

**REPORT OF THE  
PUBLIC ACCOUNTS COMMITTEE  
ON  
REPORT NO. 54 OF THE DIRECTOR OF AUDIT  
ON  
THE RESULTS OF  
VALUE FOR MONEY AUDITS**

*July 2010*

*P.A.C. Report No. 54*

## CONTENTS

	<u>Paragraph</u>	<u>Page</u>
<b>Part 1      Introduction</b>		
The Establishment of the Committee	1	1
Membership of the Committee	2	1
<b>Part 2      Procedure</b>		
The Committee's Procedure	1	2
Confidentiality undertaking by members of the Committee	2 - 3	3
The Committee's Report	4	3
The Government's Response	5	3
<b>Part 3      Committee Proceedings</b>		
Consideration of the Director of Audit's Report	1	4
Meetings	2	4
Arrangement of the Report	3 - 4	4
Acknowledgements	5	4
<b>Part 4      Chapter</b>		
<b>1.    Construction of pedestrian crossing facilities</b>	1 - 5	5 - 6
<b>2.    Development of EcoPark</b>		
A.    Introduction	1 - 2	7
B.    Planning of EcoPark	3 - 16	7 - 13
C.    Administration of management contract	17 - 25	14 - 16
D.    Phase 1 development	26 - 41	16 - 21

## CONTENTS

	<u>Paragraph</u>	<u>Page</u>
E. Phase 2 development	42 - 49	22 - 25
F. Conclusions and recommendations	50	25 - 31
 <b>3. Hong Kong Chinese Orchestra Limited</b>		
A. Introduction	1 - 6	32
B. Criteria for evaluating subvented performing arts groups	7 - 29	32 - 42
C. Governance and management	30 - 41	42 - 45
D. Core activities	42 - 77	46 - 57
E. Human resources management	78 - 92	57 - 61
F. Other administrative issues	93 - 98	62 - 63
G. Conclusions and recommendations	99	63 - 70
 <b>4. Provision of postal services</b>	1 - 7	71 - 73
 <b>SIGNATURES OF THE CHAIRMAN, DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE</b>		74
 <b>CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 54 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT</b>		75
 <u>Appendix relating to Part 1: "Introduction"</u>		
<b>APPENDIX 1</b> Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region		76 - 77

## CONTENTS

### Page

#### Appendix relating to Part 2: "Procedure"

<b>APPENDIX 2</b>	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'	78 - 80
-------------------	---	---------

#### Appendices relating to Part 3: "Committee Proceedings"

<b>APPENDIX 3</b>	Witnesses who appeared before the Committee	81
<b>APPENDIX 4</b>	Introductory remarks by the Chairman of the Public Accounts Committee, Dr Hon Philip WONG Yu-hong, GBS, at the first public hearing of the Committee in respect of the Director of Audit's Report No. 54 on Tuesday, 11 May 2010	82 - 83

#### Appendix relating to Chapter 1 of Part 4: "Construction of pedestrian crossing facilities"

<b>APPENDIX 5</b>	Letter of 8 June 2010 from the Commissioner for Transport	84 - 85
-------------------	---	---------

#### Appendices relating to Chapter 2 of Part 4: "Development of EcoPark"

<b>APPENDIX 6</b>	Information note provided by the Environment Bureau and the Environmental Protection Department in May 2010	86 - 91
<b>APPENDIX 7</b>	Letter of 22 June 2010 from the Director of Environmental Protection	92 - 93
<b>APPENDIX 8</b>	Letter of 27 May 2010 from the Secretary for Financial Services and the Treasury	94 - 96
<b>APPENDIX 9</b>	Letter of 25 May 2010 from the Director of Environmental Protection	97 - 102

## CONTENTS

	<u>Page</u>
<b>APPENDIX 10</b> Letter of 4 June 2010 from the Director of Environmental Protection	103 - 105
 Appendices relating to Chapter 3 of Part 4: "Hong Kong Chinese Orchestra Limited"	
<b>APPENDIX 11</b> Opening statement made by the Secretary for Home Affairs at the public hearing on 11 May 2010	106 - 107
<b>APPENDIX 12</b> Opening statement made by the Council Chairman of the Hong Kong Chinese Orchestra Limited ("HKCO") at the public hearing on 11 May 2010	108 - 109
<b>APPENDIX 13</b> Letter of 4 May 2010 from the Secretary for Home Affairs	110 - 141
<b>APPENDIX 14</b> Letter of 19 May 2010 from the Secretary for Home Affairs	142 - 147
<b>APPENDIX 15</b> Letter of 8 June 2010 from the Secretary for Home Affairs	148 - 152
<b>APPENDIX 16</b> Letter of 14 June 2010 from the Director of Audit	153 - 155
<b>APPENDIX 17</b> Letter of 18 May 2010 from the Director of Audit	156 - 157
<b>APPENDIX 18</b> Letter of 11 June 2010 from the Secretary for Home Affairs	158 - 159
<b>APPENDIX 19</b> Letter of 4 May 2010 from the Executive Director, HKCO	160 - 168
<b>APPENDIX 20</b> Letter of 10 June 2010 from the Executive Director, HKCO	169 - 178
<b>APPENDIX 21</b> Letter of 8 June 2010 from the Executive Director, HKCO	179 - 182

## CONTENTS

### Page

<b>APPENDIX 22</b>	Letter of 10 May 2010 from the Director of Audit	183 - 184
 Appendix relating to Chapter 4 of Part 4: "Provision of postal services"		
<b>APPENDIX 23</b>	Letter of 11 June 2010 from the Postmaster General	185 - 192
 <b>ACRONYMS AND ABBREVIATIONS</b>		 193

**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 Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP

**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 Undertakings 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 Report No. 54 of the Director of Audit on the results of value for money audits which was tabled in the Legislative Council on 21 April 2010. 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.       **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.

**Consideration of the Director of Audit's Report tabled in the Legislative Council on 21 April 2010** 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. 54 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. The Committee has also sought and obtained information from the Administration on some of the issues raised in two other chapters of the Director of Audit's Report No. 54. The Administration's response has been included in this Report.

2. **Meetings** The Committee held a total of eight meetings and three public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of 13 witnesses, including three Directors of Bureau and one Head of Department. The names of the witnesses are listed in *Appendix 3* to this Report. A copy of the Chairman's introductory remarks at the first public hearing in respect of the Director of Audit's Report No. 54 on 11 May 2010 is in *Appendix 4*.

3. **Arrangement of the Report** The evidence of the witnesses who appeared before the Committee, and the Committee's specific conclusions and recommendations, based on the evidence and on its deliberations on the relevant chapters of the Director of Audit's Report, are set out in Chapters 2 and 3 of Part 4 below.

4. The audio record of the proceedings of the Committee's public hearings 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.

The Audit Commission ("Audit") conducted a review to examine the planning process for the provision of footbridges and subways as well as the measures taken by the Administration to improve their utilisation since the review by Audit in 2007.

2. The Committee did not hold any public hearing on this subject. Instead, it asked for a written response to its enquiry.

3. The Committee was concerned about Audit's observations in paragraphs 3.7, 3.10, 4.6, 5.22, 6.9, 6.29 and 6.39 of the Director of Audit's Report ("Audit Report") that in respect of the projects examined in the Audit Report, sufficient and detailed information on providing the grade-separated crossing facilities (i.e. footbridges and subways) in connection with the projects were not set out in the funding submissions to the Public Works Subcommittee ("PWSC")/Finance Committee ("FC") of the Legislative Council. According to paragraphs 3.18, 4.18(a), 5.28(a) and 6.40 of the Audit Report, the Administration should provide sufficient and detailed information, including the justifications, intended purposes and functions, estimated cost, expected utilisation, as well as timing of provision of the grade-separated crossing facilities in the relevant PWSC/FC papers, where applicable. Noting that the Development Bureau, the Transport Department ("TD"), the Highways Department ("HyD") and the Civil Engineering and Development Department ("CEDD") had accepted Audit's recommendations, the Committee asked about the measures that had been/would be adopted by the Administration to ensure that sufficient and detailed information on grade-separated crossing facilities would be provided to the PWSC and the FC when seeking funding approval for infrastructure and roadworks projects in future.

4. The **Commissioner for Transport** replied in his letter of 8 June 2010, in *Appendix 5*, that:

- as an immediate measure to implement Audit's recommendations, the HyD, the CEDD and the TD had issued internal memoranda on 12 May 2010, 28 May 2010 and 1 June 2010 respectively to Division Heads asking them to remind their staff of Audit's recommendations on the need to give sufficient and detailed justifications for constructing footbridges and subways in the preparation of PWSC/FC submissions;
- in the next annual updating of the HyD Technical Circular No. 13/2009 on "PWSC Submission", the HyD would include a reference to the memorandum dated 12 May 2010 mentioned above to ensure compliance by officers; and
- the CEDD and the TD would also review their existing departmental procedures to incorporate, where appropriate, the improvements recommended in the Audit Report.

5. The Committee notes the above reply of the Commissioner for Transport, and wishes to be kept informed of the progress made in implementing the various Audit recommendations.

## A. Introduction

The Audit Commission ("Audit") conducted a review to examine the Environmental Protection Department ("EPD")'s planning and administration of land in EcoPark. The review focused on the following areas:

- planning of EcoPark;
- Phase 1 development;
- Phase 2 development; and
- administration of management contract.

2. At the beginning of the Committee's public hearing, **Dr Ellen CHAN Ying-lung, Assistant Director of Environmental Protection**, made a powerpoint presentation to report the up-to-date progress of the development of EcoPark since the completion of the Audit study at the end of February 2010. An information note provided by the Environment Bureau ("ENB")<sup>1</sup> and the EPD in May 2010 and a letter of 22 June 2010 from the Director of Environmental Protection on the up-to-date progress of the development of EcoPark are in *Appendices 6 and 7* respectively.

## B. Planning of EcoPark

### Delays in the planning of EcoPark

3. The Committee noted from paragraphs 2.2 to 2.13 of the Audit Report that there had been repeated delays in the planning of EcoPark. In September 2001, the ENB announced that the Government would build EcoPark to provide long-term land for the local recycling industries. The capital works were scheduled for completion by the end of 2004. In the same year, the EPD employed an engineering consultant ("Consultant A") to conduct a preliminary study of EcoPark. The consultant had spent almost one year to complete the study and submit the consultancy report in October 2002. Since the ENB informed the EPD in November 2002 that the operation of EcoPark should be self-financing, the EPD commissioned a financial consultant ("Consultant B") in March 2003 to further examine the financial arrangement and explore different contract options. In November 2003, Consultant B said that the EcoPark project would not be financially viable without the Government's financial support. In October 2004, in view of the lukewarm response from potential contractors, the ENB decided that the basic infrastructure at EcoPark should

---

<sup>1</sup> In 2001, the Environment and Food Bureau was responsible for the policy on environmental matters. In July 2002, the Environment, Transport and Works Bureau was formed to take up the environment portfolio from the Environment and Food Bureau. In July 2007, the ENB was formed to take up the policy on environmental matters. For simplicity, all the previous policy bureaux which had been responsible for the policy on environmental matters are referred to as the ENB in this Report.

be provided under a public works project. In September 2005, the Government decided that a conventional management contract should be adopted and the management of EcoPark would be funded by the Government. In 2006, the EcoPark project was upgraded to Category A.

4. Against the above background, the Committee asked:

- whether the serious slippage between 2001 and 2005 before settling on a viable financial arrangement and contract option was due to a lack of commitment on the part of the ENB and the EPD as they considered the project infeasible or whether the delays were caused by negligence; and
- why it had taken the EPD almost three years to decide on the option of the management contract, although the ENB had already decided in November 2002 that the EcoPark project should be self-financing.

5. In response, **Mr Edward YAU Tang-wah, Secretary for the Environment**, and **Ms Anissa WONG Sean-yee, Director of Environmental Protection**, explained that:

- the EcoPark project was a completely new and innovative idea with the objective of supporting and further developing the local waste recycling industries by providing long-term land at an affordable price to promote more higher value-added waste processing operations in Hong Kong, instead of the commonly employed mode of bale-and-export process. As such, the Government could only feel their way forward cautiously based on its experience. Gradual adjustments were made to the project in the light of changes in market responses and economic situation, as well as the difficulties encountered during the process;
- the project had undergone important and substantial changes in its mode of development and operation between 2001 and 2005. The policy intent at the early planning stage of the project was to achieve a self-financing mode of operation as far as practicable. In 2002 and 2003, the EPD conducted two consultancy studies respectively to identify the types of recycling industries that were in line with the government policy on waste management and study the preliminary design of the project, and to examine the associated financial arrangement, including the response from potential investors and the commercial viability of the project in consultation with recycling traders. The general view was that the self-financing mode was infeasible and might not be able to achieve the policy objectives of encouraging the development of value-added environmental and recycling technologies that could help minimise waste generation. As such, the Government had decided to implement and manage EcoPark as a public project;

- the EPD then needed to explore the arrangement for the management contract. It was considered that if EcoPark was to be operated strictly on commercial principles, the input of public funding might not be appropriate without policy support from the Government. On the other hand, the private investors expected the Government to provide financial support for the EcoPark's operation. Finally, it was decided that the management of EcoPark would be funded by the Government; and
- with hindsight, although it was not the Government's intention to make substantial changes during the planning and development of EcoPark, those changes were essential in order that the project could become feasible, but the cost was the loss of time.

6. The Committee queried:

- why the Administration had not explored the financial arrangement on recurrent expenditure and the contract arrangement concurrently so as to save time; and
- why the EPD had not consulted the Legislative Council ("LegCo") when it anticipated that the target date of the commissioning of the project could not be met, but only gave an explanation for the delays after the matter was raised by Audit.

7. The **Secretary for the Environment** and the **Director of Environmental Protection** responded that:

- in developing a project, some steps needed to be carried out first. The first step was to sort out the mode of development so as to estimate the resources required. Before that, it would be difficult to decide on the financial arrangement. Moreover, when there was a fundamental and substantial change in the mode of development, it would be difficult to proceed with other steps as originally planned; and
- the progress of the development of EcoPark had been reported to the relevant LegCo Panel and those who cared about the project. In 2005, the EPD had provided detailed analysis to the Panel on Environmental Affairs of the LegCo ("EA Panel") on the way forward after completion of the two consultancy studies.

8. To ascertain the main cause of the delays between 2001 to 2005, the Committee asked whether, before announcing the EcoPark project in 2001, the Government:

- had conducted any feasibility study on the project, including the feasibility of the self-financing mode of operation;
- had conducted any research on overseas recycling technologies; and
- had consulted local expertise to understand the operation of the local recycling industries and the limitations of waste disposal in Hong Kong.

9. The **Secretary for the Environment**, the **Director of Environmental Protection** and the **Deputy Director of Environmental Protection** responded that:

- the Government had been conducting studies and planning on the management of municipal solid waste as a whole since the late-1990s. The introduction of the Waste Reduction Framework Plan in 1998 by the Government had a direct impact on EcoPark. The Framework Plan provided details of the measures which the Government would introduce for waste disposal, and the development of EcoPark was one of the measures announced by the Government in 2001; and
- apart from the local recycling trades, views of environmentalists and environmental organisations had also been sought. The introduction of EcoPark was to address their need for land.

10. The Committee further asked whether the change from the self-financing mode to funding the management of EcoPark by the Government was still considered viable at present.

11. The **Secretary for the Environment** and the **Director of Environmental Protection** replied that the consultant had identified in March 2003 four options of involving private-sector participation with a view to achieving self-financing. In view of the lukewarm response from potential contractors, the Government had decided to implement and manage EcoPark as a public project under which the Government provided land and essential infrastructure facilities in EcoPark for the recycling traders to operate their business. The management of EcoPark would also be funded by the Government. The current mode of operation and management would be more suitable for EcoPark nowadays.



Consideration of landfill cost in project evaluation

12. According to paragraphs 2.2(a) and 2.21 of the Audit Report, the annual recurrent cost of EcoPark was estimated to be \$10.6 million and the estimated saving on landfill disposal cost brought about by the recycling of waste in EcoPark was \$7.3 million a year. However, information about the landfill cost saving was not provided in the Public Works Subcommittee ("PWSC") paper of February 2006 on the EcoPark project. It appeared to the Committee that if the saving on landfill disposal cost was taken into account, the annual recurrent cost of the project could de facto be reduced to \$3.3 million, which would affect the assessment on the feasibility of the project as well as its financial and contract arrangements. The Committee asked:

- how the recurrent cost was determined;
- why the EPD had not provided the cost savings in the PWSC paper; and
- whether the EPD had provided information on such saving to the Financial Services and the Treasury Bureau ("FSTB") for consideration during the planning process of the project and the discussions on the associated financial arrangement and, if it had, whether the FSTB had:
  - (a) taken into account such saving during the process of financial evaluation, and
  - (b) requested the EPD to include the information in the PWSC paper.

13. **Prof K C CHAN, Secretary for Financial Services and the Treasury**, said at the public hearing and in his letter of 27 May 2010 (in *Appendix 8*) that:

- the capital cost and the annual recurrent cost were reported in the consultancy report in October 2002. The FSTB supported the original policy intent of achieving a self-financing mode of operation and involving the private sector in the development and operation of EcoPark. Subsequent to the change of the financial arrangement, the EPD absorbed the recurrent cost of EcoPark;
- in seeking to upgrade the EcoPark project to Category B, the ENB set out in its submission a number of reasons and data justifying the project. These included the point that there could be savings in the disposal cost of the materials that would be recycled/recovered instead of being dumped in the landfills. The FSTB believed that the information had been given due consideration, but the FSTB had no records as to what weight had been given to the point about savings in landfill disposal costs in the decision;

- the FSTB had no records showing that the FSTB staff concerned had asked the ENB to include the point about savings in landfill disposal costs in the submission to the PWSC in 2006. It would seem that for the FSTB staff involved at that time, their analysis of the proposal and its justifications was such that savings in landfill disposal costs were not pertinent to the financial justification of the proposal;
- as could be seen from the "JUSTIFICATION" section of the PWSC paper, the justifications were mainly to provide an "outlet for locally recovered materials", "alleviate the heavy reliance on the export of these recyclable materials", "encourage the development of value-added environmental and recycling technologies", etc. Direct reduction in materials dumped in the landfills and savings arising from such reduction was not among the justifications;
- it was relevant to note that the materials in question could be exported instead of being sent to the landfills; and
- as for future PWSC/Finance Committee ("FC") submissions, the FSTB would as recommended by the Director of Audit continue to provide information on cost, benefits and cost savings arising from works projects in the PWSC/FC papers where appropriate.

14. The **Secretary for the Environment** said at the public hearing and the **Director of Environmental Protection** stated in her letter of 25 May 2010 (in *Appendix 9*) that:

- the Government had analysed the feasibility of adopting the self-financing mode through discussions with recycling traders. It was given to understand that the self-financing mode might only be feasible with positive economic outlook. As it transpired, the Government changed the self-financing mode to absorbing the recurrent cost of EcoPark by the EPD;
- the economic cost should be listed out and taken into consideration during the discussion of the policy behind public works projects, though it might not be totally relevant to funding application. The saving on landfill cost should have been taken into account during the planning process of the project and the discussions on the associated financial arrangement; and
- when assessing the economic effectiveness of EcoPark, the ENB and the EPD could not generalise a conclusion by simply equating the total quantity of recyclable waste materials processed at EcoPark to the total quantity of waste that would otherwise have been landfilled and then deducing from it the cost of landfilling so avoided because the saving on landfill disposal cost of the EcoPark project might only indicate notional savings. The main reason was that prior to the EcoPark project, some of the recyclable waste materials

targeted for processing in EcoPark were already exported for recycling, albeit without going through any value-added processes, instead of being disposed of at landfills.

15. The Committee understood that Hong Kong was experiencing economic downturn in 2001 when the Government announced the EcoPark project. Apart from environmental protection considerations, the project was introduced to boost the economy of Hong Kong. Paragraph 1.6 of the Audit Report also mentioned the three objectives of the development of EcoPark. They were:

- to provide land for processing of recovered materials at affordable rents with a target throughput of 58,600 tonnes per year;
- to provide basic infrastructure (including a marine frontage) and environmental control facilities to reduce tenants' operating cost; and
- to create job opportunities for recycling and related industries.

The Committee asked whether the above objectives had been achieved.

16. The **Secretary for the Environment** said at the public hearing and the **Director of Environmental Protection** stated in her letter of 4 June 2010 (in *Appendix 10*) that:

- the three objectives were generally achieved and some of the results had exceeded the target;
- the average rental cost offered at EcoPark was as low as \$1/feet. The throughput had exceeded the target with a wider scope of recycling materials to be processed;
- the basic infrastructure and environmental control facilities provided at EcoPark were better than that in other industrial estates. For example, the area for loading and unloading activities at EcoPark was located along the coast, which could hardly be provided by other industrial estates and those which offered short-term leases. The Visitor Centre and the Product Gallery could also attract buyers of recycled products. Furthermore, the Government had also assisted tenants in building recycling plants and designing the flow of production; and
- as at April 2010, there were about 120 permanent staff employed by the EcoPark Operator and the tenants who had already started operations. It was anticipated that the target of creating 750 permanent jobs could be achieved upon full commissioning of both Phase 1 and Phase 2 of EcoPark.

## **C. Administration of management contract**

### Management contract for EcoPark

17. As mentioned in paragraph 5.2 of the Audit Report, the EPD awarded a seven-year contract, commencing in May 2007, to the Operator to provide management and maintenance services. Paragraphs 5.6 to 5.8 further revealed that the scheduled payments for operation fees were planned to increase with the commissioning of different phases of site handover and the number of lots ready for occupation. Because of the adoption of a front-loaded pricing strategy by the Operator, the operation fees with the commissioning of both Phase 1 and Phase 2 were \$14 million a year, which was only \$0.9 million higher than that for Phase 1 alone in operation. The operation fees for Phase 1 seemed to be disproportionately high. Notwithstanding the fact that Phase 1 had not yet commenced operation and the services required of the Operator had been substantially lower than scheduled, up to December 2009, the EPD had paid the Operator operation fees of \$32 million.

18. In the above circumstances, the Committee asked:

- whether it had occurred to the EPD that the project might be subject to further delays before awarding the management contract, having regard to the experience gained from the planning of EcoPark between 2001 and 2005;
- whether the EPD had negotiated any adjustments to the front-loaded pricing strategy submitted by the Operator in its tender before awarding the management contract; and
- whether the contract had prescribed the level of services required of the Operator in each year of the contract and if it had, given that the level of activity on site so far had been lower than expected, whether the contract allowed the EPD to re-schedule the services for the earlier years to the latter years of the contract.

19. In response, the **Assistant Director of Environmental Protection** said at the public hearing and the **Director of Environmental Protection** stated in her letter of 4 June 2010 that:

- the management contract prescribed the services to be provided by the Operator during the contract period and the payment to be made to the Operator in phases in accordance with the portions of the site of EcoPark which would be handed over to the Operator (as set out in Table 6 and Table 7 of the Audit Report). The services required were in response to the operational circumstances at EcoPark. The tenderers submitted their

quotations for each item of service as required under the tender document. The EPD followed the standing regulations to assess the tenders;

- the EPD had negotiated with the Operator on a proposal for reducing the monthly operation fees in the light of the actual level of activities in mid-2008. The EPD's proposal was not accepted by the Operator for the reason that management duties were still required to maintain the site. In this case, the EPD had to comply with the terms of the management contract;
- the management and maintenance services, such as security, cleaning, repairing and landscaping, were required immediately after site formation. With the commencement of recycling operations in some of the Phase 1 lots and the two waste processing centres in Phase 2 as well as the opening of the Visitor Centre, the Operator had been required to deploy higher level of resources for delivery of the necessary services in accordance with the terms of the management contract; and
- apart from managing the common parts of EcoPark, the Operator was required to provide marketing services including promotion of EcoPark to local stakeholders, developing a dedicated website for EcoPark, and preparing promotional flyers and leaflets, and to provide assistance to tenants in identifying sources of recyclable materials and in submission of building plans. In January 2010, the Operator also assisted in organising a recruitment exercise for hiring manpower for one of the tenants and itself.

20. The Committee further enquired the reason why the contract period was set at seven years and whether such a relatively long contract period was common for other government service contracts.

21. The **Director of Environmental Protection** replied in the same letter that:

- the management contract was a multi-disciplinary services contract on facility management, infrastructure maintenance, tenant support, tenancy management and marketing. A seven-year contract period was adopted to attract sufficient commercial interest in pulling together the necessary multi-disciplinary forces to provide the integrated services, and at the same time allowing the operator of the second contract to gain sufficient experience before dealing with the renewal or re-tendering of the tenancy lots in the tenth year; and
- contract periods in the public sector were determined according to the service requirements and relevant operational considerations. There were contracts on facility management, for example, those on tunnel management, that covered periods longer than three years.

Monitoring of the Operator's performance

22. Noting that the Operator was required to manage the site according to the service performance requirements under the management contract, the Committee asked how the EPD monitored the performance of the Operator to ensure that the Operator had fulfilled the requirements in the management contract, before paying the operation fees to the Operator.

23. The **Director of Environmental Protection** said that the EPD monitored the Operator's performance by holding regular meetings with the Operator, conducting at least two surprise checks on the Operator's performance monthly, and requiring the Operator to submit a monthly report on the work it planned to do.

24. According to the information note provided by the ENB and the EPD, the EcoPark Visitor Centre at Phase 1 had begun to receive visitors since mid-March 2010 and had so far received more than 50 group visits with over 1,500 visitors. However, the Committee noted from paragraph 5.14(a) of the Audit Report that the Administration Building of the Centre had been completed as early as November 2007. The Committee asked why the Visitor Centre had not been put into use for a long period of time.

25. The **Assistant Director of Environmental Protection** responded that in view of the delay in the Phase 1 development, the EPD had adjusted the commissioning of the Visitor Centre to tie in with the estimated time of commencement of the tenants' operation, since the message to be delivered by the Visitor Centre was related to the recycling activities in EcoPark.

**D. Phase 1 development**

Land allocation of Phase 1 of EcoPark

26. As reflected in Table 1 and Table 2 of paragraph 3.6 of the Audit Report, there were delays in the land allocation of Phase 1 of EcoPark. As at December 2009, the EPD had entered into tenancy agreements for all the six Phase 1 lots with the recycling traders. However, none of the recycling traders had commenced operation and produced any throughput. The Committee questioned:

- whether the ENB and the EPD had accorded sufficient attention to monitoring the progress of the recycling traders in commencing operation;
- the reasons the recycling traders had not promptly commenced their operation; and

- whether there were any tenants who occupied the land only to prevent their competitors from operating in EcoPark but had no intention to develop any environmental and recycling trades; if there were, what measures would be taken by the EPD to tackle this problem.

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

- it would be difficult to judge whether a tenant had no intention to develop any environmental and recycling trades after being awarded a tenancy. There were many traders in the recycling industry who adopted the traditional simple mode of collecting waste materials for export. Such traders might encounter difficulties when they were required to build recycling plants for higher value-added waste processing operations. A much longer lead time and larger initial capital investment were required for setting up a recycling plant in EcoPark than a plant for the simple bale-and-export process. Besides, the recycling traders also faced other difficulties, leading to late commencement of operation. These difficulties were:
  - (a) the specified waste types to be processed for individual lots might not be viable due to fluctuating market conditions;
  - (b) the majority of tenants were small-to-medium-sized recycling companies which were inexperienced in handling planning and approval seeking processes in connection with designing and building their waste processing facilities. As such, a longer lead time was required to commence operation as they needed to re-submit the plans for approval by the relevant authorities. Even if the plans were approved, the tenants also needed to spend time on following up logistics such as application for electricity supply, etc;
  - (c) the small-to-medium-sized recycling companies might have difficulties in making substantial investments in hiring professional services and in funding the capital costs during the difficult market situation prevailing in the past few years; and
  - (d) tenants might have problems relating to cash flow, market volatility and unstable price of waste materials due to economic downturn, etc; and
- the EPD would try to assist tenants in tackling the problems. At the same time, it would take appropriate contract enforcement measures which included termination of tenancy, if there was any serious and significant breach of tenancy conditions.

