adequate control mechanism. Such a mechanism included a revamp of the composition of the HKDC's Board to ensure a balanced representation of stakeholders and an independent overview on the HKDC's operation; and a funding agreement which provided, inter alia, that the HKDC should submit annual plans and three-year business plans, audited accounts, performance indicators and assessment, quarterly disbursements subject to acceptance of progress, setting of annual income targets and rules on the virement of funds, etc; and
- the Administration had since been monitoring the HKDC's operations accordingly. As shown in the Audit Report (e.g. paragraph 4.20), the ITC had been playing an active role in monitoring the HKDC's compliance with the Corporate Governance Manual and had on a number of occasions reminded the management of the need to improve compliance. A further example was that the ITC, at a regular liaison meeting with the Independent Commission Against Corruption in June 2007, proactively requested that a study on the governance and project administration of the HKDC be conducted, to ensure that adequate corruption prevention safeguards were in place. The study was completed in May 2008 and the ITC had since been working with the HKDC on the follow-up actions.

20. It appeared to the Committee that it would be preferable for the HKDC, a small organisation with an establishment of only 31 staff, to strengthen its corporate governance and internal control by system design. The Committee therefore enquired whether the Administration would consider taking such measures as appointing persons with knowledge and experience in corporate governance as directors of the HKDC, and asking them to pay attention to corporate governance issues.

21. The **Secretary for Commerce and Economic Development** stated that the suggestion was in line with her thinking. In fact, the Government had appointed a professional accountant to the Board who served as the Chairman of the FAC. He would oversee the HKDC's internal audit mechanism. It was expected that with his experience in corporate governance and professional background, he would be able to assist the Board in enhancing the governance of the HKDC.

Management of potential conflicts of interest

22. The Committee noted from paragraphs 4.9 to 4.11 of the Audit Report that the HKDC adopted a "one-tier reporting system" for its directors to declare and report conflicts of interest, although it met, to a large extent, the criteria for adopting a "two-tier reporting system" set out in the guideline issued by the HAB. Audit pointed out that as many HKDC directors came from the design trade, potential conflicts of interest might arise when issues about the promotion of design and innovation were discussed at the Board/Committee meetings. As the two-tier reporting system was more stringent than the one-tier reporting system and could better safeguard the HKDC's interests, the Committee asked:

- why the Administration had not required the Board to adopt the system in accordance with the HAB's guideline; and
- whether the HKDC would adopt the two-tier reporting system.

23. The **Secretary for Commerce and Economic Development** stated that the HAB's guideline was applicable to advisory and statutory bodies. As the HKDC was a private company, it was not mandatory for it to adopt the two-tier reporting system. However, she supported the Board to adopt the system to enhance the prevention of conflicts of interest. In fact, the system not only could safeguard the HKDC's interests, but also the directors' interests. The Commissioner for Innovation and Technology, in his capacity as a director of the HKDC, would recommend adoption of the system to the Board.

24. The **Board Chairman, HKDC** stated that:

- the Board had had detailed discussion on the adoption of the two-tier reporting system at its last meeting. Reference had been made to other organisations which adopted this system. The directors held different views on the matter and wished to have more time for consideration. The matter had been set down for discussion by the Board again at its next meeting; and
- he personally supported the system and would strive to obtain the Board's agreement to adopt it.

25. In his letter of 9 January 2009, the **Chief Executive Officer, HKDC** informed the Committee that the Board decided at its meeting on 24 December 2008 to adopt the two-tier reporting system for declaration of interests by its directors.

C. Management of projects funded by the DSP

Management of DSP projects by the ITC

26. According to paragraph 2.11 of the Audit Report, Audit's examination of the records of 27 meetings of the DSI Assessment Panel ("DSI Panel") held from October 2004 to June 2008 showed that in 20 (74%) meetings, declarations of conflicts of interest had been made. However, contrary to the guidelines issued by the ITC to the DSI Panel members, in 17 (63%) meetings, the members concerned were allowed to participate in the discussion of the applications in which they had declared an interest. In 12 (44%) meetings, these members were even allowed to vote in the approval of the applications concerned.

27. The Committee asked:

- why the ITC did not enforce its guidelines on conflicts of interest and allowed a member who had declared an interest in an application to participate in the discussion, and even vote in the approval, of the application concerned;
- how the ITC would ensure compliance with the requirements stipulated in the guidelines; and
- whether the ITC adopted the two-tier reporting system for members of the DSI Panel to declare and report conflicts of interest and, if not, whether the ITC would do so.

28. In response, the **Commissioner for Innovation and Technology** said that:

- the ITC had been too lax in enforcing the guidelines on conflicts of interest. In the cases mentioned in paragraph 2.11 of the Audit Report, after the members concerned had declared an interest, the DSI Panel decided to allow them to participate in the discussion having regard to the fact that they did not have a pecuniary or commercial interest in the applications. They were only related to the applicant organisations. For example, a member was a council member of a university and the application was made by a design programme of the university. In the circumstances, the DSI Panel considered the conflicts of interest not serious and the member could contribute his professional views by participating in the discussion of the application. However, he agreed that such arrangement could not satisfy the public expectation for a stringent system that could effectively prevent the occurrence of conflicts of interest;

- as explained in paragraph 2.14(c)(ii) of the Audit Report, of the 12 cases in which members with declared conflicts of interest were allowed to vote, the recommendations of the DSI Panel were arrived at through consensus or by majority view. Voting as such had not occurred at the meetings; and
- in future, the ITC would strictly enforce the guidelines on conflicts of interest and would not allow any member who had declared an interest in an application, or who was related to an applicant organisation in any way, to participate in the discussion of the application concerned. The member would not be given the discussion document.

29. Regarding adoption of the two-tier reporting system for declaration of interests by the DSI Panel members, the **Secretary for Commerce and Economic Development** and the **Commissioner for Innovation and Technology** responded that:

- the DSI Panel was established to assist the ITC in assessing applications and monitoring progress of projects under the DSP. It was chaired by the Commissioner for Innovation and Technology and comprised prominent people selected from related fields. Unlike directors of the HKDC who had the authority to approve funding applications, the DSI Panel members only played an advisory role and the approval authority was vested in the Commissioner for Innovation and Technology. Hence, the arrangements for declaration of interests by the DSI Panel members were not necessarily the same as those for directors of the HKDC;
- all DSI Panel members were required to declare if there was a conflict of interest when they attended the DSI Panel meetings. This requirement was made known to the members when they were appointed to the DSI Panel. In addition, before each DSI Panel meeting, the ITC reminded the attending members in writing with a standard form to declare interests. The ITC would ensure that, in accordance with established guidelines, members who had made a declaration of interest on a particular agenda item would not be allowed to participate in the discussion of that item; and
- the Administration saw the merit of adopting the two-tier reporting system to avoid any perceived or actual conflicts of interest for the sake of transparency and accountability. It would seriously consider introducing the system for the DSI Panel members.

30. The **Commissioner for Innovation and Technology** informed the Committee in his letter of 7 January 2009 that the two-tier reporting system for all DSI Panel members had been introduced with effect from 1 January 2009.

31. The Committee noted from paragraph 2.3 of the Audit Report that, in seeking funding approval for the DSI in June 2004, the Administration informed the Finance Committee of the Legislative Council that the four DSP funding schemes, namely the Design Research Scheme ("DRS"), Design-Business Collaboration Scheme ("DBCS"), Professional Continuing Education Scheme ("PCES") and General Support Scheme ("GSS"), would benefit about 700 projects over five years. However, up to 30 June 2008 (i.e. four years after launching the DSI), only 169 projects (24% of 700 projects) were approved under the DSP. The Committee asked:

- why the total number of projects which benefited from the DSP was so much lower than that expected; and
- whether the ITC had taken any action to improve the utilisation of the funding schemes.

32. The **Commissioner for Innovation and Technology** explained that:

- of the four funding schemes, the number of projects benefited from the GSS was almost the same as expected, while the utilisation rates of the other three schemes were lower than estimated. This was probably because the Administration had over-estimated the number of projects that would benefit by such a new initiative. It turned out that the response was not as warm as anticipated. Moreover, it took a period of time to introduce the programme to potential applicants and the design trade;
- to improve the utilisation of the DSP, the ITC had reviewed the operation of the funding schemes. The DBCS was reviewed in 2007. Following the review, the rules were revised to allow design companies and small-and-medium-sized enterprises ("SMEs") to become DBCS project co-applicants and SME applicants would be eligible for a maximum grant of \$100,000 for four projects at most. The DRS was reviewed in 2008. As a result of the review, the theme approach was abolished and a new approach was adopted for soliciting DRS project applications. Under the new approach, DRS applications with any themes would be accepted throughout the year. It was expected that the new approach would encourage more DRS applications; and
- the ITC would conduct a review of the PCES later to identify ways to encourage more applications.

33. The **Secretary for Commerce and Economic Development** supplemented that as at December 2008, there were 200 projects approved under the four DSP funding schemes. While the number was still smaller than the target of 700, the total number of beneficiaries of these projects would be multiples of the number of 200. This was because activities such as design research would benefit the industry as a whole, and events organised under the funding schemes were attended by many local and overseas participants.

34. As reported in paragraphs 2.15 and 2.16 of the Audit Report, the DSP funding guidelines issued by the ITC required that fund recipients should submit a project completion report to the ITC within two months after the project is completed. However, Audit's review of the ITC's records found that there were delays in the submission of project completion reports.

35. In addition, the Committee noted from paragraph 2.20(a) of the Audit Report that the DSI Panel agreed at its meeting held in July 2008 that a warning letter should be sent to a DBCS fund recipient who had not submitted the project completion report over three months after the due date. The Committee asked whether the ITC had issued any warning letter to the 19 projects referred to in paragraph 2.16(a), whose reports had been overdue for more than three months.

36. The Committee further asked whether the ITC would require fund recipients of the other three funding schemes, in addition to those of the DBCS, to complete and return post-project evaluation questionnaires, as recommended by Audit in paragraph 2.19(b).

37. The **Commissioner for Innovation and Technology** replied at the public hearing and in his letter of 22 January 2009 (in *Appendix 20*) that:

- the 19 projects consisted of 18 under the DBCS and one under the GSS. As at 22 January 2009, the ITC had not issued any warning letter to these projects because:
 - (a) three projects had since been withdrawn by the applicants;
 - (b) one project had sought and obtained a two-week extension of the completion report submission due date and submission was made within this period. There were some clarifications and technical issues in the accounts to be considered; these had now been resolved and the revised completion report submitted;

- (c) eight projects had applied for and been approved extended deadlines for project completion or submission of completion, and the concerned completion reports had been submitted within the extended timeframe; and
- (d) seven projects had applied for and been approved extended deadlines for project completion or submission of completion, and their respective extended timeframes had yet to expire;
- the fund recipients of all the four schemes were required to submit project completion reports. However, only the fund recipients of the DBCS were required to submit post-project evaluation questionnaires. This was because the ITC wanted to obtain more information on whether or not the DBCS projects were successful in transforming design activities into tradable deliverables. When the review of the DBCS commenced in July 2007, the ITC conducted a questionnaire survey to gauge the views of various stakeholders; and
- no questionnaire survey had been conducted on the other three funding schemes. As the ITC would evaluate the other funding schemes in 2009, it would also require the relevant fund recipients to complete and return post-project questionnaires.

38. According to paragraph 2.21 of the Audit Report, in seeking funding approval for the DSI in June 2004, the Administration informed the Finance Committee that it intended to review periodically the operation of the DSP. However, paragraph 2.22 revealed that of the four DSP funding schemes, the ITC had only completed reviewing the DRS and the DBCS by June 2008, while no review had been conducted on the PCES and the GSS. It appeared to the Committee that if the ITC had conducted reviews on the four DSP schemes periodically as undertaken, it might be able to identify at an earlier time areas for improvement that could help optimise the utilisation of the schemes.

39. The **Commissioner for Innovation and Technology** said he agreed that if the schemes had been reviewed earlier, the ITC might have recognised earlier that the number of projects benefited from the schemes was lagging far behind the target. On the other hand, as the DSP was only launched in 2004, the ITC considered it more appropriate to allow the schemes to operate for a longer time before reviewing them, so that more experience in their operation could be accumulated. The ITC considered it opportune to start reviewing the schemes from 2007, about three years after the DSP had been launched. The ITC would review the PCES and the GSS, starting from the first half of 2009.

40. In response to the Committee's enquiries about the improvement brought about by the review of the DBCS, the **Commissioner for Innovation and Technology** stated in his letter of 7 January 2009 that:

- the DBCS review exercise was started in July 2007. To better tap the views of various stakeholders, the ITC had conducted a questionnaire survey, a discussion session and two special DSI Panel meetings during the review period from July 2007 to June 2008. The new arrangements for DBCS were then implemented in June 2008; and
- there had been an increasing trend for DBCS applications. Approved applications for the DBCS rose from five in 2005 to 31 in 2006 and 57 in 2007. For 2008, there were respectively 41 and 35 approved projects before and after the new arrangements of the DBCS were implemented in June 2008.

GSS projects undertaken by the HKDC

41. The Committee noted that Project 9707 was a GSS project initiated by the HKDC to commemorate the 10th anniversary of Hong Kong's return to China. It aimed to honour the achievements and excellence of the Hong Kong design industry in the period 1997 to 2007. As part of Project 9707, 10 international brands and 10 Hong Kong designers were invited to produce 10 collaborative creative products. These products were exhibited in Hong Kong and the Mainland, and were sold in limited quantity.

42. According to paragraphs 2.36 to 2.38 of the Audit Report, the DSI Panel had commented that as the participating brands and designers would get good exposure, they should pay their own travel and hotel expenses. However, as it transpired, the travel expenses of the participating brands and designers were met by the HKDC, from funds obtained by auctioning nine of the 10 creative products. The Committee asked the Chief Executive Officer, HKDC:

- about the justifications for not following the advice of the DSI Panel, and whether these had been put up to the DSI Panel for consideration; and
- about the procedure that he had gone through in obtaining approval for departing from the DSI Panel's advice.

43. The **Chief Executive Officer, HKDC** replied that:

- Project 9707 created a win-win situation for both the participating brands and designers, and the Hong Kong design industry. The former could gain good exposure to promote their business/service. On the other hand, the participation of brands and designers in the exhibitions/symposiums in Beijing and Hong Kong in December 2007 was critical to the promotion of Hong Kong's design industry and the development of international frontiers for the design profession;
- the HKDC noted the DSI Panel's view. However, the HKDC considered it justifiable to meet the travel and hotel expenses incurred by staff of the brands and designers, particularly given that the designers had contributed their time and service free of charge, and the brands had made substantial investments in the research, prototyping and manufacturing of the products. Faced with such a dilemma, the HKDC adopted a compromising arrangement whereby the travel and hotel expenses were paid from the auction proceeds, instead of public funds. As no government funding was involved, the ITC had confirmed that it saw no objection to the arrangement. The donors concerned had also reaffirmed their understanding of the specific usage of the funds;
- the HKDC was only informed of the DSI Panel's view after the meeting was over and hence could not give its views to the Panel. As regards procedure, the FAC's approval for the arrangement had been obtained by circulation of paper. As Board meetings were held quarterly, the arrangement could not be put up to the Board for consideration at its meeting at that time. Nevertheless, the Chairman and Vice-chairman of the Board had given consent to the arrangement; and
- in case of similar situation in future, the HKDC would be more prudent and strengthen communication with the Commissioner for Innovation and Technology and the DSI Panel, with a view to reaching a consensus.

44. In his letter of 9 January 2009, the **Chief Executive Officer, HKDC** supplemented that the Board's retrospective approval for paying the travel expenses of the brands' representatives and designers from the auction proceeds had been obtained at the Board meeting on 22 September 2008, when the draft Audit Report was discussed.

45. The Committee further referred to the following problems relating to Project 9707 and the BODW identified in the Audit Report, and asked the HKDC how it would improve its internal control and accounting systems to ensure compliance with set guidelines and requirements:

- three months after Project 9707 was completed, as at 30 June 2008, only three brands and three designers participating in the project had signed a Memorandum of Understanding ("MOU") with the HKDC, which specified the rights and obligations of the parties concerned, contrary to the HKDC's undertaking in its project proposal that it would sign an MOU with all parties concerned;
- there was no documentation to record the basis adopted by the HKDC for shortlisting and selecting the brands and designers to participate in the project; and
- contrary to the DSP funding agreement and funding guidelines, pre-project commencement expenses were charged to the Project 9707 account without the ITC's approval, the expenses incurred for buying tickets to participate in the HKDC Annual Award Gala Dinner were charged to the Project 9707 account, and entertainment expenses were charged to the BODW project accounts.

46. The **Chief Executive Officer, HKDC** responded that:

- all the participating brands and designers of Project 9707 had now signed the MOUs with the HKDC;
- the shortlisting and selection of the brands and designers involved in Project 9707 were steered by the Chairman and Vice-chairman of the Board, in consultation with the design community. The DSI Panel had also been briefed. Owing to time and manpower constraints, the HKDC had focused on marketing and liaison work and neglected the requirement for proper documentation. The HKDC would keep proper records on the shortlisting and selection of participants for large projects in future;
- the expenses involved in the cases mentioned above were all justified, but had been charged to the wrong accounts due to oversight. There were basically two sources of government funding to the HKDC, namely funding provided under the DSI which was used to support Project 9707 and the BODW project, and the \$100 million allocated in May 2007 to support the HKDC's basic operation. The pre-project commencement expenses, expenses for buying tickets for the brand representatives and designers attending the HKDC Annual Award Gala Dinner, and entertainment expenses were regarded as expenditures arising from the HKDC's daily operations, so they should not be charged to the project votes. There was no question of the HKDC spending money which should not be used; and

- the HKDC already had a Corporate Governance Manual providing guidelines on governance and administration matters. However, in view of the problems identified in the Audit Report, he had compiled a more direct and simpler handbook for reference by the HKDC's staff responsible for vetting and approving applications. Moreover, the HKDC had put in place an internal audit mechanism. With the implementation of these measures, it was expected that the HKDC's internal control procedures would be tightened and level of compliance with established rules and regulations would be enhanced.

47. According to paragraph 2.49 of the Audit Report, the DSI Panel had urged the HKDC to develop a long-term financial sustainability plan for the BODW and to reduce its reliance on the GSS for funding the BODW. However, up to August 2008, the HKDC had yet to develop a long-term financial sustainability plan with a timetable for achieving self-sufficiency. The Committee asked about the HKDC's plan to maintain the financial sustainability of the BODW.

48. The **Chief Executive Officer, HKDC** stated at the public hearing and in his letter of 9 January 2009 that:

- as shown in Table 4 of the Audit Report, the project income of the BODW had been increasing over the last few years. However, it was unlikely that the BODW could achieve self-sufficiency at this stage. Experience of overseas countries indicated that substantial government funding was required for similar projects, which involved a lot of educational and promotional work;
- the BODW had contributed to the Hong Kong brand and the HKDC's goal to become the design hub of Asia. The number of attendees and visitors to the conferences, seminars, workshops and exhibitions of the BODW had been on a rising trend, increasing from 30,000 in 2004 to 50,000 in each of 2007 and 2008; and
- as the BODW was now in its seventh year, the HKDC decided to take stock and an external consultant had been appointed to review the positioning and strategy of the BODW. The study included an elaboration of the results and effectiveness of the event, and recommendations on the development of a long-term financial plan. The HKDC aimed to finalise the report in January 2009 and submit it for the Board's consideration in early February 2009.

D. Promotion of design by the HKDC

49. According to paragraphs 3.13 and 3.14 of the Audit Report, the HKDC stated in its business plan and annual budget various initiatives for enhancing the design infrastructure. However, the implementation of these initiatives had met with considerable delays. For instance, the development of the design directory was completed almost four years after the planned completion date. The Committee asked how the HKDC would ensure that its design infrastructure projects would not be further delayed.

50. The **Chief Executive Officer, HKDC** replied that:

- the delay in completing the design directory was due to the unforeseen long time taken to discuss with the design community and business users to formulate the project proposals, and the difficulties encountered in the discussion process. For example, some design associations had expressed concern about duplication of resources as the Hong Kong Trade Development Council had similar directories. The discussion took quite some time to complete. Moreover, time had been wasted in seeking funding support for the project from the DSP, which turned out to be unsuccessful; and
- to ensure that its design infrastructure projects would not be unduly delayed in future, the HKDC had put in place a more comprehensive project control system, which included holding frequent internal project review meetings among staff and involving the Board in reviewing project progress on a quarterly basis.

51. According to paragraphs 3.20 and 3.22 of the Audit Report, the HKDC was required to achieve an income target of 20% for 2008-2009 set by the ITC, and the HKDC's projection in July 2008 showed that it might not be able to meet this target. The Committee asked why the HKDC could not achieve the income target and about the measures that it had taken to boost the income for 2008-2009.

52. The **Chief Executive Officer, HKDC** responded that:

- the HKDC originally estimated that it could meet the income target, but it turned out that the actual income was less than expected because:
 - (a) the summer overseas design and cultural tour for students, which was an income-generating event, was cancelled due to an unexpectedly low response to the HKDC's initial marketing;

- (b) some projects in the original plan were subsequently organised as part of the "Reinventing with Design" conference held in June 2008 under the DSP funding instead; and
- (c) due to the prevailing economic conditions, businesses were expected to be less generous in sponsorships. For example, the target sponsorship of \$625,000 for holding exhibitions at the InnoCentre was unlikely to be met. Only \$400,000 was raised in a fund-raising activity held recently, which was much less than the original target of \$1million; and
- the HKDC would try to improve the expenditure/revenue ratio by cutting expenditure and increasing revenue. For instance, salary and general expenses had been reduced by \$2.55 million in 2008. Additional revenue had been generated by holding more activities, such as courses and seminars on design and branding for senior civil servants. Moreover, a large-scale exhibition had been held in Shanghai, generating an income of \$1.36 million. With these efforts, it was estimated that the HKDC would be able to achieve an expenditure/revenue ratio of 15%, though not 20%.

53. Paragraphs 3.24 to 3.27 of the Audit Report revealed that the amount of unspent balance of the funding approved under the InnoCentre Programme, as reported by the HKDC in July 2007, had been understated by about \$4.5 million. The Committee noted that the funding allocated to the HKDC under the InnoCentre Programme was disbursed by instalments, and any unspent amount would be deducted from the funding for the following period. The Committee therefore enquired whether the understatement of \$4.5 million might lead to an over-provision of funding to the HKDC.

54. In his letter of 2 January 2009 in *Appendix 21*, the **Director of Audit** stated that:

- Audit informed the ITC of the understatement of unspent balance in May 2008. In September 2008, the ITC informed Audit that, owing to heavy work commitment around March 2008 and in trying to meet the payment deadline at close of financial year, the third quarterly disbursement was made to the HKDC without further updating the unspent balance according to the audited accounts. After confirmation with the HKDC, the updating and offsetting was made when considering the fourth disbursement in June 2008. The updating and offsetting was thus delayed by a quarter; and
- as the understatement of unspent balance was subsequently rectified in June 2008, it did not lead to an over-provision of funding to the HKDC. Nonetheless, Audit considered that the ITC should ensure that the unspent balance was properly reported by recipients of DSI funding.

55. In his letter of 9 January 2009, the **Chief Executive Officer, HKDC** stated that the amount of \$2.5 million reported by the HKDC to the ITC in July 2007 (subsequently adjusted to \$2 million in December 2007) represented the unspent balance for the three-month period from 1 April to 30 June 2007. The HKDC did report the cumulative unspent balance of \$6.5 million under the InnoCentre Programme through submission of the audited accounts to the ITC in December 2007. As the HKDC's accounts were audited by professional accountants, he did not see the possibility of the HKDC benefitting from over-provision of funds from the ITC.

E. Administration of the Design Incubation Programme ("DIP")

56. The Committee noted that according to the Memorandum of Administrative Arrangements signed between the Hong Kong Science and Technology Parks Corporation ("HKSTPC") and the ITC for the DIP ("DIP-MAA"), the HKSTPC should offer a one-year mentorship programme, as part of the technical and management assistance to be provided to incubatees. Paragraph 5.12 of the Audit Report revealed that the participation rate of the mentorship programme was low. The Committee asked why the mentorship programme was not popular among the incubatees and about the remedial measures taken.

57. The Committee also asked about the actions taken by the HKSTPC in response to the following Audit observations:

- no records were kept to show that due diligence visits had been carried out by the HKSTPC to verify information provided by DIP applicants, as required by the HKSTPC's DIP guidelines (paragraph 5.19 of the Audit Report refers); and
- despite the Design Admission Panel's decision that a marking sheet should be used to facilitate it in assessing the qualitative aspects of DIP applicants, the marking sheet had not been used (paragraph 5.20 of the Audit Report refers).

58. **Mr E Anthony TAN, Chief Executive Officer, HKSTPC**, replied that:

- participation in the mentorship programme was on a voluntary basis. The HKSTPC conducted a survey in August 2008 to investigate the reasons for the low participation rate. It was found that the incubatees did not join the programme mainly because they were not willing to share their creative and innovative ideas with other people, particularly those from the design trade, including the mentors;

- to improve the situation, the HKSTPC would, with agreement from participating incubatees and mentors, publicise success cases of mentorship to non-participating incubatees, so as to encourage their participation in the mentorship programme;
- the incubatees were design start-up companies which often did not have an office for visit by the HKSTPC staff, e.g. they might work at home and apply to join the DIP. Hence, since November 2007, the responsible HKSTPC staff interviewed DIP applicants at the InnoCentre to verify the information provided in their applications. The interview records were also submitted to the Design Admission Panel;
- the HKSTPC would revise the due diligence evaluation report format to capture the name of interviewers/interviewees and the date/time/venue of interview; and
- the idea of using a marking sheet to facilitate assessment of DIP applicants was raised by the chairman of the Design Admission Panel at a meeting, but the marking sheet was not used subsequently. Notwithstanding this, the Design Admission Panel did assess the applicants according to each of the criteria set out in the DIP-MAA. He would seek the Design Admission Panel's formal decision as to the applicability of the original proposed quantitative marking sheet for assessing DIP applications.

59. The Committee noted the response of the Chief Executive Officer, HKSTPC in paragraph 5.39(a) of the Audit Report that the HKSTPC would request the Design Advisory Panel to give guidelines to DIP applicants to help them set realistic quantitative milestone targets. The Committee asked about the progress made and whether the HKSTPC had encountered any difficulty in drawing up the guidelines.

60. The **Chief Executive Officer, HKSTPC** responded that it was indeed difficult to set quantitative targets for design companies. However, the HKSTPC agreed that it was desirable to set measurable targets as far as possible to enable progress assessment. As the Design Advisory Panel comprised designers, industrialists and academics of various design disciplines, it could give expert advice on the setting of realistic quantitative milestone targets by DIP applicants.

61. In view of the various problems in the administration of the DIP as revealed by Audit, the **Chief Executive Officer, HKSTPC** said that the HKSTPC did not have experience in the design industry, and it needed to accumulate more experience in managing the DIP which was a new initiative launched in 2006. The HKSTPC planned to improve the operation of the DIP by using the funding for the programme more flexibly to

assist the incubatees, keeping proper records and documentation in evaluating applications and assessing the performance of incubatees, and issuing guidelines to help applicants set milestone targets which were more measurable.

F. Overseas practices in the promotion of design

62. As reported in paragraph 6.3 of the Audit Report, many countries which were renowned for their design capability had formulated national design policies and programmes to promote design. For example, the UK Department for Innovation, Universities and Skills published a White Paper entitled "Innovation Nation" in March 2008, listing out details of actions that the UK Government would carry out to promote design.

63. Noting that it was the Government's policy to strengthen the support for design and innovation and to better harness the economic potentials of design, and that the Government had devoted a large amount of money to promoting design in Hong Kong over the past five years (i.e. 250 million for launching the DSI in 2004 and another \$100 million to the HKDC in 2007 to enhance its roles in promoting design), the Committee asked the Secretary for Commerce and Economic Development how the Administration would engage the public at large in its policy objective.

64. The **Secretary for Commerce and Economic Development** responded that:

- as the DSI had been implemented for almost five years, it was opportune to review its achievements. For example, the BODW had been a very successful programme for providing training and commercial opportunities to the design and creative industries. It had become the largest annual design event in Asia and one of the leading design events in the world;
- currently, the different aspects of the creative industries were handled by different government departments, e.g. the Television and Entertainment Licensing Authority, the Trade and Industry Department and the ITC, giving rise to the impression that the government policy on creative industries was not clear and coherent. She agreed that a consolidated policy paper should be issued to set out the Government's vision and policy for promoting the development of creative industries, so as to engage various stakeholders and the public in its policy direction;
- the Chief Executive announced in his 2008-2009 Policy Address that to promote the development of creative industries, the Commerce and Economic Development Bureau ("CEDB") would set up a dedicated Creative Industry Office with integrated and realigned resources from related departments. The new Office would co-ordinate the work of different departments and

work closely with the trades to boost the development of creative industries. It would also consider providing more effective support for Hong Kong's creative industries through integration of resources; and

- to implement the above policy initiative, the CEDB should work together with and listen to the views of the relevant trades and industries. The CEDB had commenced work in this respect and was consulting the relevant representatives from the industries on how to take forward the policy initiative. The CEDB aimed to set up the Creative Industry Office on 1 April 2009 and would, at the same time, formulate strategic measures for implementing the government policy on promoting the development of creative industries.

65. The Committee further asked about the progress made in developing suitable targets and methods/indicators for measuring the performance and effectiveness of the DSI. The **Secretary for Commerce and Economic Development** said that the Administration would study the experience of overseas countries in evaluating and reporting the performance of their initiatives to promote design, with a view to developing more suitable outcome targets and indicators on design promotion in Hong Kong.

G. Conclusions and recommendations

66. The Committee:

Corporate governance and administration of the Hong Kong Design Centre ("HKDC")

- regrets that the HKDC is yet another government-funded organisation found to have problems and inadequacies in corporate governance that has become the subject of a report by the Director of Audit and has required examination by the Committee in recent years, the others being the English Schools Foundation, Hong Kong Applied Science and Technology Research Institute Company Limited, Hong Kong Tourism Board and Society for the Aid and Rehabilitation of Drug Abusers;
- expresses serious concern and finds it unacceptable that the Board of Directors ("Board"), which is responsible for directing the development and operations of the HKDC and monitoring the performance of the HKDC's management, has not properly discharged its responsibilities, as reflected by the following:

- (a) the attendance rates of some directors, including the Deputy Secretary for Home Affairs as one of the two government directors, at the Board/Committee meetings were low;
 - (b) at three (60%) of the five Finance and Administration Committee ("FAC") meetings held between March 2007 and June 2008, the quorum requirement was not met;
 - (c) the HKDC has adopted a "one-tier reporting system" for its directors to declare and report conflicts of interest, despite the fact that it meets, to a large extent, the criteria for adopting a "two-tier reporting system" set out in the guideline issued by the Home Affairs Bureau;
 - (d) there were weaknesses in the HKDC's internal control and accounting systems, details of which are given in the part on "Management of projects funded by the Design Support Programme ("DSP")" below; and
 - (e) the HKDC has failed to comply with the requirements and guidelines on governance and administration matters set out in its Corporate Governance Manual, for example:
 - (i) for the procurement of goods and services, the guidelines on the number of quotations required and the approval limits stipulated in the Corporate Governance Manual were not followed in some cases;
 - (ii) air tickets were purchased before application for approval was made or written approval was obtained in a number of cases; and
 - (iii) approval for reimbursing the travel expenses incurred by a Board member was given by the Chairman instead of the Board as required by the Corporate Governance Manual in a number of cases;
- expresses serious concern and finds it unacceptable that whilst the two government directors (i.e. the Commissioner for Innovation and Technology and the Deputy Secretary for Home Affairs) on the Board may not carry a heavier weight than the other directors, they have together not been able to discharge the added dimension of their responsibilities as the guardian of the public interest to ensure proper utilisation of the public funds allocated to the HKDC, in so much that problems and inadequacies have been found in the HKDC's corporate governance;

- notes that the Home Affairs Bureau intends to send a representative to sit on the Board in the capacity of an observer instead of a director, and expresses concern as to how the single government director left on the Board can effectively safeguard the public interest in dealing with any problems and inadequacies in the HKDC's corporate governance;
- acknowledges that:
 - (a) the HKDC has put in place an internal audit mechanism to ensure compliance with the requirements and guidelines in the Corporate Governance Manual, and the Government has appointed a professional accountant to the Board who serves as the Chairman of the FAC and will oversee the mechanism;
 - (b) the Board has decided to adopt the two-tier reporting system for declaration of interests by its directors;
 - (c) the Secretary for Commerce and Economic Development has accepted the audit recommendation in paragraph 4.12 of the Director of Audit's Report ("Audit Report"); and
 - (d) the Chief Executive Officer, HKDC has accepted the audit recommendations in paragraphs 4.13, 4.21, 4.26 and 4.34 of the Audit Report;
- urges the HKDC to consider publishing the attendance records of Board/Committee meetings in its annual reports;
- in view of the repeated occurrence of corporate governance problems in government-funded organisations, urges the Administration to attach the utmost importance to ensuring sound corporate governance in such organisations, educate their staff about the importance of achieving sound corporate governance and accountability in using public funds, and consider taking measures, including but not limited to the following, to strengthen their corporate governance by system design:
 - (a) formulating a code of best practice on corporate governance for government-funded organisations for reference by the organisations, and requiring the organisations to produce a report on compliance with the code and publish the same in their annual reports to enhance accountability;

- (b) in selecting individuals for appointment to the governing bodies of government-funded organisations, appointing persons with knowledge and experience in corporate governance who could afford the time to contribute their service;
- (c) providing briefings on corporate governance requirements to members of the governing bodies of government-funded organisations; and
- (d) for small-sized government-funded organisations like the HKDC, which may not have sufficient resources to hire an internal auditor to oversee compliance issues, arranging for the secondment of a government treasury accountant to such organisations to help train up their staff in corporate governance matters, or extending the scope of service provided by the external accountants hired by the organisations to cover compliance matters;

Management of projects funded by the DSP

- expresses great dissatisfaction and disappointment that:
 - (a) the total number of projects which benefited from the DSP (i.e. 200 as at December 2008) was very much lower than that expected (i.e. 700 by June 2009); and
 - (b) the Commissioner for Innovation and Technology, being the Controlling Officer of the DesignSmart Initiative ("DSI") and responsible for administering the DSP, has failed to:
 - (i) strictly enforce the DSP funding guidelines and the DSP funding agreement, as follows:
 - in some cases, the requirements stipulated in the guidelines on conflicts of interest issued by the Innovation and Technology Commission ("ITC") to members of the DSI Assessment Panel were not complied with; and
 - despite the requirement in the DSP funding guidelines issued by the ITC, there were delays in the submission of project completion reports by fund recipients of the DSP; and
 - (ii) review the operation of the DSP periodically as undertaken by the Administration in seeking funding approval for the DSI in June 2004. Of the four DSP funding schemes, the ITC had only completed reviewing the Design Research Scheme and the Design-Business Collaboration Scheme by June 2008 while no

review had been conducted on the Professional Continuing Education Scheme ("PCES") and the General Support Scheme ("GSS"). The failure to review the funding schemes in a timely manner might have led to delays in identifying any areas for improvement that could help optimise the utilisation of some of the funding schemes;

- expresses serious dismay and finds it unacceptable that the HKDC, in managing Project 9707 and the Business of Design Week ("BODW") project, has failed to comply with the DSI Assessment Panel's advice, the DSP funding guidelines and the DSP funding agreement, and to see to the good and proper management of the projects, as follows:
 - (a) there was no documentation to record the basis adopted by the HKDC for shortlisting and selecting the brands and designers to participate in Project 9707;
 - (b) three months after Project 9707 was completed, as at 30 June 2008, only three brands and three designers participating in the project had signed a Memorandum of Understanding ("MOU") with the HKDC, contrary to the HKDC's undertaking in its project proposal that it would sign an MOU with all parties concerned;
 - (c) despite the advice given by the DSI Assessment Panel that brands and designers participating in Project 9707 should pay their own travel and hotel expenses, such expenses were met by the HKDC;
 - (d) notwithstanding the advice given by the DSI Assessment Panel that the HKDC should reduce its reliance on the GSS for funding the BODW project, the HKDC did not develop a long-term financial sustainability plan for the project; and
 - (e) the following errors have occurred in connection with the projects:
 - (i) contrary to the DSP funding agreement, pre-project commencement expenses of about \$173,000 were charged to the Project 9707 account without the ITC's approval;
 - (ii) a sum of \$75,000 incurred for buying tickets to participate in the HKDC Annual Award Gala Dinner was wrongly charged to the Project 9707 account, contrary to the DSP funding guidelines that DSP funding should not be used to meet entertainment expenses; and

- (iii) contrary to the DSP funding guidelines, entertainment expenses were wrongly charged to the BODW project accounts;
- acknowledges that:
 - (a) the ITC has introduced the two-tier reporting system for declaration of interests by all DSI Assessment Panel members with effect from 1 January 2009;
 - (b) the DSI Assessment Panel has agreed that the ITC would send a warning letter to a fund recipient of the Design-Business Collaboration Scheme who has not submitted the project completion report over three months after the due date;
 - (c) the ITC will review the PCES and the GSS from the first half of 2009 and, after completing these reviews, conduct an overarching review of the DSP;
 - (d) all the participating brands and designers of Project 9707 have signed the MOUs with the HKDC;
 - (e) the HKDC has appointed a consultant to review the positioning and strategy of the BODW, including making recommendations on the development of a long-term financial plan. The consultant's report would be considered by the Board in early February 2009;
 - (f) the Commissioner for Innovation and Technology has accepted the audit recommendations in paragraphs 2.13, 2.19 and 2.24 of the Audit Report; and
 - (g) the Chief Executive Officer, HKDC has accepted the audit recommendations in paragraphs 2.46 and 2.62 of the Audit Report;
- urges that:
 - (a) the Commissioner for Innovation and Technology should:
 - (i) unless for good and justifiable reasons to be fully documented, strictly enforce the requirements in the DSP funding guidelines and the DSP funding agreement; and
 - (ii) review the PCES and the GSS and then the DSP as a whole without delay, with a view to identifying areas for improvement to help optimise the utilisation of the funding schemes; and

- (b) the Chief Executive Officer, HKDC should:
 - (i) unless for good and justifiable reasons to be fully documented, comply with the DSI Assessment Panel's advice, the DSP funding guidelines and the DSP funding agreement, and ensure the good and proper management of the projects funded by the DSP; and
 - (ii) take measures to improve the HKDC's internal control and accounting systems;

Promotion of design by the HKDC

- expresses great dissatisfaction and disappointment that:
 - (a) the implementation of a number of initiatives stated in the HKDC's business plan and annual budget for enhancing the design infrastructure had met with considerable delays;
 - (b) it is unlikely the HKDC will meet the income target of 20% for 2008-2009 set by the ITC; and
 - (c) the amount of unspent balance of the funding approved under the InnoCentre Programme reported by the HKDC had been understated by about \$4.5 million;
- acknowledges that:
 - (a) the ITC has accepted in principle that sponsorship-in-kind could also be taken into account in assessing the expenditure/revenue ratio of the HKDC;
 - (b) in June 2008, the ITC deducted \$4.5 million from the disbursement to the HKDC for 2008-2009 and, in future, the ITC will verify reported unspent balance against other independent sources such as bank balance statements and audited accounts at each quarterly disbursement;
 - (c) the Commissioner for Innovation and Technology has accepted the audit recommendations in paragraphs 3.16 and 3.29 of the Audit Report; and
 - (d) the Chief Executive Officer, HKDC has accepted the audit recommendations in paragraphs 3.11, 3.17, and 3.30 of the Audit Report;
- urges the Commissioner for Innovation and Technology and the Chief Executive Officer, HKDC to expeditiously implement the above audit recommendations;

Administration of the Design Incubation Programme ("DIP")

- expresses serious dismay and finds it unacceptable that:
 - (a) in some cases, disbursement of financial assistance was not made in accordance with the Memorandum of Administrative Arrangements for the DIP and the guidelines issued by the Hong Kong Science and Technology Parks Corporation ("HKSTPC"); and
 - (b) supporting documents submitted by incubatees in making claims for reimbursement of expenses under the DIP were often inadequate;
- expresses dissatisfaction that:
 - (a) no records were kept to show that due diligence visits had been carried out by the HKSTPC to verify information provided by DIP applicants;
 - (b) there was no documentation showing that the HKSTPC had submitted supplementary information to the Design Admission Panel to clarify its concerns in conditional approval cases;
 - (c) the milestone targets set by incubatees in their applications were often non-quantitative, which did not facilitate progress assessment or benchmarking; and
 - (d) documentation of milestone assessments was not always kept;
- acknowledges that:
 - (a) the HKSTPC will:
 - (i) revise the due diligence evaluation report format to capture the name of interviewers/interviewees and the date/time/venue of interview; and
 - (ii) modify the milestone assessment form to enable the assessor to fill in justifications for the judgments made, and to include a checklist on supporting documents to be reviewed; and
 - (b) the Chief Executive Officer, HKSTPC has accepted the audit recommendations in paragraphs 5.14, 5.25, 5.38 and 5.42 of the Audit Report;

- urges the Chief Executive Officer, HKSTPC to ensure compliance with the Memorandum of Administrative Arrangements for the DIP and the HKSTPC's guidelines, and expeditiously implement the above audit recommendations;

Overseas practices in the promotion of design

- notes that the Government has devoted a large amount of money to promoting design in Hong Kong over the past five years, i.e. 250 million for launching the DSI in June 2004 and another \$100 million to the HKDC in May 2007 to enhance its roles in promoting design;
- expresses serious concern that there is a lack of outcome targets/indicators to evaluate the effectiveness of the Government's initiatives to promote design in Hong Kong;
- acknowledges that:
 - (a) the Commerce and Economic Development Bureau aims to set up a dedicated Creative Industry Office with integrated and realigned resources from related departments on 1 April 2009. The Office will co-ordinate the work of different departments and work closely with the trades to boost the development of creative industries; and
 - (b) the Commissioner for Innovation and Technology has accepted the audit recommendations in paragraph 6.11 of the Audit Report;
- strongly urges the Secretary for Commerce and Economic Development to expeditiously issue a policy paper to set out the Government's vision and policy for promoting the development of creative industries, including design, and engage various stakeholders and the public in its policy direction; and

Follow-up actions

- wishes to be kept informed of:
 - (a) the HKDC's decision regarding publishing the attendance records of Board/Committee meetings in its annual reports;
 - (b) the Administration's decision regarding the measures proposed by the Committee to strengthen corporate governance in government-funded organisations by system design;
 - (c) the progress of the ITC's reviews of the PCES, the GSS and the DSP;

- (d) the measures taken by the Chief Executive Officer, HKDC to improve the HKDC's internal control and accounting systems;
- (e) the progress made by the Administration in issuing a policy paper on the development of creative industries, including design; and
- (f) the progress made in implementing the various audit recommendations.

