

## 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.

*Management of public markets*

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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,

*Management of public markets*

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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

*Management of public markets*

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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;

*Management of public markets*

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- (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;

*Management of public markets*

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- (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

*Management of public markets*

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- (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

*Management of public markets*

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- (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

*Management of public markets*

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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.