28. Given the difficulties encountered by some small-to-medium-sized companies, the Committee enquired whether the EPD would consider setting up an inter-departmental group with relevant authorities to assist tenants in submitting applications to meet statutory requirements or adopting other modes of operation.

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

- the EPD had maintained close communication with relevant authorities, such as the Buildings Department and the Fire Services Department, to assist tenants in submitting applications to meet statutory requirements;
- other measures had been taken to address the difficulties encountered by some tenants in the Phase 1 development, including exercising flexibility when the tenants experienced cash flow problems, and on the types of materials to be processed and the requirement of building recycling plants; and
- the EPD was still exploring other modes of operation, such as the feasibility of partnership arrangements with relevant organisations, according to the experience gained during the development process of the project.

30. The Committee further enquired:

- the reasons why re-tendering was needed for three of the six lots in Phase 1 of EcoPark;
- whether a pre-qualification exercise had been conducted to ensure that the successful tenderer would be capable of operating the business; and
- whether the EcoPark Advisory Committee ("EAC") set up in December 2006 had provided advice on the development and operation of EcoPark.

31. The **Assistant Director of Environmental Protection** replied that:

- the three lots had to be re-tendered due to the following reasons:
  - (a) tenancy terminated due to default in rent payments;
  - (b) tenancy terminated due to failure to submit performance bond; and
  - (c) successful tenderer repudiated the tenancy after the award of tenancy as it did not understand that there was no subsidy from the Government;



- no pre-qualification exercise had been conducted before tendering. However, the EPD had conducted an expression-of-interest exercise to obtain information about the recycling traders' preference before tendering; and
- the EAC performed a consultancy role in the EcoPark project. It provided advice on the types of recycling industries to be invited for tendering. Views from the potential tenants on the letting of lots were also discussed at the EAC meetings.

32. At the request of the Committee, the **Director of Environmental Protection** provided in her letter of 25 May 2010 the terms of reference and membership of the EAC, as well as the discussion items of the EAC meetings since its establishment.

33. The Committee noted that only four EAC meetings were held from December 2006 to May 2010, with an interval as long as 19 months between the second meeting in May 2007 and the third meeting in December 2008.

#### Change in throughput of recycling materials

34. According to paragraphs 3.20 and 3.21 of the Audit Report, Consultant A estimated that EcoPark could process 648,780 tonnes of recycling materials. However, according to the PWSC paper of February 2006, the annual throughput was substantially reduced to 58,600 tonnes. The Committee enquired why there had been such a significant reduction of throughput, especially on the throughput of metals between the estimates by the Consultant A and the minimum quantity required under tenancy agreement.

35. The **Director of Environmental Protection** and the **Assistant Director of Environmental Protection** responded that:

- the throughput estimates provided in the consultancy study included waste metals and waste paper. These materials, however, were excluded when the PWSC paper was prepared in consideration of the waste management policy as a whole; and
- although waste metals were excluded from the PWSC paper estimate, they were eventually included in the Phase 1 development in the light of market changes. Apart from collecting waste metals, the tenant planned to build a steel furnace to reproduce the metals. This would contribute to an annual throughput of 160,000 tonnes.

36. The **Secretary for the Environment** supplemented that:

- as waste paper made up a considerable amount of throughput (i.e. 136,000 tonnes), the exclusion of it had a great impact on the total amount. Another trade, tyres, was originally included in the PWSC paper but was eventually excluded from the Phase 1 development as it was considered that exporting this kind of materials for recycling in other countries would be more viable; and
- while the actual throughput had exceeded the target set out in the PWSC paper, the annual throughput might not be able to reflect the real situation of EcoPark. The ENB's concern was whether the types of recycling industries could tie in with the government policy on waste management. For example, used cooking oil was selected as one of the recycling materials to be processed at EcoPark as it was in line with the legislation regarding biodiesel, even though the throughput of used cooking oil was not very large. Another example was the electronics/electrical appliances trade which was at present operated by non-governmental organisations ("NGOs"). If the collection of these appliances had become satisfactory, it would pave the way for the future Producer Responsibility Scheme for waste electrical and electronic equipment ("WEEE").

37. The Committee referred to Audit's comments in paragraph 3.22 of the Audit Report that in view of the market changes since 2006, the EPD needed to update the target materials throughput of EcoPark. The Committee asked:

- whether the change in recycling materials to be processed had been reported to the EA Panel; and
- about the measures that the EPD would take in response to Audit's recommendation.

38. The **Secretary for the Environment** and the **Director of Environmental Protection** said that the EPD reported to the EA Panel the progress of the development of the EcoPark project, including the types of recycling materials to be processed, at least once a year. The EPD would also update the target materials throughput of EcoPark in the next regular report to the EA Panel.

Consolidation of experience gained from the Phase 1 development

39. According to paragraph 3.29(g) and (h) of the Audit Report, in the light of the experience of the Phase 1 development and the views from stakeholders, the EPD would continue to explore appropriate measures and arrangements to ensure the early setting up of waste recycling operations at EcoPark following the award of tenancies, and the EPD would work with relevant parties to review the tenancy arrangements for Phase 2. The Committee asked:

- how the land allocation in Phase 2 would be arranged; and
- when the EPD would report the experience gained from Phase 1 to the EA Panel.

40. The **Secretary for the Environment** and the **Assistant Director of Environmental Protection** replied that having regard to the experience gained from the Phase 1 development, the ENB and the EPD would consider taking the following measures in the Phase 2 development:

- to exercise flexibility in determining the size and operation of the lots to be leased out in light of the market situation and the government policy on waste management;
- to set up some government-funded waste recycling centres to be operated by NGOs in order to tie in with the government policy on waste management;
- to invite traders to bid for lots for a wider scope of land uses, including conducting researches for waste-management technologies;
- to provide basic plant infrastructure and facilities, e.g. working sheds and fire services facilities, to tenants; and
- to provide flexibility in the tenancy agreements, including a longer tenancy period, such as 20 years, as reflected by some tenants.

41. The **Director of Environmental Protection** said that the EPD was studying the feedback from the Phase 1 tenants with the FSTB with a view to encouraging investment in more advanced technologies and value-added processes. The EPD would report the progress of the review to the EA Panel in the coming months once recommendations were generated.

## **E. Phase 2 development**

### Waste processing centres operated by NGOs in Zone A

42. In February 2009, in response to the demand for short-term use of land by logistics trades in Tuen Mun and the slowing down of the recycling industries due to the economic downturn, the EPD divided Phase 2 of EcoPark into three zones, namely Zones A to C, for different uses. Zone A was allocated for government-funded projects. The EPD planned to set up some waste recycling centres at the lots to be operated by NGOs. Zone B was allocated for recycling-related environmental industries. Zone C was used by other government departments on a temporary basis for storage of empty containers. According to paragraph 4.6 of the Audit Report, the plastic waste processing centre and the WEEE processing centre would be commissioned in the first and second quarters of 2010 respectively. Paragraph 4.10 of the Audit Report stated that Phase 2 should have been available for leasing by the end of 2009, but infrastructure works for Phase 2 were still in progress as at February 2010. The Committee asked:

- whether the two waste processing centres could be commissioned on time; and
- about the actions that would be taken by the ENB and the EPD to expedite the Phase 2 development of EcoPark.

43. The **Secretary for the Environment** said at the public hearing, and the Committee noted from the information note provided by the ENB and the EPD that:

- the plastic waste processing centre located in Zone A had already commenced operation;
- the views from potential tenants were being taken into account in the review of the tenancy arrangements for Phase 2. The site formation and road works for Phase 2 had been substantially completed and the lots would be available for leasing by the end of 2010. In the light of the lessons learnt from Phase 1 as well as the feedback from project stakeholders from time to time, the EPD was reviewing the lot allocation arrangement in consultation with the FSTB. While the ENB and the EPD would continue to uphold the principle of open, competitive and fair process in the selection of tenants, they were prepared to make appropriate necessary adjustments to:
  - (a) increase the attractiveness of EcoPark to the recycling industry; and

- (b) facilitate early commencement of recycling operation on site so that the objectives of setting up EcoPark to provide long-term land at affordable costs for the development of the recycling and environmental industry with a view to encouraging investment in more advanced technologies and value-added processes were fulfilled; and
- the EPD would take into account the views from Audit, the Public Accounts Committee and the FSTB in developing a set of revised lot allocation arrangement for the Phase 2 lots. Subject to follow-up consultation with relevant stakeholders and the EA Panel, the ENB and the EPD aimed to commence the tendering process by the end of 2010.

#### Temporary land allocation for open storage of empty containers in Zone C

44. The Committee noted Audit's recommendation in paragraph 4.23(c) of the Audit Report that the EPD should liaise with the Secretary for Development and the Director of Lands regarding the time-frame for handing back the Phase 2 lot temporarily allocated for container storage. The Committee asked what progress had been made.

45. The **Secretary for the Environment** replied that:

- Zone C was used by other government departments on a temporary basis for storage of empty containers;
- the financial downturn in late 2008 resulted in a significant drop in import/export trade and a massive return of empty containers to Hong Kong. There was an acute shortage of temporary sites for open storage of empty containers. In response to the request of the Development Bureau and in consideration that the EPD was still resolving the problems encountered in the Phase 1 development, the EPD agreed to set aside some areas under Phase 2 of EcoPark for the storage of empty containers; and
- so far, the ENB and the EPD had not received any request for extension of the usage of the land. Since the Phase 2 tenancy arrangement should be decided as soon as possible and the import/export trade had gradually recovered, the EPD would take back the land for letting upon expiry of the one-year short-term tenancy in October 2010.

Funding arrangements of waste processing centres

46. According to paragraphs 4.18 to 4.22 of the Audit Report, although the infrastructure works of the plastic waste processing centre and the WEEE processing centre under a pilot scheme in Phase 2 of EcoPark were general and common in nature and within the scope of the EcoPark project, the EPD had adopted different funding arrangements for the capital cost of the two centres, with the former being charged to the EcoPark project vote under the Capital Works Reserve Fund ("CWRF") and the latter to a separate item under the CWRF block allocation. The Committee also noted that under Financial Circular No. 8/2001 of August 2001 on Delegated Authorities of CWRF block allocations, which was currently in force, government departments should not use block allocations to cover increased expenditure on a project or part of a project that was already funded under the CWRF. Also, block allocations must not be used to hide cost overruns on projects. The Committee asked why the EPD had adopted different funding arrangements.

47. The **Secretary for the Environment** and the **Director of Environmental Protection** explained that:

- different financial arrangements had been adopted to reflect the different purposes and background of the two projects;
- the plastic waste processing centre was developed as a short-term measure to address the poor market situation of plastic waste since the financial tsunami in 2008. Upon the revival of the plastic waste recycling market, the processing centre's infrastructure works and ancillary facilities could be released for other short-term waste recycling operations. The Administration hoped that the involvement of NGOs in the development of the processing centre would continue to foster the work of source separation of municipal solid waste;
- given the success of the Kowloon Bay WEEE processing centre and the physical constraints there for capacity expansion, the WEEE processing centre at EcoPark was developed to provide additional space to process WEEE collected by NGOs. Since the WEEE processing centre was an extension of the Kowloon Bay WEEE processing centre which was funded under a separate item of the block allocation in 2005, the ENB and the EPD considered that the same source of funding should be used; and
- the financial arrangements were in compliance with the government guidelines and the EPD had no intention to hide any cost overruns. In fact, as at March 2010, the unspent balance of \$21.67 million under the EcoPark project vote was sufficient to cover the capital costs of the WEEE processing centre at \$19 million.

48. The Committee further enquired whether the FSTB considered that it would be more appropriate for the EPD to charge the EcoPark WEEE processing centre capital cost to the EcoPark project vote than the block allocation.

49. **Ms Alice LAU, Deputy Secretary for Financial Services and the Treasury (Treasury)**, said at the public hearing and the **Secretary for Financial Services and the Treasury** stated in his letter of 27 May 2010 that:

- in March 2010, the EPD consulted the FSTB about whether the funding arrangement for the WEEE processing centre at EcoPark was in order. The FSTB noted the rationale of the ENB and the EPD in adopting different financial arrangements. The FSTB had also reviewed the funding arrangement with reference to the Financial Circular No. 8/2001 on Delegated Authorities of CWRP block allocations;
- the capital cost of a works project was chargeable to a subhead (be it a project vote created under Public Works Programme or a block allocation) if it fell within the ambit of the subhead concerned. In the present case, the EcoPark WEEE processing centre fell within the scope of both the EcoPark project vote and the relevant block allocation; and
- based on the information the ENB provided to the FSTB earlier in 2010, the FSTB did not find it improper for the ENB to use the block allocation to cover the expenditure of the EcoPark WEEE processing centre as it was not the increased expenditure of the EcoPark project. The FSTB therefore considered that both funding routes were appropriate.

## **F. Conclusions and recommendations**

50. The Committee:

- expresses serious concern and finds it unacceptable that:
  - (a) the Environment Bureau ("ENB") and the Environmental Protection Department ("EPD") had failed to exercise due diligence and had demonstrated a lack of commitment in handling the EcoPark project, as evidenced by the spate of problems from its inception to the Phase 1 development, causing the project not only to stall between 2001 and 2005 before finally settling on a viable financial arrangement and contract option after serious slippage, but also to progress slowly in awarding tenancies after its commissioning due to the failure to critically assess market demand before tendering and that despite the problems, the EcoPark Advisory Committee ("EAC") was only set up as late as December 2006;

*Development of EcoPark*

---

- (b) progress in the development of EcoPark has become notable only after the completion of Audit Commission ("Audit") review at the end of February 2010, which further demonstrates that the ENB and the EPD had not accorded sufficient attention to the EcoPark project before the Audit review; and
- (c) the ENB and the EPD had not found it necessary to consult the Legislative Council ("LegCo") on the proposed financial arrangement for EcoPark, i.e. implementing and managing EcoPark as a public project with the Government taking on all financial risks instead of a self-financing project;

Planning of EcoPark

- is surprised and expresses serious concern that:
  - (a) notwithstanding the fact that the ENB had decided in November 2002 that the EcoPark project should be self-financing, the financial arrangements on recurrent cost and the contract option to be adopted were only resolved in September 2005; and
  - (b) information about the landfill cost saving of \$7.3 million a year, brought about by the recycling of waste in EcoPark, was not provided in the Public Works Subcommittee ("PWSC") paper of February 2006 on the EcoPark project;
- does not agree with the Secretary for Financial Services and the Treasury and the Director of Environmental Protection that the landfill cost saving is only notional and not pertinent to the financial justification of the project. If the saving had been taken into account, the estimated annual recurrent cost of EcoPark could de facto be significantly reduced from \$10.6 million to \$3.3 million, which might affect the financial and contract arrangements of the project;
- acknowledges that the Secretary for the Environment and the Director of Environmental Protection agree with the recommendations in paragraph 2.22 of the Director of Audit's Report ("Audit Report");
- urges the Secretary for the Environment, the Secretary for Financial Services and the Treasury and the Director of Environmental Protection, in evaluating the financial justification of a project in future, to take into account all the relevant costs and benefits, including de facto cost savings, and provide such information to the LegCo;



Administration of management contract

- expresses dissatisfaction and finds it unacceptable that the management contract for operating EcoPark had been designed in such a way that it failed to align the payment schedule with the occupancy of the lots at EcoPark. Although the EPD was well aware that the project was to be implemented in two phases, and its planning had already experienced delays between 2001 and 2005 with possible further slippage, it had not tried to negotiate any adjustments to the front-loaded pricing strategy submitted by the Operator in its tender before awarding the management contract in November 2006. Consequently, although Phase 1 had not yet commenced operation and the services required of the Operator had been substantially lower than scheduled, up to December 2009, the EPD had paid the Operator operation fees of \$32 million;
- expresses dismay that in administering the management contract, the Director of Environmental Protection had failed to exercise sufficient vigilance and prudence, in that:
  - (a) while the Operator was required under the management contract to ensure that a mix of industries was established and operated at EcoPark and to minimise the number of vacant lots, the EPD had not instructed the Operator to provide any marketing services for promoting EcoPark from November 2006 to November 2009; and
  - (b) the EPD had not compiled assessment reports on the Operator's performance;
- acknowledges that the Director of Environmental Protection agrees with the recommendations in paragraph 5.17 of the Audit Report;
- urges the Director of Environmental Protection to:
  - (a) in designing future management contracts of EcoPark and other projects, take into account the special circumstances of each project, including the possibility that the project may not be able to proceed on schedule; and
  - (b) implement expeditiously the above Audit recommendations;

Phase 1 development

- expresses serious concern and finds it unacceptable that:
  - (a) there was delay in the implementation of Phase 1 of EcoPark, which was planned to be commissioned by 2006 according to the 2005 Policy

Address. Up to February 2010, Phase 1 had not yet commenced recycling operation;

- (b) the EPD did not have sufficient understanding of the actual demand, capabilities and profiles of the recycling trade and its operators in Hong Kong not only in the planning stage but also after EcoPark has been launched, as reflected by the following:
  - (i) re-tendering of tenancy for three of the six lots was required and the types of recycling materials for two lots had to be revised to meet the market demand;
  - (ii) of the six Phase 1 tenants, four had not complied with the tenancy requirements to commence recycling operations within 12 months from the date of site possession. The EPD had not provided timely support to tenants which were small-to-medium-sized companies to assist them in handling the planning and approval seeking processes in connection with the design and building of their waste processing facilities; and
  - (iii) there was significant variation between the original planned annual throughput of EcoPark in 2002 (i.e. 648,780 tonnes) and that as stated in the PWSC paper of 2006 (i.e. 58,600 tonnes) due to the exclusion of waste metals and waste paper from the recycling materials; and
- (c) the Director of Environmental Protection only held four EAC meetings from December 2006 to May 2010, with an interval as long as 19 months between the second meeting in May 2007 and the third meeting in December 2008;
- notes that concerns had been expressed at a meeting of the Panel on Environmental Affairs of the LegCo ("EA Panel") held in June 2008 as to whether the modus operandi of EcoPark could attract tenants;
- acknowledges that:
  - (a) the Director of Environmental Protection agrees with the recommendations in paragraph 3.28 of the Audit Report;
  - (b) the Secretary for Financial Services and the Treasury agrees with the recommendation in paragraph 3.28(f) of the Audit Report;
  - (c) the EPD has maintained close communication with relevant authorities to assist tenants in submitting applications to meet statutory requirements;

- (d) four tenants (waste cooking oil, waste metals, waste wood and waste computer equipment) of Phase 1 of EcoPark have commenced their operations or will have done so by July 2010; and
- (e) in the light of the Phase 1 development and the views from stakeholders, the EPD will continue to explore appropriate measures and arrangements to ensure the early setting up of waste recycling operations at EcoPark following the award of tenancies;
- urges the Director of Environmental Protection to:
  - (a) seek advice from the EAC more frequently;
  - (b) critically review whether the modus operandi of EcoPark can attract tenants in consultation with experts in the field, the EA Panel and other stakeholders, and report the outcome to the EA Panel; and
  - (c) expeditiously follow up the above Audit recommendations and take specific measures to assist all tenants of Phase 1 of EcoPark to commence operation as soon as possible;

#### Phase 2 development

- expresses serious concern and finds it unacceptable that:
  - (a) Phase 2 of EcoPark could not be made available for leasing by the end of 2009 as originally planned. As at February 2010, infrastructure works for Phase 2 were still in progress;
  - (b) by mid-2010, of the 12 hectares of land formed under Phase 2, only 5.2 hectares would be available for allocation to recycling traders; and
  - (c) although the EPD has indicated that it will draw on the experience gained from the Phase 1 development in reviewing the tenancy and lot allocation arrangements for Phase 2, the EPD has yet to formulate a concrete strategy to ensure that EcoPark will achieve its objectives of encouraging the development of value-added and higher-end environmental and recycling technologies and activities;
- acknowledges that:
  - (a) the Director of Environmental Protection agrees with the recommendations in paragraph 4.23 of the Audit Report;
  - (b) the Secretary for Development agrees with the recommendations in paragraph 4.23(c) of the Audit Report; and

- (c) the EPD is reviewing, in consultation with the Financial Services and the Treasury Bureau ("FSTB"), the lot allocation arrangement for Phase 2 as well as other supporting measures, with a view to increasing the attractiveness of EcoPark to the recycling industry and facilitating early commencement of recycling operations on site. It aims to commence the process for the allocation of the Phase 2 lots by late 2010;
- urges the Director of Environmental Protection to:
  - (a) formulate a concrete strategy to ensure that EcoPark will achieve its objectives of encouraging the development of value-added and higher-end environmental and recycling technologies and activities, and seek the views of the experts in the local recycling trade and other stakeholders in the process; and
  - (b) set measurable performance targets for Phase 2 of EcoPark with milestone dates for their achievement, and report progress to the EA Panel;

Funding arrangements of waste processing centres

- notes that under Financial Circular No. 8/2001 of August 2001 on Delegated Authorities of Capital Works Reserve Fund ("CWRF") block allocations, which is currently in force, government departments should not use block allocations to cover increased expenditure on a project or part of a project that is already funded under the CWRF. Also, block allocations must not be used to hide cost overruns on projects;
- expresses concern that:
  - (a) although the infrastructure works of the plastic waste processing centre and the waste electrical and electronic equipment ("WEEE") processing centre under a pilot scheme in Phase 2 of EcoPark were general and common in nature and within the scope of the EcoPark project, the EPD had adopted different funding arrangements for the capital cost of the two centres, with the former being charged to the EcoPark project vote under the CWRF and the latter to a separate item under the CWRF block allocation; and
  - (b) while it may not be the intention of the EPD to charge the WEEE processing centre capital cost to the CWRF block allocation for the purpose of covering increased expenditure or hiding cost overruns of the EcoPark project, the fact that it did not charge the cost of the works of the same project to the project vote will leave room for manipulation and under-reporting of the total project cost. This is undesirable from the financial control point of view;

- urges the Secretary for Financial Services and the Treasury to review Financial Circular No. 8/2001 and consider issuing guidelines on the charging of the cost of the works of the same project to different votes, with a view to removing any room for manipulation and under-reporting of the total cost of a project; and

Follow-up actions

- wishes to be kept informed of:
  - (a) the actions taken by the Director of Environmental Protection to seek advice from the EAC more frequently;
  - (b) the EPD's decision on whether to review if the *modus operandi* of EcoPark can attract tenants, and any progress made;
  - (c) the specific measures taken by the EPD to assist all tenants of Phase 1 of EcoPark to commence operation as soon as possible;
  - (d) the progress made by the EPD in formulating a concrete strategy to ensure that EcoPark will achieve its objectives of encouraging the development of value-added and higher-end environmental and recycling technologies and activities;
  - (e) the progress made by the EPD in setting measurable performance targets for Phase 2 of EcoPark with milestone dates for their achievement;
  - (f) the FSTB's decision on whether to review Financial Circular No. 8/2001 and issuing guidelines on the charging of the cost of the works of the same project to different votes, with a view to removing any room for manipulation and under-reporting of the total cost of a project, and any progress made; and
  - (g) the progress made in implementing the various Audit recommendations.

## **A. Introduction**

The Audit Commission ("Audit") conducted a review of the Hong Kong Chinese Orchestra Limited ("HKCO") with focus on its governance and management issues, covering the following areas:

- corporate governance;
- core activities;
- human resources management; and
- other administrative issues.

2. The Committee noted that the Audit review did not in any way reflect on the artistic performance of the HKCO's work.

3. The Committee held two public hearings on 11 and 27 May 2010 respectively to receive evidence on the findings and observations of the Director of Audit's Report ("Audit Report").

4. **Hon Paul CHAN Mo-po** declared that he had been a Council member of the HKCO in the past but not at present. He was currently a sponsor of the HKCO. As such, he had received complimentary tickets from the HKCO before.

5. **Hon Starry LEE Wai-king** declared that she and Dr Carlye TSUI, Council Chairman of the HKCO, were both members of the Democratic Alliance for the Betterment and Progress of Hong Kong.

6. **Mr TSANG Tak-sing, Secretary for Home Affairs, and Dr Carlye TSUI, Council Chairman of the HKCO,** respectively made an opening statement at the public hearing on 11 May 2010. The full texts of their statements are in *Appendices 11 and 12* respectively.

## **B. Criteria for evaluating subvented performing arts groups**

### Audit requirements under the Funding and Services Agreement ("FSA")

7. According to paragraph 1.6 of the Audit Report, to ensure proper administration of the HKCO and that public money is used properly and cost-effectively, the Home Affairs Bureau ("HAB") enters into an FSA with the HKCO on an annual basis.

8. Paragraphs 2.8 to 2.10 of the Audit Report revealed that since 2005-2006, for each financial year, the HKCO was required under the FSA to submit to the Government an audited financial report containing an audit opinion as to whether the HKCO had complied with, in all material respects, the requirements set by the Government (including the terms and conditions of the FSA). However, for the four years from 2005-2006 to 2008-2009, the auditors' reports submitted by the HKCO did not contain such an audit opinion. Although the Leisure and Cultural Services Department ("LCSD") and the HAB were aware of the HKCO's non-compliance with the audit requirement stipulated in the FSA, they had not taken positive action to address the problem.

9. The Committee referred to clause 4 of the FSA for 2009-2010 (in *Appendix 13*) and noted that some provisions related to the HKCO's artistic mission, e.g. clause 4(a) on providing artistic leadership in the local Chinese music community, and clause 4(c) on establishing regional and international reputation for the HKCO. It appeared to the Committee that they were non-financial matters and practically not auditable. However, under the FSA, the HKCO's auditor was required to express an opinion on whether **all** the terms and conditions of the FSA, including those relating to non-financial matters, had been complied with.

10. Against the above background, the Committee asked:

- whether the HKCO had discussed with its auditor how to carry out audits on the matters set out in clause 4 of the FSA;
- why the HAB had not taken positive action to address the problem of non-compliance in the past, and what remedial measures the HAB had taken/would take after the matter was raised by Audit; and
- why the audit requirements under the FSA included non-financial matters.

11. The **Council Chairman of the HKCO** responded that the HKCO noted the relevant audit requirement in the FSA. However, it was the HKCO's understanding in the past that an audit opinion on subvented activities could be included or not included in the audited financial reports. Following Audit's review, the HKCO had discussed the matter with the HAB. The audit requirement was amended and incorporated into the FSA for 2010-2011. The HKCO would comply with the requirements of the FSA.

12. The **Secretary for Home Affairs** said that:

- the requirement for the submission of audited annual financial statements and audited annual financial reports (as set out in Annex C of the FSAs) was not only applicable to the HKCO but also other major subvented performing arts groups. The performing arts groups all faced similar problem as the HKCO because the FSAs required the auditors engaged by them to give confirmation that the arts groups had complied with the provisions of the FSAs in all aspects, including their artistic work; and
- some performing arts groups had reflected to the HAB that the auditors engaged by them had had difficulties in auditing non-financial matters. In view of Audit's concern, the HAB had recently consulted the Financial Services and the Treasury Bureau ("FSTB") and obtained its consent to require the auditors to express an opinion only on those provisions in the FSAs that were related to financial matters, and not artistic matters. The revised audit requirement was hence incorporated into the 2010-2011 FSA with the HKCO. The other performing arts groups would also require their auditors to carry out audits according to the same principle.