The Committee held two public hearings on 6 and 8 January 2009 respectively to receive evidence on this subject. In view of the evidence revealed in the course of the public hearings, the Committee has decided to seek additional information from the Administration.

2. To allow itself more time to consider the issues raised in the Director of Audit's Report and the additional information provided by the witnesses, the Committee has decided to defer a full report on this subject.

A. Introduction

The Audit Commission ("Audit") conducted a review of the management of public markets by the Food and Environmental Hygiene Department ("FEHD"). The review focused on the following areas:

- usage of public markets;
- market stall rentals and charges;
- problem of stall subletting;
- management of a public market in Kowloon; and
- planning of new public markets.

2. **Dr Hon York CHOW Yat-ngok, Secretary for Food and Health**, made an opening statement at the Committee's public hearing on 9 December 2008. The full text of his statement is in *Appendix 22*. In gist, he said that:

- Hong Kong's public markets had a long history. The operation of markets was similar to bazaars, with every market stall being run by an individual tenant. As they offered a wide variety of distinctive goods sold at relatively low prices, markets had provided an alternative for meeting the daily shopping needs of local residents. In fact, shopping at markets had become an integral part of many people's daily lives. There was no doubt about the value of public markets;
- public markets were also places on which small traders had to rely to earn a living. Many of them were lower-skilled workers and some had engaged in on-street hawking in the past. They were willing to move into markets to carry on their business mainly because of the concessionary rental arrangements made by the Government. Most of them hoped to continue with their small business to maintain their livelihood. This was not only another social function of public markets, but also the fundamental reason for the Government's on-going subsidisation of their operation;
- currently, only 15% of the public market tenants were paying full Open Market Rentals ("OMR"), while the rest were paying rental below the open market level. Nearly 50% of the stall tenants were paying 60% or less of the OMR. This was the outcome of the market subsidisation policy in previous decades, as well as the rental freeze in the last 10 years as demanded by various quarters in the community, including the Legislative Council ("LegCo") and many political parties;

- if all stall tenants were asked to pay the OMR, the overall market operation could certainly achieve fiscal balance without showing any deficit as pointed out in the Audit Report. However, this would mean that the stall tenants would have to pay an additional \$1,700 on average for monthly rental, and as many as over 9,700 tenants would be affected. For those tenants who were former on-street hawkers and currently paying concessionary rental, the rate of increase would be even greater. Therefore, the core question was whether the Government should charge stall tenants the OMR and, if yes, at what pace;
- speaking solely from the Government's financial perspective, the Government certainly hoped to reduce substantially the level of subsidisation in market management or even to achieve fiscal balance. However, in order to reduce government subsidy, changes would have to be made to the long-standing policy of subsidisation. Questions which warranted an in-depth study by the Public Accounts Committee and various sectors in the community included: whether stall tenants were prepared to accept the substantial increase in rental; whether the rental increase would make business difficult for them; whether it would aggravate the stall vacancy situation; whether it would push up prices in markets and jeopardise public interests in the end; and in view of the current economic downturn, whether it was still advisable for the Government to implement rental adjustments as soon as possible; and
- on 3 December 2008, the LegCo passed a motion urging the Administration to reduce the rent of public markets by half for one year. This precisely reflected the difference in the expectations of the LegCo and the public about market rental policy. Therefore, the Administration must hold detailed discussions with stakeholders before implementing the recommendation in the Audit Report to devise a "suitable and aligned rental adjustment mechanism".

B. Usage of public markets

3. The Committee noted that the current review on the public markets managed by the FEHD was a follow-up to the review conducted by Audit in 2003. In Audit Report No. 41 (October 2003), Audit already pointed out that many market stalls were vacant or non-trading, and large operating deficits were incurred at some public markets. The Committee had examined the subject and made conclusions and recommendations in its Report No. 41 (February 2004). It appeared to the Committee that with a lapse of five years since the last audit review, the Food and Health Bureau ("FHB") and the FEHD had made little progress in resolving the above problems, which still persisted at some markets. As revealed in paragraph 2.15(c) of the Audit Report, as of June 2008, 34 of the 104 public markets had a stall vacancy rate of 30% or above, of which 11 had a vacancy rate of 50% or above. The Committee therefore enquired about:

- the details of the actions that had been taken by the Administration since February 2004 to follow up the recommendations made by Audit and the Committee; and
- the reason why the actions taken by the Administration did not appear to be effective.

4. **Mr CHEUK Wing-hing, Director of Food and Environmental Hygiene,** responded that:

- the Administration had actively followed up Audit's recommendations since the last audit review. The FEHD had conducted a review in respect of public markets with a high vacancy rate and non-trading stalls, and taken measures to address such problems. The measures included maintaining flexibility in determining and changing the trade of individual stalls, merging small stalls to form larger ones, lowering the upset auction prices of long-standing vacant stalls in selected markets to attract potential bidders, and tightening tenancy condition so that a tenant shall not cease or suspend business at the stall for seven days or more in a calendar month without the prior written consent of the FEHD;
- the FEHD had also implemented other measures to improve the facilities and viability of public markets, such as market improvement works, promotional activities and maintaining a high standard of cleanliness in markets;
- the Administration had conducted a comprehensive review of public markets with a view to ascertaining whether any of the markets should be closed down. The Administration reported the result of the review to the Panel on Food Safety and Environmental Hygiene of the LegCo ("LegCo Panel") in May and November 2008 respectively; and
- despite the efforts made by the FEHD, it was noted that the overall vacancy rate had remained stable at around 23% to 24% in recent years. This reflected that there might be an over-provision of market stalls as a result of the diminished need to resite hawkers, and increasing competition from other retail outlets such as supermarkets and fresh provision shops.

5. The **Secretary for Food and Health** also provided, vide his letter of 11 December 2008 in *Appendix 23*, further information on the follow-up actions taken by the Administration since February 2004.

6. The Committee noted from the opening statement made by the Secretary for Food and Health that the core question for the Administration was whether it should charge stall tenants the OMR and, if so, at what pace. It appeared to the Committee that the Administration had mainly focused on the financial perspective in addressing the problems in managing public markets. The Committee sought further clarification regarding the government policy on the positioning, functions and subsidisation of public markets.

7. In response, the **Secretary for Food and Health** stated that:

- from the financial perspective, the Administration certainly wished to achieve cost recovery in the operation of public markets. While it was necessary to review the level of subsidisation on public markets, it was also important to consider other associated questions mentioned in his speech. Public markets were not just provided as a public service to the community. They should also be examined from a commercial perspective in order to maintain their competitiveness and viability. Public markets also provided business opportunities for small traders and people with less skills to earn a living. As such, the Administration should provide a certain level of subsidisation on markets. In view of the complexity of the problems, the Administration had to carefully review the positioning and functions of public markets before formulating a policy on the future development of markets;
- the Administration would conduct market surveys from a commercial perspective in the first six months of 2009 to gauge the views of market patrons and stall tenants. Information on the background of stall tenants, patrons' opinions on the value of markets, and suggestions to improve market vitality and attractiveness, etc, would be gathered. Having regard to the result of the surveys, the Administration would formulate its policy on the subsidisation of public markets; and
- historical reasons had led to the present-day problems of public markets. Such old yet ever-changing problems could not be easily resolved within a short time. Nevertheless, the Administration was determined to tackle these issues to improve the management of public markets.

8. According to paragraph 2.2 of the Audit Report, in addition to land and building costs, public markets cost the Government some \$500 million a year to operate. In 2007-2008, the FEHD incurred a deficit of \$160 million in operating the public markets. According to the FEHD's records, 84 (81%) public markets were run at a deficit in 2006-2007, with 11 markets having operating deficits of over \$5 million a year. The Committee enquired about the formula for calculating the "operating deficit" of public markets.

9. The **Secretary for Food and Health** stated in his letter of 15 December 2008 in **Appendix 24** that the operating deficits of individual markets in 2006-2007 as set out in the Audit Report were calculated by deducting rental income from the operating costs, including staff cost (e.g. emolument and pension), departmental expenditure (e.g. market cleansing and security fees, electricity tariff and maintenance fee of electrical and mechanical equipment), administration overhead cost and cost of services provided by other departments (e.g. the property maintenance fee charged by the Architectural Services Department and water charges).

10. According to paragraphs 2.4 and 2.6 of the Audit Report, Audit had identified, among a sample of 25 public markets, seven less vibrant markets. In respect of the Shau Kei Wan Market, Tsuen King Circuit Market and Plover Cove Road Market, the Committee asked:

- when and how the FEHD became aware of the viability problems of these markets; and
- about the measures that had been/would be taken by the FEHD to improve their vibrancy, and the effectiveness of the measures.

11. The **Secretary for Food and Health** replied in his letter of 15 December 2008 that:

- the FEHD conducted monthly surveys on the vacancy rate, the types of the stalls rented out and the number of vacant stalls of all public markets in the territory. For example, the number of vacant stalls at the Tsuen King Circuit Market had increased from 55 stalls in 2000 to 127 stalls recently;
- the FEHD had taken/would take the following measures in respect of the three markets:

Tsuen King Circuit Market

- stalls in the Tsuen King Circuit Market were located on the ground floor and first floor respectively. The FEHD was aware that the vacancy rate on the first floor was higher. As such, the FEHD discussed with the tenants the market improvement plan through the Market Management Consultation Committee ("MMCC") in June 2005. Tenants put forward a market stall re-arrangement plan. However, the plan was not implemented as the tenants had different views on the ex-gratia payment arrangement. In July 2008, the FEHD put forward a new stall re-arrangement plan for the tenants' consideration, suggesting the relocation of tenants on the first floor to the ground floor and using the vacant first floor for other uses. Preliminarily,

the tenants reacted actively. The FEHD was discussing with the tenants the detailed arrangements. Besides, the FEHD had organised festive decorations and game activities in the market for the past two years;

- the occupancy rates for the Tsuen King Circuit Market were 48% and 47% in November 2006 and in recent period respectively;

Plover Cove Road Market

- with the consent of the MMCC, the FEHD had changed the use of two vacant stalls into selling Chinese herbal medicine and providing Chinese medicine services in December 2006. Since this market was located next to a residential area, the FEHD examined with the MMCC and the tenants in August 2008 a plan to make use of some vacant stalls for the service trades such as real estate companies. The recommendation was supported by the tenants. The FEHD would keep contact with the trade and follow up the recommendation. Besides, the market underwent general improvement works from 2005 to 2007 at a cost of \$7 million. The occupancy rate had improved by 8% after completion of the works. In the past two year, the market had organised promotional activities such as festive decorations, health exhibitions, food therapy workshops and games, etc;
- the occupancy rate of the Plover Cove Road Market had increased from 50% in November 2006 to 70% recently; and

Shau Kei Wan Market

- the occupancy rate of the Shau Kei Wan Market had little change in the past two years, dropping slightly from 64% in November 2006 to 62% recently. The market tenants had not been operating actively in the market. In November 2008, the FEHD discussed with the MMCC options to improve the market, including tenants' suggestion to change the specified uses of individual stalls, so as to increase the variety of products sold. The FEHD would also step up identification of non-trading stalls, take enforcement actions to encourage the tenants to re-open, and consider terminating the tenancies of stalls which were continuously out of business. In addition, the fire safety installations of this market had been upgraded at a cost of \$1.5 million. In the past two years, festive decorations and exhibitions were mounted at this market.

12. The Committee further asked how the FEHD obtained feedback from market patrons to assess whether the market service provided could meet the needs of the community, and whether the FEHD had regularly reported the vacancy situation to the FHB as well as the directions given by the FHB.

13. The **Secretary for Food and Health** and the **Director of Food and Environmental Hygiene** said that:

- the vacancy rate of a market would reflect whether a market could meet the needs of the community. The FEHD held meetings with the MMCC, traders' representatives and the District Councils ("DCs") concerned from time to time to discuss any issues concerning public markets. The FEHD would also convene a meeting in 2009 to invite members of the relevant committees under various DCs to discuss ways to improve the operation of public markets. Further, the FEHD planned to conduct surveys in 2009 to collect information on the patrons' views on whether a market could meet their needs; and
- the FHB discussed with the FEHD issues concerning public markets at least once or twice a year, and the vacancy rate of markets was always examined. In 2008, the Administration also reported to the LegCo Panel the policy on provision of public markets. However, the FHB agreed that many other issues, such as the level of subsidisation on markets, the value of existence of specific markets, and the introduction of commercial operations in public markets should be further reviewed. It was hoped that after completing the market surveys by June 2009, the Administration could make recommendations in respect of the above.

14. The Committee noted that the FEHD had been organising promotional activities in the past few years as a means to improve market viability. Yet, the problem of high vacancy rates and low patronage still persisted at some markets. The Committee enquired about the details of the measures that had been taken to promote public markets and their effectiveness.

15. The **Secretary for Food and Health** stated in his letter of 15 December 2008 that:

- the FEHD organised promotional activities for its public markets every year. In 2007-2008, the FEHD spent about \$3.2 million on these activities. The promotional activities were mainly organised around some traditional festivals to attract patrons. During the four major festivals over the past year, i.e. Tuen Ng Festival, Mid-Autumn Festival, Christmas and Chinese New Year, the FEHD organised market promotional activities such as festive decorations, cooking demonstrations, souvenir giving and lucky draws in almost 60 markets. In addition, two workshops promoting vegetarian cooking, three exhibitions about hygiene and health, one territory-wide quiz and three shopping reward activities for refurbished markets were organised. Besides, the FEHD also organised similar festive activities through the

contractors for the markets whose management had been outsourced so as to attract patrons;

- in 2008, in view of the commissioning of service of two new markets, i.e. the Wan Chai Market and the Aldrich Bay Market, the FEHD widely promoted their openings to the residents in the districts, including distributing handbills in the main residential areas in the districts, putting up posters and promotional banners on footbridges, public light buses, bus stops and outside of the markets. Directional signs would also be installed at the relevant MTR station exits to facilitate patrons from other districts to go to the market. Details of the market promotion activities in 2007-2008 and those for the two newly commissioned markets were set out in *Annex A to Appendix 24*;
- the FEHD conducted opinion surveys after every promotional activity. The results showed that on average 94% or above of the participants were satisfied or very satisfied with the activities, while 93% of the participants supported the organisation of similar activities; and
- the FEHD would continue to organise promotional activities so as to encourage the public to shop in public markets. In organising promotional activities in the coming year, the FEHD would explore ways to enhance market tenants' participation and their sense of involvement, with a view to promoting their sense of belonging to the public markets.

16. According to paragraphs 2.8 and 2.9(c) of the Audit Report, the FEHD proposed to adopt the criteria of "consistently high vacancy rate exceeding 60% for three consecutive years" and "with big deficits" for assessing the viability of a public market. However, the Committee noted that some less vibrant public markets, though not meeting the vacancy rate of 60%, had very low patronage and had incurred deficits. The Committee therefore asked:

- why the Administration adopted a vacancy rate of 60% as one of the criteria; and
- whether the Administration would take into account if a public market could provide active market services to the community when assessing the viability of a market.

17. The **Secretary for Food and Health** and the **Director of Food and Environmental Hygiene** said that:

- if the vacancy rate of a market was consistently up to 60% or above, it would be very difficult to attract customer flow. If the vacancy rate was below 60%, measures could still be taken to enhance the market's viability, such as by organising promotional activities or re-arranging the stall locations;
- it was estimated that if the vacancy rate used for assessing market viability was set at 40%, more than 10 markets might have to be closed down. As closure of markets was an important decision which would affect the livelihood of many market stall tenants, the Administration had to consider the implications of setting a lower vacancy rate; and
- no objection to the above criteria had been raised when they were discussed at the LegCo Panel in May 2008 and subsequently presented to the DCs for consultation. As to whether the criteria should be reviewed, the FEHD would continue to listen to the views of the LegCo and the community.

18. The Committee noted from the Administration's paper to the LegCo Panel in November 2008 that four public markets, namely the Bridges Street Market, Mong Kok Market, Kwong Choi Market and Tang Lung Chau Market, had been identified to have viability problems and might have to be closed down. The Committee enquired about the options and proposals that had been considered by the FEHD in the past three years to enhance the viability of these markets.

19. In brief, the **Secretary for Food and Health** stated in his letter of 15 December 2008 that the four markets had recorded over 60% vacancy rate for the past three consecutive years. The FEHD had discussed with the relevant DCs whether to keep the four markets. Details of the discussion on individual markets were set out under *item (g) of Appendix 24*.

20. The Committee noted that in Audit Report No. 41, Audit already raised concern over the existence of many non-trading market stalls, which was detrimental to the viability of a public market. However, the problem of non-trading stalls still persisted as identified by Audit in the current review. In response, the FEHD stated in paragraph 2.24(a) and (b) of the Audit Report that it would step up efforts in identifying non-trading stalls and take enforcement actions against them. It would also encourage the relevant tenants to reactivate their business so as to improve market vibrancy. The Committee enquired about the measures taken in identifying and reactivating non-trading stalls, and details of the enforcement actions.

21. The **Director of Food and Environmental Hygiene** explained that:

- the FEHD staff would strengthen inspection to identify stalls which had not been in operation for seven days or more in a month. If three warning letters had been issued to a tenant within a six-month period, the FEHD might take action to terminate the tenancy. In the past two years, the FEHD had identified 112 such non-trading cases and issued more than 50 warning letters. As a result, 58 stalls had resumed business, and more than 10 tenancy agreements had been terminated (four of which were terminated by the FEHD and the rest were terminated by the tenants themselves); and
- the FEHD would communicate with those tenants who were found to have left their stalls in a non-trading state, and encourage them to reactivate the business.

22. The Committee referred to the case of the Shau Kei Wan Market set out in Appendix B of the Audit Report. Audit observed that a few traders transported commodities from the Market to fixed-pitch hawker stalls with high patronage in the vicinity, whereas the Market itself was inactive and quiet. The Committee also noted from Appendix D that the FEHD was following up on Audit's findings to see if there was evidence of tenants holding hawker licences or conducting wholesale business. The Committee enquired:

- whether the FEHD was aware that some tenants might be using the market stalls for storage while trading their commodities on-street; and
- about the progress of the FEHD's follow-up action on these cases.

23. The **Director of Food and Environmental Hygiene** stated in his letter of 12 January 2009, in **Appendix 25**, that several market stalls appeared to have been operating for wholesale business, as pointed out in the Audit Report. The FEHD had started detailed investigations and was seeking legal advice on establishing evidence of wholesale activities at the stalls. The FEHD would take immediate action against any tenant found to have breached the tenancy agreement.

24. Paragraph 2.18 of the Audit Report reported that as at 25 September 2008, retailers for 171 (66%) of 260 live poultry stalls in the public markets had opted for the buyout package, comprising 61 retailers who surrendered their stall tenancies and 110 retailers who would continue selling chilled/frozen poultry at their stalls. The Committee asked how the Administration would deal with the stalls left vacant.

25. The **Secretary for Food and Health** said in his letter of 15 December 2008 that:
- after the ex-gratia payment scheme was launched in July 2008, 106 live poultry stalls in the FEHD's public markets had been transformed from selling live poultry to chilled poultry, with another 68 live poultry stalls left vacant. The FEHD was actively considering the introduction of new uses for the vacant stalls, such as selling traditional snacks, desserts, bread and pastries, etc;
 - when assessing whether a stall was suitable for other uses, the FEHD would take into account, for example, the number of vacant live poultry stalls and their locations, whether there was still live poultry sold at the stalls nearby, the ventilation system and the design of the stalls, and whether such uses would compete badly with operators in the cooked food centres. The FEHD had preliminarily identified a number of markets that might be suitable for such uses, including the Luen Wo Hui Market, Yee On Street Market, Lei Yue Mun Market and Plover Cove Road Market. The next step would be to liaise with the relevant MMCC, market tenants and DCs to listen to their comments and suggestions; and
 - the FEHD would also appropriately relax the terms of lease to create a business-friendly environment. For example, as the public's demand for chilled and frozen meat had increased, the FEHD allowed tenants selling fresh meat to apply for selling chilled or frozen meat. Besides, according to the information from the Planning Department, planning permit application was not required for 21 out of the 80 existing public markets if service trade was to be introduced. The FEHD was actively studying the practical arrangement.
26. The Committee noted from paragraphs 2.21 and 2.24(g) of the Audit Report that the public market policy review currently undertaken by the FHB and the FEHD covered only wet markets, with cooked food markets ("CFMs") excluded, and a separate review on CFMs would be conducted on completion of the review on wet markets. The Committee asked why the review on the provision of CFMs and wet markets had to be conducted separately instead of concurrently, and about the expected timeframe for commencing the review on CFMs.
27. The **Director of Food and Environmental Hygiene** said at the public hearing and in his letter of 24 December 2008, in **Appendix 26**, that:
- the objective of the review on the provision of public markets was to examine whether the long adopted planning standards and guidelines for the provision of public markets were still applicable. The review also aimed to formulate

guidelines for assessing public markets with viability problems, so as to devise improvement measures or examine the possibility of closing down these markets. Since the problems of high vacancy rate and operating deficit were more common for the wet market section of a public market, which sold mainly fresh provisions and daily necessities, the review had first focused on the provision of wet markets;

- CFMs were quite different from wet markets in their overall operation. In the past two years, the average let-out rate of the 39 cooked food centres ("CFCs") and 25 CFMs exceeded 85%. Among them, 40% were fully let out. Moreover, according to the 2006-2007 financial costing analysis, 10 of the 25 CFMs recorded an operating surplus. Consideration was also given to the fact that CFCs/CFMs mainly provided cooked food for consumption at the premises, which provided rather different services to the public as compared to general wet markets where customers purchased foods and daily necessities; and
- recognising the differences between wet markets and CFMs in terms of their nature, vacancy position and other related issues, the Administration decided to first focus on the section that provided fresh provisions and daily necessities, while a review on the CFMs would be conducted separately. It was expected that the review on the CFMs would be conducted in the second half year of 2009 on completion of the review on wet markets.

C. Market stall rentals and charges

28. According to paragraph 3.3 of the Audit Report, 48% of the stall tenants were paying 60% or less of the OMR, and in some 150 cases, stall tenants were paying rentals at only 1% to 5% of the OMR. Table 4 of the Audit Report further demonstrated that some stall tenants were paying extremely low rentals whereas others renting similar stalls through open auctions were paying higher rentals. Such disparity in rentals might have discouraged traders to rent market stalls for business. The Committee enquired about:

- the background leading to the present rental disparity; and
- the Administration's plan and timetable to tackle this problem.

29. The **Secretary for Food and Health** and the **Director of Food and Environmental Hygiene** replied that:

- to encourage licensed itinerant hawkers to surrender their licences and move into public markets in line with the resiting objective, the hawkers had been allowed to rent public market stalls at a concessionary price. The annual

rentals for their first tenancies (usually for a period of three years) were equivalent to the annual hawker licence fees, which were around \$1,000 for small stalls. When stall tenants of an old market or licensed fixed-pitch hawkers were to be resited to a new market, they were allowed to bid for stalls in the new market through an auction at a lower upset price, which was normally set at 75% of the OMR. Hence, there was disparity in rentals;

- in 2001, the Administration presented to the LegCo Panel a market rental adjustment mechanism, whereby rentals would be gradually raised to the OMR by phases. However, the LegCo Panel was not supportive of the recommendation due to the economic downturn at that time, and the proposed mechanism was not discussed in detail; and
- the Administration should review the situation and consider setting an appropriate level of subsidisation, say at a certain percentage of the OMR. Once the level of subsidisation was decided, the Administration could then work towards devising a suitable rental adjustment mechanism which could align rentals to the pre-set percentage of the OMR. The Administration was undertaking the above review and would present findings to the LegCo Panel by June 2009.

30. Noting that the concessionary rentals for ex-licensed itinerant hawkers were extremely low and had not been adjusted for years, the Committee sought further clarification on the expiry date of the concessionary rentals and the rental adjustment mechanism thereafter.

31. The **Director of Food and Environmental Hygiene** stated in his letter of 24 December 2008 that:

- the concessionary rentals for ex-licensed itinerant hawkers who surrendered their licences for market stalls were applicable to their first tenancy. The policy was first implemented in the urban area in 1993, and was later extended in 2003 to cover the licensed itinerant hawkers in the New Territories; and
- in the urban area, if a tenant continued to rent the public market stall upon expiry of the first tenancy before mid-1998 (i.e. before the rentals of all public market stalls were reduced by 30% and subsequently frozen), the rental would be determined by the rental adjustment mechanism of the former Urban Council ("UC") and Provisional UC. For market stalls in the New Territories, the rentals had not been adjusted so far as they had been frozen since the concessionary policy came into effect in 2003.

32. In view of the above, the Committee further enquired whether during the rental freeze period, the Administration had considered increasing rentals of the tenants whose rentals were far below the OMR, so as to reduce the rental disparity among tenants. The **Director of Food and Environmental Hygiene** said that it was difficult to implement rental increase only for those paying concessionary rentals far below the OMR. In the past, rental freeze had all along been applied across-the-board to all tenants for fairness sake. Increasing the rental for one group of tenants and freezing the rental for others would also present a confusing message to the public. Besides, even if the absolute amount of rental increase was small, the percentage of increase would be high. The tenants concerned would object to such proposal.

33. According to paragraph 3.14 of the Audit Report, the FEHD adopted the same practice as the Provisional UC and Provisional Regional Council ("RC") of not recovering rates from the stall tenants. However, such practice was not in accordance with the provisions of the stall tenancy agreements. The Committee asked:

- about the background for the Provisional UC and Provisional RC to adopt the above practice, including whether approval had been sought from the relevant authority for not recovering rates from the stall tenants;
- why the FEHD had followed the previous practice of the Provisional UC and Provisional RC, despite stipulation in the tenancy agreements that tenants were responsible for their rates payment; and
- when the FEHD would make a decision on the recovery or waiver of rates paid by it for stall tenants in the past as well as the future arrangements for rates payment.

34. The **Secretary for Food and Health** stated in his letter of 15 December 2008 that the Administration recommended in 1988 to the then UC to accept collecting the rates of public markets by way of block assessment and paying rates on behalf of the stall tenants. At the same time, the Administration also let the then UC decide whether and when to collect rates from individual market tenants. The then UC agreed to pay rates on behalf of market tenants and had not collected rates from the individual tenants. The then RC adopted the same practice. The relevant practice had been implemented since 1 June 1989 and was still being followed.

35. The **Director of Food and Environmental Hygiene** also said that the FEHD had recently sought legal advice on issues relating to the recovery or waiver of rates paid for stall tenants in the past. It was noted that despite stipulation in the tenancy agreements, there was no clear provisions on how rates paid on behalf of stall tenants could be recovered. Apart from legal considerations, the FEHD had to consider other implementation

difficulties. The FEHD had been liaising with the Department of Justice, the Financial Services and Treasury Bureau ("FSTB") and the Rating and Valuation Department with a view to resolving this problem. As to the future arrangements for rates payment, the FEHD inclined to have the rates paid by the stall tenants. The FEHD would make a decision on the matter, and report its recommendations to the LegCo by June 2009.

36. The Committee noted from paragraph 3.19 of the Audit Report that the FEHD had not recovered air-conditioning cost of about \$11 million a year from stall tenants, mainly because air-conditioning charges would be revised upon tenancy renewal and most of the tenancy agreements were not renewed during the rental freeze period since 1999. The Committee asked why the FEHD had not renewed the tenancy agreements during the rental freeze period to allow for revision of air-conditioning charges, and whether the FEHD had worked out an appropriate arrangement for the recovery of air-conditioning cost from tenants.

37. The **Director of Food and Environmental Hygiene** and **Ms Julina CHAN, Deputy Director (Administration and Development), FEHD** said that:

- the FEHD had not arranged for tenancy renewals owing to shortage of manpower for handling a large amount of paper work within a short period of time. Also, the FEHD did not see much problem in extending the agreements during the rental freeze period, as this practice had been adopted for many years. However, given that Audit had revealed some problems associated with extension of agreements, such as recovery of air-conditioning charges and verification of stall tenants' identity, the FEHD had decided to deploy sufficient manpower to handle the renewal of all tenancy agreements which would expire on 30 June 2009, irrespective of whether there would be rental freeze after June 2009; and
- the FEHD had already consulted the FSTB and included a new clause in the tenancy agreements for new tenants to provide for annual revision of air-conditioning charges.

38. The Committee asked the FEHD to provide an estimation of the additional manpower required to arrange for renewal of tenancy agreements. The **Secretary for Food and Health** said in his letter of 15 December 2008 that the FEHD estimated that 2,500 additional man-days (66 days x 38 men) were required to complete preparation work for the renewal of the some 10,400 tenancy agreements.

D. Problem of stall subletting

39. According to paragraph 4.4 of the Audit Report, the Independent Commission Against Corruption ("ICAC") conducted a review in 2004 on markets managed by the FEHD and pointed out the risk of market stall subletting. It also recommended that the FEHD should consider requiring stall tenants who were paying concessionary rentals to operate their stalls in person, so as to make subletting difficult. The Committee asked:

- whether the ICAC's recommendation had been implemented by the FEHD; and
- why the problem of stall subletting still persisted despite the ICAC review.

40. The **Director of Food and Environmental Hygiene** explained that:

- as section 5 of the Public Markets Regulation (Cap. 132 sub. leg. BO) allowed tenants to engage authorised servant or agent to carry on their business, legislative amendment would be required if the ICAC's recommendation was to be implemented. Moreover, there would be difficulties in requiring only stall tenants who were paying concessionary rentals to operate their stalls in person, and in determining the types of concessionary rentals that should come under this arrangement. Having further reviewed the recommendation, the FEHD considered that there was no strong justification to support legislative amendment;
- as reported by the ICAC in its 2004 review, so long as the tenants and their registered assistants ("RAs") kept the subletting deal to themselves, it would be difficult for the FEHD to prove a case of subletting and take action. A stall tenant might sublet his stall to a person and register that person as his authorised assistant to operate the stall; and
- having said that, the FEHD had implemented stall operator status checking arrangements to ascertain the identity of the persons operating the stalls. After June 2001, the FEHD had tightened the inspection frequency from a monthly to a bi-weekly interval. If a stall tenant was found to be continuously absent for a period of over six months, reasonable explanations had to be provided. Otherwise warning letters would be issued to him, which might lead to termination of the tenancy agreement.

41. Paragraph 4.8 of the Audit Report revealed that the FEHD's existing controls to deter subletting, as set out in the Operational Manual for Markets ("Operational Manual"), were inadequate and might be open to abuse. The Committee asked the Director of Food and Environmental Hygiene to explain the following:

- the rationale for not penalising the stall tenant upon detection of an unauthorised person in a stall, as long as the stall tenant concerned registered that person with the FEHD (paragraph 4.8(a) refers);
- for the Haiphong Road Temporary Market, why the FEHD staff had not fully complied with the stall operator status checking procedures (relating to keeping of inspection records and inspection frequency) as laid down in the Operational Manual, and whether non-compliance with the procedures was common in other markets (paragraph 4.8(b)(ii) refers);
- whether the FEHD had requested the tenants and the RAs to produce engagement records (e.g. payment slips) for inspection (paragraph 4.8(b)(i) refers); and
- why the FEHD staff had not enforced the tenancy condition of requiring a tenant to display at his stall a Notice showing his name and photograph (paragraph 4.8(b)(iii) refers).

42. In response, the **Director of Food and Environmental Hygiene** said that:

- he admitted that the existing arrangement for allowing the stall tenant to register an unauthorised person with the FEHD was too lax. If an unauthorised person was found operating the stall, enforcement action should have been taken against the tenant for contravention of the relevant regulation;
- after noting the non-compliances in the Haiphong Road Temporary Market and some other markets identified by Audit, the FEHD had taken immediate action to remind staff of the need to fully comply with the Operational Manual, and to remain vigilant in conducting supervisory checks;
- the need to keep and produce engagement records for inspection was stipulated in the undertakings signed by the tenants and the RAs concerned, but not in the Operational Manual. Hence, the FEHD had not requested the tenants and RAs to show the engagement records during the bi-weekly inspections. However, the FEHD would do so for suspected cases; and
- the FEHD agreed that requiring each tenant to display at the stall a Notice bearing the name and photo of the tenant could facilitate checking of the status of stall operators. The FEHD had since September 2008 instructed front-line staff to strictly enforce the requirement.

43. As the FEHD's controls over subletting appeared to be lax, the Committee enquired whether there were checklists for the FEHD staff to follow when carrying out market stall inspections and supervisory checking, as well as the areas that the FEHD staff would check. The **Director of Food and Environmental Hygiene** stated in his letter of 16 December 2008, in *Appendix 27*, that:

- Senior Health Inspectors (Market Management), Health Inspectors (Market Management), Overseers (Markets) and Foremen (Markets) (or Market Assistants and other staff engaging in the same tasks) were required to carry out inspections and supervision on the daily operation and management of markets according to the Guideline to the FEHD Staff for Inspection and Supervision of the Operation of Markets (see *Annex I to Appendix 27*); and
- for public markets whose management was outsourced, market task forces headed by Overseers had been set up to conduct daily surprise checks in different markets in order to monitor the contractors' performance. The Inspection Record on Market Management was in *Annex II to Appendix 27*.

44. **Ms Rhonda LO, Assistant Director (Operations)2, FEHD** added that the duties of supervisory staff included the supervision of cleansing, security and maintenance work in the public markets. Besides, they were responsible for enforcing tenancy conditions, including checking whether there were suspected cases of subletting. Although subletting was not easy to identify in daily inspection, the FEHD would conduct investigation if complaints were received or if suspected cases were identified (e.g. several market stalls under one single shop sign). In the past three years, the FEHD had handled more than 90 suspected cases.

45. According to paragraph 4.10 of the Audit Report, the results of business registration ("BR") search conducted by Audit indicated that for some stalls, the tenants were not the business owners. Instead, businesses were carried on by the RAs or third parties. Paragraph 4.12 also revealed that some market stalls did not display any shop signs or BR certificates, and failure to apply for BR or to display a BR certificate at the stalls would constitute an offence under the Business Registration Ordinance (Cap. 310). The Committee asked:

- why the FEHD had not conducted BR search to identify stalls that were not run by stall tenants;
- why the FEHD staff had not required the stall tenants to display their BR certificates; and
- about the follow-up actions taken on the suspected subletting cases identified by Audit.

46. The **Director of Food and Environmental Hygiene** said that:

- although it was simple to conduct BR search, it would take greater efforts to check whether the business owners as per BR records were the tenants or the RAs. Neither could BR record provide conclusive evidence to substantiate a subletting case; and
- the FEHD would remind stall tenants to comply with the requirements laid down in the Business Registration Ordinance, and conduct seminars with the Inland Revenue Department in late 2008 at different districts to remind them of the requirements.

47. Regarding the follow-up actions on the suspected subletting cases, the **Director of Food and Environmental Hygiene** informed the Committee vide his letter of 12 January 2009 that:

- the FEHD was following up on the suspected subletting cases mentioned in the Audit Report. All tenants concerned had been interviewed and they denied subletting;
- some of the cases involved tenants who registered their business in the name of another person. When interviewed, these tenants put up various reasons to explain why they authorised other persons to register their business (e.g. they did not know that tenants should make BR in their own name, or they were illiterate or busy). Some tenants indicated that they would or had already amended their BR to bring it under their own names. The FEHD had also referred all these cases to the Inland Revenue Department for it to follow up if there was any breach of the Business Registration Ordinance; and
- apart from BR, the FEHD also checked records to see if the tenants had personally operated the stall regularly or intermittently. The FEHD also requested them to provide employment records, Mandatory Provident Fund ("MPF") contribution records, order and cash records, water and electricity bills, etc of their stalls to prove that they were in possession and control of the stall business. Based on the information and evidence obtained in each case, the FEHD would seek legal advice to establish whether subletting was involved and take follow-up actions accordingly.

48. The Committee further enquired about the details of the FEHD's plan and timetable for conducting checking in other public markets to identify improper subletting, as recommended in paragraph 4.14(c) of the Audit Report. The **Director of Food and Environmental Hygiene** stated in his letter of 16 December 2008 that:

- apart from following up the suspected subletting cases identified by Audit, the FEHD would strengthen daily monitoring of stalls with higher risk of subletting. If the BR of the stall was not made under the name of the stall tenant, or the stall had been operated by someone else for a long time, or there were other signs of subletting, thorough investigations would be carried out and legal advice would be sought to determine whether the stall was involved in subletting. Stalls with high risk of subletting included those:
 - (a) under complaints of subletting;
 - (b) whose tenants had been absent from the stalls for over six months;
 - (c) rented by different tenants but displaying the same shop signs; or
 - (d) with existing rents far below the OMR; and
- the FEHD planned to collect information on the above cases by March 2009. Relevant information included records of absence, records of employment and MPF contribution of assistants, utilities bills of stalls, records of income and expenditure, etc. Further investigation would be carried out into suspected cases upon analysis.