13. **Mr Gilford LAW, Principal Assistant Secretary for Home Affairs (Culture)**, supplemented that:

- under clause 5(d)(ii) of the FSA, the HKCO was required to provide to the Government, within six months after the end of a financial year, audited annual financial statements and an annual financial report of the company in accordance with the requirements set out in Annex C of the FSA;
- the HKCO, being a limited liability company, was required by law to prepare detailed annual financial statements of the company. It also submitted the audited annual financial statements to the Government, thus fulfilling the first requirement in clause 5(d)(ii) of the FSA. On the other hand, Annex C of the FSA (before 2010-2011) required the auditors' report accompanying the annual financial report to contain an opinion as to whether the company had complied with, in all material respects, the requirements as might be set by the Government and "all the terms and conditions of the FSA" and other relevant documents as might be specified by the Government. As Annex C did not specify what the terms and conditions were, they could be taken to mean all the provisions in the FSA, including those that related to artistic achievement and artistic work;
- given that some performing arts groups had raised concern about the practicability of engaging an auditor to carry out compliance audit on all the terms and conditions of the FSA as stipulated in Annex C of the FSA, the HAB sought the advice of the FSTB in April 2007. As mentioned in



paragraph 2.10(b) of the Audit Report, the FSTB advised that the detailed requirements and presentation of the annual financial report to be submitted might be determined by the Controlling Officer taking into account any specific requirements and, where necessary, in consultation with the Director of Accounting Services ("DAS"); and

- taking into account the FSTB's advice and because the HAB agreed that it was difficult to require auditors to carry out compliance audit on non-financial matters, the HAB had not required the performing arts groups to provide an auditor's opinion on their annual financial reports. However, this was dealt with as a matter of understanding between the performing arts groups and the HAB while the text of the FSA was not amended at that time.

14. The Committee queried:

- when the FSA came into existence;
- why the HAB had not found it necessary to amend the text of the FSA but had relied on the understanding with the performing arts groups, until the matter was raised by Audit;
- why the HAB had not consulted the DAS on the problem of non-compliance with the relevant audit requirement in the FSA, despite the FSTB's suggestion in 2007; and
- whether the HAB considered the performing arts groups' non-compliance with the FSA unimportant.

15. The **Principal Assistant Secretary for Home Affairs (Culture)** said at the public hearing and the **Secretary for Home Affairs** replied in his letter of 19 May 2010 (in *Appendix 14*) that:

- when the HKCO was corporatised in 2001-2002, the LCSD entered into an FSA with the HKCO annually as the latter's funding body. Since taking over the funding responsibility for the then 10 major performing arts groups, including the HKCO, from the LCSD in 2007-2008, the HAB inherited the LCSD's FSAs with its performing arts groups, and adopted the same Annex C for its FSAs for 2007-2008 with the major performing arts groups. This included the requirement on an auditor's opinion on the financial report. The same Annex C was incorporated into the HAB's FSAs with the major performing arts groups for 2008-2009 and 2009-2010;

- the HAB had not consulted the DAS in 2007 because, on the basis of the FSTB's advice, it was satisfied that the audited financial reports (including detailed financial statements) submitted by the subvented performing arts groups had duly fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding, as it was not the HAB's intention to seek a confirmation from the auditor on provisions of the FSA which touched on non-financial matters; and
- the HAB had not amended the text of the FSA at that time because the transfer of the funding responsibility for major performing arts groups from the LCSD to the HAB from 2007-2008, pursuant to the recommendations in the report of the Committee on Performing Arts, was meant to be a transitional arrangement, pending the results of a funding review of the subvented performing arts sector. Hence, the HAB had dealt with the matter by adopting an option which required fewer changes.

16. The Committee asked about the actions taken by the HAB to address Audit's concern after the matter had been raised in the Audit Report. The Committee further requested a chronology of the events showing the actions taken by the LCSD/HAB in relation to the scope of an auditor's opinion on an audited financial report. The **Secretary for Home Affairs** provided the chronology in his letter of 19 May 2010. He also stated that:

- on 16 March 2010, the HAB wrote to the FSTB to seek its advice on whether and how the requirement on an auditor's opinion on the financial report could be better framed to reflect the purpose of ensuring proper management and control of government funding, instead of seeking an audit on every single details of the FSA which touched on non-financial matters;
- on 25 March 2010, the FSTB advised the HAB that, among other things, the relevant section of Financial Circular No. 9/2004 "Guidelines on the Management and Control of Government Funding for Subvented Organisations", from which the requirement in Annex C of the FSA originated, mainly focused on the monitoring of financial matters of the subvented organisations. The Controlling Officer had the flexibility to require subvention organisations under his purview to define the objectives and scope of auditors' duties;
- on 31 March 2010, having regard to the advice from the FSTB, the HAB revised Annex C in the FSA for 2010-2011 to reflect better the intention of the requirement on an auditor's opinion on the financial report to ensure proper management and control of government funding; and

- on 21 April 2010 when the Audit Report - Chapter 6 on the HKCO was made public, the HAB forwarded a copy of the FSTB's advice concerning the requirement on an auditor's opinion on the financial report to the Treasury for information.

17. Given that the HAB had continued to allocate government subvention to the HKCO for the years from 2005-2006 to 2008-2009 without taking actions to address the problem of non-compliance with the FSAs or improve the audit requirements in the FSAs, the Committee questioned whether the HAB had not performed its monitoring role with due diligence and had allocated the regular subventions to the HKCO as a matter of routine.

18. The **Secretary for Home Affairs** responded that:

- the Government provided funding to the major performing arts groups in Hong Kong through the HAB. The HAB entered into an annual FSA with each of the arts groups, including the HKCO, and monitored their performance in the context of the FSA. As a comprehensive funding review of the subvented performing arts sector would be conducted, the HAB adopted the FSA which was modelled on the Government's general agreements for subvented organisations and not tailor-made for performing arts groups;
- it was the HAB's objective to ensure that the performing arts groups had made proper use of public money in accordance with the principle of prudence while at the same time had enough room for development. On the whole, the HAB was satisfied that such objective had been achieved. Although there were different interpretations of the requirement on an auditor's opinion on the financial report, the HAB did not consider that its funding support to the HKCO should be affected; and
- having regard to Audit's comments, the HAB considered that there was room for improvement and hence amended the text of the FSA to resolve the problem.

19. In his letter of 8 June 2010 in *Appendix 15*, the **Secretary for Home Affairs** further informed the Committee that:

- the FSAs between the HAB and the performing arts groups were in line with the prevailing government subvention guidelines on support for subvented organisations. It had not been the HAB's intention to seek a confirmation from an auditor on provisions of the FSA which touched on non-financial matters. The performing arts groups had engaged their auditors with the same understanding; and

- the HAB considered that the financial reports (including detailed financial statements) submitted by the performing arts groups had fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding. The subsequent amendments to Annex C were made to reflect better the intention of the clauses.

20. In response to the Secretary for Home Affairs' view set out in the last paragraph, **Mr Benjamin TANG, Director of Audit**, offered his comments to the Committee vide his letter of 14 June 2010 (in *Appendix 16*). He stated that:

- the requirements in Annex C of the FSA were made in accordance with Financial Circular No. 9/2004 which stipulated that:

"1.6 ..... In all circumstances, they (Controlling Officers) should satisfy themselves that an appropriate system of cost control and monitoring is in place for overseeing the spending of public money by subvented organisations, having regard to economy, efficiency and effectiveness in the delivery of public service and use of public funds.

10.4 The auditors' report accompanying the annual financial statement and annual financial report submitted should contain an expression of opinion as to -

(a) **On the annual financial statements of the subvented organisation -**

whether they give a true and fair view of the state of affairs of the subvented organisation as at the balance sheet date and of its financial result and cash flows for the year then ended.

(b) **On the annual financial report of the subvented programme(s) being audited -**

whether the subvented organisation has complied with, in all material respects, the requirements set by the Government (including the requirements to keep proper books and records and to prepare annual financial report of the subvented programme(s) in accordance with the books and records) and all the terms and conditions of the subvention as specified in the relevant subvention guidelines and other relevant documents."; and

- in Audit's view, the previous audited financial reports (including detailed financial statements) submitted by the HKCO had only fulfilled the audit requirement in (a) above, but **not** the audit requirement in (b) above which

aimed to ensure the proper management and control of government funding. Therefore, Audit had reservation on the HAB's view that financial reports submitted in the past by the performing arts groups (including the HKCO) "had fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding".

21. To ascertain whether the FSA, as amended, could facilitate the auditor engaged by the HKCO to express an opinion on the financial report in the future and fulfil the FSA's purpose of ensuring that the government funding allocated to the HKCO had been properly managed and controlled, the Committee invited Audit's comments on the FSA for 2010-2011.

22. In his letters of 18 May 2010 (in *Appendix 17*) and 14 June 2010, the **Director of Audit** advised that:

- Audit understood that it was not the HAB's intention to seek audit assurance on non-financial provisions of the FSA. As a result, in Annex C of the FSA for 2010-2011, the HAB had modified the audit requirement in paragraph 10.4(b) of Financial Circular No. 9/2004 such that the auditor only had to express an opinion on the HKCO's compliance with the Government's requirements on the keeping of proper books and records as well as the accounting requirements in clauses 6(t), 8.1(d) and 10(d) of the FSA. As such, the auditor was no longer required to express an opinion on whether **all** the terms and conditions of the FSA had been complied with, as previously required under the FSAs of 2008-2009 and 2009-2010. The reduced audit scope under the 2010-2011 FSA would facilitate the auditor to express an opinion in the future. However, a number of other specific requirements of the FSA (which would hence fall outside the audit scope under the 2010-2011 FSA) were also important to the HAB as the Controlling Officer in monitoring the subvention to the HKCO. Examples included:
  - (a) clause 6(a) that required the HKCO to adopt proper internal controls to ensure that the subvention was used in a cost-effective and accountable manner;
  - (b) clause 6(h) that required the HKCO employees/agents/sub-contractors to observe the "Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organisations", and the adoption of the proforma "Declaration of Conflict of Interest" (Annexes D and E to the FSA); and
  - (c) clause 6(u) that governed the procurement of goods and services to ensure that all procurement is conducted in a fair, unbiased and competitive bidding basis; and

- without the audit assurance, the HAB needed to consider adopting other measures to satisfy itself that such essential requirements of the FSA had been properly complied with by the performing arts groups, thereby ensuring that government funding to them had been properly managed and controlled. The HAB might wish to consult the FSTB in this regard.

23. In response to Audit's recommendation that the HAB should consider adopting measures to ensure compliance by the HKCO and other performing arts groups with some of the FSA clauses that were outside the audit scope under the 2010-2011 FSA, the **Secretary for Home Affairs**, in his letter of 8 June 2010, stated that the HAB would consult the FSTB and take appropriate follow-up actions.

24. The Committee referred to clause 5(d)(iii) of the 2010-2011 FSA which listed out the documents to be included in the HKCO's Annual Report and asked whether the HAB would review the clause because it was not clear as to what should be included. For example, the HAB could require the HKCO to publish the whole set of its financial statements on the company website and state such arrangement in its Annual Report. The **Secretary for Home Affairs** noted the suggestion.

25. Noting that a funding review of the subvented performing arts sector was under way, the Committee asked about the details and progress of the review. In his letter of 11 June 2010 in *Appendix 18*, the **Secretary for Home Affairs** stated that:

- the HAB had appointed a consultant in March 2010 to conduct a study on funding for the performing arts for the purpose of reviewing the objectives of public funding for the performing arts in Hong Kong, and drawing up a comprehensive proposal on a sustainable funding mechanism for government subvention of the performing arts groups, including looking into the assessment criteria as well as the level and models of public funding, to facilitate the flexible development of the sector; and
- the consultant was in the process of seeking views from arts groups and other stakeholders through interviews, focused group discussions and other means. The work of the consultant was scheduled for completion in 2011.

#### Criteria for evaluating the performance of the HKCO

26. According to paragraph 1.12(c) of the Audit Report, the Council Chairman of the HKCO had said that the sound governance and management of the company was valuable

only to the extent that it facilitated artistic development and achievement. She had further pointed out that as and when administration and bureaucracy threatened to consume time and resources to the point of stifling the HKCO's core work in arts and arts promotion, the HKCO should reconsider its priorities in the correct context. It appeared to the Committee that, in giving such response to Audit, the Council Chairman of the HKCO was aggrieved and did not agree with Audit's recommendations. The Committee enquired:

- whether this was the case; and
- whether the HKCO perceived any difficulties in implementing Audit's recommendations on the governance and management of the HKCO.

27. The **Council Chairman of the HKCO** and **Ms Celina CHIN, Executive Director of the HKCO**, said that:

- the HKCO truly agreed with Audit's recommendations. It was prepared to follow up and study the recommendations and would work closely with the HAB and the LCSO to ensure that appropriate measures would be taken for further improvement;
- the HKCO was not aggrieved, but had tried to explain the difficulties it faced, such as the difficulties in recording the artistic staff's actual working hours and lack of space for practices and rehearsals. The HKCO's biggest challenge was the need to balance between governing/managing and providing room for artistic development; and
- in the course of the Audit review, the HKCO had had good communication with Audit staff. Audit understood the difficulties faced by the HKCO as a performing arts group while the HKCO appreciated that Audit's evaluation was from a value-for-money perspective. Both Audit and the HKCO considered the review a health check with the objective of enabling the HKCO to further improve.

28. The Committee further referred to the response given by the Council Chairman of the HKCO in paragraph 1.12(c) of the Audit Report that it might not be very meaningful to just focus on the mechanistic administration and bureaucracy in any review of the HKCO, neglecting the more valuable yet intangible return the HKCO brought. The Committee asked whether the HKCO considered that apart from evaluating the HKCO's cost-effectiveness from the value-for money perspective, there should be other criteria for assessing its intangible artistic performance, such as its contribution towards the development of Chinese music and the audience's level of appreciation of its concerts.

29. The **Council Chairman of the HKCO** and **Ir Edmund LEUNG, First Vice-Council Chairman of the HKCO**, responded that:

- in the HKCO's view, value had both quantitative and qualitative aspects. In assessing the HKCO's performance, its artistic achievement and endorsement by local and international audiences should also be taken into account. In this connection, it should be noted that the HKCO had continuously been invited to perform on international tours. If a set of criteria was to be developed for evaluating the performance of arts groups, it should include qualitative criteria for measuring the arts groups' intangible achievements; and
- the HKCO was corporatised about 10 years ago for the purpose of enabling it to have greater autonomy in pursuing its artistic vision and more flexibility to optimise the use of public funding. As reflected in the FSA, the HKCO was not only required to meet financial targets but also achieve artistic mission. For instance, the HKCO should try to solicit more private sector sponsorship so as to reduce the proportion of government subsidy, while at the same time enhance its artistic performance and promotional work.

## **C. Governance and management**

### Functions of the HAB's representatives

30. The Committee noted from paragraph 1.6 of the Audit Report that the HAB's representatives attended the HKCO Council meetings as observers and received full sets of Council papers and minutes. The Committee also referred to the Secretary for Home Affairs' opening statement in which he mentioned that it was the HAB's duty to ensure that the performing arts groups had made proper use of public money in accordance with the principle of prudence. The Committee asked:

- about the functions of the HAB's representatives in attending the Council meetings and whether they included advising the HKCO on governance issues, such as compliance with the terms and conditions of the FSAs, so as to ensure the proper use of public money; and
- why the HAB's representatives had not raised queries about the HKCO's non-compliance with the audit requirement under the FSA before the problem was raised by Audit.



31. The **Secretary for Home Affairs** and the **Principal Assistant Secretary for Home Affairs (Culture)** explained that:

- the HAB's representatives were staff seconded from the LCSD who were familiar with this area of work. As observers, they were concerned with the implementation of the FSAs, but they did not participate in the governance of the HKCO. The HKCO operated as an independent company and its Council was responsible for governance matters; and
- the problem relating to the FSA's requirement on an auditor's opinion on the financial report did not concern the internal operation of the HKCO. It was an important policy matter which was beyond the competence of the HAB's representatives and the HKCO Council. It had to be dealt with by the HAB and the FSTB. Following Audit's advice, the HAB had sorted out the matter with the FSTB.

#### Members and Council members of the HKCO

32. As reported in paragraph 2.2 of the Audit Report, the HKCO's Articles of Association provided that the subscribers of the HKCO's Memorandum of Association were its first members. Other persons might apply for membership subject to the approval of the Council. It also provided that the Council of the HKCO should consist of not less than six or more than 20 members. At least two-thirds of Council members should be elected by members and not more than one-third of Council members should be appointed by the Government. The Committee asked whether:

- only members of the HKCO had the right to elect, and to be elected as, Council members; and
- any persons had applied for membership of the Council since the HKCO's incorporation in February 2001 and what the results were.

33. The **Council Chairman of the HKCO** replied at the public hearing and the **Executive Director of the HKCO** in her letter of 4 May 2010 (in *Appendix 19*) that:

- Council members were elected from among the HKCO's voting members; and

- in addition to the five subscribers of the Memorandum of Association of the HKCO who automatically became the first voting members of the HKCO, 22 persons had applied to become members of the HKCO since February 2001. All applications had been accepted. As at 4 May 2010, there were altogether 23 voting members in the HKCO.

34. In response to the Committee's request, the **Executive Director of the HKCO** provided a list of the members and Council members of the HKCO since February 2001 vide her letter of 10 June 2010 (in **Appendix 20**). The Committee noted that the number of members of the HKCO ranged from 9 to 23 at various times since its incorporation.

35. It appeared to the Committee that if a larger pool of HKCO members with a diversity of experience and expertise was available for the HKCO Council to draw its members, the new blood injected into the Council would be conducive to the HKCO's development. The Committee therefore enquired whether the HKCO had made any effort to attract more people to become its members.

36. The **Council Chairman of the HKCO** stated that it was difficult to attract people to be the HKCO's members because not many people were willing to contribute their time and efforts. As for Council members, the HKCO's Nomination Committee was responsible for, among other things, advising on the criteria for selecting Council members.

#### Policies and guidelines

37. The Committee noted from paragraph 2.4 of the Audit Report that the HKCO had compiled a set of Corporate Governance Guidelines to provide the Council and its members with defined direction of work and modus operandi. To guide its staff in managing the day-to-day operation, the HKCO had also laid down its administrative policies and procedures in the Accounting Policies and Procedures Manual ("PPM"), Human Resources PPM and Marketing and Development PPM. The Committee asked:

- who drafted the PPMs and whether they were practicable having regard to the nature and characteristics of the HKCO as a performing arts group; and
- whether any review had been carried out to ensure that the requirements in the PPMs were updated according to changing circumstances.

38. The **Council Chairman of the HKCO** replied that:

- the Corporate Governance Guidelines and the PPMs were drawn up by the Council of the HKCO as soon as the HKCO was corporatised. In preparing the guidelines and manuals, the Council had taken into account the HKCO's business as a Chinese orchestra and the requirements of the FSA, with a view to setting the standards and guidelines for the HKCO staff to follow; and
- the HKCO reviewed the guidelines and manuals on a regular basis and updated them according to changing circumstances.

#### Declaration of interests

39. According to paragraph 2.6(b) of the Audit Report, in its examination of the annual declarations of interests and the declarations of conflict of interests for meetings, Audit found that there were 22 occasions when some Council members of the HKCO did not submit a written declaration as to whether there was any conflict of interests in relation to the agenda items before attending the Council meetings held from October 2008 to September 2009. This was not in compliance with the HKCO's Corporate Governance Guidelines. The Committee asked about the reason for the non-compliance.

40. The **Council Chairman of the HKCO** and the **Executive Director of the HKCO** explained that on some occasions, the Council members concerned had in fact declared interests verbally at the meetings, but their declarations were not recorded in the minutes of meetings. Sometimes the HKCO's administration department had verbally followed up with those Council members who had not submitted the required declarations, but the follow-up actions and results were not documented. The HKCO accepted Audit's recommendation and would keep proper record of both verbal and written declarations in future.

41. The Committee further asked whether the HKCO was aware that any Council member had benefited by not declaring interests. The **Council Chairman of the HKCO** replied in the negative.

## D. Core activities

### Performance results reported to the Government

#### *Complimentary ticket figures*

42. According to paragraph 3.5 of the Audit Report, to account for its performance for each financial year, the HKCO was required under the FSA to submit to the Government a Self-evaluation Report. Paragraphs 3.7 to 3.9, however, revealed that Audit's examination of the 2008-2009 Self-evaluation Report on the HKCO's core activities (i.e. the conduct of regular concerts) found that the Report did not present a proper picture of the actual performance results of its core activities. The paid audience, attendance rates and ticket proceeds of its regular concerts were overstated while the number of complimentary tickets issued was understated.

43. Regarding the number of complimentary tickets reported by the HKCO, the Committee noted from paragraph 3.7(a) that the 1,941 complimentary tickets reported represented only the free tickets issued by the LCSD's Urban Ticketing System ("URBTIX") to the HKCO for distribution. Another 3,321 complimentary tickets purchased by the HKCO for promotional purposes were not included. The Council Chairman of the HKCO had said in paragraph 3.12(a) that it was a common practice in the local arts industry that the attendance rate was calculated based on the number of tickets sold at URBTIX plus complimentary tickets issued. The Committee asked whether this was indeed a common practice of the performing arts groups in Hong Kong, or the HKCO had understated the number of complimentary tickets intentionally in order to meet its performance targets set out in the FSA.

44. The **Principal Assistant Secretary for Home Affairs (Culture)** responded that:

- as far as he understood, the complimentary tickets included in the Self-evaluation Reports of other performing arts groups were the free tickets issued by URBTIX and such tickets had no face value. This was because even for performances held at the LCSD's venues, the LCSD staff might not be able to collect the ticket stub of every ticket. Moreover, the arts groups were encouraged to stage performances at non-LCSD venues where information on ticket stubs collected might not be available; and
- before the matter was raised by Audit, the HAB was not aware that the HKCO purchased a large number of tickets for free distribution as "complimentary tickets". In the past, the definition of complimentary tickets was not given in the form for use by arts groups to report their performance results, and hence there could be different interpretations of complimentary tickets. After the Audit review, the HAB had amended the report form and stated clearly that complimentary tickets were "tickets with no face value".

45. The **Council Chairman of the HKCO** and the **Executive Director of the HKCO** said that:

- given the need to more vigorously promote Chinese music by widening audienceship, the HKCO adopted the strategy of issuing HKCO-paid complimentary tickets for promotional purposes. The persons entitled to complimentary tickets included consular officials, Legislative Council Members, media, critics, the underprivileged and so on; and
- there was no question of the HKCO understating the number of complimentary tickets intentionally in order to meet the performance targets. The HKCO had consistently used the same basis for calculating the targets of complimentary tickets, paid audience and attendance rates etc as stated in the FSAs and for calculating the actual performance results. The HKCO had all along provided the information required in Self-evaluation Report form according to the requirements stated therein. As the HAB had revised the form to require more detailed breakdown of the performance results, the HKCO would provide the requisite information accordingly.

#### *Attendance rates*

46. The Committee noted from paragraph 3.7(d) of the Audit Report that in the 2008-2009 Self-evaluation Report, the attendance rates were arrived at by dividing the paid audience figures by an audience capacity pre-defined by the HKCO, instead of the maximum audience capacity of the venues where the concerts were held. The attendance rate based on the paid audience figure could have been overstated when the absence rate was high, as in case of a few concerts held in 2008-2009. There were also concerts for which the reported attendance rates exceeded 100% because the number of seats allocated for use was greater than the pre-defined audience capacity.

47. As stated in paragraph 3.7(d)(ii), the HKCO generally held its regular concerts at two LCSD venues, namely the Hong Kong Cultural Centre ("HKCC") Concert Hall and the Hong Kong City Hall ("HKCH") Concert Hall, with a maximum audience capacity of 2,005 and 1,434 seats respectively. However, the pre-defined audience capacity was only 1,496 (some 75% of 2,005) seats for the HKCC, and 1,206 (some 84% of 1,434) seats for the HKCH. The Committee enquired about the HKCO's rationale for setting the pre-defined audience capacity at such levels.

48. The Committee also referred to Audit's observation in paragraph 3.31 that the temporary blocking of more than 20% of the seats by the HKCO for concerts held at the HKCC was high as compared to the common practice of withholding only 14% in the case of concerts organised by another performing arts group. The Committee asked about the HKCO's reason for blocking so many seats from ticket sale.

49. The **Council Chairman of the HKCO** explained at the public hearing and the **Executive Director of the HKCO** in her letter of 4 May 2010 that:

- the pre-defined audience capacity was discussed and agreed under the broad principle of ensuring optimal viewing and most favorable acoustics effect for the audience. It was generally determined on a case-by-case basis, especially when the concert involved additional equipment such as an image projector, and other theatrical elements such as a dance or live performance of calligraphy. The less favorable seats would be released for sale, at a lower price, when all the other tickets had been sold, or the sightline problem proved to be acceptable during the final rehearsals. These measures were especially essential for ensuring a good experience for novice concert-goers who might otherwise be discouraged from coming back for more HKCO events in future;
- the HKCO understood that the case-by-case variation in the seating capacity of each concert might create difficulties for the HKCO's internal evaluation of programming and marketing effectiveness. It had therefore adopted a pre-defined audience capacity of 1,496 seats and 1,206 seats for the HKCC Concert Hall and the HKCH Concert Hall respectively. The defined capacity was for internal reference in the Self-evaluation Report only. The actual attendance figure instead of attendance rate was published in the HKCO's Annual Report to better reflect the full picture of attendance. The attendance rate might however be different, depending on the physical setting of the venue and the nature of the art form;
- the above practice had been approved by the HKCO Council after long and detailed discussions in a number of meetings where representatives from the LCSD were present; and
- the HKCO would comply with the revised requirements stated in the new report form to provide both the total seating capacity of the venue where the concert was held as well as the number of seats available for ticket sale according to the seating plan approved by the venue management concerned.

50. The Committee asked:

- about the HAB's established policy on the basis for determining attendance rates in the Self-evaluation Report; and
- how the HAB ensured that the HKCO had properly used government resources when there was such great discrepancy between the maximum audience capacity and the HKCO's pre-defined audience capacity.

51. The **Principal Assistant Secretary for Home Affairs (Culture)** stated that:

- generally speaking, the base figure for calculating the attendance rate was the number of seats allocated for sale of tickets or distribution, as agreed between the performing arts groups and the venue holder, which was the LCSD in the case of LCSD venues. The HAB understood that an arts group might want to achieve different artistic effects for different concerts. Thus, it would not be desirable to stipulate that the maximum audience capacity of a venue must be used as the base figure for calculating the attendance rate;
- the HAB respected the practice of the arts groups and considered it appropriate to let the LCSD discuss with the arts groups the number of seats that should be made available for ticket sale, having regard to the desired artistic effect of a performance and the need to ensure the effective use of its venues; and
- the HAB had amended the report form to require all the nine subvented performing arts groups to report the audience capacity in terms of the total seating capacity of a venue and the number of seats available for ticket sale/distribution approved by the venue management concerned.

52. In his letter of 8 June 2010, the **Secretary for Home Affairs** provided a copy of the revised Self-evaluation Report form to the Committee. He also stated that:

- the HAB had worked out a detailed proforma to facilitate the major performing arts groups to report the performance results of their core programmes in their respective Self-evaluation Report; and
- the new proforma had incorporated the recommendations put forth in the Audit Report. It provided clear definitions and methodologies on the performance information to be included in the Report, such as the maximum venue capacity, the maximum audience capacity stated in an approved seating plan, the number of paid audience, the number of complimentary tickets (including free tickets or complimentary tickets paid by the arts group), and the formulas for calculating ticket proceeds and ticket sale rates.