49. According to paragraph 4.15(b) of the Audit Report, the FEHD would deploy all possible means to collect evidence to substantiate subletting cases. The Committee enquired about the details of the possible means that would be adopted. The **Director of Food and Environmental Hygiene** said in his letter of 16 December 2008 that the FEHD would flexibly deploy the following means to collect evidence as the case warranted:

- the status of all stall operators would be checked and recorded by Foremen (Market)/Market Assistants/market management contractors at least once every fortnight. Warnings would be given to unauthorised operators. Those who took no heed of the warnings would be prosecuted for contravening section 5 of the Public Markets Regulation. Warnings would also be given to the tenants concerned for breach of the tenancy agreement. The agreement might be terminated should the tenants fail to give a reasonable excuse;
- if a tenant applied to appoint a RA, both the tenant and the RA would be required to sign an undertaking, declaring that the RA was not the owner, assignee or sublettee of the stall; nor did he hold any other unauthorised benefits in connection with the stall. Any false declaration would render the tenancy agreement terminated and criminal prosecution instituted against the declarant. Moreover, the tenant should produce the engagement records of his RA for inspection and for making copies for future checking;

- if a tenant was continuously absent, the FEHD staff would interview the tenant. The tenant would be requested to prove that he was still in charge of operating the stall. If the information collected indicated that the tenant was no longer in charge of operating the stall, legal advice would be sought to ascertain any subletting case. Subject to availability of resources, the FEHD would strive to shorten the time of continuous absence of tenants that warranted follow-up action from six months to three months;
- in the past, the tenant or the person authorised by him was requested to sign an agreement of tenancy extension during the time of renewal of market stall tenancies. However, it was not specified that the signed undertaking had to be submitted by the tenant in person. In future, the tenant would have to come to the FEHD office to sign the new tenancy agreement in person unless he gave a reasonable excuse; and
- tenants who entered into a new tenancy agreement would be required to apply for BR under his own name, and the BR certificate should be displayed at the stall. The BR of the stall would be regularly checked and suspected cases would be investigated.

50. According to paragraph 4.15(e) of the Audit Report, the FEHD would seek legal advice on how to publicise some blatant subletting cases. In response to the Committee's enquiry about the FEHD's implementation plan and timetable in this regard, the **Director of Food and Environmental Hygiene** informed the Committee vide his letter of 12 January 2009 that:

- according to legal advice, the name of a tenant, investigation findings of a subletting case and termination of a market stall tenancy agreement as a result of breaching the clause prohibiting subletting were personal data of the tenant. The use or disclosure of personal data was regulated by the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Data Protection Principle 3 of the PDPO required that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose referred to at the time of the collection of the data. However, section 61 of the Ordinance provided an exemption from Data Protection Principle 3 in any case in which the publishing of the data was in the public interest. As the data user, the FEHD had to consider whether it was in the public interest to disclose the information on the blatant subletting cases and, if so, the extent of disclosure; and
- in the light of the above legal advice, the FEHD planned to publicise the market name and stall number of sublet stalls upon termination of their tenancy agreements, so that the consequence of subletting would be made known to the public and market stall tenants to achieve a deterrent effect.

E. Management of a public market in Kowloon

51. Paragraph 5.6 of the Audit Report revealed that the business hours of the stalls at Market A (i.e. 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 5:00 p.m. on Mondays to Fridays) were shorter than the daily operational hours of 6:00 a.m. to 8:00 p.m. allowed for public markets. Audit also noted that the basement of Market A did not appear to be providing active market service, as there was no customer during Audit's various visits and many trading commodities specified in the tenancy agreement were found unavailable. The Committee asked:

- whether the business hours of Market A were set with the prior approval of the FEHD, and why they were shorter than the daily operational hours allowed for public markets;
- why the FEHD had not taken any action on the above irregularities; and
- whether the FEHD considered Market A an active market that could serve the needs of the community.

52. The **Director of Food and Environmental Hygiene** said at the public hearing and in his letter of 16 December 2008 that:

- the opening hours of Market A were from 6:00 a.m. to 8:00 p.m., same as those of other public markets, whilst the cooked food centre opened until after mid-night. The two tenants of Market A operated the cooked food centre on the ground floor ("G/F") and the stalls at the basement respectively. They were free to determine the opening hours of individual stalls according to their own business condition as long as they did not breach the tenancy agreements. The food court of Market A currently opened from 7:00 a.m. to 1:00 a.m., while the stalls at the basement opened until 5:00 p.m.;
- the tenant was allowed to sell a variety of trading commodities at individual stalls (e.g. general groceries, chilled processed meats and sausages, biscuits and baked products, and candies) as specified in the tenancy agreement. As long as they sold some (not necessarily all) of these commodities, there was no breach of the tenancy agreement; and
- the food court at the G/F was providing active market service. As to the stalls at the basement, since they mainly provided bulk sale with limited types of commodities, it was worth reviewing whether there was the need for continued operation under the existing mode.

53. According to paragraphs 5.7 and 5.10 of the Audit Report, the ICAC pointed out in its letter of July 2008 that there were cases of non-compliance with the terms of the tenancy agreement for Market A (such as the absence of manned stalls and the use of locked up stall spaces for storage). Notwithstanding that Market A had been subject to daily supervision and routine inspections by the FEHD staff, there was no record of any such irregularities having been noted or any follow-up actions taken. The ICAC further pointed out that there was an apparent and direct conflict of interest as the tenants were both the sole tenants and the sole management agent of Market A. The Committee asked why such blatant non-compliance cases in Market A had not been dealt with by the FEHD, and whether the FEHD agreed to the ICAC's observation.

54. The **Director of Food and Environmental Hygiene** responded that:

- the FEHD had not taken any action in the past because the District Environmental Hygiene Office ("DEHO") staff had adopted a wrong interpretation of the tenancy agreement in respect of non-trading. As all the eight stalls at the basement were under the same tenant, the DEHO staff considered that as long as any of these stalls was open for business, there was no breach of tenancy agreement. Hence, no irregularities had been identified. After the ICAC drew the FEHD's attention to this situation, the FEHD had clearly explained to the DEHO staff that if any of these stalls was not open for business, the stall should be regarded as non-trading; and
- there was no apparent conflict of interest in this case as the management and maintenance services ("MMS") contract mainly involved the provision of cleansing, security and maintenance services. The management of the market, including the enforcement of regulations and tenancy conditions, was still the DEHO's responsibility.

55. The Committee noted from paragraphs 5.4 and 5.9 of the Audit Report that in 1993, when approving the letting of all Market A's stalls to the two tenants (i.e. the G/F tenant and the basement tenant), the then UC also approved the outsourcing of the Market's MMS to them. Since 2000, the FEHD had awarded new MMS contracts three times through single tenders, i.e. to the two tenants jointly in 2000 and 2003, and to the G/F tenant in 2006. The Committee asked the FEHD to explain:

- the background and reasons for the then UC to outsource Market A's MMS to the two tenants of the Market in 1993; and
- the reasons for the FEHD to award Market A's MMS contracts to the tenant(s) through single tenders in 2000, 2003 and 2006.

56. The **Director of Food and Environmental Hygiene** provided the background and reasons for the then UC's decision vide his letter of 16 December 2008. Regarding the FEHD's reasons for awarding the MMS contracts through single tenders, he stated in the same letter that:

- when the FEHD took over the management responsibility of Market A from the UC in 2000, it noted that there were binding terms in the tenancy agreements and the Management and Maintenance Agreement ("MMA") awarded to the two tenants. In view of such, the then Finance Bureau ("FB") granted approval in April 2000 for the FEHD to further let out the stalls of Market A and award the MMA to the two tenants for three further years (2000-2003) without having to undergo open tendering. Nevertheless, the FB was of the view that "it is not appropriate to include any provision that binds the Government to grant further agreements to the companies, or bind the 'co-existence' of the MMA with the tenancy agreements" and "in the event FEHD consider there were justifications for single or restricted tendering procedures to be adopted, they should seek the FB's prior approval in accordance with Regulation 325 of the Stores and Procurement Regulations". Accordingly, the FEHD deleted the clause entitling automatic renewal of the agreements when they were renewed;
- when the tenancy agreements and MMA were about to expire, the FEHD obtained legal advice on issues regarding property management and maintenance concerning Market A. The FEHD appreciated that in view of the main structure of the Market and the hotel building, the hotel management might not agree to allow any third party contractor to carry out such maintenance and repair work on behalf of the public market authority by going through the hotel private areas on a daily basis. Taking the legal advice into full consideration, the FEHD assessed the situation and advised the FSTB that if the MMS of the Market was contracted out to a third party, it was anticipated that the hotel management would not be cooperative by purposely delaying or even refusing the request for access by the new contractor to the parts/private areas of the hotel building which were the only places where the maintenance works could be done;
- the FEHD sought approval from the FSTB to invite a single tender jointly from the two tenants for the MMA; and
- when the MMA was about to expire in September 2005, the FEHD obtained legal advice again and noted that from the legal point of view, the FEHD should have sufficient rights under the Deed of Mutual Covenant to carry out the MMS. It was a matter of administrative consideration as to which management company the FEHD might appoint to carry out the MMS for the Market and the Refuse Collection Point. However, the FEHD also noted from the legal advice that the owner of the hotel and the developer and

management of the whole building might restrict the maintenance access, and the interpretation of the Deed of Mutual Covenant would be in issue. Taking the legal advice into full consideration, the FEHD, based on the same reasons given in 2003, sought and obtained approval from the FSTB to invite a single tender for the MMA again.

57. The Committee noted from paragraph 5.13 of the Audit Report that the Director of Food and Environmental Hygiene admitted that the present contractual arrangement in respect of Market A was far from being ideal, and would seek to improve the current arrangements and step up controls over the management of Market A. The Committee enquired when the Director became aware of the above unsatisfactory arrangement, and the measures that had been taken by the FEHD to improve the arrangement.

58. The **Director of Food and Environmental Hygiene** responded that:

- the FEHD considered the arrangement far from being ideal after noting the audit findings;
- Market A had a rather peculiar configuration, with a considerable part of its plants and equipment located within the development. It was against this background that the MMS contract of Market A was awarded to the tenant who was also a related party of the development owner. With hindsight, the FEHD considered that the arrangement of single tendering might not be satisfactory as most MMS contracts of the Government were awarded through normal tendering procedure. If Market A continued to operate, the FEHD would have reservation about offering the future MMS contract to the tenant who was related to the development owner. Strictly speaking, the Government should have rights to gain access to the plants and equipment in the development for the purpose of carrying out inspection and maintenance at all reasonable times on notice according to the Deed of Mutual Covenant;
- the FEHD would review the need to retain Market A taking into account the views of the DC and the local community and work out the way forward. If there was no need to operate Market A, the FEHD would consult the Government Property Agency on the alternative gainful use of the market site; and
- in the interim, the FEHD had advised the DEHO staff to vigilantly carry out inspections according to the procedures laid down in the Operational Manual, and to take enforcement action as appropriate.

F. Planning of new public markets

59. The Committee noted from paragraph 6.9 of the Audit Report that in the planning of both the Tai Kok Tsui Market and the Aldrich Bay Market, the FEHD had not conducted comprehensive viability studies for the two markets to ascertain whether there would be adequate demand in the catchment areas. The Committee enquired about the guidelines and principles adopted in the planning of the Tai Kok Tsui Market and the Aldrich Bay Market, and how these guidelines and principles were actually applied to the planning of these markets.

60. In summary, the **Director of Food and Environmental Hygiene** said in his letter of 16 December 2008 that:

- the guidelines and principles adopted in the planning of Tai Kok Tsui Market and Aldrich Bay Market were generally based on the following principles adopted by the then UC in 1987 for the construction and design of markets:
 - (a) a market should be placed in a central location within its residential catchment area;
 - (b) there should be an adequate demand in the catchment area to sustain the number of stalls provided in the market. Due consideration should be given to competition from retail outlets, including markets in public and private housing, supermarkets and fresh provision shops;
 - (c) competition from on-street hawkers nearby selling wet goods commodities should be eliminated; and
 - (d) the extent of resiting commitment should be set at a realistic level having regard to viability;

Tai Kok Tsui Market

- in April 1997, the Urban Services Department ("USD") conducted a viability study on the construction of the Tai Kok Tsui Market. The study concluded that the construction of the market was well justified. The following factors were considered in the viability study:
 - (a) population in the catchment area of the new market: 59,300 (based on the 1991 Census);
 - (b) number of market stalls required in accordance with the Hong Kong Planning Standards and Guidelines: 247;

- (c) number of supermarkets in the vicinity: 3;
 - (d) number of licensed fresh provision shops in the catchment area of the Market: 32; and
 - (e) number of licensed hawkers in the vicinity: 40;
- based on the above data, the USD considered that the proposed number of stalls of 170 was well justified. In September 1998, it was agreed that the number of stalls be reduced to 127 having regard to various factors, including site constraint and improved stall design. In late 1999, the USD reviewed the ratio between the number of stalls and the resiting commitment for 183 hawkers, and considered that the market should be viable;
 - in early May 2000, the FEHD further reviewed the utilisation rates of public markets in Mong Kok district, including the number of market goers, the number of stalls provided in the markets and their vacancy position. It was noted that:
 - (a) the average daily numbers of market goers of, for example, the Fa Yuen Street Market, the Mong Kok Market and the Tai Kok Tsui Temporary Market were 6,000, 1,200 and 5,000 respectively;
 - (b) the numbers of stalls provided in, for example, the Fa Yuen Street Market, the Mong Kok Market and the Tai Kok Tsui Temporary Market were 192, 146 and 194 respectively; and
 - (c) the vacancy rates of, for example, the Fa Yuen Street Market, the Mong Kok Market and the Tai Kok Tsui Temporary Market were 2.6%, 51.4% and 23.7% respectively;
 - according to the Public Works Subcommittee ("PWSC") Paper submitted to the Finance Committee ("FC") of the LegCo in May 2000 for funding approval, the new market would be used to resite stall tenants/licensed hawkers from the Tai Kok Tsui Temporary Market, Boundary Street Market, Canton Road Temporary Cooked Food Bazaar and Tai Kok Tsui Temporary Cooked Food Bazaar;

Aldrich Bay Market

- in the planning of the Aldrich Bay Market, the FEHD completed a preliminary feasibility study on the proposed market in September 2000. It was stated in the study report that a new market was required to meet the demand of the new population and to resite the on-street hawkers at Kam Wa Street and its vicinity to resolve the environmental hygiene problems;

- the preliminary feasibility study revealed that:
 - (a) a new market was required to meet the demand of the new population of 30,000 in the housing development in Aldrich Bay Reclamation Area;
 - (b) the activities of the 196 on-street hawkers at Kam Wa Street and its vicinity created environmental hygiene, street cleansing, noise, smell and street obstruction problems; and
 - (c) in June 2001, the FEHD conducted a survey on the retail facilities in the vicinity of the proposed market and found that those facilities were inadequate to meet the local demand for market services; and
- in the light of the above findings, the FEHD submitted in November 2001 a funding application for the project which was endorsed by the PWSC and approved by the FC of the LegCo.

61. According to paragraph 6.8 of the Audit Report, since 1987, it had been the then UC's policy that viability should be a major factor in market construction and operation, and public markets should no longer be built to satisfy resiting commitments, but should be justified by establishing a distinct demand and role for them in a District Plan. Nevertheless, there were no detailed guidelines on how a viability study should be conducted. The Committee queried how the FEHD could carry out the planning of new markets without any detailed guidelines, and when the guidelines would be available.

62. The **Director of Food and Environmental Hygiene** responded that:

- the FEHD recognised that the existing planning standards for public markets set out in the Hong Kong Planning Standards and Guidelines should not be mechanically followed. Future planning of new markets would be considered on a case-by-case basis, taking into account factors such as the population of the area, demographic mix, community needs, and provision of retail outlets in the vicinity. The above broad principles had been reported to the LegCo Panel in May 2008; and
- there was no new market under planning by the FEHD. The FEHD would formulate internal guidelines on how a viability study should be conducted by June 2009.

63. According to paragraph 6.22(c) of the Audit Report, a number of market promotion initiatives had been implemented in newly commissioned markets. However, according to Figure 2 of paragraph 6.13(b), the stall vacancy rate of the Tai Kok Tsui

Market had remained high at about 30%. The Committee enquired about the details and effectiveness of the market promotion initiatives implemented in the Tai Kok Tsui Market since its commissioning in December 2005, and the reasons for its high vacancy rate.

64. The **Director of Food and Environmental Hygiene** said at the public hearing and in his letter of 16 December 2008 that:

- a total of 20 market activities had been held since the commissioning of the Tai Kok Tsui Market. These activities included opening publicity, festive decorations, cooking demonstrations, roving health exhibitions, lucky draw for shoppers and workshops for market tenants to enhance customer service skills. All these helped to attract a regular flow of customers. Without such activities, the vacancy rate might be even higher. Details and the effectiveness of these activities were set out in *Annex VIII to Appendix 27*; and
- the high vacancy rate of the Tai Kok Tsui Market was related to its location, with one side facing factory buildings and the other side facing a school. Although some modifications had been made at the entrance of the Market, there were still limitations which rendered further improvement of vacancy rate difficult.

65. The Committee noted from paragraph 6.12 of the Audit Report that, in planning the Tai Kok Tsui Market, the FEHD had not sought the views of the tenants/hawkers about the resiting plan before seeking funding approval from the LegCo. The Committee asked why the tenants/hawkers had not been consulted, and whether such inadequacy in the planning process had resulted in the high vacancy rate.

66. The **Deputy Director (Administration and Development)**, FEHD responded that the funding approval was sought in 2000 and the Market was commissioned in late 2005. If consultation was made five years before the Market commissioned, the tenants/hawkers could only give a preliminary indication of their intention as to whether they would move into the new market. Their views might provide some reference for future planning, but would not be binding. Hence, there was no direct correlation between the lack of consultation and the high vacancy rate.

67. The Committee asked why the recently commissioned public markets looked alike in terms of external design and internal layout, and whether the FEHD would make reference to successful overseas examples in designing new markets. The **Director of Food and Environmental Hygiene** said that:

- given the large number of stalls in a market and the need to segregate wet and dry foods, there were certain limitations in design. However, the FEHD would consult the needs of traders and make necessary adjustments to the internal layout of each market. The building design of the market was handled by the Architectural Services Department, with input from the FEHD on the use of materials, colours and signage, etc. Although the design of new markets was largely similar, the fact that some markets were more vibrant than the others indicated that the vibrancy of a market was not directly related to its design; and
- the design of overseas markets might not be applicable to the situation in Hong Kong due to space limitation. In Hong Kong, some very vibrant markets, such as the Fa Yuen Street Market, despite its traditional three-level design, could still attract a lot of patrons. Having said that, the FEHD would continue to improve the design of public markets as appropriate.

G. Conclusions and recommendations

68. The Committee:

Usage of public markets

- considers that:
 - (a) in addition to land and building costs, public markets also cost the Government some \$500 million a year to operate. They must therefore serve the primary purpose of their existence, i.e. providing active market services to the community, otherwise they would not justify the high building and operation costs; and
 - (b) the Administration's policy on the provision of public markets should be conducive to ensuring that the public markets can give full play to their functions to effectively serve the needs of the community;
- expresses astonishment and finds it inexcusable that:
 - (a) although the problems of high vacancy rates, non-trading stalls and large operating deficits at some public markets had already been identified in the Director of Audit's Report ("Audit Report") No. 41 of October 2003, such problems still persist at some markets, as revealed in the current Audit Report. As of June 2008, 34 of the 104 public markets had a stall vacancy rate of 30% or above, of which 11 had a vacancy rate of 50% or above;

- (b) despite a lapse of five years since the last audit review, the Food and Health Bureau ("FHB") and the Food and Environmental Hygiene Department ("FEHD") have made little progress in resolving the above problems. A review on the policy on provision of public markets was only completed in late 2008, resulting in delay in devising new policy objectives and strategic measures which suit present-day circumstances; and
- (c) there is a lack of clear government policy on the positioning, functions and subsidisation of public markets;
- does not accept the Secretary for Food and Health's view expressed at the public hearing on 9 December 2008 that the core question to be examined by the Administration was whether or not to charge stall tenants the Open Market Rentals ("OMR"). This reflects the narrow mindset of the Administration in focusing mainly on the financial perspective in addressing the problems in managing public markets;
- is surprised and finds it unacceptable that:
 - (a) the Administration only proposed to adopt the criteria of "consistently high vacancy rate exceeding 60%" and "big deficits" for assessing the viability of a public market, without taking into account whether a market can provide active market services to the community. These two criteria are inadequate because some less vibrant public markets, though not meeting the vacancy rate of 60%, have very low patronage and have incurred deficits; and
 - (b) the FEHD has not put in place a system for collecting usage information of individual markets, such as the number of patrons visiting the markets and the number of stalls actually providing retailing services, to assist in assessing whether a market is meeting the needs of the community;
- acknowledges that:
 - (a) the FHB and the FEHD will conduct market surveys in the first six months of 2009 to gauge the views of market patrons and stall tenants, so as to assess the viability and value of public markets in the community;
 - (b) in view of the differences in the nature and vacancy position between wet markets and cooked food markets ("CFMs"), the FEHD did not include CFMs in its public market policy review. A separate review on the provision of the CFMs will be conducted in the second half year of 2009 on completion of the review on wet markets; and

- (c) the Secretary for Food and Health and the Director of Food and Environmental Hygiene have agreed to implement other audit recommendations in paragraph 2.23 of the Audit Report;
- urges the Secretary for Food and Health and the Director of Food and Environmental Hygiene to:
 - (a) take into account whether a public market is providing active market services to meet the needs of the community when assessing the viability of the market;
 - (b) seek the assistance of the Efficiency Unit where appropriate in conducting market surveys to gauge the views of market patrons and stall tenants;
 - (c) complete the market surveys by June 2009 and, having regard to the result of the surveys, formulate clear policy on the provision of public markets, including the positioning, functions and appropriate level of Government's subsidisation of the operation of public markets;
 - (d) complete the review on the provision of the CFMs within 2009 without delay;
 - (e) establish a mechanism to regularly monitor changes in the community and the business environment, e.g. changes in population size in the catchment areas and provision of public markets/market stalls in the same area, so as to make timely adjustment to avoid over-provision of market stalls; and
 - (f) proactively encourage and assist traders to introduce new types of goods and services into public markets, thereby increasing market patronage and reducing vacancy rate;

Market stall rentals and charges

- notes that:
 - (a) 48% of stall tenants were paying 60% or less of the OMR and some 150 stall tenants were paying rentals at only 1% to 5% of the OMR. On the other hand, 15% of stall tenants were paying full OMR; and
 - (b) concessionary rentals far below the OMR were offered to ex-licensed itinerant hawkers, who chose to continue their business in public markets, for their first tenancies. Further, the market stall rentals were reduced across-the-board by 30% in 1998 and have been frozen at the reduced

level since 1999, with the current rental freeze period due to expire on 30 June 2009;

- expresses serious concern that:
 - (a) the FHB and the FEHD have not resolved the problem of rental disparity in the same market, i.e. some tenants (e.g. ex-licensed hawkers) are paying extremely low rentals whereas others renting similar stalls through open auctions are paying higher rentals;
 - (b) the disparity in rentals might have discouraged traders to rent market stalls for business;
 - (c) the low rentals in some markets might be a reason for some tenants renting the stalls for purposes other than running an active retail business (e.g. for storage and bulk sale);
 - (d) the FHB and the FEHD have not devised a suitable rental adjustment mechanism to deal with stall tenancy renewal cases after 30 June 2009 (the expiry date of the rental freeze period);
 - (e) the FEHD has simply followed the practice of the Provisional Urban Council and the Provisional Regional Council of not recovering from stall tenants the rates paid on their behalf, despite stipulation in the tenancy agreements that tenants are responsible for their rates payment; and
 - (f) the FEHD has not recovered air-conditioning cost of about \$11 million a year from stall tenants as air-conditioning charges for 27 markets have not been revised since 1999 and no charges have been levied on three markets which were retrofitted with air-conditioning systems in 2000;
- acknowledges that the Secretary for Food and Health and the Director of Food and Environmental Hygiene are reviewing the existing market rental adjustment mechanism and will present findings to the Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene by June 2009, and urges them to expeditiously devise a suitable mechanism to deal with the problem of rental disparity and stall tenancy renewal cases;
- acknowledges that the Director of Food and Environmental Hygiene:
 - (a) will make a decision on the recovery or the waiver of rates paid for stall tenants in the past as well as the future arrangements for rates payment by the stall tenants, and report its recommendations to the LegCo by June 2009; and

- (b) has agreed to implement the audit recommendations in paragraph 3.20 of the Audit Report;
- urges the Director of Food and Environmental Hygiene to expeditiously implement the above audit recommendations;

Problem of stall subletting

- notes that:
 - (a) according to market stall tenancy agreement, a tenant is not allowed to sublet his stall; and
 - (b) many stalls were operated by tenants' registered assistants ("RAs") on a permanent basis in the absence of the tenants;
- does not accept:
 - (a) the existence of subletting of market stalls at public markets; and
 - (b) the Director of Food and Environmental Hygiene's view expressed at the public hearing on 11 December 2008 that as long as the tenants and their RAs kept the subletting deal to themselves, it would be difficult for the FEHD to take action. This reflects a lack of resolve on the part of the Director to tackle the problem;
- finds it unacceptable and inexcusable that the FEHD's controls over stall subletting are inadequate and lax, in that:
 - (a) the FEHD staff have failed to vigilantly follow the requirements and procedures laid down in the Operational Manual for Markets in carrying out market stall inspection and supervisory checking, or take action to detect and curb subletting, as reflected by the following:
 - (i) in recent years, the FEHD only identified three stall subletting cases which were revealed upon complaints;
 - (ii) upon detection of an unauthorised person in a stall, the stall tenant concerned was not penalised as long as he registered the person with the FEHD;
 - (iii) the FEHD's stall operator status checking procedures (relating to keeping of inspection records and inspection frequency) were not fully complied with in some markets; and

- (iv) although it was a tenancy condition for a tenant to display at the stall a Notice showing his name and photograph, no such Notice was generally displayed, rendering it difficult to check the status of stall operators;
 - (b) during the rental freeze period since 1999, the FEHD successively extended (instead of renewed) the old tenancies without requiring the tenants concerned to appear in person for verifying their status. As a result, for many extended tenancies, the status of stall tenants might not have been verified for years;
 - (c) some tenants did not follow the Business Registration Ordinance requirement to display business registration ("BR") certificates in their stalls, and the FEHD, as the market administrator, had not reminded them to do so; and
 - (d) the FEHD has not conducted a BR search to help identify whether a tenant is carrying on the market stall business as its owner. In fact, the results of BR searches conducted by the Audit Commission indicated that RAs and third parties (instead of the tenants) were the business owners of some stalls;
- acknowledges that the Director of Food and Environmental Hygiene:
 - (a) will strengthen the daily monitoring of market stalls with higher risk of subletting, collect information on high-risk cases by March 2009, and conduct further investigation into suspected cases;
 - (b) will publicise the market name and stall number of sublet stalls upon termination of their tenancy agreements, so that the consequence of subletting will be made known to the public and market stall tenants to achieve a deterrent effect;
 - (c) will arrange for renewal, instead of extension, of tenancies upon their expiry in future so that there will be an opportunity to verify the status of tenants and revise the tenancy conditions as appropriate; and
 - (d) has agreed to implement other audit recommendations in paragraph 4.14 of the Audit Report;
- urges the Director of Food and Environmental Hygiene to take effective measures to step up controls over stall subletting;

Management of a public market in Kowloon

- finds it unacceptable and inexcusable that:
 - (a) the basement of Market A, with its low patronage, was not serving as an active public market, thereby defeating the Government's original purpose of constructing Market A to serve nearby residents; and
 - (b) notwithstanding cases of non-compliance with the terms of the tenancy agreement (such as the absence of manned stalls and the use of locked up stall spaces for storage), and that Market A had been subject to daily supervision and routine inspection by the FEHD staff, there was no record of any such irregularities having been identified or any follow-up actions taken, reflecting that the FEHD staff had performed their duties in a perfunctory manner;
- expresses grave dismay and alarm that:
 - (a) the FEHD awarded Market A's management and maintenance services ("MMS") contracts to the tenants through single tendering in 2000, 2003 and 2006 instead of the normal open tendering procedures;
 - (b) the FEHD adopted single tendering of the MMS contracts mainly because it anticipated that there would be difficulty for a contractor other than the one related to the development owner to have access to the private areas of the development to carry out maintenance work. The FEHD had paid no regard to the provisions in the Deed of Mutual Covenant governing the rights and obligations of the owner/occupier of Market A in this respect; and
 - (c) despite comments by the Independent Commission Against Corruption in July 2008 that there was an apparent and direct conflict of interest as the tenants were both the sole tenants and the sole management agent of Market A, the Director of Food and Environmental Hygiene maintained that there was no apparent conflict of interest in this case;
- acknowledges that the Director of Food and Environmental Hygiene has agreed to implement the audit recommendations in paragraph 5.12 of the Audit Report, and urges the Director to follow up the audit recommendations without delay;

Planning of new public markets

- notes that, since 1987, it had been the then Urban Council's policy that viability should be a major factor in market construction and operation, and

public markets should be justified by establishing a distinct demand and role for them in a District Plan. However, there were no detailed guidelines on how a viability study should be conducted;

- expresses serious dismay and finds it unacceptable that the FEHD, after taking over the management responsibility for public markets in 2000, has failed to develop detailed guidelines on conducting comprehensive viability studies in planning new markets and, in planning and designing new markets, has simply followed established practices and procedures without taking into account the changing aspirations and needs of the community, as demonstrated by the following:
 - (a) in the planning of both the Tai Kok Tsui Market and the Aldrich Bay Market, the FEHD had not conducted comprehensive viability studies to ascertain whether there would be adequate demand for the two markets, taking into account factors such as demographic mix and local residents' shopping habits;
 - (b) although the Tai Kok Tsui Market was planned to resite stall tenants/licensed hawkers operating at four separate facilities, the FEHD had not sought their views about the resiting plan before seeking funding approval from the LegCo; and
 - (c) with the exception of the first four months of 2006, the Tai Kok Tsui Market had stall vacancy rates consistently above 25%, despite various market promotional activities held by the FEHD;
- acknowledges that:
 - (a) the FHB and the FEHD have proposed that future planning of new markets would be considered on a case-by-case basis, taking into account factors such as the population of the area, demographic mix, community needs, and provision of retail outlets in the vicinity;
 - (b) the FEHD will formulate internal guidelines by June 2009 on how viability study should be conducted in the planning of public markets; and
 - (c) the Director of Food and Environmental Hygiene has agreed to implement other audit recommendations in paragraph 6.21 of the Audit Report;

- urges the Director of Food and Environmental Hygiene to:
 - (a) formulate detailed guidelines on conducting comprehensive viability studies in planning new markets by June 2009 without delay; and
 - (b) inject innovative thinking in the design and layout of new markets, and make reference to successful overseas examples as appropriate; and

Follow-up actions

- wishes to be kept informed of:
 - (a) the result of the market surveys to gauge the views of market patrons and stall tenants, and the Administration's policy on the provision of public markets, including the positioning, functions and appropriate level of subsidisation of the operation of public markets, formulated in the light of the survey result;
 - (b) the result of the FEHD's review on the provision of the CFMs;
 - (c) details of the mechanism for regularly monitoring changes in the community and the business environment, so as to avoid over-provision of market stalls in public markets;
 - (d) the proposed rental adjustment mechanism to deal with the problem of rental disparity and stall tenancy renewal cases;
 - (e) the Director of Food and Environmental Hygiene's decision on the arrangements for rates payment by stall tenants;
 - (f) the various measures taken by the FEHD to step up controls over stall subletting;
 - (g) details of the FEHD's guidelines on conducting comprehensive viability studies in planning new markets; and
 - (h) the progress made in implementing other audit recommendations.

A. Introduction

The Audit Commission ("Audit") conducted a review to examine the economy, efficiency and effectiveness of the Environment Bureau ("ENB") and the Environmental Protection Department ("EPD") in managing the disposal of municipal solid waste ("MSW"). The review focused on the following areas:

- strategic management of MSW;
- progress of MSW recovery;
- implementation of domestic waste-recovery programmes; and
- implementation of non-domestic waste-recovery programmes.

2. **Hon Edward YAU Tang-wah, Secretary for the Environment**, made an opening statement at the Committee's public hearing. His statement is in *Appendix 28*. In summary, he said that:

- the management of MSW involved three important aspects, namely the reduction of waste at source, waste recovery and recycling, and the final disposal of waste;
- the reduction of waste at source was the focus of the MSW management policy. The Product Eco-responsibility Ordinance (Cap. 603), enacted in mid-2008, was an important milestone, since it provided the legal basis for implementing producer responsibility schemes ("PRSs") to achieve the objectives of waste reduction and recovery. The environmental levy on plastic shopping bags would be the first PRS under the Ordinance;
- the ENB believed that legislation was essential for putting the concept of producer responsibility into practice. However, it would be a very time-consuming process to implement PRSs if the ENB relied solely on legislative means. Therefore, in parallel with legislative work, the Administration had been encouraging the relevant trades to launch voluntary PRSs;
- to encourage waste recovery and recycling, a number of measures had been introduced. The relevant subsidiary legislation under the Buildings Ordinance (Cap. 123) had been amended to impose a mandatory requirement for the provision of refuse storage and material recovery room on every floor of new domestic buildings and composite buildings;

- the recovery rate of domestic waste had risen from 16% in 2005 to 20% in 2006 and further to 24% in 2007, representing a significant annual increase. However, when compared to the overall waste recovery rate of 45% and the commercial and industrial ("C&I") waste recovery rate of 62%, there was still ample room for improvement in domestic waste recovery. The Environment and Conservation Fund ("ECF") had allocated \$50 million to support District Councils and local organisations to organise public education programmes on environmental protection. Source separation of domestic waste would be one of the main themes;
- to further encourage public participation and support in waste reduction and recovery, the ECF had allocated \$10 million for public education programmes under the Policy Framework for the Management of Municipal Solid Waste (2005-2014) ("2005 Policy Framework"). So far, seven applications for funding support had been approved, covering topics such as plastic shopping bag reduction, simple packaging, food waste reduction, green procurement and the recovery of waste electrical and electronic equipment;
- it was necessary to develop infrastructure to manage waste in a sustainable manner. To this end, a pilot facility at Kowloon Bay had been set up to collect food waste generated by the C&I sectors. In the long run, the Administration would develop Phase 1 of the Organic Waste Treatment Facilities at Siu Ho Wan, North Lantau to convert food waste into useful compost and renewable energy, and the feasibility and environmental impact assessment ("EIA") studies had already started. In addition, the EPD was conducting detailed engineering and EIA studies for the two possible sites of Phase 1 of the Integrated Waste Management Facilities ("IWMF"). The IWMF was expected to come into operation in 2014-2015;
- the Director of Audit's Report ("Audit Report") referred to the target set out in the 2005 Policy Framework that the quantity of MSW generated was to be reduced by 1% per annum. This target was forward-looking and difficult to achieve. It might remain unachieved even if all the measures mentioned above were implemented. Overseas experience indicated that it might be necessary to implement a solid waste charging scheme to help reduce waste at source. Although waste charging was controversial, the Administration would commence study in this regard and put forward options for public consultation; and
- the Administration had provided 35 short-term tenancy sites to support the development of the recycling trade. In response to the industry's recent request for more short-term tenancy sites, another 10 sites had been identified and initially assessed to be suitable. They would be made available for use by the trade as soon as possible. While much progress had been made in waste recovery, there were still considerable difficulties in developing

large-scale recycling industry in Hong Kong due to factors such as land and wages. There was room for improvement in the development of the EcoPark. The Administration would maintain close liaison with tenants of the EcoPark and provide as much assistance as possible.

B. Strategic management of MSW

3. The Committee noted from Table 4 in paragraph 4.2 of the Audit Report that the recovery rate of domestic waste in 2007 was only 24.4%, which was far from satisfactory. The Committee asked about the reasons for the low recovery rate and the measures to boost the rate.

4. The **Secretary for the Environment** responded that:

- the recovery rate of domestic waste was relatively low when compared to the C&I recovery rate. The successful promotion of the recovery of domestic waste hinged on the provision of suitable recycling facilities as well as public participation and education;
- so far, 983 estates had joined the Source Separation of Domestic Waste programme ("SSDW programme"), covering 51% of the population in Hong Kong, which was not too bad. The participating estates were provided with waste-separation facilities. Under the amended subsidiary legislation of the Buildings Ordinance, all new domestic buildings and the domestic part of new composite buildings were required to provide a refuse storage and material recovery room on every floor. In addition, the latest design of three-coloured waste-separation bins had recently been introduced to encourage and facilitate waste recovery;
- funding support was provided by the Administration. Any building that needed to provide additional waste separation facilities on its floors could apply for a subsidy of \$800 per floor; and
- public participation and education were equally important. The Administration aimed to cooperate with District Councils and local organisations in the next year to promote source separation of domestic waste, and allocated \$50 million for this purpose. Also, the Administration would continue to provide funding support to green groups for organising activities to promote waste reduction and recovery.

5. As local organisations and District Councils were helpful partners for disseminating the message of waste reduction and recovery in the community, the Committee asked how the Administration cooperated with them. The Committee further asked about the measures taken by the EPD to promote and facilitate the recovery of computers and electronic products.

6. **Ms Anissa WONG Sean-ye, Director of Environmental Protection**, stated that:

- the Administration welcomed partnership with district and community organisations to promote awareness of environmental protection and conservation, and the ECF provided funding support for them to hold public education programmes. The \$1 billion injected into the ECF in April 2008 would further strengthen the funding support to environmental education and research initiatives, including those on waste reduction and recovery;
- the EPD had all along been working together with District Councils. Apart from informing them of the EPD's work by circulation of documents, she also personally attended meetings with various District Councils on a regular basis and introduced the ECF to them. As mentioned by the Secretary for the Environment, the ECF had allocated \$50 million to strengthen cooperation with District Councils and local organisations in organising environmental protection programmes; and
- with the assistance of the trades concerned, the EPD had implemented four voluntary PRSs to recover and recycle different kinds of products. They were the Rechargeable Battery Recycling Programme, Computer Recycling Programme, Fluorescent Lamp Recycling Programme and Glass Container Recycling Programme. The EPD had also launched a trial scheme to collect waste electrical and electronic products for reuse and recycling. The department hoped that there would be collection points in all the 18 districts throughout the territory to facilitate citizens. Locations of the collection points were published in the department's website. There was also a campaign in Kowloon Bay held by two charitable organisations for collecting waste computers and electrical products. Besides, the EPD worked closely with District Councils in organising district programmes to recover waste electrical appliances, particularly during the period before the Lunar New Year.

7. In response to the Committee's enquiries about the EPD's performance targets for the Rechargeable Battery Recycling Programme and the Computer Recycling Programme, the **Director of Environmental Protection** said that the EPD:

- aimed to collect about 50 tonnes of rechargeable battery and 50,000 computers per year under the programmes. The Computer Recycling Programme was launched in January 2008 and about 20,000 computers had been collected up to November 2008. As for the Rechargeable Battery Recycling Programme, up to October 2008, a total of 155 tonnes of rechargeable battery had been collected; and
- would evaluate the effectiveness of the PRSs regularly and discuss with the trades concerned to extend the programmes when necessary.

8. The Committee noted that there were some district organisations in Hong Kong which launched small-scale yet successful environmental campaigns. For example, a women group in Yan Oi Tong, Tuen Mun ran a project to collect waste oil for producing soap. In Taiwan, there was a very active and influential green group organised by housewives. The Committee asked whether the Administration would publicise the successful experience of these district organisations in order to disseminate the message of environmental protection to the public more effectively.

9. The **Secretary for the Environment** responded that:

- the Administration stood ready to encourage voluntary groups, non-profit-making bodies and social enterprises, etc, irrespective of their size, to organise environmental protection campaigns. They could apply for funding support from the ECF. The Administration would also publicise the successful campaigns organised by them; and
- following the injection of additional fund into the ECF, the Administration had held discussion with members of the ECF on its future mode of operation. It was agreed that the ECF should reach out to local organisations. For example, the ECF would identify some charitable organisations and help to turn them into green organisations. The chairmen and vice chairmen of all District Councils as well as the chairmen of District Councils' relevant committees had already been informed of such a plan.

10. The Committee noted that Part II of the Waste Disposal Ordinance ("WDO") (Cap. 354) provided a statutory framework for the preparation of waste disposal plans ("WDPs") by the Administration to set out the arrangements for the collection and disposal of solid and semi-solid wastes and all existing and proposed waste disposal sites. The WDP-making process included consultation with the Advisory Council on the Environment, gazettal of the plan, public consultation and approval by the Chief Executive in Council. Under section 7 of the WDO, the WDP-making process applied equally to any revision to a WDP.

11. The Committee also noted that in 1989, the Administration published a WDP ("1989 WDP") which included a strategy for the disposal of MSW through the provision of landfills and a network of refuse transfer stations. It appeared that no revision had been made to the 1989 WDP in the past 20 years.

12. Against the above background, the Committee asked:

- about the nature of the Waste Reduction Framework Plan in 1998 ("1998 Framework Plan") and the 2005 Policy Framework vis-à-vis a statutory WDP;
- given the statutory nature of a WDP, whether the use of non-statutory means, i.e. the 1998 Framework Plan and the 2005 Policy Framework, to set out the Administration's policy on waste disposal would circumvent any possible legal consequence in the event of the Administration's failure to have regard to or meet the targets set out in a statutory WDP; and
- as Part II of the WDO was still in force and represented a statutory commitment of the Administration to observe a specific plan-making process, whether the use of non-statutory means to make similar plans would undermine the Administration's commitment.

13. In his letter of 7 January 2009 in *Appendix 29*, the **Secretary for the Environment** responded that:

- the WDP published by the Administration in December 1989 dealt with the collection and disposal aspects of waste management. It also set out a tentative programme for the development of new facilities, namely the three strategic landfills and the transfer station network, and the closure of old incinerators and small landfills. Given its focus on waste disposal and treatment, the WDP was not the most suitable vehicle to address the other aspects of waste management strategies, namely waste avoidance, reuse, recovery and recycling;
- A Waste Reduction Study was commissioned by the EPD in 1994 to identify ways to encourage waste avoidance, minimisation, recovery and recycling. The findings were presented to the Panel on Environmental Affairs of the Legislative Council, which requested the Administration to provide a total picture of its waste reduction targets and implementation timetable. The Administration subsequently consulted the public on the draft Waste Reduction Plan in May 1997, and published the 1998 Framework Plan to set out the waste reduction strategy and targets;

- since then, there had been a continuing and rising public aspiration for a sustainable waste management strategy which placed primary emphasis on waste reduction, reuse and recovery. In response to this public aspiration, in particular the Report on the Engagement Process for a First Sustainable Development Strategy published by the Council for Sustainable Development ("SDC") in May 2005, the Administration published the 2005 Policy Framework in December 2005, setting out a comprehensive waste management strategy for the next ten years. Enshrining the "polluter-pays" principle, the 2005 Policy Framework proposed policy tools to encourage the public to recycle more and discard less. It also covered the adoption of latest technologies for waste management facilities. The 2005 Policy Framework had adopted the waste management targets laid down in the SDC Report; and
- the waste management targets set out in the 2005 Policy Framework were the results of the SDC's extensive public engagement process. The Administration remained committed to achieving these targets as set out in the 2005 Policy Framework as soon as practicable and would continue to report to the Legislative Council on the progress made.

C. Progress of MSW recovery

14. According to paragraph 3.11 of the Audit Report, in 2007, 1.36 million tonnes of putrescible waste (mainly food waste) were produced, accounting for 22% of the total MSW. Almost all the putrescible waste was disposed of at landfills. This would shorten the life spans of the three landfills in Hong Kong, and generate leachate and landfill gas, which were harmful to the environment if not controlled properly.

15. The Committee noted from the Secretary for the Environment's opening statement that only a pilot facility had been set up at Kowloon Bay to collect food waste generated by the C&I sectors. The Organic Waste Treatment Facilities at Siu Ho Wan, North Lantau were still at the stage of undergoing feasibility and EIA studies. Possible sites of the IWMF were still undergoing engineering and EIA studies, and the expected commissioning of the IWMF would be as late as 2014-2015. Given that the continued disposal of food waste at the landfills was undesirable, the Committee queried whether:

- the Administration understood the urgency of the problem and whether the planned programme of the construction of large-scale management facilities was too slow;
- the Administration had any alternative plans in case the result of the pilot facility at Kowloon Bay was unsatisfactory; and

- the three existing landfills would be exhausted before the IWMPF was commissioned in 2014-2015.

16. In response, the **Director of Environmental Protection** stated that:

- food waste constituted a significant proportion of the waste disposed of at landfills. More than 3,300 tonnes of putrescible waste were generated in Hong Kong every day, with the main bulk generated by the domestic sector. The C&I sectors also generated 870 tonnes a day;
- the Administration did not rely on the IWMPF alone to resolve the waste problem. It also aimed to develop organic waste treatment facilities to manage waste in a sustainable manner. To build up experience and information on the collection and treatment of organic waste, a small-scale pilot plant with a capacity of 4 tonnes per day had been set up at Kowloon Bay to process source-separated food waste from more than 20 C&I premises, such as food factories, hotels and restaurants. The Administration's target was to deal with putrescible waste from the C&I sectors first as this would be easier to collect and process;
- in addition, as part of the long-term waste treatment strategy, an Organic Waste Treatment Facility would be developed in two phases, with each phase handling 200 tonnes of source-separated organic waste from the C&I sectors per day. The first phase of the facility was to be built in Siu Ho Wan of Lantau Island, and the target commission date was early 2013. At present, EIA studies were being conducted. The second phase would be of a similar capacity and built in Sha Ling of the North District; and
- extension of the existing landfills was also necessary. The Administration had already completed the feasibility and EIA studies on the extension of two of the three landfills.

17. The **Secretary for the Environment** added that:

- his opening statement highlighted that the Administration tackled the problem of waste management through enactment of legislation, cooperation with the trades, public participation and education, provision of infrastructure and allocation of resources; and
- the support of the Legislative Council and the community was indispensable. For instance, a number of legislative proposals would be put up for consideration by the Legislative Council in the coming year, and successful implementation of the voluntary PRSs relied on the participation of the

relevant trades and the public. Additional resources had been allocated through injection to the ECF. The Administration was also identifying more short-term tenancy sites to meet the need of the recycling industry. The ENB would submit funding application for the several waste treatment infrastructure projects mentioned in his opening statement to the Legislative Council for approval in the near future.

18. Regarding the treatment of food waste, the Committee noted that the EPD and the commercial sector had implemented programmes for recovering and recycling food waste. The Committee asked:

- about the effectiveness and experience of the programmes;
- whether the Administration would consider providing economic incentives to encourage more commercial organisations to participate in food waste reduction and recovery; and
- the reason why the Administration aimed to deal with food waste from the C&I sectors first instead of that from the domestic sector, even though the main bulk of food waste in Hong Kong was generated by the domestic sector.

19. The **Director of Environmental Protection** and **Dr Ellen CHAN Ying-lung, Assistant Director (Environmental Infrastructure), EPD**, replied that:

- before the SSDW programme was implemented, the EPD had conducted a pilot scheme at four housing estates in the Eastern District which focused on the separation of wet waste (i.e. food waste) and dry waste (i.e. recyclable materials like paper, aluminium cans and plastic bottles). Under the scheme, the dry waste was not further separated. The result of the scheme indicated that the recovery rate was raised slightly, but the handling cost was high because the waste had to be separated at the waste collection points. Given this experience, the Administration launched the SSDW programme in 2005 to provide waste separation facilities on each building floor, which would be more convenient to residents and would encourage them to separate waste at source;
- some commercial organisations were keen to take measures to treat the food waste generated by them. The Hong Kong Disneyland had installed a machine to process food waste, which was similar to the one in the plant at Kowloon Bay, with a capacity of about one to two tonnes per day. The machine operated satisfactorily, but it was only of a small scale. To process several hundred tonnes of food waste a day would require different technology. A shopping arcade at Kowloon Tong had installed a similar

machine at its carpark to process the food waste generated by the food premises there. In addition, the Airport Authority had installed several similar machines; and

- food waste could not be stored and had to be transported to the treatment plant immediately after collection. Food waste generated by the C&I sectors was easier to collect, hence the EPD's aim was to deal with the C&I sectors first. As for food waste from the domestic sector, ultimately it would have to be incinerated by the IWMF.

20. The Committee noted from paragraph 2.15 of the Audit Report that according to the 2005 Policy Framework, the quantity of MSW generated was targeted to be reduced by 1% per annum, from 2005 up to 2014, based on the 2003 level of 5.83 million tonnes. However, Audit found that the actual quantity of MSW generated was increasing. In 2007, 6.25 million tonnes of MSW were generated, exceeding the target quantity of 5.66 million tonnes by 10.4%.

21. The Committee further referred to the Secretary for the Environment's remarks that the MSW reduction target of 1% per annum was forward-looking and difficult to achieve. In view of the Secretary's remarks and the Administration's apparent reluctance to set more aggressive performance targets for its initiatives such as the SSDW programme, the Committee questioned:

- the Administration's commitment to achieving the MSW reduction target; and
- whether the Administration would set more objective and quantifiable targets for its different MSW reduction initiatives, such as public education programmes, so as to provide the Legislative Council and the public with a basis for evaluating their effectiveness.

22. The **Director of Environmental Protection** responded that:

- the Administration had been working towards achieving the three waste management targets set out in the 2005 Policy Framework, including reduction of the amount of MSW generated in Hong Kong by 1% per annum, although this was indeed a challenging target. The Administration had been trying to achieve the targets through legislative means where necessary, educational and publicity campaigns, as well as provision of waste treatment infrastructure;

- the Administration believed that the implementation of an MSW charging scheme based on the "polluter-pays" principle could effectively help to reduce waste at source. Overseas experience indicated that volume-based charging would be more effective for achieving waste reduction. However, it might not suit the situation in Hong Kong where the waste of some individual households was not collected by waste collectors, rendering it difficult to monitor the volume of waste disposed of by them and determine the charge. The Administration would continue to examine the issue with a view to identifying measures that could address the needs of Hong Kong. Progress had also been made in implementing PRSs with the enactment of the Product Eco-responsibility Ordinance. This would provide economic incentive to reduce waste at source. Apart from the levy on plastic shopping bags, the Administration would also study the implementation of PRSs for other products; and
- although the community's awareness of environmental issues had enhanced, the actual quantity of MSW generated had been increasing. While the amount of domestic waste generated had remained relatively stable at about 3 million tonnes a year, the amount of C&I waste generated had increased from 2.55 million tonnes in 2005 to 2.9 million tonnes in 2007. During the period from 2005 to 2007, population growth remained at about 1% a year, and there was robust economic growth (i.e. 7.5% in 2005, 6.8% in 2006 and about 6% in 2007). This meant that the increase in C&I waste generation was probably driven by the significant growth in economic activities.

23. The **Secretary for the Environment** stated that:

- the 2005 Policy Framework was a blueprint setting out the Administration's major initiatives and specific targets for MSW management for the years from 2005 to 2014. It was a policy framework that suited the circumstances of Hong Kong. The Administration had already achieved a recovery rate of 45% back in 2006, three years ahead of the target laid down in the 2005 Policy Framework, but it would not be complacent. The Administration was lagging behind with regard to the MSW reduction target;
- he considered that in the short run, the Administration should not spend efforts on setting targets which were different from those in the 2005 Policy Framework. Instead, the Administration should make its best efforts to achieve or exceed the targets as laid down in the policy framework;
- the Audit Report highlighted the difficulties faced by the Administration. Without a charging scheme, it was doubtful whether the MSW generated could be decreased. For instance, if the Administration were to collect domestic food waste, Hong Kong citizens would have to change the way they

disposed of waste. It was inevitable that a levy would have to be introduced to provide incentive for change. It would be ideal if the amount of MSW generated in Hong Kong could be reduced by 1% per year. In that case, Hong Kong would not have any rubbish after 99 years; and

- the Audit Report also highlighted the need for modern IWMF with incineration as the core technology to substantially reduce the volume of unavoidable waste. The Administration was taking forward the waste treatment infrastructure projects and would submit proposals to the Legislative Council soon.

24. Regarding the promotion of the recovery and recycling industries, the Committee noted Audit's recommendation in paragraph 3.16(b) of the Audit Report that the EPD should take further measures to improve the recovery of paper waste and plastic waste. However, the Director of Environmental Protection only responded that the EPD had commissioned the Hong Kong Business Environment Council to carry out a "Study on Waste Paper and Plastics Generation and Recovery in the C&I Sector in Hong Kong", which appeared to be less than a positive response.

25. The Committee also noted from the Secretary for the Environment's opening statement that there were considerable difficulties in developing large-scale recycling industry in Hong Kong due to factors such as land and wages, and there was room for improvement in the development of the EcoPark.

26. The Committee enquired:

- when the EcoPark tenants would commence operation and about the difficulties faced by them;
- about the direction in reviewing the tenancy requirements for Phase II of the EcoPark and the specific measures to assist the recovery and recycling industries, particularly in the face of the difficulties brought about by the financial tsunami, e.g. whether the Administration would further extend the term of the tenancy and reduce the rent, and construct the plants for the tenants; and
- whether the Administration would consider developing the recycling industry in the Lok Ma Chau Loop where there would be more land and more manpower at lower wages to cater to the industry's need.

27. The **Secretary for the Environment** and the **Director of Environmental Protection** said that:

- there were a total of six lots in Phase I of the EcoPark. Four lots had been awarded for recycling of waste wood, used cooking oil, computers and waste plastic. The tenants were preparing for the construction of plants. Of the remaining two lots, tender evaluation in respect of the one designated for recycling scrap iron was at the final stage, while invitation for tender for the one designated for recycling various materials would be issued by the end of 2008. Apart from providing land at affordable rent, the Administration also assisted tenants of the EcoPark in market development and liaison with suppliers. The ECF provided funding support to the recycling industry for technology development;
- the rent of the EcoPark was already very low, even cheaper than that of short-term tenancies. The term of tenancy was 10 years, which was very long, and the tenancy could be renewed upon expiry. The problem was that there might not be suitable recycled products for use in Hong Kong or tenants who were willing to make long-term investment. The paper recycling industry was an example. While waste paper was recovered in Hong Kong, the recycling plants were set up in the Mainland. The experience in the past few years indicated that Hong Kong might not be able to attract large-scale recycling industry to develop locally. Moreover, some higher-end recyclers might choose to operate in the Hong Kong Science and Technology Parks rather than the EcoPark;
- despite the difficulties, the Administration had continued to support the recycling industry. If the operators had problems in administration, the EPD would help them to liaise with the government departments concerned. The Administration would also try to provide assistance if they lacked the requisite technologies. However, it was important that they were committed to operation and production instead of, say, using the land for storage of their goods;
- the Hong Kong and Shenzhen authorities were considering the land use of the Lok Ma Chau Loop, including higher education, and the research and development of new high technology. The development of the Loop was more remote than that of the EcoPark; and
- regarding the development of Phase II of the EcoPark, the Administration had set up a committee to study how to improve the attractiveness of the EcoPark. Some members of the committee had proposed that the Administration might build some standard plants for use by the tenants. The Administration would consider this option but was concerned that a standard design might not suit the differing requirements of tenants. The Administration would continue to

discuss with representatives from the recycling industry and other relevant organisations such as the Hong Kong Science and Technology Parks and Hong Kong Productivity Council.

D. Implementation of domestic waste-recovery programmes

28. According to paragraphs 4.5 and 4.8 of the Audit Report, the SSDW programme for recovering domestic waste at housing estates had been implemented since 2005. The ENB had set the following performance targets under the programme: (a) to have 80% of Hong Kong's population enrolled in the programme by 2010; (b) to extend the programme to cover all public rental housing ("PRH") estates by 2012; and (c) to increase the domestic waste recovery rate from 16% in 2005 to 26% in 2012. It appeared to the Committee that the performance targets were conservative. The Committee asked:

- the reason why the Administration only targeted to extend the SSDW programme to all PRH estates by 2012 but not earlier, despite that it should be easier to implement the programme in PRH estates which were under the control of the Hong Kong Housing Authority;
- as the domestic waste recovery rate already reached 24% in 2007, whether the Administration would set a higher target in this regard instead of adhering to the original target of 26% in 2012, so as to provide a greater impetus to its work; and
- the respective recovery rates of MSW, domestic waste and non-domestic waste in other advanced cities of the world and how the rates compared to those in Hong Kong.

29. The Committee further referred to paragraph 4.18(b) and (c) of the Audit Report in which the Director of Environmental Protection stated that through promotion of the SSDW programme, the message of source-separation of waste was widely disseminated in the community, and that the programme had improved waste recovery in Hong Kong. It appeared to the Committee that the Administration was complacent about the progress of the SSDW programme and doubted its determination in achieving a more aggressive target.

30. On the extension of the SSDW programme to PRH estates, the **Director of Environmental Protection** explained that although the EPD would like to expedite the progress, it had to work together with the Housing Department. To implement the programme, the Housing Department needed to identify suitable locations for providing waste-separation facilities and make corresponding arrangements, such as with its cleansing contractors.

31. The **Secretary for the Environment** responded that:

- the Administration should be able to meet the target of raising the domestic waste recovery rate to 26% by 2012. Nevertheless, he agreed that the Administration should make even greater efforts to improve domestic waste recovery. To achieve a higher recovery rate, the Administration had to work together with management companies and residents' associations;
- regarding facilities for waste recovery, as most existing domestic buildings had neither a refuse storage and material recovery room on each floor nor sufficient space for waste-separation facilities, the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123 sub. leg. H) were amended in May 2008 to require such facilities to be provided on every floor of new domestic buildings. More than 800 new three-coloured waste-separation bins would be provided at public places to raise the environmental awareness of the general public; and
- funding support was provided for the installation of recycling facilities. Besides, the Administration also aimed to encourage residents to participate in source separation at home through community participation and education. For instance, many large housing estates had taken the initiative to place a collection box for waste clothes, apart from collecting paper, metal and plastic waste. The Administration would commend these estates and publicise their good experience. He also personally introduced the newly-designed three-coloured waste-separation bins to enhance publicity. The Administration would also launch programmes periodically, such as those for the recovery of computers and electrical appliances, to boost the recovery rate.

32. Regarding the recovery rates of other advanced cities, the **Assistant Director (Environmental Infrastructure), EPD** replied at the public hearing and in her letter of 6 January 2009 (in *Appendix 30*) that overseas data were only available for MSW. Based on the latest accessible and comparable data, Hong Kong's MSW recovery rate was 45% in 2007, as compared to some major cities such as Tokyo (18% in 2007), Sydney (26% in 2003), New York (30% in 2003), London (35% in 2006-2007), Singapore (54% in 2007), Taipei (61% in 2007) and Seoul (64% in 2007).

33. The Committee noted from paragraph 4.14 of the Audit Report that the EPD only relied on the Census and Statistics Department's statistics collected from recycling traders to evaluate the performance of the SSDW programme. However, such statistics might not represent the actual quantities of MSW recovered under the programme as some recyclable waste might be directly taken to recycling traders without going through the programme.

The Committee enquired whether the EPD would directly estimate the quantities of recyclable waste recovered under the SSDW programme, as recommended by Audit.

34. The **Director of Environmental Protection** and the **Assistant Director (Environmental Infrastructure)**, EPD replied that:

- the EPD did not collect data on the quantities of recyclable waste recovered through the SSDW programme from the participating housing estates directly because the quantities as reported by them might only reflect a portion of the actual quantities recovered. Residents might choose to put recyclable waste into the waste-separation bins provided by their buildings/estates or take recyclable waste directly to the recycling traders. The EPD considered such practices desirable as they were conducive to environmental protection. Hence, the department used the Census and Statistics Department's data for evaluating the SSDW programme; and
- in future, apart from using the statistics from the Census and Statistics Department, the EPD would also implement Audit's recommendation and conduct surveys in the estates and buildings which had joined the SSDW programme to obtain information about the quantities of domestic waste recovered under the programme.

E. Implementation of non-domestic waste-recovery programmes

35. According to paragraphs 5.4 to 5.6 of the Audit Report, the EPD launched a Source Separation of Commercial and Industrial Waste (SSCIW) programme in October 2007. Under the programme, the management offices of C&I buildings were encouraged to implement measures for waste separation and recovery, and to provide quarterly returns on the quantities of waste recovered. Paragraph 5.8 of the Audit Report revealed that the EPD did not obtain statistics of recyclable waste recovered under the SSCIW programme from management offices of the participating buildings for evaluating the effectiveness of the programme. Paragraph 5.11(a) also reported that only 40% of participants of the programme submitted regular returns on recyclable waste recovered.

36. The Committee asked the EPD to explain:

- why it did not obtain statistics from management offices of the participating buildings; and
- why the return rate of participants of the programme was so poor and the actions that it would take to improve it.

37. The **Director of Environmental Protection** and the **Assistant Director (Environmental Infrastructure)**, EPD replied that:

- similar to the SSDW programme, the EPD had all along used the Census and Statistics Department's statistics collected from recycling traders to evaluate the performance of the SSCIW programme because the information was more comprehensive. However, in view of Audit's recommendation, the EPD would also collect statistics on recyclable waste recovered under the SSCIW programme directly from management offices of the participating buildings for reference;
- the submission of quarterly returns on the quantities of waste recovered was voluntary. The EPD would, through further communications with the participants, endeavour to encourage better response. The EPD would also introduce a commendation scheme similar to the one for the SSDW programme to commend those participants who submitted returns and achieved a high recovery rate; and
- the SSCIW programme was only launched in October 2007 and was still in an early implementation phase. Up to November 2008, about 420 C&I buildings had joined the programme. In order to attract more participants, waste-separation bins would be provided free of charge to participating C&I buildings.

38. The Committee noted from paragraphs 5.12(a) and 5.14 of the Audit Report that since 2000, the Education Bureau, the EPD and the Environmental Campaign Committee ("ECC") had implemented a waste-recovery programme at schools to enhance students' awareness of the importance of resource conservation and waste separation. However, up to July 2008, only 67% of schools in Hong Kong had been provided with waste-separation bins. The Committee enquired why not all schools were provided with waste-separation bins and how the Administration would improve the situation.

39. The **Director of Environmental Protection** said at the public hearing and the **Assistant Director (Environmental Infrastructure)**, EPD stated in her letter of 6 January 2009 that:

- the ECC launched two one-off campaigns of "Waste Separation and Recycling Scheme in Schools" ("the Schemes") in 2000 and 2003 respectively. Under the Schemes, all primary and secondary schools were invited to participate on a voluntary basis. With the concerted efforts of the ECC, the EPD and the then Education Department, 1,100 sets of waste-separation bins were provided to all participating schools, covering about 70% of primary and secondary school premises. The Schemes had successfully raised the

awareness of schools in waste separation and recycling. It was noted that some schools had elected not to join the Schemes but had procured waste-separation bins at their own expenses;

- since the introduction of the Schemes, the ECC had continued to proactively offer assistance and support to new schools or newly participating schools by providing new waste-separation stickers for the bins, as well as referring the participating and non-participating schools to the Food and Environmental Hygiene Department ("FEHD") for recyclable collection service on a free-of-charge basis. In parallel, the ECC had also reviewed the design of waste-separation bins to cater for the expanded scope of recyclables;
- as many of the old sets of waste-separation bins distributed under the Schemes were approaching the end of their natural life span, the ECC had obtained funding support of \$6 million from the ECF in early 2008 for procurement of newly designed waste-separation bins for distribution to primary and secondary schools. In November 2008, the ECC invited all primary and secondary schools to apply for the new bins. As at the end of December 2008, over 220 applications had been received and, among them, about 140 had never received recycling bins under the Schemes. All such requests would be entertained within the current school year, boosting the coverage rate of three-coloured waste-separation bins in school premises to around 83%; and
- while participation of schools in the Schemes remained voluntary, the ECC was prepared to entertain all applications and, in this connection, the EPD would reach out to those schools yet to join the Schemes to proactively invite them again to join or to ascertain their reasons for not joining.

40. Paragraph 5.23 of the Audit Report revealed that as at June 2008, only 17% of the refuse collection points ("RCPs") in rural areas were provided with waste-separation bins. The Committee asked about the reason for the small percentage and the FEHD's action plan to improve the situation.

41. **Mr CHEUK Wing-hing, Director of Food and Environmental Hygiene,** stated at the public hearing and in his letter of 31 December 2008 (in *Appendix 31*) that:

- village-type RCPs in rural areas were usually situated in rather remote places, serving only a small local population. The FEHD started to provide waste-separation bins in village-type RCPs in 2000. In general, the waste recovering yield from these bins had been low compared with that from bins set up in urban areas. Nevertheless, to help promote the concept of waste

separation and recovery, the FEHD had progressively increased the number of RCPs provided with waste-separation bins. For more effective use of resources, priority was given to village-type RCPs with potentially higher "pitching-in" rate, having regard to factors such as the size of the local population, convenience of the RCP location and proximity to tourist spots. The percentage of village-type RCPs provided with waste-separation bins had now been raised to 25%; and

- the FEHD would continue to support the EPD in further promoting public awareness of and participation in waste separation. To this end, waste separation-bins would be provided at 300 new sites across the territory in the first quarter of 2009. Subject to the outcome of the EPD's consultation with District Councils, some of the new sites would include village-type RCPs.

F. Conclusions and recommendations

42. The Committee:

Strategic management of municipal solid waste ("MSW")

- expresses deep regret and sadness that the Secretary for the Environment lacks a sense of urgency and is not proactive enough in tackling the problem of MSW, as reflected by the following:
 - (a) despite the target of reducing the quantity of MSW generated by 1% per annum as laid down in the document "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" ("2005 Policy Framework"), 6.25 million tonnes of MSW were generated in 2007, exceeding the target quantity of 5.66 million tonnes by 10.4%, and the Secretary for the Environment has failed to demonstrate the Administration's commitment to achieve the MSW reduction target;
 - (b) while the MSW recovery rate target of 45% (originally set for achievement by 2009) was achieved as early as 2006, the Secretary for the Environment made no further commitment to raise the target; and
 - (c) definite timetables have not been formulated for the provision of large-scale waste management facilities. Only a pilot scheme is being implemented to collect food waste generated by the commercial and industrial sectors. The Organic Waste Treatment Facilities at Siu Ho Wan, North Lantau are still at the stage of undergoing feasibility and environmental impact assessment ("EIA") studies. Possible sites of the Integrated Waste Management Facilities ("IWMF") are still undergoing

engineering and EIA studies and the expected commissioning of the IWMF will be as late as 2014-2015;

- expresses serious concern that:
 - (a) the daily per capita MSW generated increased from 1.99 kilogrammes in 1998 to 2.47 kilogrammes (a 24% increase) in 2007;
 - (b) in 2007, while other Asian cities disposed of small percentages (3% to 16%) of their MSW at landfills, 55% of Hong Kong's MSW was disposed of at landfills; and
 - (c) the three landfills will reach their full capacities in six to ten years' time;
- notes that:
 - (a) Part II of the Waste Disposal Ordinance (Cap. 354) provides a statutory framework for the preparation of waste disposal plans ("WDPs") by the Administration to set out the arrangements for the collection and disposal of solid and semi-solid wastes and all existing and proposed waste disposal sites. The WDP-making process includes consultation with the Advisory Council on the Environment, gazettal of the plan, public consultation and approval by the Chief Executive in Council, and applies equally to any revision to a WDP;
 - (b) the then Secretary for the Environment stated at the moving of the second reading of the Waste Disposal Bill 1979 that the WDP "will form the policy framework in which waste management will be carried out"; and
 - (c) in 1989, the Administration published a WDP ("1989 WDP") which included a strategy for the disposal of MSW through the provision of landfills and a network of refuse transfer stations;
- expresses serious concern that:
 - (a) the Administration has provided no satisfactory explanation for the concern referred to in sub-paragraph (b) below when asked to do so in writing;
 - (b) the Administration used non-statutory means, i.e. the Waste Reduction Framework Plan in 1998 and the 2005 Policy Framework, to set out its policy framework on certain aspects of waste disposal, despite the statutory WDP-making process; and

- (c) no revision has apparently been made to the 1989 WDP, nor a new WDP made, in spite of the Waste Reduction Framework Plan in 1998 and the 2005 Policy Framework, almost 20 years after the 1989 WDP was made;
- acknowledges that the Secretary for the Environment and the Director of Environmental Protection have agreed to implement the audit recommendations in paragraph 2.25 of the Director of Audit's Report ("Audit Report");
- urges the Secretary for the Environment to:
 - (a) adhere to the MSW reduction target laid down in the 2005 Policy Framework and proactively take measures to achieve it;
 - (b) raise the target on the recovery rate of MSW;
 - (c) formulate definite timetables and action plans to expedite the provision of large-scale waste management facilities; and
 - (d) conduct a review on the Administration's practice of using non-statutory means instead of a statutory WDP to set out its policy on waste disposal since the 1989 WDP, and report the results of the review to the Environmental Affairs Panel of the Legislative Council;

Progress of MSW recovery

- expresses serious dismay that:
 - (a) in 2007, almost all of the 1.36 million tonnes of putrescible waste were disposed of at landfills, which would shorten the life spans of the landfills and generate leachate and landfill gas; and
 - (b) in 2007, only 56% of paper waste and 57% of plastic waste were recovered, which means that significant quantities of paper waste and plastic waste have been disposed of at landfills;
- notes the Director of Environmental Protection's stated agreement to implement the audit recommendations in paragraph 3.16 of the Audit Report, but urges the Director to formulate definite timetables for their implementation;

Implementation of domestic waste-recovery programmes

- expresses serious concern that the Environmental Protection Department ("EPD") has only relied on the Census and Statistics Department's statistics collected from recycling traders to evaluate the performance of the Source Separation of Domestic Waste programme ("SSDW programme"), which might not represent the actual quantities of MSW recovered under the programme;
- expresses great dissatisfaction that some of the performance targets set by the Environment Bureau under the SSDW programme are too conservative (i.e. extending the programme to cover all public rental housing estates by 2012 but not earlier, and increasing the domestic waste recovery rate from 16% in 2005 to 26% in 2012 but not higher), reflecting a lack of resolve on the part of the Bureau to vigorously extend the programme;
- acknowledges that the Director of Environmental Protection has agreed to implement the audit recommendations in paragraph 4.17 of the Audit Report;
- urges the Director of Environmental Protection to set more aggressive performance targets under the SSDW programme and formulate specific measures to achieve them;

Implementation of non-domestic waste-recovery programmes

- expresses disappointment that:
 - (a) the EPD did not obtain statistics of recyclable waste recovered under the Source Separation of Commercial and Industrial Waste ("SSCIW") programme from management offices of the participating buildings for evaluating the effectiveness of the programme;
 - (b) the return rate of participants of the SSCIW programme on the quantities of waste recovered was only 40%, which is far from satisfactory;
 - (c) up to July 2008, only 67% of schools in Hong Kong had been provided with waste-separation bins for waste recovery and recycling despite the launching of two campaigns of the Waste Separation and Recycling Scheme in Schools in 2000 and 2003 respectively;
 - (d) some waste-separation bins at public places overflowed and there were instances where rubbish bins were not provided near waste-separation bins; and
 - (e) up to December 2008, only 25% of refuse collection points in rural areas had been provided with waste-separation bins;


- acknowledges that:
 - (a) the Director of Environmental Protection and the Secretary for Education have agreed to implement the audit recommendations in paragraph 5.24 of the Audit Report, and the coverage rate of waste-separation bins in schools will be increased to around 83% in the 2008-2009 school year;
 - (b) the Director of Food and Environmental Hygiene has agreed to implement the audit recommendations in paragraphs 5.25 and 5.26; and
 - (c) the Director of Leisure and Cultural Services has agreed to implement the audit recommendation in paragraph 5.26;
- urges:
 - (a) the Director of Environmental Protection to proactively follow up with those schools that have not joined the Waste Separation and Recycling Scheme in Schools or applied for new waste-separation bins, with a view to further boosting the coverage rate of waste-separation bins in schools; and
 - (b) the Director of Food and Environmental Hygiene to expeditiously increase the number of waste-separation bins provided at refuse collection points in rural areas; and

Follow-up actions

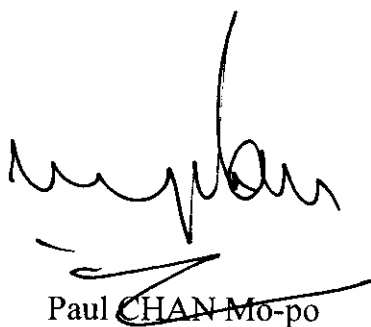
- wishes to be kept informed of:
 - (a) the progress made in achieving the MSW reduction target laid down in the 2005 Policy Framework and the measures taken to achieve it;
 - (b) the Administration's decision on raising the target on the recovery rate of MSW;
 - (c) the definite timetables and action plans to expedite the provision of large-scale waste management facilities;
 - (d) the Administration's decision regarding the proposed review of its practice of using non-statutory means instead of statutory WDPs to set out its policy on waste disposal;
 - (e) the definite timetables for implementing the audit recommendations in paragraph 3.16 of the Audit Report;

- (f) the Administration's decision on setting more aggressive performance targets under the SSDW programme and any specific measures formulated to achieve them;
- (g) the progress made in providing waste-separation bins at all schools in the territory;
- (h) the progress made in increasing the number of waste-separation bins provided at refuse collection points in rural areas; and
- (i) the progress made in implementing other audit recommendations.

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




Philip WONG Yu-hong
(Chairman)



Paul CHAN Mo-po
(Deputy Chairman)



Andrew CHENG Kar-foo



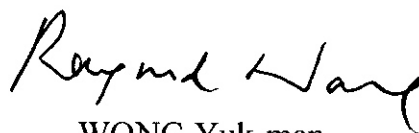
Abraham SHEK Lai-him



Alan LEONG Kah-kit



Starry LEE Wai-king



WONG Yuk-man

4 February 2009

**CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 51
DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT**

**Director of
Audit's Report
No. 51**

**P.A.C.
Report No. 51**

<u>Chapter</u>	<u>Subject</u>	<u>Chapter</u>
2	Administration of the DesignSmart Initiative	1
4	Emergency ambulance service	2
6	Management of public markets	3
11	Reduction and recovery of municipal solid waste	4

**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. *(L.N. 214 of 2005)*

(3A) The chairman and 2 other members shall constitute a quorum of the committee. *(L.N. 214 of 2005)*

(3B) In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. *(L.N. 214 of 2005)*

(3C) 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 give a casting vote. *(L.N. 214 of 2005)*

(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) *(Repealed L.N. 214 of 2005)*

(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.

Relocation of the Yau Ma Tei Fruit Market

Purpose

This note updates Members on the latest position regarding the proposed relocation of the Yau Ma Tei (YMT) Fruit Market.

Latest position

2. After the Public Accounts Committee tabled its No. 48 report in July 2007, the Administration has held several meetings with the YMT fruit trader representatives and organised for them a site visit to the proposed relocation site at Cheung Sha Wan Wholesale Market Phase 2. Fruit traders have strong reservations about the relocation. Amongst other concerns, they consider that the new market site is too small and too remote for their operation¹. To address their concerns, we have been providing them with additional information and will continue to liaise with the fruit traders and engage them fully in the design of the new fruit market with a view to alleviating their concerns about the proposed relocation.

3. The Administration recognises that obtaining the understanding of the fruit traders and the local residents is essential for a smooth relocation. We will therefore continue to engage the fruit traders and the District Councils concerned. Having established the understanding of the fruit traders and the relevant District Councils to the proposed relocation, we will proceed with the development of the new wholesale fruit market according to the timetable at **Annex**.

4. In the meantime, relevant government departments, including the Police and the Food and Environmental Hygiene Department, will continue to take necessary enforcement actions with a view to mitigating the traffic and environmental nuisance caused by the operation of the YMT Fruit Market to neighbouring residents. In this regard, the District Office (Yau Tsim Mong) will continue to take a leading role in co-ordinating inter-departmental efforts.

Food and Health Bureau
January 2008

¹ The proposed site has a total area of 3.5 to 4 hectares compared to the current 1.53 hectares in YMT Fruit Market.

Indicative Timetable for Relocating the YMT Fruit Market

Time needed	Action
Month 1 ²	Subject to traders' and District Councils' agreement to the relocation, prepare and submit Project Definition Statement for the new market
Month 2 to 7	Prepare and submit Technical Feasibility Statement (TFS)
Month 8 to 13	Prepare and submit Environmental/Traffic Impact Assessment (EIA/TIA) Reports
Month 14 to 17	Public inspection of Environmental Impact Assessment (EIA) Report
Month 18	Seek Environmental Protection Department's approval for EIA report and Environmental Permit Seek Transport Department's approval of TIA report
Month 19 to 24	Prepare tender documents for construction of the new wholesale fruit market
Month 25	Consult LegCo Panel on Food Safety and Environmental Hygiene on the proposed submission to LegCo Finance Committee for the construction of the new wholesale fruit market
Month 26	Seek funding approval from LegCo Public Works Subcommittee of Finance Committee
Month 27	Seek funding approval from LegCo Finance Committee
Month 28 to 31	Tender period (including tender assessment)
Month 32	Obtain approval from Central Tender Board
Month 33 to 52	Construction of new wholesale fruit market
Month 53	New wholesale fruit market commences operation

² We are already engaging the fruit traders and Yau Tsim Mong District Council (YTMDC). Due to the divergent views held by the fruit traders and YTMDC, it would still take time to resolve their differences. We have also keep Sham Shui Po District Council posted of the issue and will formally consult the District Council in due course. It is estimated that the preliminary consultation with fruit traders will take about 12 to 18 months. The consultation may need to be extended if an understanding could not be reached by then.

漁農自然護理署

九龍長沙灣道三〇三號
長沙灣政府合署五樓



AGRICULTURE, FISHERIES AND
CONSERVATION DEPARTMENT

Cheung Sha Wan Government Offices
303 Cheung Sha Wan Road
5th floor
Kowloon, Hong Kong

本署檔號 OUR REF.: (7) in TC 44/2008 AF GR 1-55/13/3/0 Pt. 2

來函檔號 YOUR REF.: CB(3)/PAC/CS(48,49&49A)

電話 TEL NO.: 2150 6603

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圖文傳真 Faxline No.: 2377 4665

7 January 2009

Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Serena CHU)

Dear Ms Chu,

**Follow-up to Public Accounts Committee Report No. 48
Management of Government Fresh Food Wholesale Markets**

Thank you for your letter dated 23 December 2008.