#### Strategy and monitoring system for issuing complimentary tickets

53. According to paragraph 3.15 of the Audit Report, as compared with the complimentary ticket strategy of the LCSD which similarly held a lot of cultural/festival presentations/events each year, the HKCO's complimentary ticket strategy was more generous and its monitoring system more relaxed. The Committee asked:

- about the HAB's view on the HKCO's strategy; and

- given that URB TIX only allowed up to a maximum number of 60 complimentary tickets for each performance, whether other performing arts groups also had the practice of purchasing tickets for free distribution to different categories of persons, such as commercial sponsors, so as to meet their needs.

54. The **Secretary for Home Affairs** responded that the HAB had no intention to require the subvented performing arts groups to adopt the same strategy for issuing complimentary tickets as the LCSD because they were not directly managed by the Government. However, they were required to ensure value for money in using public funds. It was up to the Council of the HKCO to decide on matters like whether quotas on complimentary tickets should be set.

55. The **Principal Assistant Secretary for Home Affairs (Culture)** supplemented that other performing arts groups also had the practice of purchasing priced tickets for free distribution to different persons and organisations, such as sponsors, schools and the underprivileged. However, they would break down the number of tickets sold for a performance into those that had no face value, those that were paid for by the audience, and those that were purchased by the arts groups themselves for free distribution. The problem concerning complimentary ticket figures in the HKCO's Self-evaluation Report had arisen due to unclear reporting and presentation.

56. The Committee further asked about the HKCO's criteria for issuing complimentary tickets to commercial sponsors, and whether the HKCO would take into account the amount of sponsorship received in determining the number of complimentary tickets issued to the sponsor concerned.

57. In her letter of 8 June 2010 in *Appendix 21*, the **Executive Director of the HKCO** replied that:

- a set of guidelines on the distribution of complimentary tickets had been laid down in the Marketing and Development PPM by the Marketing Committee and endorsed by Council: an agreed number of complimentary tickets would be given to the sponsors according to the size of the sponsorship with flexibility to be exercised as stated in the manual; and
- the number of tickets to be offered was based on the following criteria:
  - (a) the brand value and relevance of the sponsor to the HKCO;
  - (b) profile of clients/guests to be invited by the sponsor to the concert and the HKCO;



(c) new opportunities for the HKCO to promote Chinese orchestral music to non-regular concert goers; and

(d) the potential to establish long-term partnership with the sponsor.

58. The Committee noted the distribution of the complimentary tickets issued in 2008-2009 by recipient categories, as set out in Table 5 in paragraph 3.14 of the Audit Report. The Committee asked whether:

- the HKCO reviewed the categories of persons entitled to complimentary tickets on a regular basis; and
- the HKCO issued complimentary tickets to non-governmental organisations ("NGOs") and schools to help promote Chinese music to the community.

59. The **Council Chairman of the HKCO** and the **First Vice-Council Chairman of the HKCO** responded that:

- the recipient categories of complimentary tickets were reviewed and adjusted every year. The HKCO's ultimate goal was to increase the number of audience who paid for the tickets and reduce the issuance of complimentary tickets;
- schools and NGOs, including the underprivileged groups, were also recipients of the HKCO's complimentary tickets. The HKCO would take into account the nature of a concert in issuing the tickets to different categories of audience. For instance, if a concert was more international, the HKCO might issue complimentary tickets to consular officials, hoping that they would help bring Chinese music to different countries. For schools in remote areas, the HKCO would make arrangements for the students to attend concerts held in the HKCC;
- the HKCO had encountered practical difficulties in issuing complimentary tickets to schools. When the HKCO tried to offer complimentary tickets to schools when the ticket sale for a particular performance was not good, which would normally be known about two or three weeks before the performance was held, the schools indicated that the lead time was too short for them to distribute the tickets. Hence, there was a need to work out systematic arrangements for issuing complimentary tickets to schools; and
- the HKCO would also review the ratio of complimentary ticket distributions among different categories of recipients to see if there was room for improvement.

60. The Committee noted from paragraph 3.22(b) of the Audit Report that from an examination of seven concerts (involving 12 performances) held in 2008-2009, Audit found that in many cases, there were no justifications on record, and no written approvals had been obtained, for issuing additional complimentary tickets. In some cases, additional complimentary tickets were issued "with verbal approval from the Council Chairman" without evidence that written approval had subsequently been given. Case 3 and Case 4 were examples. The Committee questioned whether these cases reflected that the HKCO had been lax in governance matters and had not paid due regard to compliance with its own rules and requirements.

61. The **Council Chairman of the HKCO** and the **Executive Director of the HKCO** explained that:

- the HKCO attached high importance to corporate governance and compliance matters. The Marketing and Development PPM set out the maximum number of complimentary tickets that could be issued for different purposes. It also provided flexibility for the Executive Director to seek approval from the Chairman of the Marketing Committee/Council Chairman for issuing additional complimentary tickets where situation warranted. Sometimes because of the urgency of situation, the Executive Director might seek verbal approval from the Council Chairman or the Chairman of the Marketing Committee by phone first, followed by a written report to the Council. The written reports were discussed at meetings of the Council. However, this procedure was not recorded in the minutes of meetings; and
- regarding Case 3 and Case 4, verbal approval for issuing additional complimentary tickets had been sought from the appropriate authority, but no written record of the justifications and approval was kept. Following Audit's advice, the HKCO would improve its documentation.

62. The Committee noted that in Case 4, the HKCO had issued a total of 155 complimentary tickets to two local media firms. The Committee asked about the business nature of the media firms.

63. In her letter of 4 May 2010, the **Executive Director of the HKCO** stated that the two media firms were local newspapers. The complimentary tickets were provided to the newspapers in exchange for promotion and publicity in their papers. This was a common public relations and marketing bartering strategy to promote HKCO's concerts and to feed first-hand experience in the appreciation of Chinese orchestral music to their readers. The net benefits of such arrangements were far greater than the income from the sale of the tickets concerned.

Regular concerts held as "private functions" for commercial sponsors

64. According to paragraph 3.23 of the Audit Report, there were two occasions (Case 5 in 2008-2009 and Case 6 in 2009-2010) when the HKCO's regular concerts were arranged as "private functions" (i.e. with no public sale of tickets) for commercial sponsors. On each of the occasions, the sponsorship was unable to cover the full cost of the performance. As pointed out by Audit, the arrangements for these two concerts could give rise to problems such as cross-subsidisation of private functions by government fund. The Committee asked about the HKCO's reasons for changing its regular concerts to private functions for commercial sponsors and whether there were established criteria in this regard.

65. The **Council Chairman of the HKCO** and the **First Vice-Council Chairman of the HKCO** explained that:

- it was the HKCO's aim to promote public private partnership and encourage sponsorship from the private sector, with a view to lowering the subsidy rate. The HKCO's strategy on the solicitation of sponsorship had been deliberated and endorsed by the Marketing Committee and there were guidelines on sponsorship programmes. The Marketing Committee had endorsed the holding of the two concerts for the sponsors based on commercial considerations and had reported to the Council; and
- the HKCO had a programme of regular concerts in each orchestral season. It would not specially stage a concert for a commercial organisation, but a commercial organisation could sponsor the regular concerts. The two cases referred to in the Audit Report as "private functions" were regular concerts which had been planned as part of the programme in the orchestral season. Moreover, holding the concerts as private functions could also bring new audiences who might otherwise not be exposed to Chinese music. From this perspective, the private concerts could help to promote Chinese music.

66. The Committee noted that one performance each of the two concerts mentioned in Case 5 and Case 6 were open to the public for ticket sales. To ascertain whether members of the public had been deprived of the opportunity to attend the concerts due to the change from open performances to private functions, the Committee asked about the respective numbers and percentages of the tickets sold for the open performances. In her letter of 4 May 2010, the **Executive Director of the HKCO** provided the information requested by the Committee, as follows:

---

	<u>Case 5</u>	<u>Case 6</u>
Number of tickets sold (to the public only)	905 (57.57%)	1,592 (92.02%)
Total number of tickets sold (including promotional tickets bought by the HKCO)	1,039 (66.09%)	1,663 (96.12%)

67. The Committee further asked about the principles adopted by the HKCO Council and/or the Marketing Committee for holding private functions for commercial sponsors, and whether the private concerts in question had breached the rules for using the venues. The **Executive Director of the HKCO** informed the Committee vide her letter of 8 June 2010 that:

- despite that Chinese orchestral music had about 90 years of development, it was still much less established in the global arts world compared to its western counterparts, where the development of symphony orchestras dated back over 300 years. As such, the HKCO had to adopt an aggressive marketing strategy to vigorously promote Chinese orchestral music and broaden audience base;
- the HKCO accepted private sponsorship for the two concerts in question based on the following principles/consideration:
  - (a) to bring in extra income which, in turn, would help reduce government subsidy;
  - (b) it was an opportunity to tap/broaden into new/potential audience through networks of the sponsors; there would be a guaranteed number of audience through the sponsors' network; and
  - (c) the sponsors' brands could be leveraged to enhance the HKCO's own brand and marketing efforts in seeking more sponsorships in the future; and
- in terms of the use of the venue, the HKCO had complied with all requisite requirements in these two concerts as with all other concerts.

68. Regarding the private function mentioned in Case 6, Audit reported that the HKCO received a sponsorship of less than \$400,000 from the sponsoring company. However, the HKCO spent some \$358,000 on purchasing 1,662 complimentary tickets (including 1,630 issued to the sponsoring company). The HKCO also incurred another \$350,000 on overseas artists' and performers' fees, venue rental, and marketing expenses. This meant that the performance was held at a deficit, even without including any indirect expenses. Moreover, the issuance of 1,630 complimentary tickets to the sponsoring company exceeded the sponsor's entitlement under which 200 complimentary tickets should have been issued.

69. The Committee questioned why the HKCO had issued such a large number of complimentary tickets with a value which was disproportionately high when compared to the amount of sponsorship received, and consequently giving rise to a large amount of deficit. The Committee also asked whether the HKCO would review its criteria for holding private functions for, and issuing complimentary tickets to, commercial sponsors, so as to prevent the occurrence of similar situation in future.

70. The **Council Chairman of the HKCO** and the **Executive Director of the HKCO** responded that:

- the private function in question was in fact a regular concert which would be held whether there was sponsorship or not. It was not staged by the HKCO specially for the sponsoring company;
- it was the HKCO's long-term strategy to encourage sponsorship from the private sector. The HKCO accepted the sponsorship in question because the estimated money generated from ticket sales of the performance was only about \$230,000 whereas the amount of sponsorship was \$350,000. This was because if the performance was open for public sale of tickets, a number of tickets would be sold at a concessionary rate, such as those for students and senior citizens. Therefore, the sponsorship had generated more financial return to the HKCO and reduced the subsidy by the Government. Moreover, the sponsor would help to bring more audience to the concert; and
- following the Audit review, the Marketing Committee would review the HKCO's strategy of sponsorship to identify ways of improvement. The HAB would also be consulted.

71. The Committee further asked whether the HAB's representatives who attended the HKCO Council meetings knew that the HKCO had changed its regular concerts to private functions for commercial sponsors, and if they knew, whether they had raised any objection.

72. In his letter of 8 June 2010, the **Secretary for Home Affairs** advised that:

- based on the discussion at the HKCO's Council meetings, the two concerts mentioned in paragraph 3.23 of the Audit Report were arranged with the aims to increase revenue and broaden the audience base. As such, the HAB's observer did not raise objection to the arrangement; and
- the HAB also noted that the HKCO had paid full rental for hiring the LCSD's venue for the said concerts and did not receive rental subsidy.

73. The Committee referred to Audit's comments on Case 5 and Case 6 that the HKCO should charge the commercial sponsors of the private functions the full cost of the concerts, so as to avoid cross-subsidisation of private functions by government fund. Noting that the full cost of a concert included both the direct and indirect costs (e.g. apportionment of the musicians' salaries), the Committee enquired:

- in the HKCO's view, whether Audit's recommendation was feasible;
- about the HAB's policy regarding charging full cost for the private functions held by performing arts groups; and
- given that it would be difficult for some performing arts groups to solicit sponsorship if the sponsors were required to pay the full costs of the sponsored activities, the Committee asked whether the HAB would consider allowing the arts groups to hold sponsored events with a certain degree of government subsidy, so as to help promote the performing arts to the community.

74. The **Council Chairman of the HKCO** responded that the full cost of staging a concert was very high and it was unlikely that an organisation would be willing to spend such a large amount of money to sponsor a concert. The HKCO would seriously follow up Audit's recommendation and consult the HAB with a view to identifying an appropriate direction for future development.

75. The **Secretary for Home Affairs** and the **Principal Assistant Secretary for Home Affairs (Culture)** responded that there was no provision governing the holding of private functions for sponsors in the HAB's FSAs with all the nine subvented performing arts groups, including the HKCO. As regards whether arts groups should charge full cost for sponsored events, it would depend on the situation of each arts group and each art form. For the time being, the HAB had no intention to impose such a requirement on the performing arts groups, although full cost recovery was a goal to be achieved in the long term.

76. The Committee noted that the HKCO had been corporatised for almost 10 years but its cost recovery rate was only 18%, meaning that 82% of its expenditure was met by the Government, and this appeared to be on the high side. The Committee therefore asked whether the Government had set a target cost recovery rate for the HKCO each year with a view to reducing the government subsidy rate gradually and ensuring the proper use of public money.

77. The **Principal Assistant Secretary for Home Affairs (Culture)** stated that there was no such target under the current mode of subvention. One of the aims of the funding review was to draw on the experience of overseas countries with a view to establishing some objective criteria for determining the mode of funding for different performing arts groups.

## **E. Human resources management**

### Working hours of artistic staff

78. According to paragraph 4.2 of the Audit Report, with the exception of the Artistic Director, the resident conductor and the research and development officer, other artistic staff of the HKCO were required under their employment contracts to work 28 hours a week. Paragraph 4.4, however, revealed that based on a sample checking of the 2008-2009 duty rosters and attendance records of the artistic staff, Audit found that the actual working hours of 20 of them averaged 703, which were 533 (43%) less than the conditioned working hours of 1,236 for that year.

79. The Committee noted that the working hours of artistic staff included the time spent on rehearsals and self-practices, and musicians might work on their own at venues outside the HKCO's office. Moreover, if there were insufficient venues for rehearsals and self-practices at the HKCO, artistic staff might be forced to practise elsewhere. All these factors would add to the difficulties in recording the time spent by artistic staff on self-practices and in monitoring whether their conditioned working hours had been fulfilled. The Committee therefore enquired about:

- the duties of the 20 artistic staff whose actual working hours were less than the conditioned working hours in 2008-2009, as mentioned in Table 9 in paragraph 4.4 of the Audit Report, as well as the musical instruments they played; and
- the venues provided by the HKCO for self-practices and small group rehearsals by its artistic staff, and whether the venues were sufficient.

80. In the attachment to her letter of 4 May 2010, the **Executive Director of the HKCO** provided the duties of the 20 artistic staff and the musical instruments played by them. The Committee also noted the supplementary information on the artistic staff's actual working hours provided by the **Director of Audit** vide his letter of 10 May 2010 (in *Appendix 22*).

81. Regarding the space for sectional rehearsals and self-practices, the **Executive Director of the HKCO** stated at the public hearing and in her letter of 4 May 2010 that:

- there were one large hall and two small rehearsal rooms at the HKCO's base at the Sheung Wan Municipal Services Building. The facilities were grossly insufficient for all of the HKCO's sectional rehearsals and self-practices. The smaller rehearsal rooms were extremely inadequate for instruments like Suona, Sheng or Percussion due to their high volume. Very often musicians had to make use of any space at the Sheung Wan base, such as sitting or standing in the corridors to practise, or practise during the odd hours. The time spent on such sporadic self-practices could not be recorded; and
- in view of the lack of space for rehearsals and self-practice sessions, the HKCO had submitted a document to the West Kowloon Cultural District Authority dated 11 December 2009, proposing to the Authority, among other suggestions, to designate a regular and appropriate venue for the HKCO for rehearsals and practice sessions, which would be instrumental to the professional development of the HKCO.

82. The Committee also understood from paragraph 4.9(d) of the Audit Report that when musicians were required to play new or difficult scores, they would have to devote more time to self-practice. To better understand the impact of new scores on the actual working hours of artistic staff, the Committee asked about the number of pages of new scores which musicians were required to play, and the average time required for analysing and becoming familiar with one page of the new scores, in each of the past two years.

83. The **Council Chairman of the HKCO** stated that the HKCO had commissioned over 1,900 new pieces and the musicians had devoted considerable time to practising them. Another example was a concert staged in March 2010 at the Hong Kong Arts Festival. Musicians were required to play 298 pages of new scores. On average, it took 30 minutes to one hour for a musician to analyse and become familiar with one page of a new or difficult score. Therefore, a total of 149 hours were required in addition to the 28-hour per week rehearsals for this concert.



84. In her letter of 8 June 2010, the **Executive Director of the HKCO** informed the Committee that:

- the HKCO played a total of 1,148 and 1,183 pages of new score music for the 31<sup>st</sup> season (August 2007 to July 2008) and the 32<sup>nd</sup> season (August 2008 to July 2009) respectively;
- the average time required for analysing and becoming familiar with one page of new scores was a highly complex consideration which might be risky to generalise. This was because the creativity, complexity and difficulty of each composition varied, often drastically, from one to another. Even for the same composition, different conductors might interpret the music differently according to the different orchestras and occasions in question. Their requirements on the musicians, which were often linked to the practice time required, were thus different;
- in addition to newly commissioned pieces, musicians were also required to prepare for other pieces and practise on their own before coming to group rehearsals. Even for "old" pieces, there would be new interpretations by different conductors and/or on different occasions and musicians still needed to practise to achieve artistic excellence; and
- in view of the dynamism and complexity of orchestral music, which was subject to the creativity of composers and conductors, it was very difficult to generalise for all concerts and all pieces on the average time required for musicians to analyse and become familiar with music scores.

85. Having regard to the fact that artistic staff were required under their employment contracts to work 28 hours a week, the Committee wondered whether such requirement had taken into account the need for self-practice and the dynamism and complexity of orchestral music. The Committee further asked how the terms and conditions of the employment contracts were arrived at.

86. The **Council Chairman of the HKCO** said that:

- the terms and conditions had been evolving over the years. They were first introduced by the LCSD and then adopted by the HKCO upon incorporation, with adjustments based on legal advice;
- the working hours stipulated in the employment contracts were included to protect the right of the orchestra, as it empowered the HKCO to require a specified number of hours for group rehearsals. The weekly working hours of 28 were agreed between the HKCO and the musicians after much discussion with the trade union. The artistic staff understood that they were

required not only to fulfil the conditioned working hours but also to achieve the required artistic standard; and

- the HKCO understood that the artistic staff's actual working hours would be longer than those stated in the employment contracts. That was why the HKCO had introduced the 360 degree performance assessment scheme in order to ensure that the musicians performed up to artistic standards and requirements.

87. As regards the details of the 360 degree performance assessment system, the **Executive Director of the HKCO** informed the Committee vide her letter of 4 May 2010 that:

- the assessment not only encompassed a review of each musician's performing artistic capability, but also gave an indication on the musician's professionalism, team spirit, cooperation with others, discipline and demeanour, etc. Depending on the assessed musician's position and grade, an assessment was done by at least two tiers of immediate supervisors. Contract renewal or salary adjustment cases were discussed thoroughly by the Human Resources Committee and the Council of the HKCO; and
- on top of the assessment of individual musician's performance, the HKCO also adopted a system whereby senior musicians of the artistic department starting from Assistant Principals upwards would appraise, for virtually each concert, the performance of other musical sections or individual musicians from other musical sections. The senior musicians would also be asked to evaluate the guest conductors and soloists, as well as the venue facilities and score preparation for future reference.

#### Other issues

88. According to paragraph 4.7 of the Audit Report, the artistic staff worked less than the conditioned hours in December 2008, but were granted time off on two occasions, which were not consistent with the contract provisions. On one occasion, the actual practising time exceeded the scheduled three hours by three minutes only but one-day time off was granted to all participating artistic staff. On the other occasion, one-day time off was granted to all participating artistic staff for an anticipated 30-minute overtime ("OT") work due to the early start of the following day's rehearsal. The Committee queried why the HKCO was so generous in granting time off to its artistic staff.

89. The Committee also noted from paragraph 4.12 of the Audit Report that three outgoing artistic staff were paid \$323,000 salaries from mid-May to end of August 2009 but were not assigned any duties during the period. The Committee asked why the HKCO adopted such an arrangement instead of dismissing them by giving one month's notice according to the employment contract.

90. The **Council Chairman of the HKCO** responded that:

- in the past, OT work was compensated by OT pay. After discussion with the trade union, OT pay was stopped and OT work was compensated by time off. Very often, time off was granted during the "slow" months for the HKCO;
- it was not the HKCO's practice to grant one-day time off to the artistic staff whenever they worked beyond the scheduled hours by three minutes. On the two occasions mentioned by Audit, more time off had been granted because December was a "slow" month; and
- in deciding whether a staff should be terminated, the HKCO would take into account its possible impact on individuals and the morale of the HKCO as a whole. However, in view of Audit's recommendation, the HKCO would explore ways to minimise any nugatory expenditure.

91. As revealed in paragraphs 4.21 and 4.24 of the Audit Report, there were cases of non-compliance with the HKCO Human Resources PPM in the provision of air passage and lodging for duty visits outside Hong Kong in 2007 and 2008. The Committee also noted the response of Council Chairman of the HKCO set out in paragraph 4.26(d) that in the cases concerned, the HKCO respected the organisers' consideration based on their budget and the desire for the HKCO to be positioned consistently with its international standing.

92. The Committee asked whether the HKCO would amend its policy to the effect that its staff could accept the class of air passage and lodging provided by organisers in consideration of the HKCO's international standing. The **Council Chairman of the HKCO** agreed and said that the Human Resources PPM had already been amended to cater for such situation.

**F. Other administrative issues**

93. According to paragraphs 5.13 and 5.17 of the Audit Report, in 2003, the HKCO purchased 1,975 drums at a cost of \$976,000 for the first Drum Festival. Audit found that while the drums were excessive to the HKCO's normal requirement, the HKCO did not formulate a disposal plan in 2003. In the event, storage cost totalling \$617,000 was incurred and 623 drums were damaged before they could be disposed of by sale or donation. The Committee enquired whether the HKCO Council had discussed how to dispose of the drums in 2003.

94. The **Council Chairman of the HKCO** replied that:

- the Council had discussed the matter at that time. The drums were purchased for the opening rally of the first Drum Festival which was part of the Economic Relaunch Programme organised by the Government after the Severe Acute Respiratory Syndrome outbreak in 2003. The Drum Festival was well received and the HKCO continued to organise drum festivals every year during which the drums would be used. A number of the drums were given away as gifts after a performance in the United States. Also, some drums had been sold or donated; and
- as for the storage of the drums, the HKCO had made enquiries with the LCSD but was told that no storage space was available. In the circumstances, the HKCO could only rent storage space for storing the drums. The rental cost had in fact been decreasing over the years. The \$617,000 was the accumulated rental costs of the past seven years.

95. Noting that 623 drums were damaged by moulds and wood-boring insects, the Committee queried whether the storage space rented by the HKCO was suitable for storing musical instruments.

96. The **First Vice-Council Chairman of the HKCO** and the **Executive Director of the HKCO** explained that:

- it was the HKCO's original plan to hold a drum festival in September 2003. However, to tie in with the Government's Economic Relaunch Programme, the festival was advanced to 13 July 2003. Moreover, as more than 3,100 people wanted to participate in the festival, the HKCO had to buy a lot of drums within a short time. Given that the Drum Festival was considered a one-off project, the HKCO did not demand drums of a very high quality. As the event had been advanced from September to July, perhaps the wood of some drums was not yet dry enough then and hence was easily damaged; and

- with hindsight, it might be more advisable if the HKCO had chosen to dispose of the drums shortly after the Drum Festival, such as selling them regardless of the financial return, instead of keeping them for future use.

97. It appeared to the Committee that the HKCO did not have adequate government support for the provision of space for practice and storage. The Committee asked how the HAB would meet the needs of the HKCO.

98. The **Secretary for Home Affairs** responded that the HAB understood that in promoting the development of arts and culture in Hong Kong, apart from providing performance venues for arts groups, the Government should also provide space for practice and other support facilities. On the other hand, the HAB respected an arts group's autonomy and would not intervene in matters relating to its performance, such as the need to procure a large number of drums to produce certain artistic effect.