(a) Letting of market facilities

As of 31 December 2008, we have rented out 24 of the 99 previously vacant stalls. The 75 stalls which have not been leased out include 15 stalls in the Cheung Sha Wan Temporary Wholesale Poultry Market (which will not be further leased out in view of the recent Voluntary Surrender Scheme for the live poultry trade) and 9 stalls located in the Western Wholesale Food Market (the area where the stalls are situated has been allocated to the Hongkong Post as a Speedpost and regional delivery centre through the assistance of Government Property Agency).

The remaining 51 stalls are mainly located in the egg or fruit sections of the Cheung Sha Wan and Western Wholesale Food Markets. We observed that importers are increasingly distributing eggs and fruits to supermarkets or retailers direct, i.e. without going through Government wholesale markets. As a result, the demand for egg and fruit stalls remains low. That said, we will continue to monitor the vacancy situation closely and carry on promoting these stalls through trade associations, advertisements in major local news papers and

the homepage of the Department. In parallel, we have recently allowed these stalls to be used for the wholesaling of canned food, kitchen utensils and fruit associated products in addition to eggs and fruits, with a view to attracting more tenants.

(b) Collection of rental – introduction of surcharge

During the latest consultation with tenants on the overdue surcharge, tenants continued to object strongly to the proposal. In view of the latest economic situation and the Government's commitment to revive the economy by supporting Small and Medium Enterprise (SMEs), we are considering possible refinements to the proposal and will consult the tenants again in due course.

Yours faithfully

A handwritten signature in black ink, appearing to be 'L. B. Kwei-kin', written over a horizontal line.

for Director of Agriculture, Fisheries and Conservation

c.c. Director of Audit

漁農自然護理署

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長沙灣政府合署 5-8 樓



AGRICULTURE, FISHERIES AND
CONSERVATION DEPARTMENT

Cheung Sha Wan Government Offices
5-8/F, 303 Cheung Sha Wan Road
Kowloon, Hong Kong

本署檔號 Our Ref.: (13) in TC 44/2008 in AF GR 1-55/13/3/0 Pt.2

來函檔號 Your Ref.: CB(3)/PAC/CS(48,49 & 49A)

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圖文傳真 Faxline No.: 2377 4665

29 January 2009

Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Serena CHU)

Dear Ms Chu,

**Follow-up to Public Accounts Committee Report No. 48
Management of government fresh food wholesale markets**

Thank you for your letter dated 16 January 2009. Our response is as follows.

(a) Four unused market piers at Western Market

This Department consulted the Sub-committee on Harbour Plan Review of the Harbour Enhancement Committee on 24 September 2008. The Sub-committee strongly objected to demolishing the piers. The relevant meeting notes are enclosed for your reference.

On 20 November 2008, the Culture, Leisure and Social Affairs Committee of the Central and Western District Council reiterated its suggestion of developing the area of the vacant piers into leisure facilities for the enjoyment of the public. As one of the measures to beautify and revitalize the harbourfront areas as pledged by the Chief Executive in his 2008-09 Policy Address, the Development Bureau will study the possible beneficial re-use of piers which have been left idle (including the four unused piers at the Western Wholesale Food Market) but cannot be

replaced under the restriction on reclamation in Victoria Harbour, with a view for these piers to contribute to vibrancy of the waterfront. To this end, this Department stands ready to surrender the four vacant piers for other uses provided that the security, operations and pedestrian safety of the Western Wholesale Food Market and its vicinity are not compromised.

(b) Reprovisioning of outdated wholesale markets

Consultation with the fruit wholesalers is ongoing. The Administration has been discussing different aspects of the relocation, including the location, mode of operation and design of the new market with the fruit wholesalers through various channels, including the Working Group on Concern for the Yau Ma Tei Fruit Market under the Yau Tsim Mong District Council. The tentative timetable submitted earlier on depicts the general procedures for public works projects. The Administration will explore whether there is any room for compressing the works timetable in due course.

Yours faithfully,



(Liu Kwei-kin)

for Director of Agriculture, Fisheries and Conservation

c.c. Director of Audit
SDEV (Attn: Miss Amy Yuen)
SFH (Attn: Mr Francis Ho)
DO(C&W)(Attn: Mrs Winnie Ho)
DO(YTM)(Attn: Mrs Vicki Kwok)

Extract from

HEC Sub-committee on Harbour Plan Review

Minutes of Twenty-fourth Meeting dated 24.9.2008

**Item 6 Alternative Use of Four Vacant Piers at the Western
Wholesale Food Market (Paper No. 21/2008)**

- 6.1 The following representatives of the Agriculture, Fisheries and Conservation Department (AFCD), the Proponent, were invited to the meeting:

Mr Chan Chi-chiu
Mr Yen Wai-hon

- 6.2 **The Proponent** made a presentation with the aid of powerpoint slides.

6.3 Members had the following comments/questions:

- (a) the piers should not be demolished because, once demolished, they could hardly be reinstated due to the requirements under PHO. Whether it was possible to strengthen the loading of the piers for other beneficial uses by reinforcing the pier structures;
- (b) information on the maintenance cost of the piers should be provided for reference. Moreover, in assessing the economic value of the piers, not only short-term cost savings, but also long-term community benefits should be considered;
- (c) given their harbour-front location, the piers would probably be of a high land value. In considering the land value of the piers, the associated opportunity cost forgone should also be assessed;
- (d) instead of demolishing the piers, the Government should estimate the cost of fixing the piers for public enjoyment and enhancing their connectivity with the adjoining harbour-front;
- (e) car parking was not a desirable use from harbour-front enhancement point of view. The stakeholders, including the private sector, should be engaged to determine the alternative beneficial uses of the piers;
- (f) the entire wholesale market site could be enhanced as an attraction point by incorporating seafood restaurants and improving public access to the waterfront. Reference could also be made to the proposals in the "Harbourfront Connectivity Study" by the Harbour Business Forum; and
- (g) a separate study funded by HEC to identify the constraints and formulate the enhancement plan for the whole site could be considered.

6.4 The Proponent responded as follows:

- (a) according to the advice of CEDD, the one-off cost of rehabilitating each pier for general use and the

Action

subsequent annual maintenance cost were estimated to be \$2M - \$3M and \$0.3M - \$0.4M respectively. It would not be cost-effective to lease out the piers for general commercial uses like car parking. Nonetheless, if the piers were to be retained for public enjoyment, the matter should be considered from a different perspective; and

- (b) DEVB could assist to coordinate enhancement of harbour-front sites including the subject piers.

6.5 The Chairman made the following points:

- (a) the Sub-committee did not support the removal of any under-utilised piers from the harbour-front. If the piers were no longer required by AFCD for wholesale market use, they should be returned to the Government for consideration of an appropriate harbour-front use, which could be enjoyed by members of the public with reference to HPPs; and
- (b) the suggestion of identifying individual harbour-front sites for detailed study should be further considered as it required coordination with other district review studies to be carried out under the overall Harbour Plan Review and would have resources implications.

- 6.6 Miss Amy Yuen said that the purpose of the submission was to follow up the Audit Report and the request of the Public Accounts Committee. The Sub-committee's concern on demolition of the piers was fully acknowledged and Members' view would be taken into account in considering the way forward.

**DEVB and
AFCD**

- 6.7 The Chairman thanked the Proponent for attending the meeting.

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF.: SRD 101/3/R VIII

來函檔號 YOUR REF.: CB(3)/PAC/CS(48, 49 & 49A)

23 January 2009

Clerk of Public Accounts Committee
(Attn.: Ms Serena CHU)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Chu,

Follow-up to Public Accounts Committee Report No. 31
Recoverability of the outstanding advances to the UNHCR

I refer to your letter of 16 January 2009.

The Administration has been making every effort to recover the outstanding advances through various means. For example -

- (a) the Security Bureau wrote to the Head of the UNHCR Hong Kong Sub-Office in March 2006, February 2007, September 2007, March 2008 and August 2008 to urge UNHCR to make renewed efforts to appeal to the international community for donations to allow early repayment of the outstanding advances. In our letters, we also registered the Hong Kong community's expectation of an early recovery of the advances as well as the Legislative Council's concern on the matter;
- (b) four meetings were held in January 2007, September 2007, March 2008 and July 2008 between the representatives of the HKSARG and the UNHCR Hong Kong Sub-Office. The issue was raised at these meetings; and
- (c) the issue was also raised at a meeting between the HKSARG and the UNHCR headquarters in November 2008.

The UNHCR has repeatedly conveyed the message that since they have to handle increasing number of refugees and asylum seekers globally, it is not optimistic that repayment can be made in the foreseeable future. On the other hand, the UNHCR has not withdrawn its commitment to repay such advances. It remains our understanding that UNHCR's reimbursement to Hong Kong would be subject to availability of funds.

The Administration's assessment is that it is not optimistic that full recovery of the amount due, or partial recovery could be achieved in the near future. This said, the Administration will continue with our efforts to urge the UNHCR to repay the advances.

Yours sincerely,



(W H CHOW)
for Secretary for Security

政府總部
發展局
規劃地政科
香港花園道美利大廈



Planning and Lands Branch
Development Bureau
Government Secretariat
Murray Building, Garden Road
Hong Kong

本局檔號 Our Ref. DEVB(PL-L) 35/05/2006 Pt. 4

來函檔號 Your Ref. CB(3)/PAC/CS (48, 49 & 49A)

29 January 2009

Clerk, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Serena CHU)

Dear Ms CHU,

**Follow-up to Public Accounts Committee Report No. 39
Small house grants in the New Territories**

Thank you for your letter of 16 January 2009 on the above subject.

As we have reported to the Public Accounts Committee and the Panel on Development, we are deliberating on the review of the Small House Policy including a number of measures to optimise the implementation of the Small House Policy.

Over the last few years, we have in consultation with the Heung Yee Kuk, put in place a new set of procedures to streamline the processing of Small House applications thereby expediting the processing of such applications, stipulated in the lease conditions of Small House grants that no prior arrangement for transfer or disposal of Small House applicants' beneficial interest be allowed, and introduced a new set of fire safety requirements under which fire safety alternatives would be accepted for Small House applications

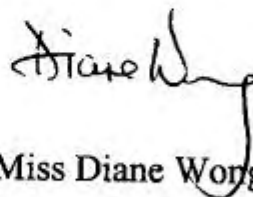
with practical constraints meeting the original Emergency Vehicular Access requirements.

We understand that the rural setting has changed significantly since the introduction of the Small House Policy in 1972. These changes have raised concern over the Small House Policy in the context of effective land resources utilization, land use planning and environmental sustainability. On the other hand, we cannot underestimate the complicated and inter-woven issues involved in different aspects of the Small House Policy. These include the legal and human right considerations, the environmental impact caused by Small House developments, the lack of proper planning and public land for provision of public facilities in villages, the existence of unauthorized building works in Small Houses, and the persistently strong demand for land for Small House developments.

The complexity and far-reaching implications of the considerations as mentioned above underline that the review would be time-consuming. We are also approaching the issue in a pragmatic manner. We are discussing with the Heung Yee Kuk on how to streamline the process of resolving objections to Small House applications, improve on the mechanism for reviewing the land reservation for open space and other public facilities on village layout plans, and rationalize unauthorised building works in New Territories Exempted Houses including, amongst others, Small Houses. Furthermore, we are also exploring the feasibility of whether and how some suitable Village Expansion Area projects could be taken forward, subject to the availability of necessary funding.

The Administration would continue our efforts on the review of the Small House Policy. Taking account of the complexity and difficulty of the issues involved, we would adopt a practical approach in putting forward proposals on the relevant aspects of the Small House Policy for consultation with the Heung Yee Kuk and the community at large.

Yours sincerely,



(Miss Diane Wong)

for Secretary for Development

c.c. AA/SDEV
Director of Planning
Director of Lands
Director of Buildings

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 本署檔號 Our Ref: LD 1/IS/EX/02 IX
 來函檔號 Your Ref: CB(3)/PAC/CS(48,49&49A)



地政總署
 LANDS DEPARTMENT

我們矢志努力不懈，提供盡善盡美的土地行政服務。
 We strive to achieve excellence in land administration.

香港北角渣華道三三三號北角政府合署二十樓
 20/F., NORTH POINT GOVERNMENT OFFICES
 333 JAVA ROAD, NORTH POINT, HONG KONG

By Fax (No. 2537 1204) and By Post

22 January 2009

Clerk, Public Accounts Committee
 Legislative Council Secretariat
 Legislative Council Building
 8 Jackson Road
 Central
 Hong Kong
 (Attn : Ms Serena Chu)

Dear Ms Chu,

Follow-up to Public Accounts Committee Report No. 42

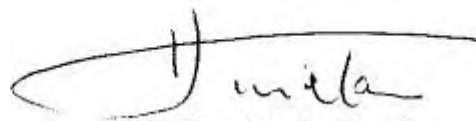
The acquisition and clearance of shipyard sites

Thank you for your letter of 16 January 2009.

The Lands Tribunal heard certain points of law as preliminary issues to facilitate the determination of the appropriate valuation basis for assessing compensation for the Penny's Bay shipyard site as referred to in your letter and handed down its judgment on 25 May 2007, ruling in favour of the Administration. The ex-lessee subsequently filed an appeal, and the judgment of the Court of Appeal was handed down on 8 January 2009 which, by majority decision of the Court of Appeal (with two of the three decisions including that of the Vice-President of the Court of Appeal allowing the appeal and one dismissing it), allowed the appeal. As the Administration is seriously considering the merits of lodging an

application for leave to appeal against the majority decision of the Court of Appeal to the Court of Final Appeal, it is considered inappropriate for us to discuss the Judgment of the Court of Appeal or related matters publicly in order to avoid any prejudice to any future legal proceedings and the legal interests of the Government in the legal proceedings.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Annie Tam', with a long horizontal stroke extending to the right.

(Miss Annie Tam)
Director of Lands

c.c. Director of Audit



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

本局檔號 Our Ref.: EDB(I) E/24/2/04 V

電話 Telephone: 2892 6665

來函檔號 Your Ref.:

傳真 Fax Line: 2573 3467

來函傳真 Your Fax Line: 2537 1204

30 January 2009

Ms Serena Chu
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Chu,

**Follow-up to Public Accounts Committee Report No. 43
Government subsidies to the English Schools Foundation ("ESF")**

Thank you for your letter of 16 January 2009 to the Secretary for Education regarding the issues relating to Government subsidies to the ESF raised in the Public Accounts Committee ("PAC") Report No. 43. I am authorized to reply on his behalf.

With the enactment of the ESF (Amendment) Ordinance 2008, the new governing structure of ESF was put in place in late 2008. We have commenced preliminary exchange with ESF on the tentative workplan and scope of the subvention review since December 2008. Bearing in mind that the review is a complex matter involving various issues and with a wide implication in the educational landscape, we need to examine the matter carefully with ESF in order to achieve a mutually acceptable solution. We hope that we can reach consensus with ESF by around mid-2009 on the

issues to be covered and the broad principles, which will form the basis of our further discussion with ESF on details of the substantive issues from mid-2009 to mid-2010. We will keep the Legislative Council informed of the progress in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Raymond Sy', written in a cursive style.

(Raymond Sy)
for Secretary for Education

c.c. Director of Audit

Corporate governance and Headquarters administration of the English Schools Foundation

Action plan of the English Schools Foundation in response to the Report of the Public Accounts Committee as at September 2008

	Recommendations of PAC	Response from the ESF to PAC	Action plan as prepared in May 2005	Responsible party	Forecast completion/comments (Position as at September 2008)
1.	Corporate governance				
	b. To adopt measures to ensure that external members would constitute a majority at each of the respective meetings of the Foundation and ExCom;	This was agreed and had formed the basis of the work of the Governance Reform Task Force.	Agreed in principle by Foundation Meeting on 9 December 2004.		Majority of external members was required at Board Meetings. The new Board would commence operations in late October 2008.
	c. To issue reminders to the related organisations if the attendance rates of their representatives at Foundation meetings were low;	Agreed: reminder would be issued before Foundation meetings.	By June 2005.		Members with low attendance rates were deemed to have resigned under the new Regulation.
	d. To amend the Regulations of the ESF to the effect that ESF staff members of ExCom would abstain from voting on matters concerning ESF staff benefits at its meetings; and	To be considered by the Governance Reform Task Force.	Governance Reform Task Force to consider (b), (d) and (e) by April 2005 and to publish a consultation paper by May 2005. Foundation to consider the reform in June 2005.	ExCom	Board members were required to declare any interest and not to vote on a matter in which they were direct beneficiaries under a Code of Conduct drawn up under the new Regulation and approved by the Transitional Board on 27 May 2008. New Remuneration and Terms and Conditions Committee did not have staff members under the new Regulation. Pending that, no staff members had been appointed to the current Conditions of Service Committees established in January 2007.

	Recommendations of PAC	Response from the ESF to PAC	Action plan as prepared in May 2005	Responsible party	Forecast completion/comments (Position as at September 2008)
	e. To consider repealing section 10(2) of The English Schools Foundation Ordinance so that subsidiary legislation in the form of regulations made under the Ordinance was required to be published in the Gazette and tabled in LegCo	To be considered by the Governance Reform Task Force.			Section 10(2) of The English Schools Foundation Ordinance had been repealed under The English Schools Foundation (Amendment) Ordinance 2008. New Regulation had been approved by LegCo.
3.	Staff remuneration and recruitment b. The membership of the Remuneration Study Group (RSG) should not be drawn from the ESF's own teaching and non-teaching staff.	The ESF had stated that the RSG's membership was agreed by ExCom and reflected the need for transparency for all stakeholders. ExCom would decide on pay levels.		ExCom	The new Regulation excluded employees from membership of the Remuneration Committee.
4.	Staff housing and medical benefits c. The ESF should formulate a policy and a plan for disposing of its surplus staff quarters.	The ESF had stated that ExCom would review carefully the audit recommendation in paragraph 5.31(a), having regard to the long-term needs of the ESF and the financial security conferred by the ownership of such fixed assets.	To submit a paper in respect of audit recommendations in paragraph 5.31(a) and (b) to ExCom by June 2005.	ExCom	The review of housing policy and property holdings was in progress under the guidance of the Remuneration Committee and Finance Committee established under The English Schools Foundation (Amendment) Ordinance 2008.

Further progress made by the Hong Kong Tourism Board on matters outstanding in the Government Minute

Report No. 49 of the Director of Audit (DoA) — Chapter 5

	DoA's Recommendations	HKTB's Response in October 2007	Progress To date
Corporate Governance			
1.	<p>(a) Monitor the attendance of members at Board/Committee meetings and ascertain the reasons for low attendance.</p> <p>(b) Take action to improve the attendance of members at Board/Committee meetings.</p>	<p>HKTB agrees with the audit recommendations and has implemented the following measures –</p> <p>(a) attendance records of members at Board/Committee meetings in the past six months are provided to members to serve as a reminder to members about their attendance and similar reminders will be sent to members every six months thereafter;</p> <p>(b) with the Board's approval, records of members' attendance will be disclosed;</p> <p>(c) to facilitate members' participation facilities for conference calls will be arranged during meetings and in case members are not available for the meetings, HKTB will actively invite their written comments;</p> <p>(d) include number and frequency of meetings for individual committees in the Terms of Reference of the respective Committee, and the existing arrangement of setting tentative dates for the Board meetings at the beginning of each year will continue so that members can make arrangements in advance.</p>	<p>Completed. HKTB has taken a series of actions to monitor and improve the attendance of members at the Board/Committee meetings. HKTB has provided members with their attendance records every six months, installed telecommunication equipments for conference calls, revised individual committees' terms of reference to include the number and frequency of meetings, and invited members who were not available for meeting to provide written comments. In July 2008, the Board approved disclosure of overall and individual members' attendance at Board and Committee Meetings in HKTB's Annual Report. To delete this part from the next progress report.</p>
Performance Measurement And Reporting			
2.	<p>Consider enhancing its performance measures in the annual Business Plan and Budget, making reference to good practices and performance measures adopted by leading National Tourism Organisations (NTOs).</p>	<p>HKTB has continuously enhanced its performance measures regularly making reference to best practices of international bodies and NTO. In addition to the Key Performance Indicators (KPIs), HKTB monitors a number of indicators to measure the performance of its marketing activities and review on a regular basis the relevancy of these indicators to its marketing activities.</p>	<p>Completed. HKTB has made reference to the practices adopted by leading NTOs and developed a framework to enhance its performance measurement. To delete this part from the next progress report.</p>

	DoA's Recommendations	HKTB's Response in October 2007	Progress To date
Remuneration And Recruitment			
3.	Ensure that there are good reasons for allowing staff to receive a salary higher than the maximum of their respective salary ranges.	HKTB will continue to identify ways to resolve such cases.	In progress. There is only one remaining case where a staff member receives a salary higher than the maximum of her salary range. HKTB will resolve it by April 2009 taking into account the coming annual salary review exercise and the overall review of the team structure of the staff concerned.
Procurement Matters			
4.	<p>(a) Taking into account the Government's guidelines, consider –</p> <p>(i) reviewing its marking scheme guidelines under the Financial Policies and Procedures (FPP), particularly the normal weightings for the technical score and the price score;</p> <p>(ii) adopting open tendering for procurement with value exceeding a certain amount.</p>	HKTB will review the procurement procedures and make recommendations to the Board.	<p>(a) (i) Completed. Revised marking scheme guidelines under the FPP were approved by the Board in June 2008. To delete this part from the next progress report.</p> <p>(ii) In progress. HKTB is working on the procedure for open tendering. The target completion date is the end of 2008.</p>

	DoA's Recommendations	HKTb's Response in October 2007	Progress To date
Other Administrative Issues			
5.	<p>(a) Improve the control for project-related entertainment expenses.</p> <p>(b) Maintain separate accounts for entertainment expenses to record the amounts incurred for budgetary control purpose.</p>	<p>(a) HKTb will effect a procedural change within this financial year to separate the food and beverage expenses of projects and events from ordinary entertainment expenses and submit to Staff and Finance Committee for approval.</p> <p>(b) For project-related entertainment expenses, by working out the food and beverage budget for each project under the proposed new policy, HKTb can account for the expenses incurred.</p>	<p>Completed. New policy and procedures to manage and account for food and beverage expenses of projects and events, separately from ordinary entertainment expenses, have been put in place since 1 August 2008. To delete this part from the next progress report.</p>
6.	<p>(a) Improve the control for project-related business travel expenses.</p> <p>(b) Maintain separate accounts for business travel expenses to record the amounts incurred for budgetary control purpose.</p>	<p>(a) Respective project owners will be required to estimate the budget for each activity under a project, business travel being one, for control purposes.</p> <p>(b) For project-related business travel, by working out the duty travel budget for each project under the new policy, the HKTb can account for the expenses incurred.</p>	<p>In progress. New policy and procedures to manage and account for project-related business travel expenses will be put in place by the end of 2008. Separate accounts for business travel expenses will be kept for budgetary control purpose after the new policy and procedures are promulgated.</p>

Further progress made by the Hong Kong Tourism Board on matters outstanding in the Government Minute

Report No. 49 of the DoA — Chapter 6

	DoA's Recommendations	HKTB's Response in October 2007	Progress to Date
Worldwide Offices And Representative Offices			
1.	<p>HKTB to consider –</p> <p>(a) laying down guidelines and objective criteria for determining the establishment of Worldwide Offices (WWOs) and Representative Offices in overseas markets;</p> <p>(b) periodically review the set up of WWOs having regard to relevant pre-determined criteria.</p>	<p>HKTB is committed to constantly reviewing the establishment of its WWOs and Representative Offices so as to take into account the changing market conditions and to tie in with its marketing strategies. HKTB has also responded that it will take into consideration various factors and criteria to closely monitor the development of the source markets and reviews the need to establish a WWO or Representative Office. Recommendations will be submitted to the Board for consideration and approval.</p>	<p>In progress. The target completion date is the end of 2008.</p>
Execution And Evaluation of Other Marketing Activities			
2.	<p>Set performance targets for its advertising and promotion campaigns to evaluate the effectiveness of the campaigns in achieving their intended objectives.</p>	<p>HKTB had conducted pre-campaign and post-campaign tracking studies to assess the changes before and after the launch of the worldwide promotion campaign for 2005-06 to 2006-07. These tracking studies directly measured the effectiveness of the marketing initiatives under the campaign, whereas the overall results of the campaign were measured by the defined KPIs set for the campaign period, such as visitor arrivals, spending, satisfaction and revisit intention.</p>	<p>In progress. HKTB had completed a study and put forward recommendations on the corporate performance measurement framework. Building upon this framework, HKTB had started to review the performance measures to evaluate the effectiveness of its advertising and promotion campaigns. The target completion date is the end of 2008.</p>

	DoA's Recommendations	HKTb's Response in October 2007	Progress to Date
Quality Tourism Services (QTS) Scheme			
3.	Explore ways to enable the QTS Scheme to achieve self-financing.	In the long run, HKTb aims to recover the operating expenditure directly related to merchant accreditation. The expenses on the promotion of the Quality Tourism Services (QTS) Scheme will continue to be funded by the HKTb as part of its effort to promote Hong Kong's destination image in quality service.	In progress. The QTS Review which covers the issue on cost recovery has been completed and the results will be submitted to the QTS Committee for review and comment in Q4 2008.

**Further developments and progress made by the Administration
as reported in the Government Minute laid before the Legislative Council in July 2008**

Report No. 49 of the Director of Audit (DoA) — Chapter 5

	DoA's Recommendations	Administration's Response in October 2007	Progress to Date
1	<p>(a) Appoint a date for the HKTb to forward the Business Plan and Budget to the Secretary for Commerce and Economic Development for approval in accordance with section 17B(1) of the HKTb Ordinance.</p> <p>(b) Lay down arrangements for the approval of the HKTb's Business Plan and Budget before the commencement date of the relevant financial year.</p> <p>(c) Ensure that the arrangements are complied with in future.</p>	<p>The Secretary for Commerce and Economic Development (SCED) has said that:</p> <p>(a) the Tourism Commission (TC) has conveyed to the HKTb the Administration's views on the HKTb's strategic directions, work priorities and key expenditure items when the HKTb engages the TC in formulating its Business Plan and Budget. The HKTb has also confirmed that it takes these views into account in finalising its Business Plan and Budget;</p> <p>(b) to formalise the submission and approval process as required by section 17B(1) of the HKTb Ordinance, he has already appointed a date as the deadline for the HKTb to forward its Business Plan and Budget for his approval; and</p> <p>(c) the Administration has also worked out with the HKTb the practical arrangements to ensure that the Business Plan and Budget can be endorsed by its Board and approved by him on a timely basis.</p>	<p>(a) to (c) Completed.</p> <p>The SCED has appointed 28 February as the date before which HKTb has to forward for his approval its annual Business Plan and Budget.</p> <p>We have formulated systematic arrangements with the HKTb to improve its business planning and budget approval process.</p>

	DoA's Recommendations	Administration's Response in October 2007	Progress to Date
2	<p>(a) Review the composition of the Board in the light of the Board's actual operational needs.</p> <p>(b) Ascertain whether there is still a need for appointing members of the Board from the Consumer Council and from the front-line workers of the travel and tourism industry.</p>	<p>The SCED has said that:</p> <p>(a) in considering appointments to the HKTb Board, the Administration takes into account the Board's strategies and work, and the range of talents needed to ensure its effectiveness. Due to the different cycles of appointments to the Board and the Consumer Council, it may not be possible to maintain cross-membership with the Consumer Council at all times. In fact, he has attempted to ensure that the consumer protection angle is taken care of in the Board membership; and</p> <p>(b) as for front-line workers of the tourism trade, he has invited the HKTb to engage the tourism industry at different levels. In addition to the existing practice of conducting prior consultation with travel trade stakeholders, the HKTb has planned to extend the consultation on the HKTb's plans and strategies to non-travel trade stakeholders, such as retail and catering industries, as well as academics, starting from 2007-08. A structured format will be adopted for the consultation and engagement process, with summary of feedbacks gathered being submitted to the respective Committees of the Board.</p>	<p>(a) and (b) Completed.</p> <p>An information paper on the arrangement regarding the appointment of representative of the Consumer Council and frontline worker of the tourism industry to the HKTb has been issued to Legislative Council Panel on Economic Development in January 2008.</p>

	DoA's Recommendations	Administration's Response in October 2007	Progress to Date
3	Take into account the attendance of members at Board/Committee meetings in considering their reappointment.	<p>The SCED has said that:</p> <p>(a) the Government takes into account the attendance rate of members when considering their reappointment. He also noted that some members' attendance rates were low. He has invited the HKTB Secretariat to inform individual members of their attendance as a reminder of the importance of their attendance. The Secretariat has introduced this practice and issued the first round of reminders since August 2007; and</p> <p>(b) he notes that some members, though unable to attend all meetings due to busy traveling schedules, also contribute to the Board's work in different ways, e.g. giving written advice, attending events organised by the HKTB, liaison with relevant trade, etc.</p>	(a) & (b) Completed.
4	Consider improving the reporting of the performance measures in the Controlling Officer's Report (COR) to better reflect the performance of the HKTB.	The SCED has said that he will, in consultation with the HKTB, consider including in the next COR additional performance indicators, including length of stay and visitor satisfaction, to better reflect the performance of the HKTB.	Completed. Additional performance indicators, including length of stay and visitor satisfaction, have been included in the 2008-09 COR.

香港特別行政區政府
政務司司長辦公室



CHIEF SECRETARY
FOR ADMINISTRATION'S OFFICE
Government of the Hong Kong
Special Administrative Region

17 July 2008

Dr Hon Philip WONG Yu-hong, GBS
Chairman, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central Hong Kong

Dear Dr ~~Wong~~, Philip,

**Review on the Role of Government Officials
Appointed as Board Members of
Government-owned or Funded Statutory Bodies and Companies**

I am pleased to inform you that the review which the Administration has undertaken in response to the recommendations relating to the role of government officials sitting on the governing bodies of publicly-funded statutory organisations and good corporate governance and management in publicly-funded statutory organisations contained in Public Accounts Committee (PAC) Reports No. 48 and 49A, is now completed. The outcome of the review is set out in the attached report.

The review represents the Administration's strive to strengthen corporate governance for publicly-funded statutory bodies, and also as a positive response to PAC's constructive comments and recommendations. On this, I wish to thank the Committee for the time and effort that it has devoted to this important issue of public sector governance.

Yours sincerely,

(Henry Tang)

Chief Secretary for Administration

cc: Secretary for Commerce and Economic Development
Secretary for Financial Services and the Treasury
Director of Audit

**Review on the Role of Government Officials
Appointed as Board Members of
Government-owned or Funded Statutory Bodies and Companies**

PURPOSE

This report briefs members on the outcome of a limited review on the role of government officials appointed as board members of government-owned or funded statutory bodies and companies as well as corporate governance and management in publicly-funded statutory organisations, which the Administration has undertaken in response to the recommendations in Public Accounts Committee (PAC) Reports No. 48 and 49A.

BACKGROUND

PAC's Recommendations

2. In PAC Report No. 48 on the Hong Kong Applied Science and Technology Research Institute Company Ltd (ASTRI) tabled at the LegCo on 11 July 2007, the PAC recommended, inter alia, that the Government should review the role and responsibility of the government officials appointed to sit on the governing bodies and committees of statutory bodies or publicly-funded organisations (“government representatives”), and ensure that they are able to perform their role and responsibility. In November 2007, as a follow-up to the PAC’s recommendation, the Government undertook to conduct a limited review on the role of government officials appointed as board members in government-owned statutory corporations and companies.

3. In PAC Report No. 49A on the Hong Kong Tourism Board (HKTb) tabled at the LegCo on 30 April 2008, the PAC urged the Administration to expedite the above review to -

- (a) critically examine measures to ensure that good corporate governance and management are put in place in publicly-funded statutory organisations; and
- (b) consider promulgating a clear stipulation of the respective roles and responsibilities of the governing body, the government representatives and the Chief Executive Officer (CEO) of publicly-funded statutory organisations.

4. In addition, the PAC also urged the Administration to -

- (a) review how it can ensure that Controlling Officers for publicly-funded statutory organisations effectively perform their roles and responsibilities;

- (b) clearly state the intended roles and responsibilities of the government representatives when appointing them;
- (c) take measures to ensure that persons appointed as members of the governing bodies of publicly-funded statutory organisations are fully aware of their roles and responsibilities and to assist them in performing such roles and responsibilities effectively; and
- (d) ensure that the CEOs have good understanding of the legislation, government rules, regulations and policies relevant to the organisations, the framework for the control and management of public finances, and proper procedures governing the use of public funds.

THE REVIEW

Scope of the review

5. The limited review, which was undertaken in response to the PAC report on ASTRI, originally covered three categories of corporations/companies -

- (a) government-owned statutory corporations;
- (b) government-owned companies ; and
- (c) non-government-owned companies.

6. As a positive response to the latest PAC report on HKTB, the scope of the review has now been extended to include statutory bodies which are government-owned or under recurrent funding from the Government and companies which are partly or wholly funded by the Government. In the light of PAC's concern on the bigger issue of how to ensure good corporate governance and management in publicly-funded statutory organisations, the Administration has also extended the scope of the limited review to examine measures to ensure that good governance and management are in place in publicly-funded statutory bodies.

Review process

7. In the review process, we have taken stock of the present position of government representatives sitting on the governing bodies of government-owned or funded statutory organisations and companies, and looked into the existing guidelines regarding the governance of publicly-funded organisations. Specifically, we have examined the series of management and control measures on subvented organisations and the role of Controlling Officer in the management of these organisations, as set out in Financial Circular ("FC") No. 9/2004 entitled

“Guidelines on the Management and Control of Government Funding for Subvented Organisations” (the Circular). The Circular provides detailed guidelines to Controlling Officers for managing and controlling government subvention to subvented organisations. Such guidelines cover a wide range of measures which Controlling Officers may use to perform their funding control responsibility, including setting clear objectives for the subvented organisations to follow; reviewing or approving the organisations’ annual budget and programme of activities; monitoring work progress; requiring the organisations to submit audited accounts; and having access to the organisations’ records and accounts.

8. Regarding the governance issues, we have made reference to the guideline on governance launched by the Hong Kong Exchanges and Clearing Ltd in 2005 - “The Code on Corporate Governance Practice” (“the Code”)¹. The Code, which focuses on companies listed in Hong Kong, is drawn up on the basis of international best practices. In addition, we have also drawn reference from international guidelines on corporate governance for public sector organisations.

FINDINGS AND RECOMMENDATIONS OF THE LIMITED REVIEW

Governance of publicly-funded statutory bodies and specific roles of Controlling Officer, the Governing Body and the CEO (re. PAC’s recommendations in paras. 3(a), 3(b), and 4(a) above)

9. The Administration attaches great importance to good corporate governance and management. Having examined the Code and the international governance guidelines, we find that many of the key internal control and transparency measures that good governance requires are already covered in FC No. 9/2004. These include the setting of a clear statement of objectives; systematic devices and proper valuation methods to monitor performance against the established objectives; appropriate cost control system; approval of the organisations’ annual budget and programme of activities; high quality accounting and auditing standards; requirement to submit audited accounts and being subject to audit check.

10. The Administration considers that the guidelines contained in FC No. 9/2004 are sufficient in helping Controlling Officers to effectively perform their roles and responsibilities and to ensure that public money is used properly and effectively. By making reference to the guidelines set out in the Circular, Controlling Officers have in general exercised effective funding control over the subvented organisations under their purview. For a large number of subvented non-government organisations (NGOs), for example, the relevant Controlling Officers have put in place well-established systems to monitor and assess the

¹ The Code sets out the principles of good corporate governance with two levels of recommendations (a) code provisions which listed companies are required to comply; and (b) the recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

financial performance of the subvented organisations on a regular and effective basis. In this regard, the Circular has in general provided useful and adequate guidelines to Controlling Officers, enabling them to take both general and specific measures to perform their funding responsibilities. We shall remind Controlling Officers to seek to review from time to time the funding control measures and the checks and balances in the system to ensure their adequacy over time.

11. As regards PAC's recommendation to put in place a standing mechanism for designated government representatives to report major matters or problems of the organisations to the responsible bureau secretaries and/or Controlling Officers, it is clearly set out in the guidelines to Controlling Officers that they should have unhindered access to the records and accounts of the subvented organisations and the latter are obliged to explain to the Controlling Officer concerned any matters relating to the receipt and expenditure of any money derived from public funds. Under the existing framework in FC No. 9/2004, therefore, Controlling Officers should be able to put in place the necessary mechanism to meet the reporting requirements.

12. Clearer delineation of roles and responsibilities between the Government, the governing body and the executive management of the publicly-funded statutory body, as an important element of governance, is however an aspect that may have scope for strengthening. Following this review, and also as a positive response to PAC's recommendations in para. 3(a), 3(b) and 4(a) above, the Administration will promulgate a set of broad guidelines explaining the essential aspects of good governance, including clarity in objectives; delineation of roles and responsibilities between the Government, the governing body, and the management; and internal control and transparency. We believe that these guidelines will provide useful reference to the respective Bureaux and Controlling Officers and should facilitate them in the discharge of their responsibilities on the statutory bodies under their policy and/or funding control purview.

Roles and responsibilities of government representatives in the governing body of statutory bodies and measures to facilitate them to perform their roles (re. PAC's recommendations in para. 2 and 4(b) above)

13. The role of government representative(s), in common with other members of the governing body, is to pursue the objects and public mission as stated in the statute which establishes the individual statutory organisation. Government representatives, together with all other board members, are collectively responsible for the overall performance of the statutory body. Thus, while the government representative on the board often acts as a link between the Government and the publicly-funded organisation, sound corporate governance does not and cannot solely rely on the presence of the government representative. The set of guidelines which the Administration will promulgate will therefore focus more on setting out the principles of good governance.

14. However, clear stipulation on the division of roles and responsibilities between various parties will serve to assist government representatives in the discharge of their duties (para. 12). We shall therefore advise Bureaux to clearly state the intended roles of the government officials when appointing them to sit on the governing board of the organisations under their policy/funding control purview.

15. As regards the need to designate government representatives sitting on governing bodies of the subvented organisations to perform specified roles, the Administration considers that effective governance hinges more on having a sound governance system that clearly sets out the accountability framework and the internal control to ensure compliance. While there are instances where the relevant Controlling Officer or his/her representative is appointed to the governing body of the organisation concerned, being a Controlling Officer for the subvented organisation per se is not an over-riding criterion for determining whether that officer or his/her representative should be appointed to the governing body. As such, the role played by a Controlling Officer for funding control purpose does not constitute a mandatory requirement for the Controlling Officer to be appointed to the governing body of publicly-funded organisations.

16. As to whether and which government officials should be appointed to the governing board of statutory bodies, PAC can rest assured that Administration will continue to strive for an optimal mix of the board of the statutory bodies, and will examine this issue having regard to all relevant factors such as statutory requirements, nature and operation of the organisation, policy objectives of the Government, and the unique circumstances in each case.

17. At present, many bureaux have already made arrangement for an alternate director to represent the Government at board meetings if and when the substantive member is unable to attend. It is considered that where applicable, this should be arranged if not already done so, as a means to facilitating the effective and continuous discharge of the government officials' duties as board members. Also, the Administration will continue to seek to improve the legal position of government representatives when such opportunities arise, as another means to facilitate them to perform their roles effectively.

Measures to ensure that members of governing bodies and CEOs of publicly-funded organisations effectively perform their roles and responsibilities (re. PAC's recommendations in paras. 4(c) and 4(d) above)

18. Although subvented organisations are not government departments and the government rules and regulations are not directly applicable to them, they have the same duty to ensure the proper use of public funds, having regard to the economy, efficiency and effectiveness in discharging their functions. To help the CEOs and senior management of these organisations to have better understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, Controlling Officers can conduct training programmes and deliver resource kits. Alternatively, Controlling Officers can

include the relevant information in a tailor-made funding control instrument and update such information as necessary.

19. To enable non-official board members to fully understand their intended roles and responsibilities, the Administration will advise Bureaux and Departments to set out clearly in the letter of appointment for each board member the terms of appointment, their duties under the relevant legislation, and their fiduciary duties under common law.

WAY FORWARD

20. Following this review, the Administration will promulgate a set of guidelines advising Bureaux and Departments on the broad principles of good governance, to facilitate Controlling Officers in the discharge of their funding control responsibilities over the publicly-funded statutory organisations.

Administration Wing,
Chief Secretary for Administration's Office
17 July 2008

Ref : L/M (8) to CSO/AW/GC/1(2008)

Government Secretariat

Government of the Hong Kong
Special Administrative Region

12 December 2008

General Circular No. 8/2008

Governance of Government-owned or Funded Statutory Bodies

(Note: Distribution of this Circular is Scale C. It should be brought to the attention of Directors of Bureaux, Permanent Secretaries, Heads of Departments, Controlling Officers, Departmental Secretaries and all officers sitting on the governing body of government-owned or funded statutory organisations.)

Introduction

This Circular sets out the guidelines on the broad principles of a governance framework for government-owned or funded statutory organisations, for reference by Directors of Bureaux and Controlling Officers in the discharge of their role in the management and control of these organisations. This set of guidelines should be viewed as a supplement to the guidelines in **Financial Circular (“FC”) No. 9/2004** entitled “Guidelines on the Management and Control of Government Funding for Subvented Organisations”. As with FC No. 9/2004, where the guidelines in this Circular are in conflict with statutory provisions, statutory provisions should prevail.

2. While the scale and complexity of the governance framework is likely to vary from case to case depending on the size of the statutory organisations, the nature of their activities, and the statutory requirements set out in the Ordinances which establish them, Directors of Bureaux and Controlling Officers should seek to ensure that a proper governance framework is in place in the statutory organisations under their policy/funding control purview.

Scope

3. The scope of this Circular covers statutory organisations which are either owned or funded by the Government. For the purpose of this Circular, government-funded statutory bodies refer to statutory bodies which are under recurrent funding from the Government. Statutory bodies which receive only one-off capital injection or other forms of non-recurrent financial assistance from the Government are not included (e.g. Urban Renewal Authority; Federation of Hong Kong Industries) unless they are government-owned statutory corporations. Also not included are statutory bodies which are not government-owned or funded (e.g. Ocean Park Corporation; Employees Retraining Board).

4. Statutory bodies falling outside the scope set out in paragraph 3 above are not covered by this Circular. However, Bureaux and Departments are encouraged to make reference to the governance guidelines in this Circular, having regard to the circumstances in individual cases.

Essential elements of a governance framework for government-owned or funded statutory organisations

5. The Government attaches great importance to sound corporate governance and good management practice. Strengthening corporate governance of government-owned/funded statutory bodies will contribute towards overall efficiency and effectiveness of the public sector, and is an integral part of the Government's initiative to strengthen public sector management.

6. In drawing up the broad principles of a governance framework, we have made reference to the guideline on governance launched by the Hong Kong Exchanges and Clearing Ltd in 2005 - "The Code on Corporate Governance Practice" ("the Code")¹. The Code, which focuses on companies listed in Hong Kong, is drawn up on the basis of international best practices. In addition, we have also drawn reference from international guidelines on corporate governance for public sector organisations.

¹ The Code sets out the principles of good corporate governance with two levels of recommendations (a) code provisions which listed companies are required to comply; and (b) the recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

7. A proper governance framework should have three key elements -

- (a) clarity of objectives and priorities;
- (b) clear delineation of accountability and clear division of responsibilities; and
- (c) robust internal control and reporting/monitoring systems.

8. The need for **clarity of objectives** is a principle consistent with the guideline in FC No. 9/2004 that the Controlling Officer should formally define the objectives that the Government expects to achieve with the funding. In addition, many of the key **internal control and transparency measures** that good governance requires are already covered in FC No. 9/2004. Apart from such general control measures, FC No. 9/2004 also encourages Controlling Officers to make use of tailor-made instruments, such as entering into a Memorandum of Administrative Arrangements or a similar instrument with each subvented organisation, having regard to the unique circumstances of each organisation concerned. Such tailor-made instruments set out the responsibilities of relevant parties in the delivery and monitoring of government-funded service and capital projects.

9. Good governance also requires **clear delineation of roles and responsibilities** between the Government, the governing body (“the Board”), and the Chief Executive Officer (“CEO”) and executive management of government-owned or funded statutory body. The broad principles commonly set out in the international governance guidelines is that the responsibility of the Government is to set a clear and consistent policy direction and to ensure that the organisation is operated in a transparent and accountable manner. International governance guidelines also consider it crucial for the Board to have a clear mandate. In this regard, the Board’s responsibility is to provide strategic direction and to oversee management performance, subject to the objectives set by the Government. In short, the Board assumes overall accountability for the statutory organisation’s performance. Besides, the roles of the Chairman of the Board and the CEO should be separate and should not be performed by the same person.

10. The key principles and broad features of a governance framework are set out below -

(I) Clarity of objectives

Controlling Officers should have a clear policy framework that defines the overall objectives and priorities for each statutory body under its

funding control purview, having regard to the prescribed objectives in the statute.

(II) Clear lines of roles and responsibilities between the Controlling Officer, the Board and the CEO

- (a) Bureaux should examine the need to set out in clear terms the division of roles and responsibilities between the Government, the Board and the CEO, if it is not already spelt out clearly in the governing legislation for the statutory bodies. Alternatively, it may form part of the funding control agreement, or via other means as deemed appropriate by the Bureaux.
- (b) The specific division of roles and responsibilities between the Controlling Officer, the Board and the CEO is likely to vary from case to case. This may already have been spelt out to a certain extent in the relevant ordinance. In drawing up the division of roles between the various parties, Bureaux should refer to any such detailed provisions in the statute to ensure that it is consistent with the Ordinance which establishes the organisation, whilst also giving due regard to the needs of the organisation and unique circumstances of each case.
- (c) The statement setting out the division of roles and responsibilities should include, amongst other things, the division of roles and responsibilities between the Controlling Officer, the Board chairman and the CEO; a statement of matters reserved for the Government (as owner of or primary source of funding for the organisation); and a system for delegating authority from the Board to the management with a statement of matters reserved for the Board.
- (d) In general terms, the broad delineation of roles and responsibilities between various parties is mapped out as follows -

Controlling Officer

- ◇ Controlling Officers are responsible and accountable for proper use of public funds; review and approval of corporate plans; ensuring adequate reporting and monitoring systems for internal control and transparency; providing broad policy direction to the organisation in accordance with the public mission as stated in the statute; assessing the ongoing relevance of the organisation's mandate and its effectiveness as a policy instrument.

- ◇ Controlling Officers are not accountable for the day-to-day administration and operations of the organisation. However, in reality, they will need to answer to the public for the organisation's activities and proper use of public funds.
- ◇ It is up to the individual bureau to consider, in collaboration with the Controlling Officer, whether the Controlling Officer should carry out some of the above duties in consultation with the Director of Bureau, and whether the division of role and responsibility between the Director of Bureau and the Controlling Officer should be explicitly spelt out.

The Board

- ◇ The Board should assume responsibility for the performance of the organisation and be held collectively responsible for its performance by directing and supervising the organisation's affairs, and for ensuring sound corporate governance, and that activities of the organisation are in line with their mandates and, in so far as the relevant Ordinance permits the Government to give guidance, the policy guidance from the Government.
- ◇ The Board is responsible for setting strategic direction to carry out the objectives of the statutory body; ensuring appropriate lines of accountability and transparency process; overseeing the CEO and senior appointments and their performance; agreeing with the CEO on appropriate levels of delegated powers; reporting on performance, quality assurance and value for money to stakeholders; and ensuring that the principal risks of the organisation are identified and appropriate systems to manage these risks are in place.
- ◇ The Board should ensure that the organisation's information systems and management practices including financial control, recruitment, remuneration and training, and procurement procedures are adequate.

CEO

- ◇ The CEO plays a pivotal role in planning, developing and managing the organisation. As head of the organisation, the CEO

reports to and is accountable to the Board for the management and performance of that organisation.

- ◇ The CEO should have line responsibility for all aspects of executive management. In general, the CEO's responsibilities include (a) developing strategy for and implementing it in pursuit of the organisation's public mission; (b) formulating and managing the organisation's programme of activities; (c) developing and implementing appropriate and effective internal control, financial planning, procurement and administrative/compliance procedures, which are the key elements of a governance framework, to ensure proper utilisation of resources and good management practices, for approval of the Board; (d) supervising the day-to-day operation of the organisation; (e) formulating the organisation structure and staffing requirement; (f) making recommendations to the Board on new initiatives; and (g) implementing the policy decisions of the Board and carrying out any other duties as directed or required by the Board.
- ◇ The division of responsibilities between the Board and the CEO should be clearly established and set out in writing.
- ◇ To enable the CEOs or senior management of these organisations to have a good understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, under FC No. 9/2004 the Controlling Officers may set out such information in a tailor-made funding control instrument and update such information from time to time as necessary. Such arrangement, whilst not a mandatory requirement under FC No. 9/2004, may be made as deemed appropriate by the Controlling Officer.

(III) Internal control and transparency

- (a) In accordance with the Public Finance Ordinance (Cap. 2), Controlling Officers are responsible and accountable for the proper use of public funds under their control. Controlling Officers should satisfy themselves that an effective system is in place to safeguard the proper use of public funds.
- (b) FC No. 9/2004 contains a wide range of measures, which the Controlling Officer may use to carry out their roles and

responsibilities in managing and controlling Government funding for subvented organisations and perform their funding control responsibility to ensure public money is used properly and cost-effectively.

(c) Controlling Officer should see to it that -

- (i) there is a system to set and agree on specific objectives;
- (ii) annual corporate plans/business plans are prepared on a timely basis;
- (iii) an established mechanism is in place to set and agree on performance targets and to evaluate performance against these targets;
- (iv) an appropriate system of cost control and monitoring is in place for ensuring prudent budgetary practices and discipline;
- (v) audited financial accounts are submitted to the Government on a timely basis;
- (vi) rules and procedures on human resource management are in place to observe the principle of fairness and transparency;
- (vii) procurement policy is transparent, fair and cost-effective; and
- (viii) the Director of Audit has unhindered access to the records and accounts of a subvented organisation.

Controlling Officers should refer to FC No. 9/2004 for details of each of the above measure. Controlling Officer should see to it that any deviation from the guidelines is justified and publicly defensible.

Measures to ensure that members of governing bodies and CEOs of government-funded organisations effectively perform their roles and responsibilities

11. Although subvented organisations are not government departments and the government rules and regulations are not directly applicable to them, they have the same duty to ensure the proper use of public funds, having regard to the economy, efficiency and effectiveness in discharging their functions. To help the CEOs and senior management of these organisations to have better understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, Controlling Officers may conduct training programmes and deliver resource kits. Alternatively, Controlling Officers may include the relevant information in a tailor-made funding control instrument and update such information as necessary.

12. While the government representative on the board often acts as a link between the Government and the publicly-funded organisation, sound corporate governance does not and cannot solely rely on the presence of the government representative. The role of government representatives, in common with other members of the governing body, is to pursue the objects and public mission as stated in the statute which establishes the individual statutory organisation. Government representatives, together with all other board members, are collectively responsible for the overall performance of the statutory body. Clear stipulation on the division of roles and responsibilities between various parties will serve to assist government representatives in the discharge of their duties. Bureaux should clearly state the intended roles of the government officials when appointing them to sit on the governing board of the organisations under their policy/funding control purview.

Appointment of non-official members to the Board

13. Non-official members on the Board are expected to attend and participate in meetings of the Board, undertake diligent analysis of all proposals placed before the Board, and make recommendations and decisions in line with the statutory objectives of the organisation. They have a responsibility to ensure that the organisation is operating efficiently, effectively and legally towards achieving its objectives.

14. To enable non-official Board members to be fully aware of their role and responsibilities, Bureaux should set out in the letter of appointment for each incoming Board member the terms of appointment, their duties under the relevant legislation, and their fiduciary duties under common law. Bureaux should also take measures to assist them in performing their roles and responsibilities effectively.

15. Bureaux should ensure that the governing body of the statutory organisations under their policy/funding control purview is made up of individuals with the necessary expertise and time to help the Board discharge its functions properly.

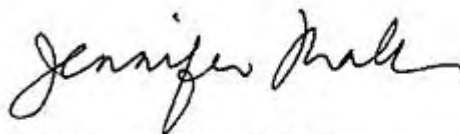
Need for review to ensure adequacy over time

16. The responsibility for administering the guidelines promulgated in this Circular rests with the relevant Directors of Bureaux. Directors of Bureaux are requested to bring this Circular to the attention of their Controlling Officers and review from time to time the governance framework and the checks and balances in the system to ensure their adequacy over time.

17. Departmental Secretaries are required to re-circulate this Circular to Directors of Bureaux and Controlling Officers once a year, to draw attention to Directors of Bureaux and Controlling Officers to the importance of having a sound governance framework in place for the statutory organisations under their policy/funding control purview.

Enquiries

18. For enquiries on the guidelines in this Circular, please contact Miss Winnie Wong, Assistant Director of Administration, at 2810 3503.

A handwritten signature in black ink, appearing to read 'Jennifer Mak', with a stylized, cursive script.

(Miss Jennifer Mak)
Director of Administration

c.c. Judiciary Administrator
Law Officer (Civil Law)

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

Dr Hon York CHOW Yat-ngok, SBS, JP	Secretary for Food and Health
Ms Olivia NIP, JP	Deputy Secretary for Food and Health (Food)
Mr Francis HO	Principal Assistant Secretary for Food and Health (Food) ²
Mr CHEUK Wing-hing, JP	Director of Food and Environmental Hygiene
Ms Julina CHAN, JP	Deputy Director (Administration and Development), Food and Environmental Hygiene Department
Ms Rhonda LO, JP	Assistant Director (Operations) ² , Food and Environmental Hygiene Department
Hon Mrs Rita LAU NG Wai-lan, JP	Secretary for Commerce and Economic Development
Mr Duncan Warren Pescod, JP	Permanent Secretary for Commerce and Economic Development (Communications and Technology)
Mr Eddy CHAN Yuk-tak, JP	Commissioner for Innovation and Technology
Hon Victor LO Chung-wing, GBS, JP	Chairman, Board of Directors, Hong Kong Design Centre
Mr Allan CHIANG	Chief Executive Officer, Hong Kong Design Centre
Mr E Anthony TAN	Chief Executive Officer, Hong Kong Science and Technology Parks Corporation
Hon Edward YAU Tang-wah, JP	Secretary for the Environment

Ms Anissa WONG Sean-yee, JP	Director of Environmental Protection
Mr Albert LAM Kai-chung, JP	Deputy Director of Environmental Protection
Dr Ellen CHAN Ying-lung, JP	Assistant Director (Environmental Infrastructure), Environmental Protection Department
Mr Alfred LEE Koon-yan	Assistant Director (Waste Management Policy), Environmental Protection Department
Ms CHU Lan-ying	Assistant Director (Operations), Food and Environmental Hygiene Department
Mr Thomas CHOW Tat-ming, JP	Director of Leisure and Cultural Services

**Introductory Remarks by
Chairman of the Public Accounts Committee,
Dr Hon Philip WONG Yu-hong, GBS,
at the First Public Hearing of the Committee
on Tuesday, 9 December 2008**

Good morning, ladies and gentlemen. Welcome to the Public Accounts Committee's public hearing relating to Report No. 51 of the Director of Audit on the results of value for money audits, which was tabled in the Legislative Council on 26 November 2008.

2. 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 consideration by the Committee of the Director's reports involves gathering evidence relevant to the facts contained in the Director's reports, so that the Committee may 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 or other personnel concerned will enable the Government to improve its control over the expenditure of public funds, with due regard to economy, efficiency and effectiveness.

3. 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 comments.

4. Following a preliminary study of Report No. 51, the Committee has decided, in respect of four chapters in the Report, to invite the relevant public officers and other personnel concerned to appear before the Committee and answer our questions. We have, apart from this morning's hearing, also set aside 15 and 16 December 2008 and 6 January 2009 for public hearings on the other chapters.

5. The public hearing this morning is on Chapter 6 of Report No. 51 on the subject of "Management of public markets". The witnesses are: Dr Hon York CHOW Yat-ngok (Secretary for Food and Health), Ms Olivia NIP (Deputy Secretary for Food and Health), Mr Francis HO (Principal Assistant Secretary for Food and Health), Mr CHEUK Wing-hing (Director of Food and Environmental Hygiene), and Ms Julina CHAN (Deputy Director (Administration and Development)) and Ms Rhonda LO (Assistant Director (Operations)) of the Food and Environmental Hygiene Department.

6. I now proceed to the public hearing.

Your Ref.: CB(3)/PAC/R51

Our Ref.: CY/PH/LTR090109

9 January 2009

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

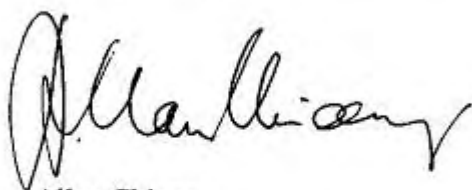
Dear Ms. HON,

**The Director of Audit's Report on the results of value for money audits ("Report No. 51")
Administration of the DesignSmart Initiative (Chapter 2)**

Thank you for your letter of 23 December 2008 on the captioned subject.

Attached please find our reply to your request for additional information.

Yours sincerely,



Allan Chiang
Chief Executive Officer
Hong Kong Design Centre

c.c.: Secretary for Commerce and Economic Development (fax no. 2588 1421)
Commissioner for Innovation and Technology (fax no. 2730 1771)
Secretary for Financial Services and the Treasury (fax no. 2147 5239)
Director of Audit (fax no. 2583 9063)

List of PAC's Follow-up Questions & HKDC Responses

Question	Response
(a) regarding the audit recommendation in paragraph 4.13(f) of the Audit Report that the Hong Kong Design Centre ("HKDC") should consider adopting the two-tier reporting system for managing potential conflicts of interest of its Board directors, please inform the Committee of the Board's decision on the matter as soon as possible;	The Board has decided at its meeting on 24 December 2008 to adopt the two-tier reporting system for managing potential conflict of interests of its Board directors.
(b) apart from the measures set out in paragraph 4.16(a) of the Audit Report, the other specific measures taken/to be taken by the HKDC to improve the attendance of its directors at Board/Committee meetings;	<p>Apart from the measures set out in paragraph 4.16(a) of the Audit Report, other specific measures taken/to be taken to improve the attendance of directors at Board/Committee meetings include:-</p> <ul style="list-style-type: none"> (i) choosing a meeting venue that suits better the convenience of the majority of the directors; (ii) sending reminders to the directors before the Board/Committee meetings; (iii) exploring the use of tele-conferencing facilities to secure the participation of directors who could not be present at the meetings.
(c) the specific measures taken/to be taken by the HKDC to ensure that the quorum requirement will be met at all meetings in future (paragraph 4.16(b) of the Audit Report refers);	To ensure that the quorum requirement will be met at all meetings in future, we will confirm the number of directors available to attend the meetings two days in advance of the respective meetings.
(d) among the projects funded by the HKDC since 2001, the number of projects in which a Board member was also a member of the project team, or office bearer or staff of the applicant organisation concerned, regardless of whether or not the Board member concerned had declared such interest;	According to our available records since 2001, there were a total of 3 projects funded and managed by HKDC where a Board member was also a beneficiary, regardless of whether or not the Board member concerned had declared such interest.

Question	Response																																
(e) it was mentioned at the hearing that the three major sources of the HKDC's funding were government funding, project income and other sponsorships. Please provide the respective amounts and percentages of funding from these three sources over the total funding received by the HKDC in each year since its establishment in 2001;	<p>The split of HKDC's funding between government funding, project income and sponsorship is as follows:-</p> <table><tr><th></th><th>Government Funding (%) HK\$ '000</th><th>Project Income (%) HK\$ '000</th><th>Donation, Sponsorship & Others (%) HK\$ '000</th></tr><tr><td>2001 – 02</td><td>4,058 52%</td><td>3,715 48%</td><td>23 0%</td></tr><tr><td>2002 – 03</td><td>6,390 94%</td><td>12 0%</td><td>429 6%</td></tr><tr><td>2003 – 04</td><td>10,448 83%</td><td>905 7%</td><td>1,278 10%</td></tr><tr><td>2004 – 05</td><td>20,994 78%</td><td>5,193 19%</td><td>876 3%</td></tr><tr><td>2005 – 06</td><td>12,076 54%</td><td>6,536 29%</td><td>3,560 16%</td></tr><tr><td>2006 – 07</td><td>22,124 68%</td><td>7,543 23%</td><td>2,768 9%</td></tr><tr><td>2007 – 08</td><td>34,131 72%</td><td>12,425 26%</td><td>814 2%</td></tr></table>		Government Funding (%) HK\$ '000	Project Income (%) HK\$ '000	Donation, Sponsorship & Others (%) HK\$ '000	2001 – 02	4,058 52%	3,715 48%	23 0%	2002 – 03	6,390 94%	12 0%	429 6%	2003 – 04	10,448 83%	905 7%	1,278 10%	2004 – 05	20,994 78%	5,193 19%	876 3%	2005 – 06	12,076 54%	6,536 29%	3,560 16%	2006 – 07	22,124 68%	7,543 23%	2,768 9%	2007 – 08	34,131 72%	12,425 26%	814 2%
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(f) regarding the audit observations in paragraphs 2.35 to 2.39 of the Audit Report concerning meeting the travel expenses of brands and designers against the DesignSmart Initiative Assessment Panel's advice, apart from seeking the Finance and Administration Committee's approval by circulation of papers, whether the Board's approval had eventually been obtained; if so, when and how the Board's approval was obtained; if not, the reasons for that;	<p>The Board's retrospective approval for paying the travel expenses of the brands' representatives and designers from the auction proceeds was obtained at the Board meeting on 22 September 2008 when the draft Audit Report was discussed.</p>																																
(g) an elaboration of the results and effectiveness of the Business of Design Week;	<p>As BODW is now in its seventh year we have decided to take stock and an external consultant has been appointed to review the positioning and strategy of the BODW. This will include an elaboration of the results and effectiveness of the event, and provide recommendations on developing a long-term financial plan. We aim to finalise the report in January 2009 and reach a conclusion at the Board meeting on 4 February 2009. We will submit copies of the report immediately thereafter to PAC.</p>																																
(h) it was stated in paragraph 2.63(a) of the Audit Report that the HKDC would review the existing financial arrangements for the Business of Design Week and develop a long-term financial plan. What the progress of the review is and when a long-term financial plan will be developed; and																																	

Question	Response
<p>(i) an elaboration of the reasons for understating the unspent balance of the funding provided under the InnoCentre Programme by about \$4.5 million in July 2007 (paragraphs 3.24 to 3.28 of the Audit Report refer); and given that any unspent amount would be deducted from the funding to be allocated by the Administration to the HKDC under the InnoCentre Programme for the following period, whether the understatement of \$4.5 million might lead to over-provision of funding to the HKDC.</p>	<p>As noted in paragraphs 3.25-3.26 of the Audit Report, the amount of \$2.5 million HKDC reported to ITC in July 2007 (subsequently adjusted to \$2 million in December 2007) represents the unspent balance for the three-month period from 1 April to 30 June 2007. HKDC did report the cumulative unspent balance of \$6.5 million under the InnoCentre Programme through submission of the audited accounts to ITC in December 2007. As HKDC accounts are audited by professional accountants, we do not see the possibility of HKDC benefitting from over-provision of funds from ITC.</p>

政府總部
民政事務局

香港灣仔
告士打道五號
稅務大樓
四十一樓



GOVERNMENT SECRETARIAT

HOME AFFAIRS BUREAU
41/F, REVENUE TOWER
5 GLOUCESTER ROAD
WAN CHAI
HONG KONG

OUR REF.: S/F (1) to HAB/C 18/84 III
TEL NO. : 2594 6619
FAXLINE : 2802 4893

30 December 2008

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. 51)**

Administration of the DesignSmart Initiative (Chapter 2)

Thank you for your letter dated 22 December 2008 addressed to the Secretary for Home Affairs.

The Home Affairs Bureau has held preliminary discussion with the Innovation and Technology Commission (Commission). The Commission is agreeable to the Home Affairs Bureau sending a representative to sit on the Board of the Hong Kong Design Centre in the capacity of an observer. The Commission will consult the Board of the Hong Kong Design Centre further before institutionalizing this arrangement.

Yours sincerely,

(K S So)
for Secretary for Home Affairs

c.c. Mr Geoffrey Woodhead, ITC

香港特別行政區政府創新科技署
Innovation and Technology Commission
The Government of the Hong Kong Special Administrative Region

Our Ref : ITCCR 5/22/1610/08

Your Ref : CB(3)/PAC/R51

7 January 2009

Clerk, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Attn : Ms Miranda Hon)

Dear Ms Hon,

**The Director of Audit's report on the
Results of value for money audits ("Report No. 51")**

Administration of the DesignSmart Initiative (Chapter 2)

Thank you for your letter of 23 December 2008 regarding the additional information requested by the Public Accounts Committee ("PAC") at the public hearings on 15 and 18 December 2008. The additional information required is as follows.

(a) The administration of the Hong Kong Design Centre (HKDC)

HKDC is a private non-profit making company formed in 2001 by founding design associations. Since the establishment of HKDC, the Commissioner for Innovation and Technology (CIT) has been participating in its governing institutions to provide Board level advice and oversight to the company. For instance, in 2006, the Innovation and Technology Commission (ITC) provided substantial input in revamping the Corporate Governance Manual of the company. However, the daily operations of the company, as for any private company, are the responsibilities of the management.

When the Administration in May 2007 sought the Legislative Council's approval to provide \$100 million to support HKDC's operations, the Administration proposed that there should be an adequate control mechanism. Such a mechanism included a revamp of the composition of the HKDC's Board

of Directors to ensure a balanced representation of stakeholders and an independent overview on HKDC's operation; and a funding agreement which provides, inter alia, that HKDC should submit annual plans and three-year business plans, audited accounts, performance indicators and assessment, quarterly disbursements subject to acceptance of progress, setting of annual income targets and rules on the virement of funds, etc.

The Administration has since been monitoring the HKDC's operations accordingly. As the Audit Report shows (e.g., paragraph 4.20), the ITC has been playing an active role in monitoring HKDC's compliance with the Corporate Governance Manual and has on a number of occasions reminded the management of the need to improve compliance. A further example is that the ITC at a regular liaison meeting with the ICAC in June 2007 proactively requested that a study on the governance and project administration of HKDC should be conducted, to ensure that adequate corruption prevention safeguards were in place. The study was completed in May 2008 and ITC has since been working with HKDC on the follow-up actions.

(b) Guidelines on conflicts of interest for the DSI Assessment Panel

It has always been a requirement that all DSI Panel members have to declare if there is a conflict of interest when they attend the Panel meetings. This requirement is made known to Panel members when they are appointed to the Panel. In addition, before each Panel meeting we remind the attending Panel members in writing with a standard form to declare interests. We will ensure that, in accordance with established guidelines, members who have made a declaration of interest on a particular agenda item, will not be allowed to participate in the discussion of that item.

(c) Two-tier reporting system for DSI Assessment Panel

The two-tier reporting system for all DSI Panel members has been introduced with effect from 1 January 2009.

(d) The number of projects approved under Design-Business Collaboration Scheme (DBCS) as at July 2007 before the review of the DBCS conducted

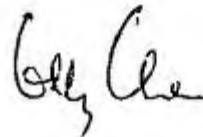
The DBCS review exercise was started in July 2007. To better tap the views of various stakeholders, we have conducted a questionnaire survey, a discussion session and two special DesignSmart Initiative Panel meetings during the review period from July 2007 to June 2008. The new arrangements for DBCS were then implemented in June 2008.

There has been an increasing trend for DBCS applications. Approved applications for DBCS rose from 5 in 2005 to 31 in 2006 and 57 in 2007. For 2008, there were respectively 41 and 35 approved projects before and after the new arrangements of DBCS were implemented in June 2008.

(e) A copy of the report on the review of the DBCS Scheme —

Relevant discussion papers and meeting minutes of the DBCS review are at Annexes A to E. In these records the names of the non-officials presenting their views have been blacked out to preserve their anonymity because they were not aware that their views would be published.

Yours sincerely,



(Eddy Chan)
Commissioner for Innovation and Technology

c.c. Secretary for Commerce and Economic Development
(Fax no. 2588 1421)
Chairman, Board of Directors, HKDC
(Fax no. 2489 2195)
Chief Executive Officer, HKDC
(Fax no. 2892 2621)
Secretary for Financial Services and the Treasury
(Fax no. 2147 5239)
Director of Audit
(Fax no. 2583 9063)

} All without
enclosures

***Note by Clerk, PAC:** Annexes A to E not attached.

香港特別行政區政府創新科技署
Innovation and Technology Commission
The Government of the Hong Kong Special Administrative Region

22 January 2009

Our Ref : ITCCR5/22/1610/08

Your Ref : CB(3)/PAC/R51

Clerk, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Attn. Ms Miranda Hon)

Dear Ms Hon,

**The Director of Audit's report on the
results of value for money audits ("Report No. 51")**

Administration of the DesignSmart Initiative (Chapter 2)

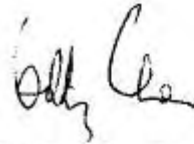
Thank you for your letter of 20 January 2009 seeking further information as to whether warning letters have been issued in respect of the 19 projects referred to in paragraph 2.16 of the captioned Chapter.

The 19 projects consist of 18 under the Design-Business Collaboration Scheme (DBCS) and one under the General Support Scheme (GSS). As at today, we have not issued any warning letter to these projects because –

- (a) three projects have since been withdrawn by the applicants;
- (b) one project had sought and obtained a two-week extension of the completion report submission due date and submission was made within this period. There were some clarifications and technical issues in the accounts to be considered; these have now been resolved and the revised completion report submitted;
- (c) eight projects have applied for and been approved extended deadlines for project completion or submission of completion, and the concerned completion reports have been submitted within the extended timeframe; and

- (d) seven projects have applied for and been approved extended deadlines for project completion or submission of completion, and their respective extended timeframes have yet to expire.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eddy Chan', is centered above the printed name.

(Eddy Chan)

Commissioner for Innovation and Technology

c.c. Secretary for Commerce and Economic Development (fax no. 2588 1421)
Secretary for Financial Services and the Treasury (fax no. 2147 5239)
Director of Audit



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網址 Website : <http://www.aud.gov.hk>

本署檔號 Our Ref.: UB/BAR/PAC/51 Vol 2

來函檔號 Your Ref.: CB(3)/PAC/R51

2 January 2009

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. 51")**

Administration of the DesignSmart Initiative (Chapter 2)

Thank you for your letter dated 23 December 2008 requesting additional information concerning the unspent balance of funding provided to the Hong Kong Design Centre (HKDC) under the InnoCentre Programme. The Committee has asked in the letter whether the understatement of \$4.5 million of the unspent balance might lead to an over-provision of funding to the HKDC.

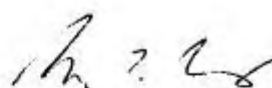
The Committee may wish to note that the Audit Commission (Audit) informed the Innovation and Technology Commission (ITC) of the understatement of unspent balance in May 2008. In September 2008, the ITC informed Audit that:

- (a) owing to heavy work commitment around March 2008 and in trying to meet the payment deadline at close of financial year, the third quarterly disbursement was made to the HKDC without further updating the unspent balance according to the audited accounts. After confirmation with the HKDC, the updating and offsetting was made when considering the fourth disbursement in June 2008. The updating and offsetting was thus delayed by a quarter (see para. 3.28(b)); and

- (b) the ITC agreed that it was more proper to confirm the unspent balance with the HKDC and carry out updating and offsetting in the first practical opportunity (see para. 3.28(c)).

As the understatement of unspent balance was subsequently rectified in June 2008, it did not lead to an over-provision of funding to the HKDC. Nonetheless, Audit considers that the ITC should ensure that the unspent balance is properly reported by recipients of DesignSmart Initiative funding (see para. 3.29).

Yours sincerely,



(David M T LEUNG)
for Director of Audit

c.c. Secretary for Commerce and Economic Development (fax no. 2588 1421)
Commissioner for Innovation and Technology (fax no. 2730 1771)
Chairman, Board of Directors, HKDC (fax no. 2489 2195)
Chief Executive Officer, HKDC (fax no. 2892 2621)
Secretary for Financial Services and the Treasury (fax no. 2147 5239)

**LegCo Public Accounts Committee
Discussion of the Director of Audit's Report No. 51
on 9 December 2008**

Speaking Notes of the Secretary for Food and Health

Chairman:

First of all, I would like to extend my appreciation to colleagues of the Audit Commission for the various recommendations put forward in the Report.

2. Hong Kong's public markets have a long history. It has already been half a century since they came into existence in the 1950's. The operation of markets is similar to bazaars, with every market stall being run by an individual tenant. As they offer a wide variety of distinctive goods sold at relatively low prices, markets have provided an alternative in meeting the daily shopping needs of local residents. In fact, shopping at markets has become an integral part of many people's daily lives. Generally speaking, there is no doubt about the value of public markets.

3. At the same time, public markets are also places that small traders have to rely on to earn a living. Many of them are lower-skilled workers and some engaged in on-street hawking in the past. They were willing to move into markets to carry on their business mainly because of the concessionary rental arrangements made by the Government. Most of them hope to continue with their small business to maintain their livelihood. This is not only another social function of public markets, but also the fundamental reason for the Government's on-going subsidization of their operation.

4. Currently, only 15% of the public market tenants are paying full Open Market Rentals (OMR), while the rest are paying rental below the open market level. Nearly 50% of the stall tenants are paying 60% or less of the OMR. This is the outcome of the market subsidization policy in previous decades, as well as the rental freeze in the last ten years as demanded by various quarters in the community, including the Legislative Council and many political parties. If all stall tenants were asked to pay the OMR, the overall market operation could certainly achieve fiscal balance without showing any deficit as pointed out in the Director of Audit's Report. However, this would mean that the stall tenants would have to pay an additional \$1,700 on average for monthly rental, and as many as over 9 700 tenants would be affected.

5. For those tenants who are former on-street hawkers and currently paying concessionary rental, the rate of increase will be even greater if they are required to pay the OMR. Take the case of a stall in the Tai Shing Street Market at Wong Tai Sin as an example. The stall tenant is currently paying a monthly rental of \$128, while the OMR is \$9,000. There is a difference of 70 times in rental.

6. Therefore, the core question is whether we should charge tenants the OMR; and if yes, at what pace.

7. Speaking solely from the Government's financial perspective, we certainly hope to reduce substantially the level of subsidization in market management or even to achieve fiscal balance. We must, however, point out that in order to reduce Government subsidy, changes will have to be made to our long-standing policy of subsidization. Are stall tenants prepared to accept the substantial increase in rental? Will the rental increase make business difficult for them? Will it aggravate the stall vacancy situation? Will it push up prices in markets and jeopardize public interests in the end? In view of the current economic downturn, is it still advisable for the Government to implement rental adjustments as soon as possible? These are questions which warrant an in-depth study by this Committee and various sectors in the community.

8. Last Wednesday, the Legislative Council passed a motion to urge the Administration to reduce the rent of public markets by half for a period of one year. This has precisely reflected the difference in the expectations of the Council and the public about market rental policy. Therefore, we must hold detailed discussions with stakeholders before implementing the recommendation in the Audit Report to devise a "suitable and aligned rental adjustment mechanism".

9. The Audit Report has also examined issues such as the usage of public markets, planning of new markets and management of markets, and come up with a number of recommendations. The Food and Health Bureau and the Food and Environmental Hygiene Department will actively follow up on these recommendations. We consider that public markets which have lost their functions due to changes in the times or community environment ought to be closed down. As for other public markets which should be allowed to continue with their operation, the Government will strive to work with the community and stall tenants to help these markets give full play to their functions in serving the community.

10. Chairman, my colleagues and I are ready to respond to any questions and views from Members. Thank you.



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: FH/F 3/4/4/1
Tel No. : (852) 2973 8232
Fax No.: (852) 2136 3281

11 December 2008

Ms Serena CHU
Clerk to Public Accounts Committee
Legislative Council Building
8 Jackson Road,
Central,
Hong Kong
(Fax: 2537 1204)

Dear Ms CHU,

**The Director of Audit's Report on the
results of value for money audits (Report No. 51)**

Management of public markets (Chapter 6)

Thank you for your letter of 10 December 2008. As requested, supplementary information regarding item (a), details of the actions taken to follow up on the 2003 Audit report, is attached herewith for consideration by the Committee please.

Other supplementary information requested will follow.

Yours sincerely,

(Francis HO)
for Secretary for Food and Health

c.c. Director of Food and Environmental Hygiene (Fax: 2524 1977)
Secretary for Financial Services and the Treasury (Fax: 2147 5239)
Director of Audit (Fax: 2824 2087)

**Recommendations in Audit's Report No. 41
and the follow-up actions taken by the Administration**

Vacant or non-trading market stalls

Recommendation A: Conduct a comprehensive review to ascertain the causes of the high market stall vacancy rate (MSVR) of public markets, especially those commissioned after 1998, and take remedial action to reduce the MSVR of markets.

Follow-up A: Completed. The Food and Environmental Hygiene Department (FEHD) has reviewed the formula for calculating the vacancy rate of public markets in accordance with Audit's recommendation and has presented two overall MSVRs, namely, a gross MSVR which covers all vacant stalls including those set aside for designated purposes and a net MSVR which excludes all stalls frozen for such purposes.

FEHD has also reviewed the reasons for the high MSVR in the few markets commissioned after 1998. In general, the reasons for high vacancy include increasing competition from supermarkets, the presence of a number of fresh provision shops and other retail outlets in the vicinity of these markets, changing shopping habits of the public, over-provision of market stalls, etc.

In view of the above, the Food and Health Bureau (FHB) and FEHD has completed a review on the policy on provision of public markets, and briefed the Legislative Council (LegCo) Panel on Food

Safety and Environmental Hygiene (FSEH) on findings of the review in May and November 2008 respectively. The review has revised the existing planning standards and guidelines for the provision of public markets, which based solely on the ratio for stall provision, population and the number of resiting hawkers. The new guideline will be more flexible, taking into account not only the population and the number of hawkers, but also a host of other relevant factors (e.g. demographic mix, community needs, provision of public and private market facilities nearby, the number and distribution of fresh provision retail outlets and public sentiments towards preservation of hawker areas), in deciding whether to build a new public market so as to ensure better use of public resources. The review has also devised a set of criteria for evaluating whether a public market has viability problems, and conducted an in-depth study on four markets with viability problems, examining proposals to improve the occupancy of these markets and the possibility of shutting them down.

Recommendation B: Review the justifications for allowing:

- (i) stall lessees of public markets previously managed by the Urban Services Department to cease trading for a maximum of 156 days a year; and
- (ii) stall lessees of markets previously managed by the Regional Services Department to cease trading for a maximum of 84 days a year.

Follow-up B: Completed. FEHD has aligned the tenancy clause for all public market tenants. Under the aligned tenancy clause, a tenant shall not cease or

suspend business at the stall for seven days or more in a calendar month without the prior written consent of FEHD. FEHD has imposed the new tenancy clause on all new tenancies and existing tenancies on 1 February 2005 and 1 April 2005 respectively.

Planning standard for public markets

Recommendation C: In conjunction with the Director of Planning, promptly conduct a comprehensive review of the demand for public market facilities, having regard to the changed circumstances brought about by the proliferation of superstores, supermarkets and fresh provision shops in recent years, and revise the planning standard for the provision of public markets set down in the Hong Kong Planning Standards and Guidelines accordingly.