## **G. Conclusions and recommendations**

99. The Committee:

- affirms the efforts made by the Hong Kong Chinese Orchestra Limited ("HKCO") to promote and develop Chinese music in Hong Kong;
- recognises that the audit review was focused on the governance and management issues of the HKCO and did not in any way reflect on the artistic performance of the HKCO's work;

### Criteria for evaluating subvented performing arts groups

- expresses concern that the Home Affairs Bureau ("HAB") may not have the necessary expertise in arts administration to enable it to establish a set of qualitative and quantitative criteria for evaluating the proper needs of a subvented performing arts group, such as the HKCO, in the absence of which the HAB appears to have allocated the regular subventions as a matter of routine. As a result:
  - (a) Audit only evaluated the HKCO on the basis of cost-effectiveness. It may not be entirely satisfactory to evaluate a performing arts group on such a basis alone without reference to its artistic needs;

- (b) when taking over the funding responsibilities for major performing arts groups from the Leisure and Cultural Services Department ("LCSD") in April 2007, the HAB inherited the LCSD's Funding and Services Agreement ("FSA") with the arts groups, including the requirement for an auditor's opinion on all the provisions of the FSA, although some provisions touched on non-financial matters (e.g. the HKCO's artistic mission) and were practically not auditable; and
  - (c) from 2005-2006 to 2008-2009, although the LCSD/HAB was aware that the audited financial reports submitted by the HKCO were not in strict compliance with the audit requirement stipulated in the FSA because they did not contain an audit opinion on the financial report of the subvented activities, the LCSD/HAB failed to take action to address the non-compliance. It was only in March 2010 after the matter had been raised by Audit that the HAB dealt with the problem by simply reducing the audit scope required under the 2010-2011 FSA, instead of improving the audit requirements in the FSA. This gives rise to concern that the amended FSA may not be able to fulfil its purpose of ensuring that the government funding allocated to the HKCO has been properly managed and controlled;
- acknowledges that:
- (a) the HAB appointed a consultant in March 2010 to conduct a study on funding for the performing arts for the purpose of reviewing the objectives of public funding for the performing arts in Hong Kong, and drawing up a comprehensive proposal on a sustainable funding mechanism for government subvention of the performing arts groups, including looking into the assessment criteria as well as the level and models of public funding, to facilitate the flexible development of the sector. The work of the consultant is scheduled for completion in 2011; and
  - (b) the Secretary for Home Affairs has accepted Audit's recommendation that the HAB should, in consultation with the Financial Services and the Treasury Bureau ("FSTB"), consider adopting measures to ensure compliance by the HKCO and other performing arts groups with some of the FSA clauses which are outside the revised audit scope under the 2010-2011 FSA, e.g. clause 6(a) on internal controls, clause 6(h) on code of conduct (for Board members and staff) and declarations of conflict of interest, and clause 6(u) on procurement;

- urges the Secretary for Home Affairs to:
  - (a) acquire the necessary expertise in arts administration so as to establish a set of qualitative and quantitative criteria for evaluating the proper needs of subvented performing arts groups, including the HKCO;
  - (b) promptly improve the monitoring mechanism for performing arts groups by taking into account the outcome of the consultancy study and the need to strike a proper balance between safeguarding artistic autonomy and ensuring the proper use of public money, consulting the major performing arts groups, the Panel on Home Affairs of the Legislative Council ("HA Panel") and other stakeholders, and to report progress to the HA Panel; and
  - (c) consult the FSTB and adopt measures to ensure compliance by the HKCO and other performing arts groups with all the provisions in the FSA, including those which are outside the revised audit scope under the 2010-2011 FSA, e.g. clauses 6(a), 6(h) and 6(u), with a view to ensuring proper management and control of public funding;

#### Governance and management

- considers that sound governance and management are essential to the success of the HKCO as a subvented performing arts group, including the achievement of its artistic vision, and disagrees with the view expressed by the HKCO that sound governance and management are valuable only to the extent that it facilitates artistic development and achievement;
- expresses concern about the small membership size of the HKCO (ranging from 9 to 23 at various times) since its incorporation in 2001 because, if a larger pool of members with a diversity of experience and expertise is available for the HKCO Council to draw its members, the new blood injected into the Council will be conducive to the development of the HKCO;
- acknowledges that:
  - (a) the Council Chairman, HKCO has agreed with the recommendations mentioned in paragraph 2.11 of the Director of Audit's Report ("Audit Report"). The HKCO will work closely with the HAB to ensure proper follow-up for improvement; and
  - (b) the Secretary for Home Affairs has agreed to implement the recommendations mentioned in paragraph 2.12 of the Audit Report;

- urges the HKCO to:
  - (a) critically review its Corporate Governance Guidelines, Accounting Policies and Procedures Manual ("PPM"), Human Resources PPM, Marketing and Development PPM, and other relevant regulations and guidelines to ensure that they are in line with good governance and management principles while at the same time practicable, having regard to the nature and characteristics of the HKCO's work; and
  - (b) proactively attract more people to become HKCO members as an avenue for bringing in more new ideas and expertise to the Council of the HKCO to help in its development;
- urges the Secretary for Home Affairs to:
  - (a) facilitate the dissemination of information on governance and management practices adopted by some performing arts group for reference by other arts groups, with a view to raising the standard of governance and management; and
  - (b) require the HAB's representatives who attend the HKCO Council meetings to proactively inform the HKCO of relevant government practices and guidelines for reference by the HKCO where appropriate;

#### Core activities

- expresses concern that:
  - (a) the HKCO's 2008-2009 Self-evaluation Report did not present a proper picture of the actual performance results of its core activities in that the paid audience, attendance rates and ticket proceeds of its regular concerts were overstated while the number of complimentary tickets issued was understated;
  - (b) a proper and complete written record of complimentary ticket requests and acknowledgement, and of the justifications and approvals for additional complimentary tickets issued, was not always maintained; and
  - (c) the temporary blocking of more than 20% of seats from ticket sales for some concerts is not conducive to efficient and effective use of resources, as those seats could have been offered to schools and other suitable organisations to help promote Chinese music among the younger generation and other specific sectors of the community, including the underprivileged;



- regrets that the HKCO does not have a clearly defined policy with objective criteria for holding private functions (i.e. with no public sale of tickets) for commercial sponsors, which could give rise to problems such as cross-subsidisation of a private function by government fund in the case of the two concerts (one in 2008-2009 and another in 2009-2010) identified by Audit;
- acknowledges that:
  - (a) the Secretary for Home Affairs has worked out a detailed proforma to facilitate the performing arts groups to report the performance results of their core programmes in their respective Self-evaluation Reports. The new proforma provides clear definitions and methodologies on the performance information to be included, such as the number of paid audience, the number of complimentary tickets and the formulas for calculating ticket proceeds and ticket sale rates; and
  - (b) the Council Chairman, HKCO has agreed with the recommendations mentioned in paragraphs 3.10, 3.25 and 3.32 of the Audit Report. The HKCO will work closely with the LCSD and the HAB to ensure proper follow-up for improvement;
- urges:
  - (a) the Secretary for Home Affairs and the Council Chairman, HKCO to take measures to promote Chinese music to the community and report to the HA Panel;
  - (b) the HKCO to devise objective criteria for changing its regular concerts to private functions for commercial sponsors; and
  - (c) the HKCO, instead of temporarily blocking a large number of less favorable seats from ticket sales, to work out arrangements with schools and other suitable organisations with a view to offering the seats to them, thereby optimising the use of resources and helping to promote Chinese music to targeted sectors of the community, including the underprivileged;

#### Human resources management

- expresses concern that:
  - (a) due to the lack of sufficient space for the HKCO's sectional rehearsals and self-practices, some artistic staff have to practise at places outside the HKCO's base at the Sheung Wan Municipal Services Building, making it difficult to monitor whether their conditioned working hours have been fulfilled;

- (b) artistic staff were granted more annual leave than their entitlement in the three employment contracts years from 2005-2006 to 2007-2008;
  - (c) three outgoing artistic staff were paid salaries for the period from mid-May 2009 to the end of their contracts (on 31 August 2009), but were not assigned any duties for this period;
  - (d) there were cases of non-compliance with the HKCO Human Resources PPM in the provision of air passage and lodging for duty visits outside Hong Kong in 2007 and 2008;
  - (e) the HKCO had not agreed with the research and development (R&D) officer on the contract terms for managing intellectual property right and research cost before he commenced research work on items not specified in his employment contracts. In the event, research cost was incurred by the R&D officer without budgetary control, and the HKCO paid \$350,000 for the research products and the related intellectual property right; and
  - (f) the HKCO did not set milestone dates in the R&D officer's employment contracts (September 2003 to August 2011) for measuring the progress of his research work;
- acknowledges that:
- (a) the Council Chairman, HKCO has agreed with the recommendations mentioned in paragraphs 4.8, 4.14, 4.25 and 4.35 of the Audit Report; and
  - (b) the HKCO's Human Resources Committee has ratified the HKCO's guidelines to tie in with its existing policy regarding air passage and lodging provision for performance tours as opposed to duty visits;
- urges:
- (a) the Secretary for Home Affairs to take measures to ensure that adequate support facilities, including space for rehearsals and self-practices and storage of musical instruments, are provided to the HKCO, such as by providing a proper home base to the HKCO in the West Kowloon Cultural District;
  - (b) the HKCO to review the terms and conditions of the employment contracts with artistic staff, having regard to the characteristics of the work of artistic staff and the need to allow flexibility to cater to the dynamics and complexity of orchestral music; and

- (c) the HKCO to issue guidelines on the granting of annual leave and time off for overtime work for compliance by its staff;

Other administrative issues

- does not accept that:
  - (a) in its 2009 exercise for selecting nominated suppliers, the HKCO invited only a small number of suppliers to provide quotations for certain types of common goods/services, resulting in that only one to two nominated suppliers were selected for each of these goods/services;
  - (b) there were no established tendering procedures;
  - (c) the HKCO did not maintain a proper record of the acquisition and disposals of 1,975 drums purchased for the first Drum Festival in 2003, and there were discrepancies between the physical stock (as at November 2009) and the HKCO records for 10 of 13 types of drums;
  - (d) the HKCO did not formulate a disposal plan for the drums which were excessive to its normal requirement, resulting in storage cost of \$617,000 and 623 drums being damaged before they could be disposed of by sale or donation; and
  - (e) there were cases of non-compliance with the established guidelines on entertainment expenses;
- acknowledges that the Council Chairman, HKCO has agreed with the recommendations mentioned in paragraphs 5.9, 5.18, 5.23 and 5.27 of the Audit Report;
- urges the HKCO to expeditiously implement the above Audit recommendations; and

Follow-up actions

- wishes to be kept informed of:
  - (a) the actions taken by the HAB to acquire the necessary expertise in arts administration so as to establish a set of qualitative and quantitative criteria for evaluating the proper needs of subvented performing arts groups, including the HKCO;
  - (b) the outcome of the consultancy study on funding for the performing arts;

- (c) the improved monitoring mechanism for performing arts groups formulated by the HAB;
- (d) the measures adopted by the HAB to ensure compliance by the HKCO and other performing arts groups with all the provisions in the FSA, including those which are outside the revised audit scope under the 2010-2011 FSA, e.g. clause 6(a) on internal controls, clause 6(h) on code of conduct (for Board members and staff) and declarations of conflict of interest, and clause 6(u) on procurement, with a view to ensuring proper management and control of public funding;
- (e) the actions taken by the HKCO to review its Corporate Governance Guidelines, Accounting PPM, Human Resources PPM, Marketing and Development PPM, and other relevant regulations and guidelines to ensure that they are in line with good governance and management principles while at the same time practicable, having regard to the nature and characteristics of the HKCO's work;
- (f) the actions taken by the HKCO to attract more people to become HKCO members as an avenue for bringing in more new ideas and expertise to the Council of the HKCO to help in its development;
- (g) the progress made by the HAB in facilitating the dissemination of information on the governance and management practices adopted by some performing arts group for reference by other arts groups;
- (h) the objective criteria devised by the HKCO for changing its regular concerts to private functions for commercial sponsors;
- (i) the HKCO's arrangements with schools and other suitable organisations to offer less favorable seats to them, instead of blocking a large number of such seats from ticket sales;
- (j) the HAB's measures to provide adequate support facilities, including space for rehearsals and self-practices and storage of musical instruments, to the HKCO;
- (k) the progress made by the HKCO in reviewing the terms and conditions of the employment contracts with artistic staff, having regard to the characteristics of the work of artistic staff and the need to allow flexibility to cater to the dynamics and complexity of orchestral music;
- (l) the HKCO's guidelines on the granting of annual leave and time off for overtime work; and
- (m) the progress made in implementing the various Audit recommendations.

The Audit Commission ("Audit") conducted a review of the provision of postal services by the Hongkong Post ("HKP").

2. The Committee did not hold any public hearing on this subject. Instead, it asked for a written response to its enquiries.

3. As reported in paragraph 3.9 of the Director of Audit's Report ("Audit Report"), a large number of post offices operated at a loss. In this connection, the Committee asked:

- (a) about the major reasons causing the losses in respect of each of the 97 loss-making post offices in 2008-2009 according to the analysis of the HKP; and
- (b) whether there were any measures to improve the financial viability of the above post offices.

4. The **Postmaster General** provided the major reasons causing the losses in Annex I of his letter of 11 June 2010, in *Appendix 23*. He also stated that:

- being a trading fund, the HKP was charged with the responsibility of delivering efficient, reliable and affordable services to the local community while generating reasonable return to the Government. A retail network broadly covering the entire territory was essential to fulfilling this social commitment;
- there had been a sharp decline of global mail traffic in the last few years due to rising popularity of social networking software and different forms of electronic communication. Mail volume dropped by 2.1% and 5.6% in 2008-2009 and 2009-2010 respectively, mainly driven by substitution of personal correspondences. This evolving business environment posed a direct and significant impact on the financial performance of the post offices located in residential districts or remote areas;
- out of the 97 post offices recording losses in 2008-2009, 47 were located in sparsely populated areas. Despite being manned by only a bare minimum of two staff, their annual revenues (ranging from \$70,000 to \$2.1 million) could not fully offset salaries and rentals (between \$950,000 and \$2 million). Similarly, another 40 were located in moderately populated areas and manned by three to six staff with annual revenues (ranging from \$400,000 to \$3.7 million) falling short of salaries and rentals (between \$1.6 million and \$3.9 million). The remainder comprised eight larger outlets located in densely populated areas but whose annual revenues (ranging from \$4.4 million to

\$24.8 million) were depleted by salaries, rentals and expenses incurred as a result of long opening hours necessary to cater for customer demands, as well as two mobile post offices. In this context, salaries and rentals that made up over 80% of the operating expenditure for these post offices had risen by 10.8% and 26.3% respectively from 2004-2005 to 2008-2009;

- the HKP conducted regular reviews on the level of activities carried out by each post office and would take prompt action to adjust the staffing level and opening hours, relocate for lower rentals or downsize in situ whenever possible. Where alternative means of service provision was available and practicable, the HKP would also close down post offices subject to local consultation. During the five-year period from 2004-2005 to 2008-2009, five post offices had been closed down and eight had been relocated or downsized in situ; and
- apart from the above measures, the HKP had spared no effort in pursuing cost reduction through re-engineering/automation and in opening up new revenue streams. On the former, a pilot eCentre was launched at an industrial building in Cheung Sha Wan whose opening hours running from 1:00 pm to 8:00 pm and self-service kiosks had shown some initial success in diverting the workload originated from the Internet traders and could eventually help to facilitate downsizing. On the latter, the HKP were vigorously positioning the HKP as the preferred partner of government departments in delivering one-stop agency services. The HKP was also exploring with several organisations the feasibility of taking over their bill payment functions.

5. The Committee also enquired about the specific actions that the HKP had taken/would take to tackle the problem of underpaid postage mentioned in paragraph 3.18 of the Audit Report.

6. The **Postmaster General** stated in the same letter that:

- the HKP had already tightened up its internal monitoring system, appraised the verification procedures adopted at retail counters and mail processing centres, and stepped up random checking. As a result, the HKP managed to recover over \$132,000 on surcharges from February to April 2010, which represented a threefold increase over the same period in 2009. The HKP would keep up such efforts; and
- new posters were displayed at all post offices and uploaded onto the HKP's website to remind the general public of their responsibility to pay sufficient postage.

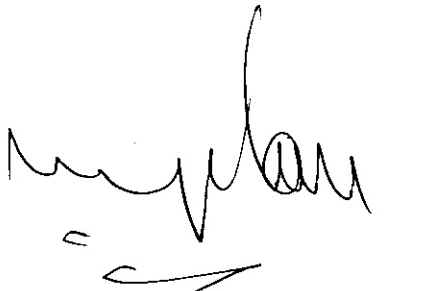
7. The Committee notes the above reply of the Postmaster General, and wishes to be kept informed of the progress made in implementing the various Audit recommendations.

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

---



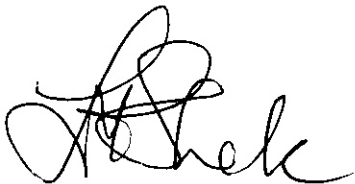
Philip WONG Yu-hong  
(Chairman)



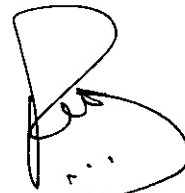
Paul CHAN Mo-po  
(Deputy Chairman)



Andrew CHENG Kar-foo



Abraham SHEK Lai-him



Ronny TONG Ka-wah



Cyd HO Sau-lan



Starry LEE Wai-king

30 June 2010



**CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 54  
DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT**

---

**Director of  
Audit's Report  
No. 54**

**P.A.C.  
Report No. 54**

<u><b>Chapter</b></u>	<u><b>Subject</b></u>	<u><b>Chapter</b></u>
3	Construction of pedestrian crossing facilities	1
5	Development of EcoPark	2
6	Hong Kong Chinese Orchestra Limited	3
8	Provision of postal services	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.

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

Mr TSANG Tak-sing	Secretary for Home Affairs
Mr Gilford LAW	Principal Assistant Secretary for Home Affairs (Culture)
Dr Carlye TSUI	Council Chairman Hong Kong Chinese Orchestra Limited
Ir Edmund LEUNG	First Vice-Council Chairman Hong Kong Chinese Orchestra Limited
Ms Celina CHIN	Executive Director Hong Kong Chinese Orchestra Limited
Mr Edward YAU Tang-wah	Secretary for the Environment
Ms Anissa WONG Sean-yee	Director of Environmental Protection
Mr Albert LAM Kai-chung	Deputy Director of Environmental Protection
Dr Ellen CHAN Ying-lung	Assistant Director of Environmental Protection
Mr WONG Chuen-fai	Senior Environmental Protection Officer Environmental Protection Department
Mr Eric CHAN Sui-wai	Administrative Assistant to Secretary for the Environment
Prof K C CHAN	Secretary for Financial Services and the Treasury
Ms Alice LAU	Deputy Secretary for Financial Services and the Treasury (Treasury)

**Introductory Remarks by  
Chairman of the Public Accounts Committee,  
Dr Hon Philip WONG Yu-hong, GBS,  
at the First Public Hearing of the Committee  
in respect of the Director of Audit's Report No. 54  
on Tuesday, 11 May 2010**

Good afternoon, ladies and gentlemen. Welcome to the Public Accounts Committee's public hearing relating to Report No. 54 of the Director of Audit on the results of value for money audits, which was tabled in the Legislative Council on 21 April 2010.

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. 54, the Committee has decided, in respect of two 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 afternoon's hearing, also set aside 13 May 2010 for holding public hearing on the other chapter.



5. The public hearing this afternoon is on Chapter 6 of Report No. 54 on the subject of "Hong Kong Chinese Orchestra Limited". The witnesses are: Mr TSANG Tak-sing (Secretary for Home Affairs), Mr Gilford LAW (Principal Assistant Secretary for Home Affairs (Culture)), Dr Carlye TSUI (Council Chairman), Ir Edmund Leung (First Vice-Council Chairman) and Ms Celina CHIN (Executive Director) of the Hong Kong Chinese Orchestra Limited.

6. Please note that except for designated public officers, other persons are not covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) when addressing the Committee.

7. I now proceed to the public hearing.



**運輸署**

**Transport Department**

APPENDIX 5

本署檔號 OUR REF: KRC 2/161-2  
來函檔號 YOUR REF: CB(3)/PAC/R54  
電 話 TEL: 2829 5810  
圖文傳真 FAX: 2802 2361 (Ency)

By Fax 2537 1204

8 June 2010

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

(Attn. : Ms. Macy NG)

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Construction of pedestrian crossing facilities (Chapter 3)**

I refer to your letter ref. CB(3)/PAC/R54 dated 25 May 2010.

I am pleased to report to you the measures that have been / will be adopted by the Administration to ensure that sufficient and detailed information on pedestrian crossing facilities will be provided to the Public Works Subcommittee (PWSC) and the Finance Committee (FC) when seeking funding approval for infrastructure and roadwork projects in future, as follows:-

- i) As an immediate measure to implement the Audit's recommendations, the Highways Department (HyD), the Civil Engineering and Development Department (CEDD) and the Transport Department (TD) have issued internal memoranda on 12 May 2010, 28 May 2010 and 1 June 2010 respectively to Division Heads asking them to remind their staff of the Audit's recommendations on the need to give sufficient and detailed justifications for constructing footbridges and subways in the preparation of PWSC/FC submissions.

/ii) In the .....

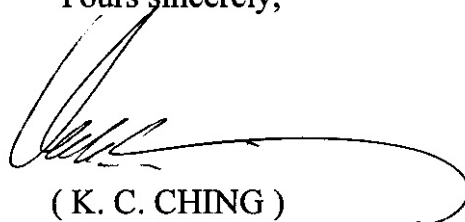
香港灣仔告士打道七號入境事務大樓四十一樓  
41st floor Immigration Tower 7 Gloucester Road Wan Chai Hong Kong  
電話 Tel (852) 2804 2600 傳真 Fax (852) 2824 0433  
網址 Web Site: <http://www.td.gov.hk>

- ii) In the next annual updating of HyD Technical Circular No. 13/2009 on “Public Works Subcommittee (PWSC) Submission”, HyD will include a reference to the aforementioned memorandum dated 12 May 2010 to ensure compliance by officers.
- iii) CEDD and TD will also review their existing departmental procedures to incorporate, where appropriate, the above-mentioned improvements recommended in the Audit Report.

The bilingual versions of this letter will be separately emailed to “sywan@legco.gov.hk” as requested.

This serves as a coordinated response from the Development Bureau, TD, HyD and CEDD.

Yours sincerely,



( K. C. CHING )

for Commissioner for Transport

c.c. Secretary for Transport and Housing	Fax : 2136 8017
Secretary for Development	Fax : 2151 5303
Secretary for Financial Services and the Treasury	Fax : 2147 5239
Director of Highways	Fax : 2714 5216
Director of Civil Engineering and Development	Fax : 2246 8708
Director of Audit	Fax : 2583 9063

**Legislative Council Public Accounts Committee**  
**Audit Report No.54**  
**Chapter 5 – Development of EcoPark**

**Update as at early May 2010**

This information note provides Members with an up-to-date progress report on the development of the EcoPark since the completion of the Audit study in end February 2010.

**Phase 1 Development**

2. All six lots in Phase 1 of the EcoPark have been let out for the recycling of waste cooking oil, metals, wood, computers, car batteries and plastics. As at early May, four tenants (waste cooking oil, waste metals, waste wood and waste computers) have commissioned or will commission their operation one after another. It is estimated that when these tenants have fully commissioned their operation in the coming months, 20 000 tonnes of waste cooking oil, 160 000 tonnes of waste metals, 2 400 tonnes of waste wood and 1 200 tonnes of waste computers would be recycled every year. We will continue to provide support and assistance to all tenants and monitor their progress in accordance with the tenancy requirements.

3. In addition, the EcoPark Visitor Centre at Phase 1 has commenced to receive visitors since mid March this year and has so far received more than 50 group visits with over 1 500 visitors. Schools, community organizations and the general public can now arrange booking for visit through the Environmental Protection Department (EPD) and EcoPark websites.

4. An up-to-date progress report on the development of all Phase 1 tenants as of early May 2010 is given below (*please also see photos in Annex I*):

<b>Recycling Operation</b>	<b>Latest Development</b>	<b>Actual/Expected Commissioning Date</b>	<b>Expected/Minimum Quantity of Waste Recycled (tonnes/year)</b>
Recycling of waste cooking oil to biodiesel	Commissioned	April 2010	20 000

<b>Recycling Operation</b>	<b>Latest Development</b>	<b>Actual/Expected Commissioning Date</b>	<b>Expected/Minimum Quantity of Waste Recycled (tonnes/year)</b>
Recycling of waste metals	Commissioned	May 2010	160 000
Shredding of waste wood	First phase operation commissioned	May 2010	2 400
Processing of waste computer equipment	The superstructure completed and installation of machinery in progress; operation will start soon	June 2010	1 200
Processing of used car batteries	Inviting tenders to construct the superstructure	Early 2011 (tentative)	120
Recycling of waste plastic	Tenant is revising its development plan and claims to be ready for commissioning in August 2010	Third Quarter 2010 (tentative)	4 000
EcoPark Visitor Centre	Fully open to public	Mid March 2010	-

## **Experience Gained from Phase 1 Development**

5. The six lots were let in batches from 2007 to 2009. When we first conducted the tender exercise for selection of tenants, we specified waste types to be processed for individual lots available for letting in accordance with feedback we gauged earlier from the trades and the wastes situation in Hong Kong. However, as the market conditions for recyclables fluctuate rapidly, tender exercises conducted on this approach did not produce positive outcome. In the first tendering exercise, a total of only 8 conforming bids were received for the three lots. Out of the three tenants who were selected in April 2007, one was terminated in around six months' time and another one was terminated in a year's time mainly due to the downturn in the market. In the second exercise, a total of only 3 conforming bids were received for the three lots, and no conforming bid was received for one of the three tenders invited. In the subsequent tenders,

we have introduced certain flexibility such as types of waste to be processed, and date of site handing-over.

6. We have conducted several meetings with various interested groups and potential tenants in our marketing for the EcoPark. Based on their feedback, we have identified the following key issues that need to be addressed in the tenancy arrangements for Phase II lots.

7. There are two distinct groups of potential tenants to the EcoPark, based on the nature of their proposed recycling operations, and their expectation of tenancy terms.

8. The first group is potential tenants intending to undertake recycling operations requiring heavier investment (say, over \$100 million) for specially-designed structures as well as plants and equipment for higher value-added processes. Due to the nature of their operations, the land required would be of larger sizes than the standard lot sizes currently rented in Phase I, and these investors may have other specific site requirements to fit their operational needs. In view of the heavy capital investment for construction of structures, plants and equipment, the investors will look for a longer tenancy term, say not less than 20 years to make the investment viable. They find it difficult to match their investment plans with the timing of invitation of tenancy by the EcoPark.

9. Potential tenants under the second group are in most cases small and medium sized investors who are engaged in lower investment recycling operations. As this group of enterprises generally require larger space for sorting of wastes and often waste discharge treatment, multi-storey industrial buildings cannot satisfy their operational needs. If they are to rent the EcoPark lots, they are on the other hand generally not familiar with the required procedures in seeking statutory approvals for building basic infrastructures (e.g. work-sheds, power transformer rooms and fire services installations, etc). A common concern raised by potential tenants is that locally-recovered waste alone will in many cases unable to provide a sufficient feedstock to the value-added recycling operations which often adopt automatic mechanical processes to deal with a very large scale of operation/throughput.

## **Phase 2 Development**

10. The above views are being taken into account in our review of the tenancy arrangements for Phase II. The site formation and road works for Phase 2 have been substantially completed and the lots will be available for leasing by end 2010. In the light of the lessons learnt from Phase 1 as

well as the feedback from project stakeholders from time to time, EPD is now reviewing in consultation with the Financial Services and the Treasury Bureau (FSTB) the lot allocation arrangement. While we would continue to uphold the principle of open, competitive and fair process in the selection of tenants, we are prepared to make appropriate necessary adjustments to (i) increase the attractiveness of the EcoPark to the recycling industry; and (ii) to facilitate early commencement of recycling operation on site so that the objectives of setting up the EcoPark to provide long-term land at affordable costs for the development of the recycling and environmental industry with a view to encouraging investment in more advanced technologies and value-added processes are fulfilled.

11. Views from the Audit Commission, the Public Accounts Committee and FSTB will be taken into account when EPD develops a set of revised lot allocation arrangement for Phase 2 lots. Subject to follow-up consultation with relevant stakeholders and the Legislative Council Panel on Environmental Affairs, we aim to commence the tendering process by end 2010.

**Environment Bureau and Environmental Protection Department  
May 2010**

## Annex 1 – EcoPark Phase 1 Updated Photos

EcoPark Phase 1 – Used Cooking Oil Recycling	
	
February 2010 Progress: Plant substantially completed	Early May 2010 Progress: Plant completed, operation commenced
EcoPark Phase 1 – Waste Metals Recycling	
	
February 2010 Progress: Concrete plinths for huge shedder just completed	Early May 2010 Progress: Installation of huge shedder completed, operation commenced



<b>EcoPark Phase 1 – Waste Wood Recycling</b>	
	
<p>February 2010</p> <p>Progress: Concrete paving in progress</p>	<p>Early May 2010</p> <p>Progress: Installation of wood shredder completed, initial operation commenced</p>
<b>EcoPark Phase 1 – Waste Computer Recycling</b>	
	
<p>February 2010</p> <p>Progress: Construction of superstructure in progress</p>	<p>Early May 2010</p> <p>Progress: Construction of superstructure completed, operation will commence after equipment installation</p>

本署檔案  
OUR REF : EP380/10/11  
來函檔案  
YOUR REF : CB(3)/PAC/R54  
電 話  
TEL NO : 2594 6034  
圖文傳真  
FAX NO : 3121 5707  
電子郵件  
E-MAIL :  
網 址  
HOMEPAGE : <http://www.epd.gov.hk/>

**Environmental Protection Department  
Headquarters**

46/F Revenue Tower  
5 Gloucester Road  
Wanchai, Hong Kong



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

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

22 June 2010

Dear Miranda,

**The Director of Audit's Report on the  
results of value for money audits (Report No.54)**

**Development of EcoPark (Chapter 5)**

I refer to your letter of 18 June 2010 to the Director of Environmental Protection on the above subject and would like to provide the additional information as follows :

**Latest Progress of the Development of All Phase 1 Tenants**

<b>Recycling Operation</b>	<b>Latest Development</b>
Recycling of waste cooking oil to biodiesel	Commissioned in April 2010. The tenant, with support from the Environmental Protection Department (EPD), is actively promoting its waste cooking oil recycling services to local restaurants.
Recycling of waste metals	Commissioned in May 2010. The tenant, with support from EPD, is expanding its waste metal collection services by establishing collection points in the urban area.
Shredding of waste wood	First phase operation commissioned in May 2010. Enhancement works in progress to upgrade the

<b>Recycling Operation</b>	<b>Latest Development</b>
	operational performance/scale. EPD is assisting the tenant to extend its waste wood collection network.
Processing of waste computer equipment	The superstructure completed, fire services installation completed and approved by the Fire Services Department; operation is expected to start in July 2010.
Processing of used car batteries	The tenant is assessing the tenders for the superstructure construction.
Recycling of waste plastic	The tenant has revised its development plan and claims to be ready for commissioning in August 2010. EPD issued a warning letter on 8 June 2010 requesting the tenant to expedite the implementation of its revised development plan.