Follow-up C: Completed. Please refer to Follow-up A.

Operating deficits incurred at some public markets

Recommendation D: Promptly conduct a comprehensive review of public markets with a view to ascertaining whether any of the markets should be closed down.

Follow-up D: Completed. As stated in Follow-up A, FHB and FEHD have reviewed the vacancy situation of public markets. Using the benchmark of vacancy rates exceeding 60% for three consecutive years and with deficits, four public markets were identified to have viability problems, namely the Bridges Street Market in Central, the Mong Kok Market, the Kwong Choi Market in Tuen Mun and

the Tang Lung Chau Market in Wan Chai.

Recommendation E: In the light of the results of the comprehensive review, draw up an action plan to deal with those public markets identified for closure.

Follow-up E: Have followed up actively. On the four markets identified with viability problems, FEHD has consulted the relevant district councils on the possibilities of closing them down. There were divergent views from district councils on closing down markets with high vacancy rates and deficit. Two district councils supported the market closure proposal in respect of the market in their district. They agreed that the market in question had lost its social function and urged the Administration to close down the market to make way for other facilities that better suit the community needs of the district. The other two district councils had reservation or did not support the closure proposal for the market in their district. They considered that public markets were major community facilities which were particularly important to residents in meeting their daily needs and hence should be retained. In the light of the feedback received, we will follow up on the market closure proposal accordingly. With the support of the Yau Tsim Mong District Council, FEHD is discussing with the tenants on the arrangement of closing down the Mong Kong Market.

Recommendation F: Re-examine the feasibility of transferring the entire operation of selected public markets to private operators, and consider carrying out a pilot scheme to test this arrangement.

Follow-up F: Have followed up actively. We have met with other market operators, including some from the private sector, to study various market operation modes. In general, the operating right of a market and the right to adjust market rental have to go hand in hand to the private operator in order to make the proposal attractive to private operators. Some members of the public and tenants are concerned that private operators who operate markets on commercial principles will substantially increase market rental and raise the operating cost of market tenants which will in turn be transferred to customers and push up prices. As such, whether the recommendation is feasible and acceptable to the public needs to be explored further.

Retrofitting of air-conditioning systems

Recommendation G: Critically reassess the need for the retrofitting of air-conditioning systems in public markets.

Follow-up G: Completed. FEHD has completed a review of the need to retrofit air-conditioning system in public markets and cooked food centres, and briefed the LegCo FSEH Panel on 3 March 2004. The Administration has formulated a guideline stipulating that air-conditioning retro-fitting works will be conducted when 85% of the market tenants or more support the project and agree to pay for the recurrent costs (electricity charge and maintenance fee). In the light of this guideline, FEHD has conducted air-conditioning retro-fitting works for two public markets and three cooked food centres (which have been completed), while general improvement works will be implemented for the remaining markets.

Vacant floor space in two public markets

Recommendation H: Draw up an action plan to put the vacant market floor space in the Fa Yuen Street Market and the To Kwa Wan Market to beneficial permanent use.

Follow-up H: Have followed up actively. After consulting the Yau Tsim Mong District Council, FEHD has converted the vacant floor space in the Fa Yuen Street Market into an office for the Centre of Food Safety. As regards the vacant basement floor at the To Kwa Wan Market, the Government Property Agency has advised that despite their repeated efforts, no Government department has indicated interest in using the floor. FEHD is currently making use of the basement floor for storage of tools and cleansing equipment, etc.



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: FH/F 3/4/4/1
Tel No. : (852) 2973 8232
Fax No.: (852) 2136 3281

15 December 2008

Ms Serena CHU
Clerk to Public Accounts Committee
Legislative Council Building
8 Jackson Road,
Central,
Hong Kong
(Fax: 2537 1204)

Dear Ms CHU,

**Public Accounts Committee Public Hearing - Report No. 51:
Management of Public Markets (Chapter 6)
Follow-up to the Meeting on 9 December 2008**

Our bureau's response to question items (b) to (i) in the letter dated 10 December 2008 from the Public Accounts Committee (PAC) Secretariat are as follows:

(b) The accounting principle adopted in calculating the operating expenses and deficits of public markets

FEHD calculates the operating expenses and deficits of public markets on a cash basis.

(c) Calculation of operating deficits of individual markets in Appendix A

The operating deficits of individual markets in 2006-07 as set out in Appendix A of the Director of Audit's Report were calculated by deducting rental income from the operating costs, including staff cost

such as emolument and pension, departmental expenditure such as market cleansing and security fees, electricity tariff and maintenance fee of electrical & mechanical equipment, administration overhead cost and cost of services provided by other departments (e.g. the property maintenance fee charged by the Architectural Services Department and water charges).

(d) Details of market promotional activities

The Food and Environmental Hygiene Department (FEHD) organizes promotional activities for its public markets every year. In 2007-08, the FEHD spent about \$3.2 million on these market promotional activities.

In general, the promotional activities are mainly organized around some traditional festivals so as to attract patrons. During the four major festivals over the past year, i.e. Tuen Ng Festival, Mid-Autumn Festival, Christmas and Chinese New Year, the FEHD organized market promotional activities such as festive decorations, cooking demonstrations, souvenir giving and lucky draws in almost 60 markets. In addition, two workshops promoting vegetarian cooking, three exhibitions about hygiene and health, one territory-wide quiz and three shopping reward activities for refurbished markets were organised. Besides, the FEHD also organized similar festive activities around the time of the festivals through the contractors for the markets whose management has been outsourced so as to attract patrons. In 2008, in view of the commissioning of service of two new markets, i.e. the Wan Chai and Aldrich Bay Markets, we widely promoted their openings to the residents in the districts, including distributing handbills in the main residential areas in the districts, putting up posters and promotional banners on footbridges, public light buses, bus stops and outside of the markets. Directional signs will also be installed at the relevant MTR station exits to facilitate the patrons from other districts going to the market. For the details of the market promotion activities in 2007/08 and those for the two newly commissioned markets, please see Annex A.

The FEHD will conduct opinion surveys after every promotional activity such as festive activities and workshops, etc. The results showed that on average 94% or above of the participants were satisfied/very satisfied with the activities, while 93% of the participants supported the organization of similar activities.

The FEHD will continue organizing promotional activities for public markets so as to encourage the public to shop in public markets. In organizing promotional activities in the coming year, FEHD will explore ways to enhance market tenants' participation and their sense of involvement so as to promote their sense of belonging to the public markets.

(e) Recommendations about the vacant live poultry stalls

After the Ex Gratia Payment (EGP) scheme in July this year, 106 live poultry stalls in FEHD's public markets have been transformed from selling live poultry to chilled poultry, with another 68 live poultry stalls left vacant. The FEHD is actively considering introduction of new uses for the vacant stalls such as selling traditional snacks, desserts, bread and pastries, etc. When assessing whether a stall is suitable for other uses, we will take into account, for example, the number of vacant live poultry stalls and their locations, whether there are still live poultry sold at the stalls nearby, the ventilation system and the design of the stalls, and whether such uses will compete badly with operators in the cooked food centres. We have preliminarily identified a number of markets that may be suitable for such uses, including Luen Wo Hui Market, Yee On Street Market, Lei Yue Mun Market and Plover Cove Road Market. Our next step will be to liaise with the relevant Market Management Consultation Committees (MMCC), market tenants and District Councils (DCs) to listen to their comments and suggestions.

In relation to the terms of lease, the FEHD will review from time to time, and make appropriate relaxations to the terms so as to create a business-friendly environment. For example, as the public's demand for chilled and frozen meat increases, the FEHD has allowed tenants selling fresh meat to apply for selling chilled or frozen meat. Besides, according to the information from the Planning Department (Plan D), planning permit application is not required for 21 out of the 80 existing public markets if service trade is to be introduced. The FEHD is actively studying on the practical arrangement.

(f) When did the FEHD become aware of the viability problems of the markets in Appendix D of the Audit Report (Shau Kei Wan Market, Tsuen King Circuit Market and Plover Cove Road Market)? What

improvement measures have been/ will be taken by FEHD? And how is the effectiveness of the relevant measures?

The FEHD conducts monthly surveys on the vacancy rate, the types of the stalls rent out and the number of vacant stalls of all public markets in the territory. For example, the number of vacant stalls at Tsuen King Circuit Market has increased from 55 stalls in 2000 to 127 stalls recently. In view of the viability problem of the three markets in Appendix D, the FEHD has taken/ will take the following measures-

Tsuen King Circuit Market

The stalls in Tsuen King Market are located on the ground floor and first floor respectively. The FEHD is aware that the vacancy rate on the first floor is more severe. As such, the FEHD discussed with the tenants on the market improvement plan through the MMCC in June 2005. Tenants put forward a market stall rearrangement plan. However, the plan was not implemented as the tenants had different views on the EGP arrangement. In July this year, the FEHD put forward a new stall rearrangement plan for the tenants' consideration, suggesting the relocation of tenants on the first floor to the ground floor and using the vacant first floor for other uses. Preliminarily, the tenants reacted actively. The FEHD is currently discussing with the tenants on the detailed arrangements. Besides, the FEHD has organized festive decorations and game activities in the market for the past two years.

The occupancy rates for Tsuen King Circuit Market are 48% and 47% in November 2006 and in recent period respectively.

Plover Cove Road Market

With the consent of the MMCC, the FEHD has changed the use of two vacant stalls into selling Chinese herb medicine and providing Chinese medicine services in December 2006. Since this market is located next to a residential area, the FEHD examined with the MMCC and the tenants in August this year a plan to make use of some vacant stalls for the services trades such as real estate company. The recommendation was supported by the tenants. The FEHD will keep contact with the trade and follow up the recommendation. Besides, the market underwent general improvement works from 2005 to 2007 at a cost of

\$7 million. The occupancy rate has improved by 8% after the works. In the past two year, the market has organized promotional activities such as festive decorations, health exhibitions, food cure workshops and games, etc.

The occupancy rate of Plover Cove Road Market has increased from 50% in November 2006 to 70% recently.

Shau Kei Wan Market

The occupancy rate of Shau Kei Wan market has little change in the past two years, dropping slightly from 64% in November 2006 to 62% recently. The market tenants have not been operating actively in the market. In November this year, the FEHD discussed with the MMCC options to improve the market, including tenants' suggestion to change the specified uses of individual stalls, so as to increase the variety of products sold. The FEHD will also step up identification of non-trading stalls, take enforcement actions to encourage the tenants to re-open, and consider terminating the tenancies of stalls which are continuously out of business. In addition, this market finished upgrading of fire safety installations at a cost of \$1.5 million. In the past two years, festive decorations and exhibitions were mounted at this market.

- (g) **What recommended measures have been considered by FEHD to improve the viability of Bridges Street Market, Mong Kok Market, Kwong Choi Market and Tang Lung Chau Market? Have these recommendations been implemented? If so, please provide the details of the measures including expenses and effectiveness. If not, please give reason.**

In his Report No. 41, the Director of Audit recommended the Government to conduct a comprehensive review as soon as possible to confirm the markets that have to be closed down and work out an action plan to handle the closure of markets in accordance with the result of the review. In accordance with the above recommendation, the Food and Health Bureau (FHB) and the FEHD submitted a paper to the relevant Legislative Council (LegCo) Panel in May this year, suggesting closures of some markets with viability problems and consultation with the relevant DCs.

The aforementioned four markets have recorded over 60% vacancy rate for the past three consecutive years. The FEHD discussed with the relevant DCs on whether to keep the four markets. Details of the individuals markets are as follows-

Bridges Street Market

The Bridges Street Market has already been included in the Staunton Street/ Wing Lee Street redevelopment scheme under the Urban Renewal Authority (URA) since 2002/03. The scheme is supported by the DC. In following up this redevelopment scheme, the DC noted that there would be no reprovisioning upon the closure of the market and had no objection to the arrangement. The relevant papers and DC minutes are appended in Annex B

Mong Kok Market

In its discussion in March 2005 and July 2006, the Yau Tsim Mong DC supported the recommendation of the closure of the Mong Kok Market, and urged the Administration to close down the market. At the same time, the DC expressed concerns on the EGP arrangement for the affected tenants. Later, FEHD further studied the issue of EGP with the relevant bureaux. In October this year, the FEHD discussed with the DC again on the arrangement for the affected tenants. At the meeting, members unanimously agreed that the Administration should close down the market as soon as possible so as to make available the site for other uses and supported the EGP arrangement put forward by the Administration. The relevant papers and DC minutes are appended in Annex C

Kwong Choi Market

There are currently only 17 tenants operating in Kwong Choi Market. The FEHD discussed with the DC on whether to keep the market in July this year. Members hoped to keep the market and made some suggestions to revitalize the market such as allowing social enterprises to operate the market stalls, transforming it into a thematic market by using the vacant part of the market for selling organic agricultural products. The FEHD is following up with a working group under the DC, and is liaising with the relevant organizations and the trade to

examine the feasibility of various suggestions. The relevant papers and DC minutes are appended in Annex D. In the past two years, we have organized 6 festive decoration activities, including Christmas this year, for the market.

Tang Lung Chau Market

There are currently only 16 tenants operating in Tang Lung Chau Market. The FEHD discussed with the Wan Chai DC on whether to keep the market in July this year. Members inclined towards keeping a part of the market, and suggested rearrangement of the market stalls, which involves relocating the three stalls on the first floor of the market to the ground floor so as to make way for other community uses. We are discussing with the tenants on the feasibility of the stall rearrangement, and also examining appropriate uses for the vacant first floor. The relevant papers and DC minutes are appended in Annex E. In the Mid-Autumn Festival this year, we organized festive decoration and distributed souvenirs at this market. We will also organize promotional activities in Christmas and Lunar New Year.

- (h) **Whether the Provisional Urban Council and Provisional Regional Council had sought the then Finance Branch's approval of not recovering rates from the stall tenants?**

According to file records, the Government recommended in 1988 to the then Urban Council to accept collecting the rates of public markets by way of block assessment and paying rates on behalf of the stall tenants. At the same time, the Government also let the Council decide whether and when to collect rates from individual market tenants. The then Urban Council agreed to pay rates on behalf of market tenants and had not collected rates from the individual tenants. The then Regional Council adopted the same practice. The relevant practice was implemented since 1 June 1989 and is still being followed.

- (i) **What is the estimation of the additional manpower required by the FEHD to arrange for renewal of tenancy agreements, so that air-conditioning cost from all stall tenants can be recovered?**

The FEHD estimates that additional 2500 man-days (66 days x 38 men) are required to complete preparation work for the renewal of the some 10 400 tenancy agreements.

Yours sincerely,

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

(Francis HO)

for Secretary for Food and Health

c.c. Director of Food and Environmental Hygiene (Fax: 2524 1977)
Secretary for Financial Services and the Treasury
(Attn: Ms Bernadette LINN) (Fax: 2596 0729)
Director of Audit (Fax: 2824 2087)

**Note by Clerk, PAC: Annexes B to E not attached.*

I. The details of the market promotion activities in 2007/08

A. Festive Celebration Activities

(i) 2007 Tuen Ng Festival

- **Decoration** [39 markets]
- **Activity** (showing cooking demonstration video) [36 markets]
- **Cooking demonstration** [3 markets]
- **Souvenir giving** [3 markets]
- **Total number of participants:** 41 000

(ii) 2007 Mid-Autumn Festival

- **Decoration** [68 markets]
- **Activity** (lantern riddles) [37 markets]
- **Cooking demonstration** [3 markets]
- **Lucky draw** [8 markets]
- **Souvenir giving** [3 markets]
- **Total number of participants:** 80 000

(iii) 2007 Christmas

- **Decoration** [11 markets]
- **Souvenir giving** [7 markets]
- **Lucky draw** [7 markets]
- **Total number of participants:** 15 000

(iv) 2008 Chinese New Year

- **Decoration** [63 markets]
- **Activity** (taking free photographs with the God of Wealth) [25 markets]
- **Cooking demonstration** [3 markets]
- **Lucky draw** [10 markets]
- **Red packet envelop and calendar distribution** [8 markets]
- **Total number of participants:** 40 000

B. Workshops

(i) “Novelty in Vegetarian Cooking” in March 2007

- **Participating markets:** 9
- **Total number of participants:** around 1 800

(ii) **“Bean Cuisine Cooking Workshop” in January 2008**

- **Participating markets:** 8
- **Total number of participants:** around 1 300

C. Three Public Exhibitions

(i) **“Viral Hepatitis” from April to September 2007**

- **Participating markets:** 19
- **Total number of participants:** around 2 000

(ii) **“Prevention of Infectious Gastro-intestinal Disease” from October 2007 to February 2008**

- **Participating markets:** 19
- **Total number of participants:** around 2 000

(iii) **“Exercise and Health – Child” from February to June 2008**

- **Participating markets:** 19
- **Total number of participants:** around 2 000

D. Territory-wide Competition

(i) **“Know More about Our Markets” Quiz**

- To enhance citizen’s knowledge on public markets through the quiz
- **Total number of participants:** around 5 300

E. Shopping Reward Activities for Refurbished Markets

(i) **“Shop Here – Scratch and Win” at San Hui Market in May 2007**

- Gift were redeemed for purchase over certain amount to encourage citizens to shop and consume in the market.
- **Total number of participants:** around 9 800

(ii) **“Reward Shopping in Plover Cove Road Market” in October 2007**

- Gift were redeemed for purchase over certain amount to encourage citizens to shop and consume in the market.
- **Total number of participants:** around 5 500

(iii) **“Reward Shopping in Tai Po Hui Market” in November 2007**

- Gift were redeemed for purchase over certain amount to encourage citizens to shop and consume in the market.
- **Total number of participants:** around 9 500

II. The details of the promotional activities for the two newly-completed markets

A. Wan Chai Market

(i) Promotional work before the market opening (August to September 2008)

- Hanging banners and curtains in the new market building and other major buildings in the district to promote the market opening
- Installing outwall stickers and lighting decoration at different new market exits so as to make the market building and exits more eye-catching.
- Introducing the new market and publishing press release which promotes the market opening on the FEHD's website.
- Publishing advertisement on the light boxes of main tram stops and bus stops, and bus stops near the new market for four consecutive weeks.
- Mailing advertising posters to residential organizations and community organizations in the district, markets and Government offices in Wan Chai district.
- Publishing advertisement on local free newspapers and regional periodicals.
- With cooperation from MTR Corporation, the sign for 'Wan Chai Market' will be shown in the maps and on the exit signs in the Wan Chai MTR station, starting from February next year, and
- Introducing the new market in the FEHD market newsletter published on September

(ii) Promotional activities for market opening (October 2008)

- Opening Ceremony was held on 23 October to enhance promotional effect.
- Shopping reward activity was launched on the opening day to attract citizens to shop in the market, and
- Organizing cooking demonstrations and health talks for three consecutive weeks to attract patrons to buy relevant food ingredients. (Every demonstration and talk had about 200 participants, over 97% participants were satisfied and supported the organization of similar activities.)

B. Aldrich Bay Market

(i) Promotional work before the market opening (June to July 2008)

- Publishing press release and the details of the new market such as market map, floor plan, product categories and list of market facilities on the FEHD's website.
- Introducing the new market in the special column in the FEHD market newsletter published on June.
- Publishing advertisement in local newspapers with high volume of circulation to let the members of public get the information of the open auction of market stalls and the opening
- Publishing advertisement of the new market opening and the open market stall open auction on the three public light buses which come and forth between Aldrich Bay and Chai Wan and between Aldrich Bay and Quarry Bay for twelve consecutive weeks.
- Mailing advertising posters to residential organizations and community organizations in the district and posting advertising posters in the markets and Government offices in Eastern district, and
- Hanging banners in major buildings in the district and places nearby the new market.

(ii) Promotional activities for market opening (August 2008)

- Hanging large-sized banners/ outwall stickers on the side of the new market building which faces Shau Kei Wan MTR exit.
- Installing outwall stickers and lighting decoration at different new market exits so as to make the market building and exits more eye-catching.
- Publishing press release on the FEHD's website to promote the market opening.
- Publishing advertisement on the light boxes of the bus stops nearby the new market for four consecutive weeks.
- Contacting the MTR Corporation to show the Aldrich Bay Market in the maps in Shau Kei Wan MTR station and on the direction signs in the exits from February 2009, and
- Publishing advertisement in local newspapers with high volume of circulation to promote the new market.

(iii) Promotional activities during Mid-Autumn Festival (August to September 2008)

- Organizing cooking demonstrations, food cure talks and Mid-Autumn

Festival celebrating activities on three consecutive Saturdays.
(Every aforementioned activity had a hundred and more participants on average, especially the Mid-Autumn Festival celebrating activities which attract more than 1000 participants. According to the questionnaire survey of the activities, 90% of the participants of the cooking demonstrations and the food cure talks consumed in the new market on the same day of the activities, while 60% of the participants of the Mid-Autumn Festival did the same.)

(iv) Promotional activities for the market full opening cum the fall season (October to November 2008)

- Organizing health talks for three consecutive Saturdays to attract citizens to buy food ingredients after the activities.
- Launching “Reward Shopping in Aldrich Bay Market” . Gift were redeemed for purchase over certain amount to encourage citizens to consume in the market.
- Hanging banners in places with high pedestrian flow such as MTR stations and bus stops to promote the market full opening.
- Mailing promotional handbills to the residents of four housing estates nearby the market (Tung Yuk Court, Oi Tung Estate, Aldrich Garden and Tung Tao Court) through the mean of circulars, and
- Arranging distribution of posters to residential buildings in the area from Grand Promenade to Ming Wah Dai Ha, covering 145 000 residential population in estimation.

(v) Establishment of task force

- Establishing task force which consists of District Councilors, tenant representatives and representatives from the FEHD to plan with the MMCC on series of promotional activities in the future.
- The FEHD will keep close liaison with the MMCC and keep improving the different facilities in the market to attract patrons, including installation of chairs in appropriate location and broadcasting free TV programs.



Your Ref : (44) in FEHD/K (CR) 2/3/105 Pt.4
Our Ref : CB(3)/PAC/R51

BY FAX & BY POST
(Total : 4 pages)

12 January 2009

Ms. Serena CHU
Clerk to Public Accounts Committee
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong
(Fax No.: 2537 1204)

Dear Ms CHU,

**The Director of Audit's Report on the
results of value for money audits (Report No. 51)
Management of Public Markets (Chapter 6)**

**Follow-up to the Public Accounts Committee Meeting
on 11 December 2008**

I refer to your letter dated 12 December 2008 regarding Report No. 51 – Management of Public Markets (Chapter 6) and provide information on items (j) to (m) therein as follows:

- (j) **It was mentioned at the hearing that the FEHD was following up on 30 plus suspected subletting cases. Please provide a situation report on the follow-up actions taken on these cases as well as their latest positions.**

We are following up on the suspected subletting cases mentioned in Audit Report No. 51. We have interviewed all tenants concerned and they denied subletting.

Some of the cases involved tenants who registered their business in the name of another person. When interviewed, these tenants put up various reasons to explain why they authorised other persons to register their

business (e.g. not knowing that tenants should make business registration in their own name, or were illiterate or busy). Some tenants indicated that they would or had already amend their business registration to bring it under their own names. We have also referred all these cases to the Inland Revenue Department for it to follow up on breach of the Business Registration Ordinance (Cap 310), if any.

Apart from business registration, we also checked records to see if the tenants had personally operated the stall regularly or intermittently. We also requested them to provide employment records, Mandatory Provident Fund contribution records, order and cash records, water and electricity bills, etc. of their stalls to prove that they were in possession and control of the stall business. Based on the information and evidence obtained in each case, we will seek legal advice to establish whether subletting is involved and take follow-up actions accordingly.

- (k) **According to paragraph 4.15(e) of the Audit Report, the FEHD will seek legal advice on how to publicise some blatant subletting cases. Please inform the Committee of the FEHD's implementation plan and timetable in this regards, having considered the legal advice obtained.**

According to legal advice, the name of a tenant, investigations findings of a subletting case and termination of a market stall tenancy agreement as a result of breaching the clause prohibiting subletting are personal data of the tenant. The use or disclosure of personal data is regulated by the Personal Data (Privacy) Ordinance (Cap. 486) (the Ordinance). Data Protection Principle 3 of the Ordinance imposes restrictions on the use of personal data, requiring that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose referred to at the time of the collection of the data. However, section 61 of the Ordinance provides an exemption from Data Protection Principle 3 in any case in which the publishing of the data is in the public interest. As the data user, FEHD must consider whether it is in the public interest to disclose the information on the blatant subletting cases and, if so, the extent of disclosure.

In light of the above legal advice, we plan to publicise the market name and stall number of sublet stalls upon termination of their tenancy agreements, so that the consequence of subletting will be made known to the public and market stall tenants to achieve a deterrent effect.

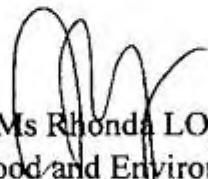
- (l) It was mentioned at the hearing that the FEHD had identified about 10 suspected cases where the stall tenants appeared to offer commodities for wholesale, which was not allowed in the tenancy agreements. The FEHD will seek legal advice on whether enforcement actions could be taken. Please inform the Committee of the FEHD's plan in handling these cases, having considered the legal advice obtained.

It was pointed out in Audit Report No. 51 that several market stalls appeared to have been operated for wholesale business. We have started detailed investigations and are seeking legal advice on establishing evidence of wholesale activities at the stalls. We will take immediate action against any tenant found to have breached the tenancy agreement.

- (m) The names of the eight new markets commissioned since the FEHD has taken over the management responsibility for public markets, and the current financial status of these markets.

The names and financial position of markets commissioned after 2000 are as follows:

	<u>Let-out rate</u> (November 2008)	<u>Financial position</u> (2006-07)
<u>Hong Kong Island</u> (Year of commissioning)		
Chai Wan Market (2001)	88%	Operating deficit: \$5.2m
Aldrich Bay Market (2008)	90%	Not applicable
Stanley Waterfront Mart (2007)	100%	Not applicable
Wan Chai Market (2008)	86%	Not applicable
<u>Kowloon</u>		
Lei Yue Mun Market (2000)	78%	Operating deficit: \$1.88m
Tai Kok Tsui Market (2005)	66%	Operating deficit: \$2.84m
<u>New Territories</u>		
Luen Wo Hui Market (2002)	78%	Operating deficit: \$6.38m
Tai Po Hui Market (2004)	93%	Operating surplus: \$1m


(Ms Rhonda LO)

for Director of Food and Environmental Hygiene

c.c. Secretary for Financial Services and the Treasury
 (Attn: Ms Bernadette LINN) (fax no.: 2596 0729)
 Secretary for Food and Health
 (Attn: Mr Francis HO) (fax no.: 2136 3281)
 Director of Audit
 (Attn: Mrs Josephine NG) (fax no.: 2587 9741)

Your Ref: FEHD/K (CR) 2/3/105 Pt.4
Our Ref : CB(3)/PAC/R51

24 December 2008

Clerk to Public Accounts Committee
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong
(Attn: Ms Serena CHU) (Fax No.: 2537 1204)

Dear Ms CHU,

**The Director of Audit's Report on the
results of value for money audits (Report No. 51)**

Management of Public Markets (Chapter 6)

I refer to your letter dated 19 December 2008 and provide the following additional information requested by the Public Accounts Committee:

- (a) **The Committee notes that the public market policy review currently undertaken by the Food and Health Bureau (FHB) and the Food and Environmental Hygiene Department (FEHD) excludes cooked food markets (CFMs), and a separate review on CFMs would be conducted on completion of the above review (paragraphs 2.21 and 2.24(g) of the Audit Report refer). Please explain the reasons for conducting the review of the provision of CFMs and the public market policy review separately instead of concurrently.**

The objective of the review on the provision of public markets that FHB and FEHD reported to the Legislative Council Panel on Food Safety and Environmental Hygiene in May and November 2008 was to examine whether the long adopted planning standards and guidelines for the provision of public markets were still applicable, with regard to the fact that they were based on the ratio between

population of the area and number of stalls as well as the hawker residing needs. The review also aimed to formulate guidelines for assessing public markets with viability problems, so as to devise improvement measures or examine the possibility of closing down these markets. Since problems of high vacancy rates and operating deficit are more common for the “wet market” section, which sells mainly fresh provisions and daily necessities, of a public market, the review has first focused on the provision of “wet markets”.

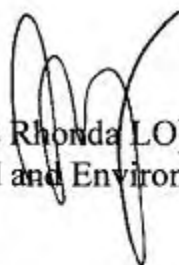
CFMs are quite different from “wet markets” in their overall operation. In the past two years, the average let-out rate of the 39 cooked food centres (CFCs) and 25 CFMs exceeded 85%. Among them, 40% were fully let out. Moreover, according to the 2006-07 financial costing analysis, 10 out of the 25 CFMs recorded an operating surplus. Consideration was also given to the fact that CFCs/CFMs mainly provide cooked food for consumption at the premises, which provide rather different services to the public as compared to general “wet markets” where customers purchase foods and daily necessities. Recognising the differences between the “wet market” and CFM section of public markets in terms of their nature, vacancy position and other related issues, FHB and FEHD decided to first focus on the section that provides fresh provisions and daily necessities, while a review on CFMs will be conducted separately.

- (b) **Whether the concessionary rentals for ex-licensed itinerant hawkers, referred to in paragraph 3.4(a) of the Audit Report, would expire after the first tenancies (usually three years); if so, the rental adjustment mechanism thereafter; if not, whether there was an expiry date for the concessionary rentals.**

The concessionary rentals for ex-licensed itinerant hawkers who surrender their licences for market stalls are applicable to the first tenancy (usually for a period of three years). The policy was first implemented in the urban area in 1993, and was later extended in 2003 to cover the licensed itinerant hawkers in the New Territories (NT). In the urban area, if the tenant continued to rent the public market stall upon expiry of the first tenancy before mid-1998 (i.e. before the rentals of all public market stalls were reduced by 30% and subsequently frozen), the rental would be determined by the

rental adjustment mechanism of the former Urban Council (UC) and Provisional UC. For market stalls in NT, the rentals have not been adjusted so far as they have been frozen since the concessionary policy came into effect in 2003.

Yours sincerely,



(Ms Rhonda LO)
for Director of Food and Environmental Hygiene

c.c. Secretary for Financial Services and the Treasury

(Attn: Ms Bernadette LINN)

(fax no.: 2596 0729)

Secretary for Food and Health

(Attn: Mr Francis HO)

(fax no.: 2136 3281)

Director of Audit

(Attn: Mrs Josephine NG)

(fax no.: 2587 9741)

電話 Tel : 2867 5357 傳真 Fax : 2530 1368 / 2868 3942 (CR)

Your Ref : FEHD/K (CR) 2/3/105 Pt.3

Our Ref : CB(3)/PAC/R51

16 December 2008

(Total : 51 pages)

Ms Serena CHU
Clerk to Public Accounts Committee
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong
(Fax No.: 2537 1204)

By FAX & By Hand

Dear Ms CHU,

Public Accounts Committee
Public Hearing on Report No. 51 - Management of Public Markets
(Chapter 6)
Follow-up to the Meeting on 11 December 2008

I refer to your letter dated 12 December 2008 regarding Report No. 51 - Management of Public Markets (Chapter 6) and provide information on items (a) to (i) therein as follows:

- (a) **A checklist used by staff of the Food and Environmental Hygiene Department (FEHD), showing items/areas that they should check when carrying out market stall inspections and supervisory checking;**

Senior Health Inspectors (Market Management), Health Inspectors (Market Management), Overseers (Markets) and Foremen (Markets) (or Market Assistants and other staff engaging in the same tasks) are required to carry out inspections and supervision on the daily operation and management of markets according to the procedural guide on inspection at **Annex I**.

For public markets with management outsourced, market task forces headed by Overseers have been set up to conduct daily surprise checks in different markets in order to monitor the contractors' performance. Please refer to the inspection record on market management at **Annex II**.

(b) **Details of the plan and timetable for conducting checking in other public markets to identify improper subletting (paragraph 4.14(c) of the Director of Audit's Report (Audit Report) refers);**

Apart from following up on the suspected subletting cases identified by Audit, FEHD will strengthen daily monitoring of stalls with higher risk of subletting. If the Business Registration (BR) of the stall is not under the name of the stall tenant, or the stall has been operated by someone else for a long time, or there are other signs of subletting, thorough investigations will be carried out and legal advice will be sought to determine whether the stall is involved in subletting. Stalls with high risk of subletting include those:

- (i) under complaints of subletting;
- (ii) whose tenants have been absent from the stall for over six months;
- (iii) rented by different tenants but displaying the same shop signs; or
- (iv) with existing rents far below the Open Market Rent.

FEHD plans to collect information on the above cases within three months. Relevant information includes records of absence, records of employment and MPF contribution of assistants, utilities bills of stalls, records of income and expenditure, etc. Further investigation will be carried out into suspected cases upon analysis.

(c) **Details of the “all possible means” deployed by the FEHD to collect evidence to substantiate subletting cases, referred to in paragraph 4.15(b) of the Audit Report;**

FEHD will flexibly deploy the following means to collect evidence as the case warrants:

- (i) The status of all stall operators will be checked and recorded by Foremen (Market)/Market Assistants/market management contractors at least once every fortnight. Warnings will be given to unauthorised operators. Those who take no heed of the warnings will be prosecuted for contravening Section 5 of the Public Markets Regulation. Warnings will also be given to the

tenants concerned for breach of the tenancy agreement. The agreement may be terminated should the tenants fail to give a reasonable excuse.

- (ii) If a tenant applies to appoint a registered assistant (RA), both the tenant and the RA will be required to sign an undertaking, declaring that the RA is not the owner, assignee, sublettee of the stall; nor does he hold any other unauthorised benefits in connection with the stall. Any false declaration will render the tenancy agreement terminated and criminal prosecution instituted against the declarant. Moreover, the tenant shall produce the engagement records of his RA for inspection and for making copies for future checking.
- (iii) If the tenant is absent continuously, FEHD staff will send for the tenant for an interview. The tenant will be requested to prove, for example, by producing MPF contribution records of the assistant, utilities bills of the stall, records of income and expenditure, etc, that he is still in charge of operating the stall. If the information collected indicates that the tenant is no longer in charge of operating the stall, legal advice will be sought to ascertain any subletting case. Subject to availability of resources, FEHD will strive to shorten the time of continuous absence of tenants that warrants follow-up action from six months to three months.
- (iv) In the past, the tenant or the person authorised by him/her was requested to sign an agreement of tenancy extension during the time of renewal of market stall tenancies. However, it was not specified that the signed undertaking had to be submitted by the tenant in person. In the future, the tenant will have to come to the FEHD office to sign the new tenancy agreement in person unless he gives a reasonable excuse.
- (v) Tenants who enter into a new tenancy agreement will be required to apply for BR under his/her own name, and the BR certificate shall be displayed at the stall. The BR of the stall will be checked regularly and suspected cases will be investigated.

- (d) **Whether the business hours for stalls of Market A, referred to in paragraph 5.6 of the Audit Report, were set with the prior approval of the FEHD, and why its business hours were shorter than the daily operational hours allowed for public markets;**

The opening hours of Market A are 6 a.m. to 8 p.m., same as those of other public markets; whilst the cooked food centre opens until after mid-night. The two tenants of Market A operate the cooked food centre on the ground floor and the stalls at the basement respectively. They are free to determine the opening hours of individual stalls according to their own business condition as long as they do not breach the tenancy agreements. The food court of Market A currently opens from 7 a.m. to 1 a.m., while the stalls at the basement open until 5 p.m.

- (e) **In respect of paragraphs 5.4 and 5.9 of the Audit Report, please elaborate on:**

- (i) **the background and reasons for the then Urban Council to approve the outsourcing of Market A's management and maintenance services (MSS) to the two tenants of the Market in 1993;**

Market A occupied the ground floor (G/F) and basement (B/M) of a hotel building with 13 and 8 stalls respectively. The then Urban Council (UC) planned to have the Market operated in the form of a supermarket selling fresh food and general provisions. UC took over Market A in October 1992 and agreed to let out the stalls thereof by open tender. Under the Deed of Mutual Covenant (DMC), the Financial Secretary Incorporated was the owner of Market A and the Refuse Collection Point (RCP) and should be responsible for their management and maintenance.

In January 1993, 84 tenders were received, including those of Company A and Company B, the subsidiaries of the developer. The tenders submitted by Company A and Company B for stalls on G/F and B/M of Market A respectively were accepted by the tender assessment panel on the basis that the prices tendered for individual stalls were close to the fair market rental and that the Market would be fully let.

It was later decided that negotiations be conducted with the two tenderers with a view to making further amendments to the tenancy clauses. Such amendments included UC's acceptance of the offers and conditions of the two companies (i.e. to rent all the stalls or offers to be regarded null and void); in return, Company A and Company B together would undertake the management and maintenance responsibilities of the Market and the RCP. UC considered the arrangements very advantageous both financially and otherwise. Had the tenders been accepted as originally submitted, UC's responsibility for security services, cleansing, utilities and maintenance would have entailed significant financial and staff resources. It was also UC's intention that the Market should be operated in a unique manner and in such a manner as to bring credit to UC. UC was satisfied that the proposal would accomplish that goal.

UC approved to let out the stalls of Market A on G/F to Company A and those on B/M to Company B at an aggregated yearly rental of \$2.93M under two tenancy agreements (TAs). A clause for automatically renew the TA with the tenant for three further years was also incorporated in each agreement. UC also approved to enter into a Management and Maintenance Agreement (MMA) with Company A and Company B for a period of three years (1994-1997) at a total annual contract price of \$1.35M.

(ii) **the reasons for the FEHD to award Market A's MMS contracts to the tenant(s) through single tenders in 2000, 2003 and 2006, and the process involved in carrying out single tendering;**

The tenants expressed their intent to convert vide a letter on 30 March 1996, at no cost to UC, the G/F of the Market into a Food Court. The tenants would be fully responsible for the maintenance and repair of the utensils, equipment, ablution facilities, ventilation system and any other fixtures/fittings installed in connection with the proposed conversion. In negotiation, the tenants proposed that the new tenancies should be extendable for a further period of three years subject to the rental being adjusted according to the prevailing UC's market rental policy.

In late 1996, UC endorsed the proposed conversion and approved to further let out the stalls on G/F and B/M of the Market to Company A and Company B respectively for three years. A clause for automatically renew the TA with the tenant for three further years was also incorporated in each agreement.

In March 1997, UC agreed to further award the MMA to Company A and Company B, again for three years (1997-2000). According to clause 2(a) of the signed MMA, ".....the Contractors' appointment herein shall be for a term of 36 months commencing from the 18th day of April 1997 to the intent that this Agreement shall co-exist with the respective tenancy agreements".

In view of the binding terms of the TAs and MMA, the Finance Bureau (FB) granted approval in April 2000 for FEHD to further let out the stalls of Market A and award the MMA to Company A and Company B for three further years (2000-2003) without having to undergo open tendering. Nevertheless, FB was of the view that it is not appropriate to include any provision that binds the Government to grant further agreements to the companies, or bind the 'co-existence' of the MMA with the TAs" and "..... in the event FEHD consider there were justifications for single or restricted tendering procedures to be adopted, they should seek FB's prior approval in accordance with Regulation 325 of the Stores and

Procurement Regulations.” Accordingly, FEHD deleted the clause entitling automatic renewal of the agreements when they were renewed.