Thank you for your attention.

Yours faithfully,



( Ellen Chan )

for Director of Environmental Protection

c.c. Secretary for the Environment  
Secretary for Financial Services and the Treasury (fax : 2147 5239)  
Director of Audit (fax : 2583 9063)

財 經 事 務 及 庫 務 局  
( 庫 務 科 )

香 港 下 亞 厘 畢 道  
中 區 政 府 合 署



**FINANCIAL SERVICES AND THE  
TREASURY BUREAU  
(The Treasury Branch)**

Central Government Offices,  
Lower Albert Road,  
Hong Kong

傳真號碼 Fax No. : 2147 5240  
電話號碼 Tel. No. : 2810 2232  
本函檔號 Our Ref. : A6/255 Pt.1  
來函檔號 Your Ref. :

27 May 2010

Clerk to Public Accounts Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road,  
Central, Hong Kong  
(Attn.: Ms Macy Ng)  
[Fax: 2537 1204]

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Development of EcoPark (Chapter 5)**

Thank you for your letter of 17 May 2010 seeking additional information regarding the captioned Chapter. Our responses are as follows –

**(a) Savings in landfill disposal cost of the EcoPark project**

In seeking to upgrade the EcoPark project to Category B, the then Environment, Transport and Works Bureau (ETWB) set out in its submission a number of reasons and data justifying the project. These include the point that there could be savings in the disposal cost of the materials that would be recycled/recovered instead of being dumped in the landfills. We believe that all this information was given due consideration, but we have no records as to what weight was given to the point about savings in landfill disposal costs, in the decision.

We have no records showing that our colleagues asked the then ETWB to include the point about savings in landfill disposal costs in the submission to the Public Works Subcommittee (PWSC) in 2006. It would seem that for our colleagues involved at that time, their analysis of the proposal and its justifications was such that savings in landfill disposal costs were not pertinent to the financial justification of the proposal.

We would understand such an analysis, having gone through the submissions at that time to the Environmental Affairs Panel and PWSC. As can be seen from the “JUSTIFICATION” section of the PWSC paper, the justifications were mainly to provide an “outlet for locally recovered materials”, “alleviate the heavy reliance on the export of these recyclable materials”, “encourage the development of value-added environmental and recycling technologies”, etc. Direct reduction in materials dumped in the landfills and savings arising from such reduction was not among the justifications.

We also think it is relevant that, as explained in Environmental Protection Department’s letter to you on 25 May 2010, the materials in question could be exported instead of sent to the landfills.

As for future PWSC/Finance Committee (FC) submissions, we will as recommended by Director of Audit continue to provide information on cost, benefits and cost savings arising from works projects in the PWSC/FC papers where appropriate.

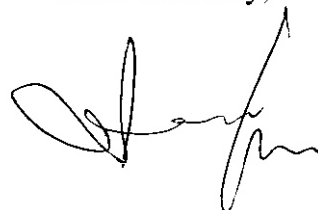
**(b) Funding source of the EcoPark waste electrical and electronic equipment (WEEE) processing centre**

The capital cost of a works project is chargeable to a subhead (be it a project vote created under Public Works Programme or a block allocation) if it falls within the ambit of the subhead concerned. In this case, the EcoPark WEEE processing centre falls within the scope of both the EcoPark project vote (i.e. 5703CL) and the relevant block allocation (i.e. 5101DX – Environmental works, studies, and investigations for items in Category D of the Public Works Programme). Based on the information the Environment Bureau (ENB) provided to us earlier this year, we do not find it improper for ENB to use the block allocation 5101DX to cover the expenditure of the EcoPark WEEE processing centre as it is not the increased expenditure of the EcoPark project under 5703CL. We therefore consider that both funding routes are appropriate.

(c) **Financial Circular No. 8/2001**

A copy of the Financial Circular No. 8/2001 is attached. Paragraph 4.21 of the audit report mentions that according to the Financial Circular, departments should not use block allocations to cover increased expenditure on a project or part of a project that is already funded under the Capital Works Reserve Fund. This reference can be found in paragraph 4 of Enclosure 3 to the Financial Circular.

Yours sincerely,



( Miss Sandra Lam )  
for Secretary for Financial Services and  
the Treasury

c.c. Secretary for the Environment	(Fax: 2537 7278)
Director of Environmental Protection	(Fax: 2891 2512)
Director of Audit	(Fax: 2583 9063)

Internal  
PS(Tsy)  
DS(1)  
DS(3)  
CAS(SD)

**\*Note by Clerk, PAC: Financial Circular No. 8/2001 not attached.**

本署檔案  
OUR REF : EP380/10/11  
來函檔案  
YOUR REF : CB(3)/PAC/R54  
電話  
TEL NO : 2594 6034  
圖文傳真  
FAX NO : 3121 5707  
電子郵件  
E-MAIL :  
網址  
HOMEPAGE : <http://www.epd.gov.hk/>

**Environmental Protection Department  
Headquarters**

46/F Revenue Tower  
5 Gloucester Road  
Wanchai, Hong Kong



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

Clerk to Public Accounts Committee  
Legislative Council  
Legislation Council Building  
8 Jackson Road  
Central, Hong Kong  
(Attn : Ms Macy Ng)

25 May 2010

Dear Macy,

**The Director of Audit's Report on the  
results of value for money audits (Report No.54)**

**Development of EcoPark (Chapter 5)**

I refer to your letter of 17 May 2010 to the Director of Environmental Protection on the above subject and would like to provide the required information as follows:-

**(a) Reasons for not providing cost savings in the Public Works Subcommittee (PWSC) paper**

The establishment of EcoPark helps to promote recycling and reduce the amount of waste requiring disposal at landfills. When assessing the economic effectiveness of EcoPark, however, we cannot generalise a conclusion by simply equating the total quantity of recyclable waste materials processed at EcoPark to the total quantity of waste that would otherwise have been landfilled and then deduce from it the cost of landfilling so avoided. The main reason is that prior to the EcoPark project, some of the recyclable waste materials targeted for processing in EcoPark were already exported for recycling, albeit without going through any value-added processes, instead of being disposed of at landfills.

(b) **EcoPark Advisory Committee**

The EcoPark Advisory Committee was set up in December 2006 and its terms of reference is attached at Annex 1. In December 2008, the membership was expanded to include representatives from five more organisations as listed in Annex 2. The agendas of the EcoPark Advisory Committee meetings held since its establishment are attached at Annex 3. As these meetings were not conducted in open session and Members were not told beforehand that the detailed discussion would be disclosed to the public, it would not be appropriate to include the minutes of meetings in the PAC report.

Thank you for your attention.

Yours faithfully,



( Ellen Chan )

for Director of Environmental Protection

Encl.

c.c. Secretary for the Environment  
Secretary for Financial Services and the Treasury (fax : 2147 5239)  
Director of Audit (fax : 2583 9063) } w/Encl.



## **EcoPark Advisory Committee Meeting**

### **Terms of Reference**

Having regard to the economic and business environment of the environmental and recycling industries and their development, to advise the Administration on the following :

- (a) the strategic planning and business development of EcoPark, and
- (b) the lot allocation arrangements, tenant admission criteria, and tender evaluation scheme of the EcoPark.

### **EcoPark Advisory Committee – Membership**

#### **(from December 2006)**

- (1) Hong Kong General Chamber of Commerce
- (2) Federation of Hong Kong Industries
- (3) Environmental Management Division, Hong Kong Productivity Council
- (4) Hong Kong Waste Management Association
- (5) Environmental Division, Hong Kong Institution of Engineers

#### **(from December 2008)**

- (1) Hong Kong General Chamber of Commerce
- (2) Federation of Hong Kong Industries
- (3) Environmental Management Division, Hong Kong Productivity Council
- (4) Hong Kong Waste Management Association
- (5) Environmental Division, Hong Kong Institution of Engineers
- (6) The Chinese General Chamber of Commerce
- (7) Hong Kong Science and Technology Park Corporation
- (8) Invest Hong Kong, HKSAR Government
- (9) Waste Management Subcommittee, Advisory Council on the Environment
- (10) Department of Marketing and International Business, Lingnan University

## **EcoPark Advisory Committee**

### **Agenda for the 1<sup>st</sup> Meeting on 8 December 2006**

- Agenda 1 - Objectives and Terms of Reference (ToR)
- Agenda 2 - Issues on confidentiality and declaration of conflict of interest
- Agenda 3 - Introduction on the objectives of EcoPark and its mode of operation (Paper 1-I)
- Agenda 4 - Report on the latest development of the EcoPark, Phase I (Paper 1-I)
- Agenda 5 - Report on the findings of the Expression of Interest (EOI) Report (Paper 1-II)
- Agenda 6 - Proposed Land Allocation in Phase I (Paper 1-III)
- Agenda 7 - Admission and Evaluation Criteria for Phase I lots (Paper 1-IV)
- Agenda 8 - Advice on the development of the EcoPark, Phase II
- Agenda 9 - Date for the next meeting
- Agenda 10 - Any other business

### **Agenda for the 2<sup>nd</sup> Meeting on 7 May 2007**

- Agenda 1 - Confirmation of Minutes of the 1<sup>st</sup> Meeting
- Agenda 2 - Report on the tender results of Batch 1 lots in Phase I (Paper 2-I)
- Agenda 3 - Discussion on proposed selection criteria and allocation for Batch 2 lots in Phase I (Paper 2-II)

- Agenda 4 - Operator's report on the preparatory work (Paper 2-III)
- Agenda 5 - Any other business

**Agenda for the 3<sup>rd</sup> Meeting on 9 December 2008**

- Agenda 1 - Issues on confidentiality and conflict of interest
- Agenda 2 - Introduction to the EcoPark Advisory Committee's role and functions
- Agenda 3 - Review of the EcoPark development and issues to be addressed in its future management to promote recycling in Hong Kong (Discussion Paper EAC 03/1)
- Agenda 4 - Any other business

**Agenda for the 4<sup>th</sup> Meeting on 19 May 2009**

- Agenda 1 - Matters Arising from last Meeting
- Agenda 2 - Progress of EcoPark Phase I  
(Information Paper EAC 04/1 Progress Report of the EcoPark Phase I Development)
- Agenda 3 - Proposed Allocation of Phase II Land  
(Information Paper EAC 04/2 Proposal for allocating land in EcoPark Phase II)
- Agenda 4 - Any other business

本署檔案  
OUR REF : EP380/10/11  
來函檔案  
YOUR REF : CB(3)/PAC/R54  
電話  
TEL NO : 2594 6034  
圖文傳真  
FAX NO : 3121 5707  
電子郵件  
E-MAIL :  
網址  
HOMEPAGE : <http://www.epd.gov.hk/>

**Environmental Protection Department  
Headquarters**

46/F Revenue Tower  
5 Gloucester Road  
Wanchai, Hong Kong



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

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

4 June 2010

Dear Ms Hon,

**The Director of Audit's Report on the  
results of value for money audits (Report No.54)**

**Development of EcoPark (Chapter 5)**

I refer to your letter of 26 May 2010 to the Director of Environmental Protection on the above subject and would like to provide the additional information as follows:-

**(a) Permanent jobs created**

As at April 2010, a total of 120 permanent staff are employed by the EcoPark Operator and the tenants who have already started their operations. The number of permanent jobs in the EcoPark is expected to increase progressively in the coming months when more tenants will commence or scale up their recycling operations. Upon full commissioning of both Phase 1 and Phase 2 of the EcoPark, it remains our estimate that about 750 permanent jobs would be created.

**(b) Timetable for the development and commissioning of Phase 2**

The site formation and road works for Phase 2 have been substantially completed. We are now reviewing in consultation with the Financial Services and the Treasury Bureau (FSTB) the lot allocation

arrangement as well as other supporting measures, with a view to increasing the attractiveness of the EcoPark to the recycling industry and facilitating early commencement of recycling operations on site. Subject to follow-up consultation with relevant stakeholders and the Legislative Council Panel on Environmental Affairs, we aim to commence the process for the allocation of Phase 2 lots by late 2010.

(c) **Management contract for the EcoPark**

- (i) An extract of the relevant clauses on the marketing service of the management contract is enclosed at **Annex 1**.
- (ii) This management contract is a multi-disciplinary services contract on facility management, infrastructure maintenance, tenant support, tenancy management and marketing. A seven-year contract period was adopted to attract sufficient commercial interest in pulling together the necessary multi-disciplinary forces to provide the integrated services, and at the same time allowing the operator of the second contract to gain sufficient experience before dealing with the renewal or re-tendering of the tenancy lots in the tenth year. Contract periods in the public sector are determined according to the service requirements and relevant operational considerations. There are contracts on facility management, for example those on tunnel management, that cover periods longer than three years.
- (iii) The management contract prescribes the services to be provided by the Operator during the contract period and the payment to be made to the Operator in phases in accordance with the portions of the site of the Ecopark which would be handed over to the Operator (Table 6 and Table 7 of the Audit Report refer). The services required are in response to the operational circumstances at the Ecopark. With the commencement of recycling operations in some of the Phase 1 lots and the two waste processing centres in Phase 2 as well as the opening of the Visitor Centre, the Operator has been required to deploy higher level of resources for delivery of the necessary services in accordance with the terms of the management contract.

Thank you for your attention.

Yours faithfully,



( Ellen Chan )  
for Director of Environmental Protection

Encl.

c.c. Secretary for the Environment  
Secretary for Financial Services and the Treasury (fax : 2147 5239)  
Director of Audit (fax : 2583 9063) } w/o  
Encl.

**\*Note by Clerk, PAC:** *Annex 1 not attached.*

**LegCo Public Accounts Committee  
Discussion of the Director of Audit's Report No. 54  
Chapter 6 – Hong Kong Chinese Orchestra  
on 11 May 2010**

**Opening Remarks by Secretary for Home Affairs**

Chairman and Members,

The Hong Kong Chinese Orchestra (HKCO) is a world-acclaimed arts group dedicated to the development of Chinese music with local characteristics. Over the years, it has preserved the best tradition of folk music with the vigour for incessant innovation. It is truly a cultural ambassador of Hong Kong. The tremendous achievements of the HKCO are recognized in the music scene. Its success is attributable to the hard work of its members as well as many other factors. The funding support by the Government for the HKCO is beyond doubt so that it may continue to scale new heights in the sector, enrich Hong Kong people's cultural life and promote arts education. Today, as we discuss whether public money has been spent in a cost-effective manner, I believe the purpose is to identify rooms for improvement on the part of the HKCO rather than to cast it under an unfavourable light.

I would like to take this opportunity to extend my appreciation to the colleagues of the Audit Commission (Audit) for conducting a review of the operation of the HKCO and putting forward various recommendations in the Audit report. We accept all the recommendations for the Home Affairs Bureau (HAB) and have put them into practice. For example, we have taken follow-up actions in respect of the audit requirements for financial reports and the reporting basis for self-evaluation reports to be submitted by the HKCO and other performing arts groups as recommended in the Audit report.

The HAB took over the responsibility for providing consolidated grants to nine major performing arts groups since April 2007. All major performing arts groups operate as limited liability companies with full autonomy. Apart from government subvention, they may actively seek other sources of funding, such as corporate sponsorships or donations.

Our policy objective is to create an environment which is conducive to artistic expression and creation, and the community's wider participation in cultural activities. The HAB enters into an annual Funding and Services Agreement with each of the major performing arts groups, including the HKCO, and monitors their performance in the context of the Agreement. It is our duty to ensure that the performing arts groups have made proper use of public money in accordance with the principle of prudence. At the same time, we also have to respect their artistic autonomy by



avoiding micro-managing their affairs, thus leaving them enough room for development. It is necessary for us to strike a balance between these two considerations in keeping with our guiding principle of supporting artistic autonomy.

Since these groups are funded by public money, they should of course continuously improve their governance and administration in order to better fulfill their obligations for receiving funding support. We understand that the HKCO had all along been cooperative during the course of the review as was specifically mentioned in the Audit report.

We will continue to liaise closely and join hands with the HKCO to promote Chinese music. We trust that the governing board of the HKCO will lead the group to strive for excellence and help promote the development of the arts and culture in Hong Kong. My colleagues and I will be happy to answer any questions that Members may have. Thank you, Chairman.

**LegCo Public Accounts Committee  
Discussion of the Director of Audit's Report No. 54  
Chapter 6 – Hong Kong Chinese Orchestra  
on 11 May 2010**

**Opening Remarks by Council Chairman of  
Hong Kong Chinese Orchestra Limited**

Chairman and Committee Members

Thank you for inviting us to the meeting of the Public Accounts Committee on Report No. 54, Chapter 6 by the Director of Audit, and allowing us an opportunity to present first-hand our response and explanations.

- (a) As the first performing arts group to have been reviewed by the Director of Audit, HKCO welcomes the exercise, which has provided us a health check. We are also grateful for their recommendations.

We understand that the Audit review of our work and the associated recommendations are all founded on the basis of conventional value for money assessment. The HKCO Council and all committees under it will follow up and study the Audit suggestions, working closely with the Home Affairs Bureau and Leisure and Cultural Services Department to ensure that appropriate measures are taken for further improvement.

HKCO's Council members are volunteers bringing to HKCO their diverse professional and commercial experiences. We've all been participating actively and passionately in the affairs of HKCO and have done our best to manage HKCO's finances prudently, as well as to shape good corporate governance for the Orchestra.

In doing so, our biggest challenge is the need to balance between governing/managing and providing space and encouragement for artistic development.

- (b) It is worth noting that although Chinese orchestral music has been developing for about 90 years, it is still much less established in the global art world compared to its western counterparts. Added to this is Hong Kong's unique colonial past resulting in the very heavy western influences in Hong Kong's community and people's lives. Because of this, HKCO needs to undertake a more proactive marketing strategy in promoting large-scale Chinese orchestral music and the Chinese culture.

- (c) HKCO is pleased that the ‘Chinese Music Alive’ and ‘Music for Love’ programmes are complimented in the Audit Report. We are much encouraged by the recognition of our effort to promote Chinese orchestral music.

The Orchestra will continue to produce different performances and events to popularize the culture of Chinese music under the supervision and guidance of the Home Affairs Bureau.

In fact, since corporatization in 2001, the HKCO has not only managed to win support from audiences and acclaim from the industry, but we have also secured increasing recognition in the international musical arena, thanks to the dedication and perseverance of the HKCO team. For instance, HKCO has continuously been invited to perform on international tours. Our performance at the world-renowned Carnegie Hall in New York last year is believed to be the first by a Hong Kong performing arts group. We’d like to express our heart-felt gratitude to all of our supporters, and look forward to doing an even better job cooperating and working earnestly with our stakeholders.

Thank you.

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

本局檔號 OUR REF: (44) in SF(3) HAB/CS/CR 7/7/8 (C1) Pt.3

來函檔號 YOUR REF: CB(3)/PAC/R54

電話 TEL NO. : 2594 6615

圖文傳真 FAXLINE : 2802 4893

4 May 2010

Clerk, Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
(Attn.: Ms Macy NG)

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Hong Kong Chinese Orchestra Limited (Chapter 6)**

Thank you for your letter of 27 April 2010. I set out the requested information as follows –

- (a) The Funding and Services Agreements (FSAs) signed between the Home Affairs Bureau and the Hong Kong Chinese Orchestra Limited (HKCO) for 2009-10 and 2010-11 are enclosed. Please kindly note that, having regard to commercial sensitivity, we have blackened out certain information in Annex A of the FSAs, i.e. part of the programme details which touch on HKCO's negotiations with third parties in "Part (b) - Indicators for the Subvention Period"; and the salaries and benefits of HKCO's staff in "Part (c) - Agreed Establishment".

- (b) Regarding the class of air passage that is normally provided by the Government for overseas artists/ performance groups, the Leisure and Cultural Services Department (LCSD) has been consulted. We understand that it is an established practice of the LCSD to offer engagement terms, covering air passage, to visiting artists/ performance groups having regard to their respective international standing. The arrangement will be agreed upon negotiation. Therefore the agreed terms would vary from case to case, and it is not uncommon to offer business class airfare for the more celebrated artists. Such arrangement is in line with the long-standing and widely-accepted practice adopted by presenters in the international performing arts market.

Yours sincerely,



( Gilford LAW )

for Secretary for Home Affairs

- cc. Executive Director, Hong Kong Chinese Orchestra Limited  
Secretary for Financial Services and the Treasury  
Director of Audit  
Director of Leisure and Cultural Services

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
AND  
HONG KONG CHINESE ORCHESTRA LIMITED  
FOR THE YEAR 2009-10**

THIS AGREEMENT is made on the 6<sup>th</sup> day of April 2009

**PARTIES:**

- (1) the Government of the Hong Kong Special Administrative Region as represented by the Secretary for Home Affairs whose principal office is at 31/F, Southorn Centre, Wanchai, Hong Kong ("the Government"); and
- (2) Hong Kong Chinese Orchestra Limited, a company with limited liability incorporated under the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) whose registered office is at 7/F, Sheung Wan Municipal Services Building, 345 Queen's Road Central, Hong Kong ("the COMPANY").

**RECITALS:**

The Government wishes to promote and develop Chinese music in Hong Kong and has agreed to grant to the COMPANY and the COMPANY has agreed to accept a maximum sum of HK\$53,143,963/(Hong Kong Dollars Fifty-three Million One Hundred Forty-three Thousand Nine Hundred and Sixty-three Only) ("the Subvention") for the period from 1 April 2009 to 31 March 2010 inclusive ("the Subvention Period") for the sole purpose of implementation of the programme of activities proposed by the COMPANY and as set out at Annex A ("the Activities") in accordance with the budget set out at Annex B ("the Budget") and subject to and upon the terms and conditions set out hereunder.

**OPERATIVE PART:**

1. Subject to the earlier termination as provided in Clause 12, this Agreement shall take effect on 1 April 2009 and shall continue until 31 March 2010.
2. The Subvention shall be made available to the COMPANY subject to the COMPANY's compliance with all provisions of this Agreement, and to the Government's overriding right to suspend, vary, reduce or cancel payment of all or any part of the Subvention or to demand immediate repayment of all or any part of the Subvention as may be determined by the Government in its sole discretion.
3. Subject to the COMPANY's compliance with all provisions of this Agreement and the Government's right provided in Clause 2, the Government will make available the Subvention to the COMPANY by quarterly instalments in advance during the Subvention Period.

*FSA 2009-10 HKCO\_26.3.2009*

*\*Note by Clerk, PAC: Annexes A, B, D, E and F not attached.*

4. In consideration of the grant of the Subvention or any part thereof by the Government to the COMPANY, the COMPANY agrees -
- (a) to provide artistic leadership in the local Chinese music community and develop a distinctive local Chinese music culture;
  - (b) to establish community support and develop public interest in Chinese music;
  - (c) to establish regional and international reputation for the COMPANY;
  - (d) to implement the Activities in accordance with the Budget, and to use and account for the Subvention in accordance with the provisions of this Agreement;
  - (e) to use all experience, skill, care and diligence and attention in carrying out the Activities and discharge all its duties and obligations under this Agreement as may be expected from a person who is an expert in providing activities similar to the Activities; and
  - (f) to comply with the requests, instructions and/or directives as the Government may make or give relating to the Activities from time to time.
5. To enable the Government to ascertain whether the objectives of the Subvention to the COMPANY are achieved and the provisions of this Agreement are complied with by the COMPANY, the COMPANY agrees and undertakes -
- (a) to notify the Government in advance in writing of each of the COMPANY's public activities and events relating to the Activities or this Agreement including without limitation publicity and promotional events such as press conferences, to provide the Government with all related publicity and promotional materials produced for the Activities and any other activities funded by the Subvention, and to allow the Government to send representatives to such activities and events;
  - (b) to notify the Government in advance in writing of each meeting of the governing body of the COMPANY, to provide the Government with the relevant papers and minutes as soon as reasonably practicable, and to allow the Government to send representatives to attend such meetings as observers;
  - (c) to provide the Government upon request with up to six tickets to attend any ticketed scheduled activities relating to this Agreement;
  - (d) to provide the Government with the following reports covering the Subvention Period -
    - (i) a self-evaluation and assessment report and a year-end report on or before 30 June 2010. The Government reserves the right to specify the format of the self-evaluation and assessment report and the year-end report;
    - (ii) audited annual financial statements and annual financial report on or before 30 September 2010 in accordance with the requirements set out in Annex C; and

- (iii) thirty copies of the Annual Report on or before 31 October 2010 and to make it available/accessible to the public via the internet by uploading it to the COMPANY's website and through such other means as the Government may specify. The Annual Report shall include the report of the Chairman of the COMPANY, COMPANY's objectives, COMPANY's corporate structure, structure of the Board of Directors, committees and advisors (if any), a pro-forma balance sheet and income and expenditure account extracted from the COMPANY's audited annual financial statements and a report on the COMPANY's work and activities.
6. The COMPANY agrees and hereby warrants and undertakes (with continuing effect until the termination or expiry of this Agreement) -
- (a) to adopt proper internal controls to ensure that the Subvention is used in a cost-effective and accountable manner, and to notify the Government of any irregularities as soon as they are identified, and forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and prevent recurrence of the irregularities;
  - (b) that due efforts will be made to ensure value for money in using the Subvention it obtains from the Government in the implementation of its objectives set out in Clauses 4(a) to (f) of the Agreement and performance of its duties and obligations under this Agreement ;
  - (c) to ensure that due efforts will be made to ensure that overheads will be reduced and productivity enhanced in the course of performance of this Agreement;
  - (d) to comply with all applicable health and safety laws and regulations in the performance of this Agreement;
  - (e) to comply with all applicable employment and equal opportunities and data protection laws and regulations in the performance of this Agreement;
  - (f) to account to the Government its employment and remuneration of its senior executives, and to observe the principle of fairness and transparency in recruiting staff in the performance of this Agreement;
  - (g) to comply in all respects (including without limitation, the giving of all necessary notices, the paying of all necessary fees and the obtaining of all necessary licences, consents and approvals) with all enactments, laws, ordinances, rules and regulations for the time being and from time to time in force in Hong Kong which are applicable to the Activities or other activities funded by the Subvention;
  - (h) to procure its employees, agents and sub-contractors who are engaged to carry out the Activities to adopt and observe the 'Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organizations' at Annex D (as may be amended or supplemented by the Government from time to time) and adopt the pro-forma 'Declaration of Conflict of Interest' at Annex E;
  - (i) to follow the Code of Conduct at Annex D to set out the COMPANY's policy documents on restricting the COMPANY's staff to take part in outside work and to supply the Government with such policy documents whenever revised;



- (j) in case of any suspected breach of the Code referred to in Clause 6(h) above, to forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities;
- (k) to acknowledge with full awareness that neither the Government, nor its employees or agents shall in any way be or be held or be deemed to be responsible for the direction or conduct of the affairs of the COMPANY. In the absence of specific designation in writing as a directive of the Government, any advice, suggestions, comments or other indication given voluntarily by the Government or its employees or agents shall be deemed in all respects to be given on a purely personal basis and not as reflecting the view or position of the Government in any way and the COMPANY shall accept and respond to any such advice, suggestion, comments or other indications entirely at its own discretion and risk. Without prejudice to Clause 14 of this Agreement, the COMPANY shall keep the Government and their employees and agents indemnified against all claims, actions, demands, costs, expenses (including without limitation the fees and disbursement of lawyers, agents and expert witnesses) and liabilities of whatsoever nature incurred as a result of the COMPANY acting, accepting and responding to any such advice, suggestion, comments or other indications as well as to any specific directive of the Government;
- (l) to acknowledge and carry on its activities on the basis that the terms and conditions of service for those persons constituting the agreed establishment as set out at Annex A ("Agreed Establishment") shall not be more favourable than what in the absolute opinion of the Government are commensurate with the duties and experience of that particular post, and shall be in line with the terms and conditions of comparable posts in the trade;
- (m) if for the Subvention Period, the Subvention amounts to \$10 million or more and the Subvention accounts for 50% of the COMPANY's operating income, to review the number, ranking and remuneration of its staff as directed by the Government; to submit to the Government an annual report on the review findings for the Subvention Period in such a format as required by the Government on or before 30 June 2010; and to make public disclosure of the remuneration of staff of the top three tiers in its Annual Report in such a way as the Government may require;
- (n) for those staff referred to in Clause 6(m) above, to supply the Government with documents on procedures of recruitment, renewal and termination of appointment, and the terms and conditions of employment of such staff (including all amendments and supplements thereto) who are employed at any time during the Subvention Period;
- (o) to notify the Government in writing if the establishment of the COMPANY is significantly different from the level provided for in the Agreed Establishment, or if there are any proposed changes or renewal of employment in the highest level of artistic or management staff of the COMPANY, to seek the Government's prior approval in writing where approval will not be unreasonably withheld;
- (p) not to accept any donation, sponsorship or advertisement from or associated in any form or manner with tobacco or tobacco-related activities;

- (q) not to deviate from the Budget without the prior written approval of the governing body of the COMPANY and to as soon as practicable notify the Government accordingly;
- (r) to meet any copyright obligations on works which are not covered by the annual blanket licence held by the venues of the Leisure and Cultural Services Department;
- (s) to use best endeavours to maximize revenue from sources other than the Government including without limitation sponsorship and fundraising as estimated at Annex B and to charge full costs for services provided on a self-financing basis to other organizations;
- (t) to include in the COMPANY's revenue budget and audited financial statements referred to in Clause 5(d)(ii) all bank interest which has accrued;
- (u) to ensure that all procurement of goods and services pursuant to the provisions of this Agreement shall be conducted on a fair, unbiased and competitive bidding basis. The COMPANY shall review its existing procurement procedures making reference to the sample procurement policy and guidelines set out at Annex F and shall, if required by the Government, amend its existing procurement procedures to ensure compliance with Annex F. The Company shall provide the Government with a copy of its procurement procedures whenever revised;
- (v) to ensure that the COMPANY's governing body, officers and staff shall keep themselves informed of the financial and accounting procedures relating to procurement of goods and services regularly and whenever such procedures are amended;
- (w) not to alter the terms of its Memorandum and Articles of Association without first obtaining the written consent of the Government;
- (x) to procure that no member of the governing body of the COMPANY shall serve for a term in excess of six consecutive years;
- (y) to give due consideration to the inclusion in the governing body of the COMPANY an appropriate number of professionals such as accountant, lawyer, fund raising and marketing experts to give advice and business support to the COMPANY;
- (z) to ensure that the constitution of the governing body of the COMPANY as comprising no less than six (6) members and that the quorum for making decisions of the board shall be no less than 50% of the full membership of the board and being at least three (3) in number;
- (aa) to hold meetings of the governing body not less than three times a year during the Subvention Period;
- (bb) the performance of its obligations under this Agreement does not and will not conflict with or contravene any judicial order or obligations under any third party contracts to which the COMPANY is a party; and
- (cc) all information in relation to the Activities of this Agreement provided by the COMPANY is true, accurate and complete in all material respects.

7. The COMPANY agrees that -

- (a) the COMPANY shall keep proper and separate books and records of all receipts and payments (including receipts, counterfoils, vouchers and other supporting documents) and contracts, minutes and all information in connection with the Subvention in legible written form for at least seven (7) years after the expiry or termination of this Agreement or up to the date as otherwise specified by the Government within seven (7) years after the expiry or termination of this Agreement and shall make the same as well as general ledgers, sub-ledgers, cashbooks and bank statements available for conducting audit (including without limitation value for money audit), inspection, verification and copying by the Government, the Director of Audit and/or their respective authorized representatives at all reasonable times during the continuation of this Agreement and the said period after the expiry or termination of this Agreement. The COMPANY shall ensure that all receipts and payments in respect of the Subvention and the programmes funded by the Subvention are properly and timely recorded. The COMPANY shall also provide copies of such books and records to the Government, the Director of Audit and/or their respective authorized representatives forthwith on demand free of charge;
- (b) the COMPANY shall, and shall procure its employees and agents to, explain to the Government, the Director of Audit and/or their respective authorized representatives any matters relating to the receipt, expenditure and/or custody in respect of the Subvention upon request;
- (c) the Government, the Director of Audit and/or their respective authorized representatives is entitled to carry out value for money scrutinies on the COMPANY's accounts and records;
- (d) upon the Government's request, the COMPANY shall allow the Commissioner of the Independent Commission Against Corruption or its authorized representatives to examine the management and control procedures of the COMPANY for the purpose of providing corruption prevention advice to the COMPANY, and the COMPANY shall heed the advice given and shall take remedial actions as are appropriate;
- (e) the COMPANY shall not, and shall procure that its employees, agents and sub-contractors who are in any way involved in the performance of this Agreement shall not -
  - (i) give or offer to give to any officer, employee or agent of the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other Government contracts or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Government contracts;
  - (ii) enter into this Agreement or any other Government contracts in connection with which commission has been paid or agreed to be paid by the COMPANY or on its behalf, or to its knowledge; and

- (f) if the COMPANY or its employees, agents or sub-contractors who are in any way involved in the performance of this Agreement shall be found to have breached Clause 7(e) of this Agreement (whether with or without the knowledge of the COMPANY) or committed any offence under the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government reserves the right to summarily terminate this Agreement immediately by giving written notice to the COMPANY pursuant to Clause 12.

#### 8.1 The COMPANY agrees -

- (a) to use the Subvention solely and exclusively for carrying out the Activities. The COMPANY shall not use or divert the Subvention to support any items/activities for which the Government has already expressed difficulties in giving policy or funding supports. The COMPANY shall account for and make good any payments or expenditure made in contravention of this Agreement;
- (b) to seek the Government's written approval before the COMPANY uses the Subvention for carrying out an activity which falls outside the scope of the Activities and if such approval is given, to acknowledge the Government for funding that activity in the same manner as provided at Clause 8.2 (a);
- (c) not to use the funds earmarked for outbound cultural exchange activities in the Subvention for any other purpose. The COMPANY undertakes to inform the Government in advance on each occasion of outbound cultural exchange the details of such exchange activity including the host party, the full budget, expected audience etc should funds earmarked for the purpose in the Subvention be used for such activity. The COMPANY also undertakes to provide reports on its outbound cultural exchange activities to be annexed to the year-end report of the COMPANY referred to in Clause 5(d)(i). The COMPANY shall keep a separate account of their outbound cultural exchange under their audited annual financial report referred to in Clause 5(d)(ii) on or before 30 September 2010. Any unspent portion of the outbound cultural exchange earmarked grant shall be carried forward to the COMPANY's Subvention of 2010-11 to be used exclusively for outbound cultural exchange activity unless the COMPANY is no longer receiving Subvention from the Government in 2010-11 in which case the unspent portion of the earmarked funds of 2009-10 will have to be repaid to the Government on demand;
- (d) to keep a separate set of accounts for self-financing activities which are funded by sources other than the Subvention in the forms of sponsorship, donations etc and ensure that all receipts and payments in this account are properly and timely recorded and there is no cross-subsidization of self-financing activities by the Activities and any other activities funded by the Subvention (whether in money or in kind);
- (e) to provide the Government with copies of all publicity and promotional materials produced for the Activities and any other activities funded by the Subvention with the consent of the Government at least one month before the start of the activities; and
- (f) to allow the Government to use the publicity and promotional materials produced

by the COMPANY in arts promotion or other promotion activities.

## **8.2 The COMPANY -**

- (a) acknowledges that the Subvention is being provided by the Government and shall, in all publicity and promotional materials produced relating to the Activities of the COMPANY, include a statement that "The COMPANY is financially supported by the Government of the Hong Kong Special Administrative Region". The acknowledgement shall be placed in a prominent position in the publicity and promotional materials and shall be of a size not smaller than other type print acknowledging support or of such other size or sizes as shall be required by the Government from time to time. The COMPANY further agrees that the acknowledgement and any other reference to the Government or its employees shall carry no implications whatsoever that the Government or its employees undertake or accept any responsibility or assume any liability to any third parties for the COMPANY's liabilities or obligations; and
  - (b) acknowledges and agrees that there is no obligation on the part of the Government to provide any additional funding should the COMPANY run into financial deficit at any time during the Subvention Period. The Government shall not reimburse the COMPANY for any amount incurred by the COMPANY that exceeds the amount of the Subvention or any amount incurred by the COMPANY before the commencement date of this Agreement or after the expiry or termination of this Agreement. The Government accepts no liabilities for any deficits arising from the carrying out of the Activities.
9. To enable the Government to take any remedial action if the financial position of the COMPANY changes to the point where in the opinion of the Government the Subvention may no longer be appropriate or necessary, the COMPANY agrees -
- (a) to accept any donation or sponsorship from any third parties on the understanding that the Government is not obliged to provide any funds to meet any financial commitment (whether recurrent or otherwise) arising from the COMPANY's acceptance of the donation or sponsorship;
  - (b) to bear any and all financial consequences resulting from the acceptance of donations or sponsorship for providing any services/undertaking any capital projects which may have recurrent/time-limited financial implications unless the Government's written agreement in providing additional funding for the purpose has been obtained before the COMPANY's acceptance of donations or sponsorship. In the event that the COMPANY accepts a donation or sponsorship which creates a financial commitment on the COMPANY beyond the Subvention Period without the prior written agreement of the Government, the COMPANY agrees that this will not preempt or commit the Government to provide any subvention to the COMPANY beyond the Subvention Period;
  - (c) to obtain the prior approval of the governing body of the COMPANY as to the manner in which the donation is to be used and to notify the Government of any donation made to the COMPANY which the donor does not require to be used for a specific purpose;
  - (d) that upon request of the Government, the COMPANY shall immediately provide

the Government with copies of all or any of the sponsorship agreements entered into by the COMPANY;

- (e) to notify the Government as soon as practicable of any proposed change to the scope and/or level of Activities. The Government reserves the right to vary the amount of Subvention if there is any change to the scope and/or level of Activities; and
  - (f) to accept a revision of the amount of Subvention if the Government, without prejudice to its right to terminate under Clause 12, considers such a revision appropriate, having regard to the resources and circumstances of the COMPANY, and to refund and to repay to the Government immediately on demand by the Government the amount of any reduction in the Subvention as may be determined by the Government.
10. In this clause, "Reserve" means the surplus (if any) as revealed in the audited annual financial statements referred to in Clause 5(d)(ii) net of sponsorship, donations and income and expenditure of self-financing activities. If at the end of the Subvention Period, there is a Reserve, the COMPANY may keep and carry forward a Reserve of not more than twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period to serve as a buffer against contingencies in the subsequent year and as an incentive to economise its spending in the current year. All amounts exceeding twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period shall either be returned by the COMPANY to the Government or netted off against the amount of the following year's Government subvention, if any, in the sole discretion of the Government. The COMPANY may apply for written approval of the Government to vary the aforesaid ceiling of the Reserve, which may be considered and decided by the Government in its sole discretion. The COMPANY agrees -
- (a) to plough back the Reserve into Activities funded by the Subvention;
  - (b) to seek the prior approval of the governing body of the COMPANY for using the Reserve;
  - (c) to seek the prior written approval of the Government if the use of the Reserve will generate additional financial consequences for the Government; and
  - (d) for accounting purpose as set out in Clause 8.1(d), the COMPANY shall keep a separate account to record sponsorship, donations and income and expenditure of the COMPANY's self-financing activities.

#### 11. Personal Data

- (a) The COMPANY hereby consents, agrees and authorizes that without further notification to the COMPANY, the Government may disclose, verify and/or exchange all and any information and data ("the Data") related to its constituent committees and/or other third parties -
  - (i) for and in relation to consideration, review and evaluation of the COMPANY's application for Government subvention and the Subvention hereby granted or for the maintenance of the Subvention

made or in respect of the continuation of the Subvention made or to be made; or

- (ii) in relation to the use of the Data in its discretion in the general policies, requirements, decisions and related activities and matters of the Government in administration of and for publicity as part of the general transparency of the Government in the discharge of its functions and duties.
- (b) The COMPANY confirms that it shall comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) before disclosing or transferring the Data obtained from data subjects to the Government.
- (c) The COMPANY hereby confirms that it is fully aware and acknowledges and authorizes that all Data are supplied to the Government in connection with the application for the Subvention and in connection firstly with the making, maintaining, reviewing, assessing, recovering and publicizing the Data for the direct primary purpose of the Subvention and secondly the objectives of the Government for the wider but equal secondary purpose of recording, storing, identifying and making available the Data for public access in implementing the fully transparent policies of conduct, operation, performance, reporting, analyzing and fully informing the public of the results of the Government from time to time and at all times in the necessary discharge of its statutory responsibilities and that failure so to treat and deal with the Data may result in the Government being unable to discharge its functions properly and efficiently and that such treatment of and dealing with the Data are accordingly hereby fully and irrevocably authorized by the COMPANY. The COMPANY shall indemnify the Government against all third party claims in this regard including without limitation employees of or consultants to and any other direct or indirect providers of services or benefits to the COMPANY.
- (d) The indemnity clause in Clause 11(c) shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

## 12. Termination and Consequences of Termination

- (a) The Government may, at any time, terminate this Agreement forthwith by giving notice to the COMPANY without entitling the COMPANY to any compensation whatsoever -

(i) if the COMPANY is -

- in breach of any terms, conditions or undertakings of this Agreement; or
- persistently or wrongfully neglecting to carry out the Activities or its duties or obligations under this Agreement;

and (in case of any of the abovementioned failure or breach capable of being remedied) has failed to remedy the same to the satisfaction of the Government within seven (7) days (or such longer period as the Government may, in its sole discretion, allow) after

the issue by the Government to the COMPANY of a written notice requiring the COMPANY to rectify the failure or breach;

- (ii) if the Government becomes entitled to terminate this Agreement pursuant to Clause 7(f);
  - (iii) if the COMPANY assigns, transfers, sub-contract, license or otherwise dispose of any interest, right, benefit or obligation under this Agreement or purports to do so otherwise than in accordance with Clause 13;
  - (iv) if the COMPANY engages in any conduct which can be considered to be prejudicial to the Activities in the Government's sole opinion;
  - (v) upon the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up or dissolution of the COMPANY (other than a voluntary liquidation for the purpose of a bona fide amalgamation or reconstruction whilst the COMPANY is solvent) or if a receiver, provisional liquidator, liquidator or administrator has been appointed over all or any of its assets or if the COMPANY makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any judgment is made against the COMPANY or any similar occurrence under any jurisdiction that affects the COMPANY;
  - (vi) if the COMPANY fails to submit any reports or financial accounts pursuant to this Agreement, or any of the data, facts or information represented to and/or provided by the COMPANY to the Government about the Activities or this Agreement or any part thereof is incomplete, incorrect, untrue or is misleading; or
  - (vii) if the COMPANY abandons this Agreement in whole or in part.
- (b) On the expiry or other termination of this Agreement -
- (i) this Agreement shall be of no further force and effect (but without prejudice to all accrued rights, liabilities and remedies and any provisions of this Agreement which expressly or by implication are intended to come into or continue in force on or after such expiration or termination);
  - (ii) subject to negotiation with and subsequent approval of the Government, the COMPANY shall not use the Reserve of the Subvention and shall forthwith return all such balance to the Government; and
  - (iii) the COMPANY shall within six (6) months after such expiry or termination submit to the Government a final Audited Account in respect of the Activities and the Subvention made up to such expiry or termination.
- (c) If this Agreement is terminated by the Government pursuant to this Clause, without prejudice to any of the Government's other rights and remedies, the Government may require the COMPANY to repay immediately all or any monies provided by the Government pursuant to this Agreement which have not been defrayed, applied or used, or whose application or use has not been controlled, monitored or supervised by the COMPANY, strictly in accordance with the terms of this Agreement together with



all administrative, legal and other costs and interest accrued up to the date of repayment.

### 13. Assignment

- (a) The COMPANY shall not assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement without the prior written consent of the Government.
- (b) The Government may at any time assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement.

### 14. Indemnity

- (a) The COMPANY shall indemnify the Government and keep the Government fully and effectively indemnified against all loss, actions, claims, demands, damages, interest, costs, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by/on behalf of the COMPANY) and liabilities of whatsoever nature which the Government may sustain or incur or which may be brought or established against the Government by any person as a result of or relating to -
  - (i) the negligence, recklessness or willful misconduct of the COMPANY, its officers, employees, agents or sub-contractors in carrying out the Activities or performing this Agreement;
  - (ii) the breach by the COMPANY of any provisions of this Agreement; or
  - (iii) any unauthorized act or omission of the COMPANY or its officers, employees, agents or sub-contractors.
- (b) The provisions of this Clause 14 shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

### 15. Amendments

Subject to the provisions of this Agreement, no waiver, cancellation, addition, alteration or amendment of or to the provisions of this Agreement shall be valid unless made in writing and duly signed by both parties.

### 16. Entire Agreement

This Agreement sets out the entire agreement between the parties hereto and supersedes all prior written or oral agreements, understandings or arrangements between them in relation to the subject matter hereof, and the parties confirm that they have not entered into this Agreement upon the basis of any statements, undertakings, warranties or representations that are not expressly stated in this Agreement.

### 17. Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, such provision shall, to that extent, be deemed not to form part of this Agreement without affecting the interpretation, legality, validity and enforceability of the remaining provisions of this Agreement.

**18. No Waiver**

No failure or delay by either party to exercise any right, power or remedy available to it under this Agreement, at law, or in equity shall operate as a waiver thereof, nor will any single, partial or defective exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

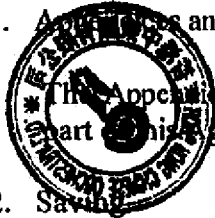
**19. Relationship of the Parties**

Nothing in this Agreement or in the arrangements contemplated by it shall create a partnership or joint venture between the parties hereto and, save as expressly provided in this Agreement, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of, or pledge the credit of or otherwise bind or oblige the other party hereto. Nothing contained in this Agreement shall be so construed as to constitute either party to be the agent of the other.

**20. Governing Law and Jurisdiction**

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

**21. Appendices and Annexes**



The Appendices and Annexes to this Agreement shall form and be read as an integral part of this Agreement.

**22. Saving**

Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any powers, discretions or duties, or the exercise or performance of any powers, discretions or duties, conferred or imposed by or under any law upon the Government, any Government bureau or department or any public officer or other person in the employ of the Government.

In witness whereof the parties have executed this Agreement the day and year first above written.

SIGNED for and on behalf of the Government of  
the Hong Kong Special Administrative Region

By : Miss Winnie So  
Signature : [Signature]  
Title : Principal Assistant Secretary  
for Home Affairs (Culture)  
Witness : [Signature]  
( Ms Rebecca Yu )  
Senior Manager  
for Home Affairs (Culture)

SIGNED for and on behalf of  
Hong Kong Chinese Orchestra Limited

By : MR HENRY LAI  
Signature : [Signature]  
Title : CHAIRMAN OF THE COUNCIL  
Witness : [Signature]  
MS. CELINA CHIN  
EXECUTIVE DIRECTOR )



Company chop

**Submission of Audited Annual Financial Statements and Financial Report**

The audited annual financial statements of the COMPANY shall include balance sheet, income statement, cash flow statement, and accounting policies and explanatory notes, and the audited annual financial report shall show –

- (a) the income and expenditure in respect of the Subvention and the Activities; and
- (b) the movements in the Reserve and assets acquired which are funded by the Subvention.

The annual financial statements and annual financial report mentioned at Clause 5(d)(ii) shall be certified by the Chairman of the COMPANY and prepared in accordance with the relevant laws of Hong Kong and the international accounting standard as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards and Accounting Guidelines as may be issued and updated from the time to time by the Hong Kong Institute of Certified Public Accountants) and duly audited, dated and signed by a certified public accountant registered under section 22 of the Professional Accountants Ordinance (Cap. 50 of the Laws of Hong Kong) who are not in any way connected with the Activities.

The auditors' report accompanying the annual financial statements and annual financial report submitted shall contain an expression of opinion as to –

**On the annual financial statements of the COMPANY –**

whether they give a true and fair view of the state of affairs of the COMPANY as at the balance sheet date and of its financial result and cash flows for the year then ended.

**On the annual financial report of the Activities being audited –**

whether the COMPANY has complied with, in all material respects, the requirements as may be set by the Government (including the requirements to keep proper books and records and to prepare annual financial report of the Activities in accordance with the books and records) and all the terms and conditions of this Agreement and other relevant documents as may be specified by the Government such as the Accounting Standards and Accounting Guidelines.

The COMPANY shall agree with the auditors the terms of the audit engagement, such as the objectives, scope and form of report, etc. To avoid misunderstanding, the agreed terms shall be recorded in an engagement letter.

The COMPANY shall provide the auditors with a copy of this Agreement and other relevant documents.

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
AND  
HONG KONG CHINESE ORCHESTRA LIMITED  
FOR THE YEAR 2010-11**

THIS AGREEMENT is made on the 9<sup>th</sup> day of April 2010

**PARTIES:**

- (1) the Government of the Hong Kong Special Administrative Region as represented by the Secretary for Home Affairs whose principal office is at 31/F, Southorn Centre, Wanchai, Hong Kong ("the Government"); and
- (2) Hong Kong Chinese Orchestra Limited, a company with limited liability incorporated under the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) whose registered office is at 7/F, Sheung Wan Municipal Services Building, 345 Queen's Road Central, Hong Kong ("the COMPANY").

**RECITALS:**

The Government wishes to promote and develop Chinese music in Hong Kong and has agreed to grant to the COMPANY and the COMPANY has agreed to accept a maximum sum of HK\$53,143,963 (Hong Kong Dollars Fifty-three Million One Hundred Forty-three Thousand Nine Hundred and Sixty-three Only) ("the Subvention") for the period from 1 April 2010 to 31 March 2011 inclusive ("the Subvention Period") for the sole purpose of implementation of the programme of activities proposed by the COMPANY and as set out at Annex A ("the Activities") in accordance with the budget set out at Annex B ("the Budget") and subject to and upon the terms and conditions set out hereunder.

**OPERATIVE PART:**

1. Subject to the earlier termination as provided in Clause 12, this Agreement shall take effect on 1 April 2010 and shall continue until 31 March 2011.
2. The Subvention shall be made subject to the satisfactory performance by the COMPANY of the terms and conditions of this Agreement, and to the Government's overriding right to suspend, vary, reduce or cancel payment of all or any part of the Subvention or to demand immediate repayment of all or any part of the Subvention as shall be determined by the Government at its sole and absolute discretion.
3. Subject to the observance and performance by the COMPANY of all terms and all its obligations under this Agreement, the Government will make available the Subvention to the COMPANY by quarterly instalments in advance during the Subvention Period.

4. In consideration of the grant of the Subvention or any part thereof by the Government to the COMPANY, the COMPANY agrees -
- (a) to provide artistic leadership in the local Chinese music community and develop a distinctive local Chinese music culture;
  - (b) to establish community support and develop public interest in Chinese music;
  - (c) to establish regional and international reputation for the COMPANY;
  - (d) to implement the Activities in accordance with the Budget, and to use and account for the Subvention in accordance with the provisions of this Agreement;
  - (e) to use all experience, skill, care and diligence and attention in carrying out the Activities and discharge all its duties and obligations under this Agreement as may be expected from a person who is an expert in providing activities similar to the Activities; and
  - (f) to comply with the reasonable requests of the Government relating to the Activities.
5. To enable the Government to ascertain whether the objectives of the Subvention to the COMPANY are achieved and the provisions of this Agreement are complied with by the COMPANY, the COMPANY agrees and undertakes -
- (a) to notify the Government in advance in writing of each of the COMPANY's public activities and events relating to the Activities or this Agreement including without limitation publicity and promotional events such as press conferences, to provide the Government with all related publicity and promotional materials produced for the Activities and any other activities funded by the Subvention, and to allow the Government to send representatives to such activities and events;
  - (b) to notify the Government in advance in writing of each meeting of the governing body of the COMPANY, to provide the Government with the relevant papers and minutes as soon as reasonably practicable, and to allow the Government to send representatives to attend such meetings as observers;
  - (c) to provide the Government upon request with up to six tickets to attend any ticketed scheduled activities relating to this Agreement;
  - (d) to provide the Government with the following reports covering the Subvention Period -
    - (i) a self-evaluation and assessment report and a year-end report on or before 30 June 2011. The Government reserves the right to specify the format of the self-evaluation and assessment report and the year-end report;
    - (ii) audited annual financial statements and annual financial report on or before 30 September 2011 in accordance with the requirements set out in Annex C; and
    - (iii) thirty copies of the Annual Report on or before 31 October 2011 and to make it available/accessible to the public via the internet by uploading it to

the COMPANY's website and through such other means as the Government may specify. The Annual Report shall include the report of the Chairman of the COMPANY, COMPANY's objectives, COMPANY's corporate structure, structure of the Board of Directors, committees and advisors (if any), a pro-forma balance sheet and income and expenditure account extracted from the COMPANY's audited annual financial statements and a report on the COMPANY's work and activities.