When the TAs and MMA were about to expire, FEHD obtained legal advice on issues regarding property management and maintenance concerning Market A. FEHD appreciated that in view of the main structure of the Market and the hotel building, the hotel management might not agree to allow any third party contractor to carry out such maintenance and repair work on behalf of the public market authority by going through the hotel private areas on a daily basis. Taking the legal advice into full consideration, FEHD assessed the situation and advised the Financial Services and the Treasury Bureau (FSTB) that if the MMS of the Market was contracted out to a third party, it was anticipated that the hotel management would not be co-operative by purposely delaying or even refusing the request for access by the new contractor to the parts/private areas of the hotel building which were the only places where the maintenance works could be done.

FEHD sought approval from FSTB to invite a single tender jointly from Company A and Company B for the MMA.

When the MMA was about to expire in September 2005, FEHD obtained legal advice again and noted that from the legal point of view, FEHD should have sufficient rights under the DMC to carry out the MMS. It was a matter of administrative consideration as to which management company FEHD might appoint to carry out the MMS for the Market and the RCP. However, FEHD also noted from the legal advice that the owner of the hotel and the developer and management of the whole building might restrict the maintenance access, and the interpretation of DMC will be in issue. Taking the legal advice into full consideration, FEHD, based on the same reasons given in 2003, sought and obtained approval from FSTB to invite a single tender for the MMA again.

- (f) **A copy of the letter of July 2008 from the Independent Commission Against Corruption to the FEHD (paragraph 5.7 of the Audit Report refers);**

Please refer to **Annex III**.

- (g) **The then guidelines/principles adopted in the planning of the Tai Kok Tsui Market and the Aldrich Bay Market, and how these guidelines/principles were actually applied to the planning of these markets (paragraphs 6.3 to 6.7 of the Audit Report refer);**

The then guidelines/principles adopted in the planning of Tai Kok Tsui Market and Aldrich Bay Market were generally based on the following principles adopted by the then UC in 1987 in the construction and design of markets:

- A market should be placed in a central location within its residential catchment area.
- There should be an adequate demand in the catchment area to sustain the number of stalls provided in the market. Due consideration should be given to competition from retail outlets including markets in public and private housing, supermarkets and fresh provision shops.
- Competition from on-street hawkers nearby selling wet goods commodities should be eliminated.
- The extent of resiting commitment should be set at a realistic level having regard to viability.

In April 1997, the Urban Services Department conducted a viability study on the construction of Tai Kok Tsui Market. The study concluded that the construction of Tai Kok Tusi Market was well justified. The following were considered in the viability study:

- Population in the catchment area of the new market: 59 300 (based on 1991 Census)
- Number of market stalls required in accordance with the Hong Kong Planning Standards and Guidelines: 247
- Number of supermarkets in the vicinity: 3

- Number of licensed fresh provision shops in the catchment area of the Market : 32
- Number of licensed hawkers in the vicinity: 40
- Based on the above data, the USD considered that the proposed number of stalls of 170 was well justified. In September 1998, it was agreed that the number of stalls be reduced to 127 having regard to various factors, including site constraints and improved stall design. In late 1999, the USD reviewed the ratio between the number of stalls and the resiting commitment for 183 hawkers and considered that the market should be viable.
- In early May 2000, FEHD further reviewed the utilisation rates of public markets in Mong Kok district, including the number of market goers, the number of stalls provided in the markets and their vacancy position. It was noted that:
 - the average daily number of market goers of, for example, Fa Yuen Street Market was 6 000, Mong Kok Market was 1 200, and Tai Kok Tsui Temporary Market was 5 000;
 - the number of stalls provided in, for example, Fa Yuen Street Market was 192, Mong Kok Market was 146, and Tai Kok Tsui Temporary Market was 194; and
 - the vacancy rate of, for example, Fa Yuen Street Market was 2.6%, Mong Kok Market was 51.4%, and Tai Kok Tsui Temporary Market was 23.7%.

According to the Public Works Subcommittee (PWSC) Paper submitted to the Finance Committee (FC) of the Legislative Council (LegCo) in May 2000 for funding approval, the new market would be used to reprovision Tai Kok Tsui Temporary Market, Boundary Street Market, Canton Road Temporary Cooked Food Bazaar and Tai Kok Tsui Temporary Cooked Food Bazaar.

In the planning of Aldrich Bay Market, FEHD completed a preliminary feasibility study on the proposed Aldrich Bay Market in September 2000. It was stated in the Study Report that a new market was required to meet the demand of the new population and to resite the on-street hawkers at Kam Wa Street and its vicinity to resolve the environmental hygiene problems.

The preliminary feasibility study revealed that:

- A new market was required to meet the demand of the new population of 30 000 in the housing development in Aldrich Bay Reclamation Area.
- The activities of the 196 on-street hawkers at Kam Wa Street and its vicinity created environmental hygiene, street cleansing, noise, smell and street obstruction problems.
- In June 2001, FEHD conducted a survey on the retail facilities in the vicinity of the proposed market and found that those facilities were inadequate to meet the local demand for market services. Regarding the retail facilities, the following was noted:
 - Number of supermarkets: 2
 - One of the supermarkets: 600 m² (with only one vegetable stall/rack)
 - The other supermarket: 1 220 m² (with one fresh meat stall, one fresh fish/seafood stall and one vegetable stall)
- Fresh provision shops in the Reclamation Area: 3

In the light of the above findings, FEHD submitted in November 2001 a funding application for the project which was endorsed by PWSC and approved by FC of LegCo.

(h) The relevant Legislative Council and Eastern District Council papers/documents relating to the planning of the Aldrich Bay Market, referred to in paragraphs 6.16 and 6.17 of the Audit Report;

The Eastern District Council (EDC) paper reporting the results of the two questionnaire surveys conducted in early 2004 and FEHD's suggestion to abandon the project is at Annex IV. Minutes of the EDC meeting held on 4 March 2004, minutes of the LegCo case conference held on 19 March 2004, and FEHD's written reply dated 23 April 2004 are at Annexes V to VII respectively.

(i) **Details of the market promotion initiatives implemented in the Tai Kok Tsui Market since its commission in December 2005, and the effectiveness of these initiatives;**

A total of 20 market activities have been held since the commission of the Tai Kok Tsui Market. These activities included opening publicity, festive decorations, cooking demonstrations, roving health exhibitions, lucky draw for shoppers and workshops for market tenants to enhance customer service skills. Details and effectiveness of these activities are at Annex VIII.



(Ms Rhonda LO)
for Director of Food and Environmental Hygiene

Encl.

c.c. Secretary for Financial Services and the Treasury

(Attn: Ms Bernadette LINN)

(fax no.: 2596 0729)

Secretary for Food and Health

(Attn: Mr Francis HO)

(fax no.: 2136 3281)

Director of Audit

(Attn: Mrs Josephine NG)

(fax no.: 2587 9741)

***Note by Clerk, PAC:** Annexes III to VII not attached.

**Guideline to FEHD Staff for Inspection and
Supervision of the Operation of Markets**

30. Guideline for Inspections of Markets and Cooked Food Markets

(1) The purpose of this procedural guide is to set out the responsibilities of the different levels of supervisory staff engaged in managing markets and cooked food markets.

(2) Inspections should be made generally in peak trading hours but visits should also be made in off-peak hours taking into account the prevailing circumstances. Should an inspecting officer discover any serious irregularities he should take appropriate action and report them immediately to his senior officer.

(3) Each market should keep an occurrence/inspection book, a Daily Inspection Record on Market Cleansing, a staff attendance book, a staff duty roster and a record of prosecutions (Appendix I).

Foreman (Markets)

(4) The Foreman in-charge of market should conduct daily inspections to each and every stall to ensure compliance with tenancy agreement and Public Markets Regulation. He must check the items listed in Appendix II and sign the inspection register to confirm his inspection. He must also record any discrepancies or infringements discovered and state the remedial action or disciplinary action taken.

(5) He should identify any problems regarding the performance of staff or contractor, general cleanliness, structural defects, and provision/storage of working gear and equipment etc. The observations should be recorded in the inspection book/record. He should also help to ensure prompt settlement of market stall rents and check the attendance book daily to ensure that the market staffs work their conditioned hours. Supervision of staff on punctuality and conduct is a matter of office routine and disciplinary action should be recommended where necessary.

(6) It is not possible to draw up a comprehensive list of events, which should be recorded in the inspection book/record. In general, action taken in respect of significant events should be entered. These shall include arrests made, seizures of articles, major clean-up operations, discovery of cash and valuables, occurrence of

accidents/crime and complaints made by stall tenants etc. The record should show the date, time and particulars of the events, action taken and initial of the officer concerned.

(7) The Foreman shall also make regular checks on the time cards of security guards to ensure that they have patrolled the markets as scheduled. At least once a month, the foreman shall make surprise inspections outside office hours to ensure that the security guards are performing their duties. Such surprise inspections must be recorded in the inspection book/record.

Overseer (Markets)

(8) The Overseer shall take necessary steps to ensure that all markets and cooked food markets in the district are maintained in an orderly and hygienic condition. He shall inspect each market/cooked food market under his charge daily and counter-check staff attendance, entries in the inspection book/record, general cleanliness and structural defects. After each inspection, he shall report his assessment in the inspection book/record together with follow-up action taken and instructions given to staff. The Overseer shall also ensure that the comments made by senior officers or prominent visitors on the inspection book/record have been properly attended to. He is required to submit monthly reports to the SHI(MM)/HI(MM) on action taken, using the proforma (Appendix III).

Health Inspector (Market Management)

(9) The HI(MM) shall assist SHI(MM) to ensure that all markets and cooked food markets in the district are maintained in an orderly and hygienic condition. He shall inspect each market/cooked food market under his charge at least once a week to check the performance of market staff and cleansing contractors. After each inspection, he shall report his assessment in the inspection book/record together with follow-up action taken and instructions given to staff. The HI(MM) shall also ensure that the comments made by senior officers or prominent visitors on the inspection book/record have been properly attended to. He shall review any operational shortfalls and identify measures for improvement to SHI(MM). He is required to vet the monthly reports (Appendix III) on actions taken submitted by the Overseer (Markets) before forwarding them to the SHI(MM).

Inspection by Senior Staff

(10) SHI(MM) shall inspect bi-weekly each market/cooked food market in the district to check the performance of the market staff and contractor. He shall ensure that appropriate follow-up actions have been taken in regard to the comments made in the inspection book/record. He shall review any operational shortfalls and identify measures for improvement. More frequent inspections should be conducted if there are high incidence of written warnings, complaints and adverse comments from senior officers recorded in the inspection book/record.

(11) As far as practicable, CHI/DEHS shall also carry out inspection to each market/cooked food market in the district not less than once quarterly. Their comments should also be recorded in the inspection book/record.

Disciplinary Action

(12) It is the current guideline that sale or possession for sale of unstamped pig carcasses/meat is considered as a serious offence and the tenancy agreement of the stall tenants convicted of this offence shall be terminated forthwith.

(13) For taking disciplinary actions against stall tenants, please follow the procedural guides for termination of tenancy agreement on account of contravention of any provision of the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation, and breaches of the tenancy agreement.

PROSECUTION RECORD

District	Name of Defendant	Market Stall	Date of Offence	Sections Contravened	Date of hearing	Result	Case No.	File No.	Remarks

List of items to be checked by Inspecting Officers

1. Obstruction
2. Display of Stall Card
3. Unauthorized alterations
4. Non-operation
5. Provision of dustbin
6. Stall Cleanliness
7. Change of Commodity
8. Being used for storage
9. Sale of non-permitted commodity
10. Other breach of lease condition (Please specify)

Appendix III

Monthly Return on Action taken against market stall
for the month of _____.

District : _____

Date : _____

Market	Verbal Warnings	Written Warnings	Summonses issued	Recommendation

Inspection Record on Market Management
街市管理情况視察記錄

District : _____
地區
Market : _____
街市

Contractor : _____
承辦商
Supervisor : _____
督導人員

Page No. : _____
頁次
File Ref : _____
檔案編號

Particulars 視察範圍	Date 日期 Shift 更次												
		AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午
(A) Cleansing and Minor Maintenance 潔淨及小型維修													
(1) Floors, passages, walls & fixtures up to 2 meters 地面、通道、兩米以下的牆壁及固定裝置													
(2) Drainage systems: surface channels, sump buckets, floor drains, sump pits, grease traps & manholes 排水系統：明渠、污物隔濾桶、地面排水渠、污水坑、隔油池及沙井													
(3) Toilets 廁所													
(4) High-level including lighting, air ducts, fans, windows, louvers, etc. 高處：包括電燈、氣喉、電風扇、窗、百葉窗等													
(5) Lifts, escalators, staircases, loading bays, open spaces, vacant stalls, market sign, poultry stall and poultry scalding room etc. 升降機、電動扶梯、樓梯、貨物裝卸區、空地、空置攤檔、街市標誌、家禽檔/家禽屠宰室等													
(6) RCP, refuse room & refuse bins 垃圾收集站、垃圾房及垃圾桶													
(7) Completion of work schedules 完成工作表上的工作													
(8) Cleansing materials/equipment/tools 潔淨用的材料/設備/用具													
(9) Minor repairs, maintenance services and supply of consumable 小型維修、保養工程及用品供應													
(10) Building and structural defects, damages to equipment and installations, etc. 樓宇及結構缺陷、工具及裝置損壞等													
(11) Provision of supervisor & labour 督導人員及工人													

[illegible]

Particulars 視察範圍		Date 日期		Shift 更次															
						AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午	AM 早上	PM 下午
(26)	The door and gates of the Market timely open/closed and properly locked 街市的門開準時開、關及鎖好																		
(27)	Patrol duty including clock-in of record by watchman clock at designated check points at specified patrol frequency 執行巡邏工作包括在指定地點用更鐘記錄指明的巡邏次數																		
(D)	Pest Control 防治蟲鼠																		
(28)	Pest control services (including pest control material/equipments/tools) 防治蟲鼠服務(包括防治蟲鼠用的材料/設備/用具)																		
(29)	Proper keeping of records 妥善貯存記錄																		
(30)	Other irregularities 其他不當情況																		
Inspecting Officer (FEHD)																			
視察人員(食環署)		Rank 職級																	

✓ satisfactory 滿意

○ unsatisfactory 不滿意

Record of Action Taken by FEHD Inspecting Officer

食環署視察員人行動記錄

District :
地區 _____
Market :
街市 _____

Contractor :
承辦商 _____

Page No. :
頁次 _____
File Ref :
檔案編號 _____

Date 日期	Shift* 更次		Item 項目	Irregularities Found/Observation/Action Taken 視察人員發現的不當情況／觀察所得／採取的行動	Time allowed for rectification 給予糾正不當情況 的時限	Actual time taken to complete the rectification 糾正不當情況 實際所用時間	Signature of site supervisor 駐場管工簽署	Inspecting Officer 視察人員	
	Day 日更	Night 夜更						Name 姓名	Rank 職級

V/W = Verbal Warning (口頭警告)

W/W = Written Warning (書面警告)

* Please tick appropriate one 請在適當的空格內劃上『✓』號
FEHM 3A

Tai Kok Tsui Market Promotional Activities

Date		Activity	Detail
2005	November to December	Opening publicity	<ul style="list-style-type: none"> - roadside banners - stickers on refuse bins at the periphery of the Market - advertisements at MTR stations and bus stations - posters distributed to residents' organisations and non-government organisations in the catchment area.
	December	"Patron Reward for the Opening of Tai Kok Tsui Market"	<ul style="list-style-type: none"> - souvenirs for market goers who signed to show support No. of participants: 3 500
2006	January	"Know More About Avian Flu" Market Roving Exhibition	<ul style="list-style-type: none"> - panel exhibition No. of participants: 100
	January	"Great Shopping Fun in Markets with the God of Wealth"	<ul style="list-style-type: none"> - festive decorations - spring scrolls calligraphy performance - souvenirs distributed by the God of Wealth No. of participants: 900
	January to February	"Guess and Win"	<ul style="list-style-type: none"> - prizes for participants who made the right guess on the total value of the food No. of participants: 62
	February	"Healthy Soup" Add-Value Workshop	<ul style="list-style-type: none"> - cooking demonstration No. of participants: 63
	March to April	"Shopping with Fun Lucky Draw"	<ul style="list-style-type: none"> - shoppers collected coupons to redeem lucky draw entry tickets and gifts No. of participants: 9 500
	April	"Pleasure in Gardening" Add-value Workshop	<ul style="list-style-type: none"> - plant care know-how and flower arrangement techniques No. of participants: 26
	May	"Tuen Ng Festival 'Cook with Fun' in Markets"	<ul style="list-style-type: none"> - festive decorations - cooking demonstration video show - cooking demonstration No. of participants: 150 93% of the respondents were satisfied/very satisfied with the activity 89% of the respondents supported the organisation of similar activities

	May to June	“Know More About Japanese Encephalitis” Market Roving Exhibition	- panel exhibition No. of participants: 100
	August	“Customer Service Training for Market Tenants” Add-value Workshop	- customer service enhancement techniques No. of participants: 54
	September	“Mid-Autumn Festival ‘Cook and Shop with Fun’ in Markets”	- festive decorations - cooking demonstration No. of participants: 160 92% of the respondents were satisfied/very satisfied with the activity 90% of the respondents supported the organisation of similar activities
	October	“Elderly Health” Market Roving Exhibition	- panel exhibition No. of participants: 100
	November	“Fun with Western Cookery” Add-Value Workshop	- cooking demonstration No. of participants: 110 92% of the respondents were satisfied/very satisfied with the activity
2007	February	Lunar New Year	- festive decorations - red packets distributed by the God of Wealth No. of participants: 1 000
	September	Mid Autumn Festival – lantern riddles	- festive decorations - prizes for participants who solved the riddles No. of participants: 1 000
	November to December	Lucky draw	- shoppers redeemed lucky draw entry tickets to win prizes No. of participants: 2 000
2008	February	Lunar New Year promotion - wheel of fortune - lucky draw	- shoppers played the wheel of fortune game to win prizes - shoppers redeemed lucky draw entry tickets to win prizes No. of participants: 2 500
	September	Mid Autumn Festival	- festive decorations
	October	National Day – gift redemption	- gift rewards for shoppers No. of participants: 750

**Meeting of Public Accounts Committee on
Report No. 51 of the Director of Audit – Chapter 11
16 December 2008**

Secretary for the Environment

Introduction

I would like to thank the Audit Commission for conducting a “green audit” on the management of municipal solid waste (MSW), which serves to enhance the community’s awareness on environmental issues. Indeed, apart from the Government’s commitment to implement the necessary policy initiatives, it takes the support and participation of the Legislative Council and the community to address our waste management problem effectively.

To me, the Report of the Director of Audit (the Audit Report) puts across a crucial message – that the reduction of waste at source, waste recovery and recycling, and the final disposal of waste are equally important. The Director of Audit has made constructive recommendations on these areas of work. In response, I would like to take this opportunity to update Members on the progress of our key policy initiatives.

Reduction of Waste at Source

The reduction of waste at source is the focus of our MSW management policy. After years of discussion, the Product Eco-responsibility Ordinance was enacted with the support of this Council in mid-2008. This is an important milestone, since the Ordinance provides the legal basis for implementing producer responsibility schemes (PRS’s) to achieve the objectives of waste reduction and recovery. The environmental levy on plastic shopping bags will be the first PRS under the Ordinance. We will submit the subsidiary legislation on the detailed implementation arrangements of the levy scheme for this Council’s consideration by the end of this month. We hope that Members will continue to lend us their support so that the

scheme can be implemented early.

We believe that legislation is essential for putting the concept of producer responsibility into practice. That said, it would be a very time-consuming process to implement PRS's if we are to rely solely on legislative means. Furthermore, formulating an effective scheme that could accommodate the views and concerns of all sectors of our society would be a huge challenge. Therefore, in parallel with our legislative work, we have been encouraging the relevant trades to launch voluntary PRS's. For instance, through co-operation with the Hong Kong Waste Electrical and Electronic Equipment Recycling Association, we have so far introduced recycling programmes for computers, rechargeable batteries and fluorescent lamps with over 60 participating producers and suppliers. In collaboration with the Hong Kong Hotels Association, we have recently launched the Glass Container Recycling Programme with the funding support and participation of 11 hotels. The successful implementation of these programmes has proved once again the importance of different sectors' participation in effective waste management. We will continue with our work in this area. This will also help lay a sound foundation for introducing other statutory PRS's.

Waste Recovery and Recycling

Similarly, we have introduced a number of measures to encourage waste recovery and recycling. We have amended the relevant subsidiary legislation under the Buildings Ordinance to impose a mandatory requirement for the provision of refuse storage and material recovery room on every floor of new domestic buildings and composite buildings. The Programme on Source Separation of Domestic Waste (the Programme), launched in 2005, currently covers 51% of our population with 983 participating housing estates. Last weekend, we introduced the latest design of 3-coloured waste separation bins to encourage and facilitate waste recovery. The recovery rate of domestic waste rose from 16% in 2005 to 20% in 2006 and further to 24% in 2007, representing a significant annual increase.

When compared with the overall waste recovery rate of 45% and the commercial and industrial waste recovery rate of 62%, however, there is still ample room for improvement in domestic waste recovery.

Therefore, the Government will continue to extend the Programme to more housing estates. The Environment and Conservation Fund (ECF) has allocated \$50 million to support District Councils and local organisations to organise public education programmes on environmental protection. Source separation of domestic waste will be one of the main themes.

To facilitate waste recovery in the community, we have also provided over 28 600 three-coloured waste separation bins at public places throughout the territory. In the light of overseas experiences, the volume of waste collected from recovery facilities at public places would generally be limited. Nevertheless, these waste separation bins could play a pivotal role in raising public awareness of and developing the habit of waste recovery. As such, in addition to devoting more resources to improve the design of waste separation bins, we will increase significantly the number of waste separation bins at public places and on pavements by 35%, from 2 600 (approximately 860 sets) to 3 500 (approximately 1 160 sets). We will co-operate with District Councils and the Food and Environmental Hygiene Department in identifying suitable locations for placing these bins, with a view to raising public awareness in waste recovery and making waste recovery facilities more accessible.

To further encourage public participation and support in waste reduction and recovery, the ECF has allocated \$10 million for public education programmes under the Policy Framework for the Management of Municipal Solid Waste (2005-2014) (the Policy Framework). So far, seven applications for funding support have been approved, covering topics such as plastic shopping bag reduction, simple packaging, food waste reduction, green procurement and the recovery of waste electrical and electronic equipment. We will continue to provide funding support to green groups and other voluntary organisations in organising similar activities.

Infrastructure

The Audit Report clearly points to the need to reduce our reliance on landfills, and highlights the fact that incineration is adopted in many advanced Asian cities to treat unavoidable waste. I fully agree with the

recommendations. In fact, our three existing landfills will be exhausted in the next few years. Apart from extending the landfills, we have to develop other facilities to manage our waste in a sustainable manner. To this end, we have set up a pilot facility at Kowloon Bay to collect food waste generated by the commercial and industrial sectors. In the long run, we will develop Phase 1 of the Organic Waste Treatment Facilities at Siu Ho Wan, North Lantau to convert food waste into useful compost and renewable energy, and the feasibility and environmental impact assessment (EIA) studies have already been started. In addition, the Environmental Protection Department is conducting detailed engineering and EIA studies for the two possible sites of Phase 1 of the Integrated Waste Management Facilities (IWMF). We expect that the IWMF will come into operation in 2014/15.

The construction of large-scale waste management facilities will inevitably be controversial. We will consult the District Councils concerned as well as local communities in the course of the EIA studies. We will also step up our education and publicity efforts to enable the public to better understand the imminent waste problem and the safety standards of modern incinerators. Meanwhile, we will continue to take forward various waste reduction and recovery initiatives. I must stress that the effective treatment of unavoidable waste is an integral part of any comprehensive waste management policy. I hope that these projects will have the support of this Council and the community at large.

Municipal Solid Waste Charging

As enshrined in the construction waste charging scheme, the sewage charge and the upcoming environmental levy on plastic shopping bags, the Government is a staunch believer in the “polluter-pays” principle. We also believe that the successful implementation of a solid waste charging scheme will help reduce waste at source.

Waste charging is a controversial policy and its implementation requires in-depth examination in the light of the actual situation of Hong Kong. Overseas experiences indicate that, among different charging options, volume-based charging would be more effective in achieving waste reduction. In this connection, we have implemented a trial scheme, which has flagged up a number of implementation and

monitoring issues which we might not be able to resolve completely. In fact, for places where the volume-based charging is implemented successfully, waste collectors normally collect the waste from individual households direct, such that the volume of waste disposed of can be monitored. For places with a living environment similar to Hong Kong (such as New York, Singapore and metropolitan Tokyo), none adopts the volume-based approach. They either charge a fixed amount or impose a flat-rate levy assessed with, for example, water consumption or property tax as proxies.

For this reason, we have to examine the issue thoroughly in order to identify measures that can address the needs of Hong Kong and achieve waste reduction effectively. We will put forward options for public consultation after the completion of our baseline waste study.

Promoting the Development of Recycling Industry

Hong Kong has made a good start in waste recovery, with a recovery rate of 45%. The value of recovered materials rose to \$6 billion last year. We have been providing 35 short-term tenancy sites to support the development of the recycling trade. In addition, by enhancing the efficiency of waste recovery through source separation and three-coloured waste separation bins, we have been providing the trade with a stable supply of recyclables. In response to the industry's recent request for more short-term tenancy sites, we have liaised with the Lands Department and identified about ten sites initially assessed to be suitable. We will make them available for the trade as soon as possible.

While we have made much progress in waste recovery, we have been facing considerable difficulties in developing large-scale recycling industry in Hong Kong due to factors such as land and wages. Members will no doubt agree that there is room for improvement in the development of the EcoPark. The environmental industry has also indicated that, although the rent of the EcoPark is competitive, tenants still have to face difficulties in, for example, dealing with the necessary procedures and costs of building plants, as well as overcoming the cost of collecting recyclables from across the territory for further processing in the EcoPark.

In the midst of the financial tsunami, tenants of the EcoPark may become even more conservative in their business development in the short term. We will maintain close liaison with them and provide as much assistance as possible. We will also review the tenancy requirements for Phase II lots so that the EcoPark can play a greater role in promoting the development of the recycling industry.

Conclusion

With our efforts over the past few years, the policy initiatives set out in the Policy Framework have progressively been rolled out, and have gradually been gaining the support and recognition of the public. Moreover, solid progress has been made in achieving the targets in the Policy Framework. To address Hong Kong's waste problems thoroughly, we need to explore all possible options, which will inevitably involve some controversial policies and measures. We hope that this Council and the community at large will accommodate discussion on these policies and measures, and that the public will continue to support our waste management effort. Thank you.

~ End ~

Generation, Recovery and Disposal of Municipal Solid Waste (MSW)

Year	2005	2006	2007
Economic growth	+ 7.5%	+ 6.8%	about 6%
Population growth	+ 0.6%	+ 0.9%	about 1%

Year	2005 (million tonnes)	2006 (million tonnes)	2007 (million tonnes)
MSW generation	602	623 (+ 3.6%)	625 (+ 0.3%)
Domestic waste generation	298	304 (+ 2%)	308 (+ 1.3%)
Commercial and industrial waste generation	255	266 (+ 4.1%)	290 (+ 9.0%)
MSW recovery	259	284 (+ 9.7%)	281 (- 1.1%)
MSW recovery rate	43%	45%	45%
Domestic waste recovery rate	16%	20%	24 %
Commercial and industrial waste recovery rate	63%	63%	62 %
MSW disposal	342	339 (- 1.0%)	344 (+ 1.6%)
Domestic waste disposal	250	242 (- 2.8%)	233 (- 4%)
Commercial and industrial waste disposal	93	97 (+ 3.8%)	112 (+ 15.7%)

**Environmental Protection Department
December 2008**

政府總部
環境局
香港灣仔告士打道五號
稅務大樓四十六樓



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本函檔號 Our Ref.: EP CR 9/10/33
來函檔號 Your Ref.: CB(3)/PAC/R51

電話 Tel No : 2594 6032
傳真 Fax No : 2877 2935

7 January 2009

Ms Miranda Hon
Clerk to Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Fax: 2537 1204)

Dear Ms Hon,

**The Director of Audit's Report on the
results of value for money audits ("Report No. 51")**

Reduction and recovery of municipal solid waste (Chapter 11)

Thank you for your letter of 22 December 2008.

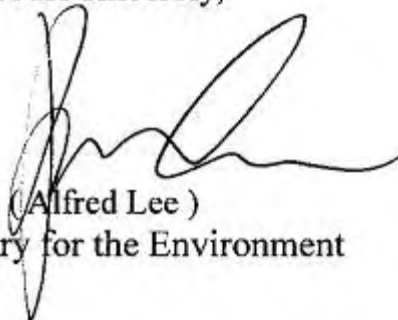
Part II of the Waste Disposal Ordinance (Cap. 354) provides for the preparation of waste disposal plans to set out the arrangements for the collection and disposal of all solid and semi-solid wastes and all existing and proposed waste disposal sites. The Waste Disposal Plan (WDP), which was published by the Government in December 1989, dealt with the collection and disposal aspects of waste management. It also set out a tentative programme for the development of new facilities, namely the three strategic landfills and the transfer station network; and the closure of old incinerators and small landfills. Given its focus on waste disposal and treatment, the WDP is not the most suitable vehicle to address the other aspects of waste management strategies, namely waste avoidance, reuse, recovery and recycling.

A Waste Reduction Study was commissioned by the Environmental Protection Department in 1994 to identify ways to encourage waste avoidance, minimisation, recovery and recycling. The findings were presented to the LegCo Environmental Affairs Panel, which requested the Administration to provide a total picture of its waste reduction targets and implementation timetable. The Government subsequently consulted the public on the draft Waste Reduction Plan in May 1997, and published the Waste Reduction Framework Plan in November 1998 to set out the waste reduction strategy and targets.

Since then, there has been a continuing and rising public aspiration for a sustainable waste management strategy which places primary emphasis on waste reduction, reuse and recovery. In response to this public aspiration, in particular the Report on the Engagement Process for a First Sustainable Development Strategy published by the Council for Sustainable Development (SDC) in May 2005, the Government published "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" (Policy Framework) in December 2005, setting out a comprehensive waste management strategy for the next ten years. Enshrining the polluter-pays principle, the Policy Framework proposes policy tools to encourage the public to recycle more and discard less. It also covers the adoption of latest technologies for waste management facilities. The Policy Framework has adopted the waste management targets laid down in the SDC Report.

The waste management targets set out in the Policy Framework are the results of the SDC's extensive public engagement process. The Administration remains committed to achieving these targets as set out in the Policy Framework as soon as practicable and will continue to report to the Legislative Council on the progress made.

Yours sincerely,



(Alfred Lee)
for Secretary for the Environment

c.c. Secretary for Financial Services and the Treasury (fax: 2147 5239)
Director of Audit (fax: 2583 9063)

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環境保護署總部

香港
灣仔告士打道五號
稅務大樓四十六樓

6 January 2009

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. 51)**

Reduction and recovery of municipal solid waste (Chapter 11)

I refer to your letter dated 22 December 2008 on the above.

Please see below the additional information you have requested –

- (a) **the respective recovery rates of municipal solid waste, domestic waste and non-domestic waste of advanced cities in the world and how the rates compare to those of Hong Kong;**

Overseas data are only available for municipal solid waste (MSW). Based on the latest accessible and comparable data, Hong Kong's MSW recovery rate is 45% in 2007, as compared with some major cities such as Tokyo (18%), Sydney (26% in 2003), New York (30% in 2003), London (35% in 2006/07), Singapore (54%), Taipei (61%) and Seoul (64%).[#]

- (b) **in respect of the four lots in the EcoPark which have been tendered out, the actual/expected length of time involved in the various steps from tendering to the tenants' commencement of operations**

The actual/expected time required for completion of the various steps from award of tenancy to commencement of operations is tabulated below:

[#] The latest available recovery rates for the cities are 2007 data unless otherwise indicated.

X X X X X X X

(c) the reason why only 67% schools in Hong Kong were provided with waste-separation bins up to July 2008 (paragraph 5.14 of the Audit Report refers)

The Environmental Campaign Committee (ECC) launched two one-off campaigns of “Waste Separation and Recycling Scheme in Schools” (the Schemes) in 2000 and 2003 respectively. Under the Schemes, **all** primary and secondary schools were invited to participate on a voluntary basis. With the concerted efforts of ECC, Environmental Protection Department (EPD) and the then Education Department, 1,100 sets of waste separation bins were provided to all participating schools, covering about 70% of primary and secondary school premises. The Schemes have successfully raised the awareness of schools in waste separation and recycling. It is noted that some schools have elected not to join the Schemes but have procured waste separation bins at their own expenses.

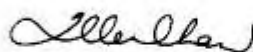
Since the introduction of the Schemes, the ECC has continued to proactively offer assistance and support to new schools or newly participating schools by providing new waste separation stickers to be adhered to the bins, as well as referring the participating and non-participating schools to the Food and Environmental Hygiene Department for recyclable collection service on a free-of-charge basis. In parallel, the ECC has also reviewed the design of waste separation bins in order to cater for the expanded scope of recyclables.

As many of the old sets of waste separation bins distributed under the Schemes are nearing the end of their natural lifespan, the ECC has obtained funding support of \$6 million from the Environment and Conservation Fund in early 2008 for procurement of newly designed waste separation bins for distribution to primary and secondary schools. In November 2008, the ECC invited all primary and secondary schools to apply for the new waste separation bins. As at end December 2008, over 220 applications have been received and among them about 140 have never received recycling bins under the Schemes. All these requests will be entertained within this school year, boosting the coverage rate of three-colour bins in school premises to around 83%.

While participation of schools in the Schemes remains voluntary, the ECC is prepared to entertain all applications and in this connection EPD will reach out to those schools yet to join the “Source Separation and Recycling Scheme in Schools” to proactively invite them again to join or to ascertain their reasons for not joining.

A soft copy of this reply in English and Chinese will be sent to you via email separately.

Yours faithfully



(Ellen Chan)

Assistant Director of Environmental Protection
(Environmental Infrastructure)

c.c. Secretary for the Environment (fax no. 2537 7278)
Secretary for Financial Services and the Treasury (fax no. 2147 5239)
Director of Audit

Internal
P(CR)

***Note by Clerk, PAC:** *Part of item (b) obliterated.*



Your Ref. : CB(3)/PAC/R51
Our Ref. : (14) in L/M(4) in FEHD HQ 53/906 III

31 December 2008

Clerk
Public Accounts Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Miranda HON)

By fax 2537 1204

Dear Ms HON,

**The Director of Audit's Report on the
Results of Value for Money Audits (Report No. 51)**

Reduction and Recovery of Municipal Solid Waste (Chapter 11)

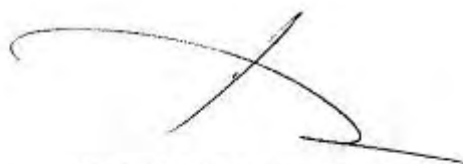
In response to your letter of 22 December 2008, we would like to provide the following additional information as requested by the Public Accounts Committee:

- (a) Village-type refuse collection points (RCPs) in rural areas are usually situated in rather remote places, serving only a small local population. We started providing waste separation bins in village-type RCPs in 2000. In general, the waste recovering yield from these bins has been low compared with that from bins set up in urban areas. Nevertheless, to help promote the concept of waste separation and recovery, we have progressively increased the number of RCPs provided with waste separation bins. For more effective use of resources, we give priority to village-type RCPs with potentially higher "pitching-in" rate, having regard to factors such as the size of the local population, convenience of

the RCP location and proximity to tourist spots etc. The percentage of village-type RCPs provided with waste separation bins has now been raised to 25%.

- (b) We will continue to support Environmental Protection Department (EPD) in further promoting public awareness of and participation in waste separation. To this end, waste separation bins will be provided at 300 new sites across the territory in the first quarter of 2009. Subject to the outcome of EPD's consultation with the District Councils, some of the new sites would include village-type RCPs.

Yours sincerely,



(Ms CHU Lan-ying)
for Director of Food and Environmental Hygiene

- c.c. Secretary for the Environment (fax no. 2537 7278)
Director of Environmental Protection (fax no. 2891 2512)
Secretary for Financial Services and the Treasury (fax no. 2147 5239)

ACRONYMS AND ABBREVIATIONS

AFCD	Agriculture, Fisheries and Conservation Department
Audit	Audit Commission
BODW	Business of Design Week
BR	Business registration
CEDB	Commerce and Economic Development Bureau
C&I	Commercial and industrial
CFCs	Cooked food centres
CFMs	Cooked food markets
CSW Market	Cheung Sha Wan Wholesale Food Market
DBCS	Design-Business Collaboration Scheme
DC	District Council
DEHO	District Environmental Hygiene Office
DIP	Design Incubation Programme
D of J	Department of Justice
DRS	Design Research Scheme
DSI	DesignSmart Initiative
DSP	Design Support Programme
ECC	Environmental Campaign Committee
ECF	Environment and Conservation Fund
EIA	Environmental impact assessment
EMF	Export Marketing Fund
ENB	Environment Bureau
EPD	Environmental Protection Department
ESF	English Schools Foundation
EU	Efficiency Unit
FAC	Finance and Administration Committee
FB	Finance Bureau

ACRONYMS AND ABBREVIATIONS

FC	Finance Committee
FEHD	Food and Environmental Hygiene Department
FHB	Food and Health Bureau
FSTB	Financial Services and the Treasury Bureau
G/F	Ground floor
GFA	Gross floor area
GFIS	Government Fleet Information System
GPA	Government Property Agency
GSS	General Support Scheme
HA	Housing Authority
HAB	Home Affairs Bureau
HD	Housing Department
HEC	Harbour-front Enhancement Committee
HEC Sub-committee	Sub-committee on Harbour Plan Review of the Harbour-front Enhancement Committee
HKDC	Hong Kong Design Centre
HKFA	Hong Kong Film Archive
HKHM	Hong Kong Heritage Museum
HKMH	Hong Kong Museum of History
HKSARG	Government of the Hong Kong Special Administrative Region
HKSTPC	Hong Kong Science and Technology Parks Corporation
HKTB	Hong Kong Tourism Board
HKU	University of Hong Kong
ICAC	Independent Commission Against Corruption
ITC	Innovation and Technology Commission
IWMF	Integrated Waste Management Facilities
Lands D	Lands Department

ACRONYMS AND ABBREVIATIONS

LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
MAA	Memorandum of Administrative Arrangements
MD	Marine Department
MMA	Management and Maintenance Agreement
MMAC	Market Management Advisory Committee
MMCC	Market Management Consultation Committee
MMS	Management and maintenance services
MOU	Memorandum of Understanding
MPF	Mandatory Provident Fund
MSW	Municipal solid waste
MTRCL	MTR Corporation Limited
OMR	Open Market Rentals
ORO	Official Receiver's Office
PCES	Professional Continuing Education Scheme
PDPO	Personal Data (Privacy) Ordinance
PIPs	Private sector insolvency practitioners
PolyU	Hong Kong Polytechnic University
PRH	Public rental housing
PRSs	Producer responsibility schemes
PSAs	Property services agents
PWSC	Public Works Subcommittee
RA	Registered assistant
RC	Regional Council
RCPs	Refuse collection points
SCL	Shatin to Central Link
SDC	Council for Sustainable Development

ACRONYMS AND ABBREVIATIONS

SGS	SME Loan Guarantee Scheme
SMEs	Small and medium enterprises
SMEC	Small and Medium Enterprises Committee
SSCIW	Source Separation of Commercial and Industrial Waste
SSDW	Source Separation of Domestic Waste
STTs	Short term tenancies
TC	Tender Committee
TID	Trade and Industry Department
UC	Urban Council
UGC	University Grants Committee
UNHCR	United Nations High Commissioner for Refugees
USD	Urban Services Department
WDO	Waste Disposal Ordinance
WDPs	Waste disposal plans
YMT Fruit Market	Yau Ma Tei Fruit Market