6. The COMPANY agrees and hereby warrants and undertakes (with continuing effect until the termination or expiry of this Agreement) -
- (a) to adopt proper internal controls to ensure that the Subvention is used in a cost-effective and accountable manner, and to notify the Government of any irregularities as soon as they are identified, and forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and prevent recurrence of the irregularities;
  - (b) that due efforts will be made to ensure value for money in using the Subvention it obtains from the Government in the implementation of its objectives set out in Clauses 4(a) to (f) of the Agreement and performance of its duties and obligations under this Agreement ;
  - (c) to ensure that due efforts will be made to ensure that overheads will be reduced and productivity enhanced in the course of performance of this Agreement;
  - (d) to comply with all applicable health and safety laws and regulations in the performance of this Agreement;
  - (e) to comply with all applicable employment and equal opportunities and data protection laws and regulations in the performance of this Agreement;
  - (f) to account to the Government its employment and remuneration of its senior executives, and to observe the principle of fairness and transparency in recruiting staff in the performance of this Agreement;
  - (g) to comply in all respects (including without limitation, the giving of all necessary notices, the paying of all necessary fees and the obtaining of all necessary licences, consents and approvals) with all enactments, laws, ordinances, rules and regulations for the time being and from time to time in force in Hong Kong which are applicable to the Activities or other activities funded by the Subvention;
  - (h) to procure its employees, agents and sub-contractors who are engaged to carry out the Activities to adopt and observe the 'Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organizations' at Annex D (as may be amended or supplemented by the Government from time to time) and adopt the pro-forma 'Declaration of Conflict of Interest' at Annex E;
  - (i) to follow the Code of Conduct at Annex D to set out the COMPANY's policy documents on allowing the COMPANY's staff to take part in outside work and to supply the Government with such policy documents whenever revised;
  - (j) in case of any suspected breach of the Code referred to in Clause 6(h) above, to

forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities;

- (k) to acknowledge with full awareness that neither the Government, nor its employees or agents shall in any way be or be held or be deemed to be responsible for the direction or conduct of the affairs of the COMPANY. In the absence of specific designation in writing as a directive of the Government, any advice, suggestions, comments or other indication given voluntarily by the Government or its employees or agents shall be deemed in all respects to be given on a purely personal basis and not as reflecting the view or position of the Government in any way and the COMPANY shall accept and respond to any such advice, suggestion, comments or other indications entirely at its own discretion and risk. Without prejudice to Clause 14 of this Agreement, the COMPANY shall keep the Government and their employees and agents indemnified against all claims, actions, demands, costs, expenses (including without limitation the fees and disbursement of lawyers, agents and expert witnesses) and liabilities of whatsoever nature incurred as a result of the COMPANY acting, accepting and responding to any such advice, suggestion, comments or other indications as well as to any specific directive of the Government;
- (l) to acknowledge and carry on its activities on the basis that the terms and conditions of service for those persons constituting the agreed establishment as set out at Annex A ("Agreed Establishment") shall not be more favourable than what in the absolute opinion of the Government are commensurate with the duties and experience of that particular post, and shall be in line with the terms and conditions of comparable posts in the trade;
- (m) if for the Subvention Period, the Subvention amounts to \$10 million or more and the Subvention accounts for 50% of the COMPANY's operating income, to review the number, ranking and remuneration of its staff as directed by the Government; to submit to the Government an annual report on the review findings for the Subvention Period in such a format as required by the Government on or before 30 June 2011; and to make public disclosure of the remuneration of staff of the top three tiers in its Annual Report in such a way as agreed by the Government;
- (n) for those staff referred to in Clause 6(m) above, to supply the Government with documents on procedures of recruitment, renewal and termination of appointment, and the terms and conditions of employment of such staff (including all amendments and supplements thereto) who are employed at any time during the Subvention Period;
- (o) to notify the Government in writing if the establishment of the COMPANY is significantly different from the level provided for in the Agreed Establishment, or if there are any proposed changes or renewal of employment in the highest level of artistic or management staff of the COMPANY, to seek the Government's prior approval in writing where approval will not be unreasonably withheld;
- (p) not to accept any donation, sponsorship or advertisement from or associated in any form or manner with tobacco or tobacco-related activities;
- (q) not to deviate from the Budget without the prior written approval of the governing body of the COMPANY and to as soon as practicable notify the Government



accordingly;

- (r) to meet any copyright obligations on works which are not covered by the annual blanket licence held by the venues of the Leisure and Cultural Services Department;
- (s) to use best endeavours to maximize revenue from sources other than the Government including without limitation sponsorship and fundraising as estimated at Annex B and to charge full costs for services provided on a self-financing basis to other organizations;
- (t) to include in the COMPANY's revenue budget and audited financial statements referred to in Clause 5(d)(ii) all bank interest which has accrued;
- (u) to ensure that all procurement of goods and services pursuant to the provisions of this Agreement shall be conducted on a fair, unbiased and competitive bidding basis. The COMPANY shall review its existing procurement procedures making reference to the sample procurement policy and guidelines set out at Annex F and shall, if required by the Government, amend its existing procurement procedures to ensure compliance with Annex F. The Company shall provide the Government with a copy of its procurement procedures whenever revised;
- (v) to ensure that the COMPANY's governing body, officers and staff shall keep themselves informed of the financial and accounting procedures relating to procurement of goods and services regularly and whenever such procedures are amended;
- (w) not to alter the terms of its Memorandum and Articles of Association without first obtaining the written consent of the Government;
- (x) to procure that no member of the governing body of the COMPANY shall serve for a term in excess of six consecutive years, save for the member's appointment as Chairman, Vice-chairman or Treasurer whose six-year count will start afresh;
- (y) to give due consideration to the inclusion in the governing body of the COMPANY an appropriate number of professionals such as accountant, lawyer, fund raising and marketing experts to give advice and business support to the COMPANY;
- (z) to ensure that the constitution of the governing body of the COMPANY as comprising no less than six (6) members and that the quorum for making decisions of the board shall be no less than 50% of the full membership of the board and being at least three (3) in number;
- (aa) to hold meetings of the governing body not less than three times a year during the Subvention Period;
- (bb) the performance of its obligations under this Agreement does not and will not conflict with or contravene any judicial order or obligations under any third party contracts to which the COMPANY is a party; and
- (cc) all information in relation to the Activities of this Agreement provided by the COMPANY is true, accurate and complete in all material respects.

7. The COMPANY agrees that -

- (a) the COMPANY shall keep proper and separate books and records of all receipts and payments (including receipts, counterfoils, vouchers and other supporting documents) and contracts, minutes and all information in connection with the Subvention in legible written form for at least seven (7) years after the expiry or termination of this Agreement or up to the date as otherwise specified by the Government within seven (7) years after the expiry or termination of this Agreement and shall make the same as well as general ledgers, sub-ledgers, cashbooks and bank statements available for conducting audit (including without limitation value for money audit), inspection, verification and copying by the Government, the Director of Audit and/or their respective authorized representatives at all reasonable times during the continuation of this Agreement and the said period after the expiry or termination of this Agreement. The COMPANY shall ensure that all receipts and payments in respect of the Subvention and the programmes funded by the Subvention are properly and timely recorded. The COMPANY shall also provide copies of such books and records to the Government, the Director of Audit and/or their respective authorized representatives forthwith on demand free of charge;
- (b) the COMPANY shall, and shall procure its employees and agents to, explain to the Government, the Director of Audit and/or their respective authorized representatives any matters relating to the receipt, expenditure and/or custody in respect of the Subvention upon request;
- (c) the Government, the Director of Audit and/or their respective authorized representatives is entitled to carry out value for money scrutinies on the COMPANY's accounts and records;
- (d) upon the Government's request, the COMPANY shall allow the Commissioner of the Independent Commission Against Corruption or its authorized representatives to examine the management and control procedures of the COMPANY for the purpose of providing corruption prevention advice to the COMPANY, and the COMPANY shall heed the advice given and shall take remedial actions as are appropriate;
- (e) the COMPANY shall not, and shall procure that its employees, agents and sub-contractors who are in any way involved in the performance of this Agreement shall not -
  - (i) give or offer to give to any officer, employee or agent of the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other Government contracts or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Government contracts;
  - (ii) enter into this Agreement or any other Government contracts in connection with which commission has been paid or agreed to be paid by the COMPANY or on its behalf, or to its knowledge; and
- (f) if the COMPANY or its employees, agents or sub-contractors who are in any way

involved in the performance of this Agreement shall be found to have breached Clause 7(e) of this Agreement (whether with or without the knowledge of the COMPANY) or committed any offence under the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government reserves the right to summarily terminate this Agreement immediately by giving written notice to the COMPANY pursuant to Clause 12.

**8.1 The COMPANY agrees -**

- (a) to use the Subvention solely and exclusively for carrying out the Activities. The COMPANY shall not use or divert the Subvention to support any items/activities for which the Government has already expressed difficulties in giving policy or funding supports. The COMPANY shall account for and make good any payments or expenditure made in contravention of this Agreement;
- (b) to seek the Government's written approval before the COMPANY uses the Subvention for carrying out an activity which falls outside the scope of the Activities and if such approval is given, to acknowledge the Government for funding that activity in the same manner as provided at Clause 8.2 (a);
- (c) not to use the funds earmarked for outbound cultural exchange activities in the Subvention for any other purpose. The COMPANY undertakes to inform the Government in advance on each occasion of outbound cultural exchange the details of such exchange activity including the host party, the full budget, expected audience etc should funds earmarked for the purpose in the Subvention be used for such activity. The COMPANY also undertakes to provide reports on its outbound cultural exchange activities to be annexed to the year-end report of the COMPANY referred to in Clause 5(d)(i). The COMPANY shall keep a separate account of their outbound cultural exchange under their audited annual financial report referred to in Clause 5(d)(ii) on or before 30 September 2011. Any unspent portion of the outbound cultural exchange earmarked grant shall be carried forward to the COMPANY's Subvention of 2011-12 to be used exclusively for outbound cultural exchange activity unless the COMPANY is no longer receiving Subvention from the Government in 2011-12 in which case the unspent portion of the earmarked funds of 2010-11 will have to be repaid to the Government on demand;
- (d) to keep a separate set of accounts for self-financing activities which are funded by sources other than the Subvention in the forms of sponsorship, donations etc and ensure that all receipts and payments in this account are properly and timely recorded and there is no cross-subsidization of self-financing activities by the Activities and any other activities funded by the Subvention (whether in money or in kind);
- (e) to provide the Government with copies of all publicity and promotional materials produced for the Activities and any other activities funded by the Subvention at least one month before the start of the activities; and
- (f) to allow the Government to use the publicity and promotional materials produced by the COMPANY in arts promotion or other promotion activities.

## 8.2 The COMPANY -

- (a) acknowledges that the Subvention is being provided by the Government and shall, in all publicity and promotional materials produced relating to the Activities of the COMPANY, include a statement that "The COMPANY is financially supported by the Government of the Hong Kong Special Administrative Region". The acknowledgement shall be placed in a prominent position in the publicity and promotional materials and shall be of a size not smaller than other type print acknowledging support or of such other size or sizes as shall be required by the Government from time to time. The COMPANY further agrees that the acknowledgement and any other reference to the Government or its employees shall carry no implications whatsoever that the Government or its employees undertake or accept any responsibility or assume any liability to any third parties for the COMPANY's liabilities or obligations; and
  - (b) acknowledges and agrees that there is no obligation on the part of the Government to provide any additional funding should the COMPANY run into financial deficit at any time during the Subvention Period. The Government shall not reimburse the COMPANY for any amount incurred by the COMPANY that exceeds the amount of the Subvention or any amount incurred by the COMPANY before the commencement date of this Agreement or after the expiry or termination of this Agreement. The Government accepts no liabilities for any deficits arising from the carrying out of the Activities.
9. To enable the Government to take any remedial action if the financial position of the COMPANY changes to the point where in the opinion of the Government the Subvention may no longer be appropriate or necessary, the COMPANY agrees -
- (a) to accept any donation or sponsorship from any third parties on the understanding that the Government is not obliged to provide any funds to meet any financial commitment (whether recurrent or otherwise) arising from the COMPANY's acceptance of the donation or sponsorship;
  - (b) to bear any and all financial consequences resulting from the acceptance of donations or sponsorship for providing any services/undertaking any capital projects which may have recurrent/time-limited financial implications unless the Government's written agreement in providing additional funding for the purpose has been obtained before the COMPANY's acceptance of donations or sponsorship. In the event that the COMPANY accepts a donation or sponsorship which creates a financial commitment on the COMPANY beyond the Subvention Period without the prior written agreement of the Government, the COMPANY agrees that this will not preempt or commit the Government to provide any subvention to the COMPANY beyond the Subvention Period;
  - (c) to obtain the prior approval of the governing body of the COMPANY as to the manner in which the donation is to be used and to notify the Government of any donation made to the COMPANY which the donor does not require to be used for a specific purpose;
  - (d) that upon request of the Government, the COMPANY shall immediately provide the Government with copies of all or any of the sponsorship agreements entered into by the COMPANY;

- (e) to notify the Government as soon as practicable of any proposed change to the scope and/or level of Activities. The Government reserves the right to vary the amount of Subvention if there is any change to the scope and/or level of Activities; and
  - (f) to accept a revision of the amount of Subvention if the Government, without prejudice to its right to terminate under Clause 12, considers such a revision appropriate, having regard to the resources and circumstances of the COMPANY, and to refund and to repay to the Government immediately on demand by the Government the amount of any reduction in the Subvention as may be determined by the Government.
10. In this clause, "Reserve" means the surplus (if any) as revealed in the audited annual financial statements referred to in Clause 5(d)(ii) net of sponsorship, donations and income and expenditure of self-financing activities. If at the end of the Subvention Period, there is a Reserve, the COMPANY may keep and carry forward a Reserve of not more than twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period to serve as a buffer against contingencies in the subsequent year and as an incentive to economise its spending in the current year. Any excess of the Reserve over twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period shall either be returned by the COMPANY to the Government or netted off against the amount of the following year's Government subvention, if any, in the sole discretion of the Government. The COMPANY may apply for written approval of the Government to vary the aforesaid ceiling of the Reserve, which may be considered and decided by the Government in its sole discretion. The COMPANY agrees -
- (a) to plough back the Reserve into Activities funded by the Subvention;
  - (b) to seek the prior approval of the governing body of the COMPANY for using the Reserve;
  - (c) to seek the prior written approval of the Government if the use of the Reserve will generate additional financial consequences for the Government; and
  - (d) for accounting purpose as set out in Clause 8.1(d), the COMPANY shall keep a separate account to record sponsorship, donations and income and expenditure of the COMPANY's self-financing activities.

#### 11. Personal Data

- (a) The COMPANY hereby consents, agrees and authorizes that without further notification to the COMPANY, the Government may disclose, verify and/or exchange all and any information and data ("the Data") related to its constituent committees and/or other third parties -
  - (i) for and in relation to consideration, review and evaluation of the COMPANY's application for Government subvention and the Subvention hereby granted or for the maintenance of the Subvention made or in respect of the continuation of the Subvention made or to be made; or

- (ii) in relation to the use of the Data in its discretion in the general policies, requirements, decisions and related activities and matters of the Government in administration of and for publicity as part of the general transparency of the Government in the discharge of its functions and duties.
- (b) The COMPANY confirms that it shall comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) before disclosing or transferring the Data obtained from data subjects to the Government.
- (c) The COMPANY hereby confirms that it is fully aware and acknowledges and authorizes that all Data are supplied to the Government in connection with the application for the Subvention and in connection firstly with the making, maintaining, reviewing, assessing, recovering and publicizing the Data for the direct primary purpose of the Subvention and secondly the objectives of the Government for the wider but equal secondary purpose of recording, storing, identifying and making available the Data for public access in implementing the fully transparent policies of conduct, operation, performance, reporting, analyzing and fully informing the public of the results of the Government from time to time and at all times in the necessary discharge of its statutory responsibilities and that failure so to treat and deal with the Data may result in the Government being unable to discharge its functions properly and efficiently and that such treatment of and dealing with the Data are accordingly hereby fully and irrevocably authorized by the COMPANY. The COMPANY shall indemnify the Government against all third party claims in this regard including without limitation employees of or consultants to and any other direct or indirect providers of services or benefits to the COMPANY.
- (d) The indemnity clause in Clause 11(c) shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

## 12. Termination and Consequences of Termination

- (a) The Government may, at any time, terminate this Agreement forthwith by giving notice to the COMPANY without entitling the COMPANY to any compensation whatsoever -
  - (i) if the COMPANY is -
    - in breach of any terms, conditions or undertakings of this Agreement; or
    - persistently or wrongfully neglecting to carry out the Activities or its duties or obligations under this Agreement;

and (in case of any of the abovementioned failure or breach capable of being remedied) has failed to remedy the same to the satisfaction of the Government within seven (7) days (or such longer period as the Government may, in its sole discretion, allow) after the issue by the Government to the COMPANY of a written notice requiring the COMPANY to rectify the failure or breach;

- (ii) if the Government becomes entitled to terminate this Agreement pursuant to Clause 7(f);
  - (iii) if the COMPANY assigns, transfers, sub-contract, license or otherwise dispose of any interest, right, benefit or obligation under this Agreement or purports to do so otherwise than in accordance with Clause 13;
  - (iv) if the COMPANY engages in any conduct which can reasonably be considered to be prejudicial to the Activities;
  - (v) upon the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up or dissolution of the COMPANY (other than a voluntary liquidation for the purpose of a bona fide amalgamation or reconstruction whilst the COMPANY is solvent) or if a receiver, provisional liquidator, liquidator or administrator has been appointed over all or any of its assets or if the COMPANY makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any judgment is made against the COMPANY or any similar occurrence under any jurisdiction that affects the COMPANY;
  - (vi) if the COMPANY fails to submit any reports or financial accounts pursuant to this Agreement, or any of the data, facts or information represented to and/or provided by the COMPANY to the Government about the Activities or this Agreement or any part thereof is incomplete, incorrect, untrue or is misleading; or
  - (vii) if the COMPANY abandons this Agreement in whole or in part.
- (b) On the expiry or other termination of this Agreement -
- (i) this Agreement shall be of no further force and effect (but without prejudice to all accrued rights, liabilities and remedies and any provisions of this Agreement which expressly or by implication are intended to come into or continue in force on or after such expiration or termination);
  - (ii) subject to negotiation with and subsequent approval of the Government, the COMPANY shall not use the Reserve of the Subvention and shall forthwith return all such balance to the Government; and
  - (iii) the COMPANY shall within six (6) months after such expiry or termination submit to the Government a final Audited Account in respect of the Activities and the Subvention made up to such expiry or termination.
- (c) If this Agreement is terminated by the Government pursuant to this Clause, without prejudice to any of the Government's other rights and remedies, the Government may require the COMPANY to repay immediately all or any monies provided by the Government pursuant to this Agreement which have not been defrayed, applied or used, or whose application or use has not been controlled, monitored or supervised by the COMPANY, strictly in accordance with the terms of this Agreement together with all administrative, legal and other costs and interest accrued up to the date of repayment.

### **13. Assignment**

- (a) The COMPANY shall not assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement without the prior written consent of the Government.
- (b) The Government may at any time assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement.

### **14. Indemnity**

- (a) The COMPANY shall indemnify the Government and keep the Government fully and effectively indemnified against all loss, actions, claims, demands, damages, interest, costs, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by/on behalf of the COMPANY) and liabilities of whatsoever nature which the Government may sustain or incur or which may be brought or established against the Government by any person as a result of or relating to -
  - (i) the negligence, recklessness or willful misconduct of the COMPANY, its officers, employees, agents or sub-contractors in carrying out the Activities or performing this Agreement;
  - (ii) the breach by the COMPANY of any provisions of this Agreement; or
  - (iii) any unauthorized act or omission of the COMPANY or its officers, employees, agents or sub-contractors.
- (b) The provisions of this Clause 14 shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

### **15. Amendments**

Subject to the provisions of this Agreement, no waiver, cancellation, addition, alteration or amendment of or to the provisions of this Agreement shall be valid unless made in writing and duly signed by both parties.

### **16. Entire Agreement**

This Agreement sets out the entire agreement between the parties hereto and supersedes all prior written or oral agreements, understandings or arrangements between them in relation to the subject matter hereof, and the parties confirm that they have not entered into this Agreement upon the basis of any statements, undertakings, warranties or representations that are not expressly stated in this Agreement.

### **17. Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, such provision shall, to that extent, be deemed not to form part of this Agreement



without affecting the interpretation, legality, validity and enforceability of the remaining provisions of this Agreement.

**18. No Waiver**

No failure or delay by either party to exercise any right, power or remedy available to it under this Agreement, at law, or in equity shall operate as a waiver thereof, nor will any single, partial or defective exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**19. Relationship of the Parties**

Nothing in this Agreement or in the arrangements contemplated by it shall create a partnership or joint venture between the parties hereto and, save as expressly provided in this Agreement, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of, or pledge the credit of or otherwise bind or oblige the other party hereto. Nothing contained in this Agreement shall be so construed as to constitute either party to be the agent of the other.

**20. Governing Law and Jurisdiction**

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

**21. Appendices and Annexes**

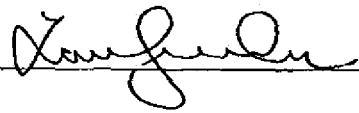
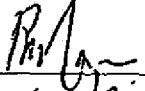
The Appendices and Annexes to this Agreement shall form and be read as an integral part of this Agreement.

**22. Saving**



Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any powers, discretions or duties, or the exercise or performance of any powers, discretions or duties, conferred or imposed by or under any law upon the Government, any Government bureau or department or any public officer or other person in the employ of the Government.

In witness whereof the parties have executed this Agreement the day and year first above written.

SIGNED for and on behalf of the Government of  
the Hong Kong Special Administrative Region

By : LAW Sun-on  
Signature :   
Title : Principal Assistant Secretary for Home Affairs (Culture)  
Witness :   
( WAN Wai-ling )  
Senior Manager for Home Affairs (Culture)

SIGNED for and on behalf of  
Hong Kong Chinese Orchestra Limited

By : Dr. Carlye Tsoi  
Signature :   
Title : Council Chairman  
Witness :   
( Mrs. Celia Chiu )



Company chop

**Submission of Audited Annual Financial Statements and Financial Report**

The audited annual financial statements of the COMPANY shall include balance sheet, income statement, cash flow statement, and accounting policies and explanatory notes, and the audited annual financial report shall show –

- (a) the income and expenditure in respect of the Subvention and the Activities; and
- (b) the movements in the Reserve and assets acquired which are funded by the Subvention.

The annual financial statements and annual financial report mentioned at Clause 5(d)(ii) shall be certified by the Chairman of the COMPANY and prepared in accordance with the relevant laws of Hong Kong and the international accounting standard as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards and Accounting Guidelines as may be issued and updated from the time to time by the Hong Kong Institute of Certified Public Accountants) and duly audited, dated and signed by a certified public accountant registered under section 22 of the Professional Accountants Ordinance (Cap. 50 of the Laws of Hong Kong) who are not in any way connected with the Activities.

The auditors' report accompanying the annual financial statements and annual financial report submitted shall contain an expression of opinion as to –

**On the annual financial statements of the COMPANY –**

whether they give a true and fair view of the state of affairs of the COMPANY as at the balance sheet date and of its financial result and cash flows for the year then ended.

**On the annual financial report of the Activities being audited –**

whether the COMPANY has complied with, in all material respects, the requirements as may be set by the Government to keep proper books and records and to prepare annual financial report of the Activities in accordance with the books and records, as well as all the accounting requirements in this Agreement<sup>1</sup> and other relevant documents such as the Accounting Standards and Accounting Guidelines.

The COMPANY shall agree with the auditors the terms of the audit engagement, such as the objectives, scope and form of report, etc. To avoid misunderstanding, the agreed terms shall be recorded in an engagement letter.

The COMPANY shall provide the auditors with a copy of this Agreement and other relevant documents.

---

<sup>1</sup> The accounting requirements in this Agreement refer to Clause 6(t), 8.1(d) and 10(d).

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 : (19) in SF(3) to HAB/CS/CR 7/7/8(C1) Pt. 4  
YOUR REF : CB(3)/PAC/R54  
TEL NO. : 2594 6615  
FAXLINE : 2802 4893

19 May 2010

Clerk, Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
(Attn: Ms Macy NG)

Dear Ms NG,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)  
Hong Kong Chinese Orchestra Limited (Chapter 6)**

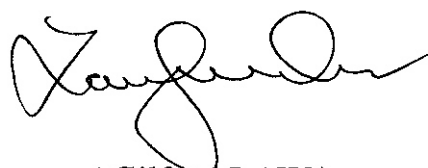
Thank you for your letter of 13 May 2010. The requested information is set out below.

- (a) When the Hong Kong Chinese Orchestra (HKCO) was corporatised in 2001-02, the Leisure and Cultural Services Department (LCSD) entered into a Funding and Services Agreement (FSA) with HKCO annually as the latter's subventing body. The Home Affairs Bureau (HAB) has then entered into an FSA with HKCO annually following the transfer of funding responsibility of HKCO from LCSD to HAB since 1 April 2007.

- (b) A chronology setting out the actions taken in relation to the scope of an auditor's opinion on an audited financial report is attached at the Annex.

As explained in the chronology, the Financial Services and the Treasury Bureau advised HAB in 2007 that "the detailed requirements and presentation of the annual financial report to be submitted might be determined by the Controlling Officer taking into account any specific requirements, and *where necessary*, in consultation with the Director of Accounting Services (DAS)". DAS was not consulted subsequently because HAB was satisfied that the audited financial reports (including detailed financial statements) submitted by the subvented performing arts groups had duly fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding as it was not our intention to seek a confirmation from the auditor on provisions of the FSA which touches on non-financial matters.

Yours sincerely,



( Gilford LAW )

for Secretary for Home Affairs

- cc. Executive Director, Hong Kong Chinese Orchestra Limited  
Secretary for Financial Services and the Treasury  
Director of Audit

**Requirement on an Auditor's Opinion**  
**Chronology of Events**

---

No.	Date	Events / Development
1.	March 2001	<ul style="list-style-type: none"> <li>The Leisure and Cultural Services Department (LCSD) entered into a Funding and Services Agreement (FSA) with the Hong Kong Chinese Orchestra (HKCO) to prepare for the latter's corporatisation in April 2001. There were no requirements in the FSA for an auditor to provide an opinion on the audited financial reports.</li> </ul>
2.	September 2004	<ul style="list-style-type: none"> <li>The Financial Services and the Treasury Bureau (FSTB) issued the Financial Circular No. 9/2004 "Guidelines on the Managements and Control of Government Funding for Subvented Organisations" (the Circular).</li> </ul>
3.	April 2005	<ul style="list-style-type: none"> <li>With reference to the Circular, LCSD included a requirement for an auditor's opinion on the audited financial reports, among others, in the Annex C of the FSA for 2005-06<sup>1</sup> with its four subvented performing arts groups, including HKCO.</li> <li>The audit requirement reads "on the annual financial report of the activities being audited, the auditors' report shall contain an opinion as to whether the company has complied with, in all material respects, the requirements as may be set by the Government and all the terms and conditions of the FSA and other relevant documents as may be specified by the Government." (hereafter referred to as "requirement on an auditor's opinion on the financial report").</li> </ul>

<sup>1</sup> The same Annex C was incorporated in LCSD's FSA for 2006-07 with its subvented performing arts groups.

No.	Date	Events / Development
4.	November 2005	<ul style="list-style-type: none"> <li>The Assistant Director (Finance) of LCSD informed the Deputy Director (Culture) that the 2004-05 audited financial statements of HKCO (and other subvented performing arts groups) did not contain an auditor's opinion on the financial report of the subvented activities. In response, the Assistant Director (Performing Arts) explained that when the 2004-05 FSA was signed in early 2004, the Circular was not yet issued. Upon the issuance of the Circular in September 2004, the requirement on an auditor's opinion on the financial report was included into the FSAs for 2005-06 and full compliance with the requirement would be closely monitored.</li> </ul>
5.	April 2007	<ul style="list-style-type: none"> <li>Following up on the Recommendation Report of the Committee on Performing Arts, the Home Affairs Bureau (HAB) took up the funding responsibility for the then ten major performing arts groups<sup>2</sup>, including HKCO from LCSD from 2007-08. The arrangement was meant to be transitional, pending results of a funding review of the subvented performing arts sector.</li> <li>Inherited from LCSD's FSAs with its performing arts groups, HAB adopted the same Annex C for its FSAs for 2007-08<sup>3</sup> for the major performing arts groups, including the requirement on an auditor's opinion on the financial report.</li> <li>Before signing the FSAs for 2007-08, HAB received an enquiry from one of the groups formerly funded by the HKADC concerning Annex C. The group provided HAB with a copy of its Report of the</li> </ul>

<sup>2</sup> The groups included six from the Hong Kong Arts Development Council (HKADC).

<sup>3</sup> The same Annex C was incorporated in HAB's FSAs for the major performing arts groups for 2008-09 and 2009-10.

No.	Date	Events / Development
		<p>Directors and Audited Financial Statements for 2005-06 (without an auditor's opinion on the financial report) for HAB's confirmation on whether the Report had already fulfilled all the requirements stipulated at Annex C of the FSA for 2007-08.</p>
6.	4 April 2007	<ul style="list-style-type: none"> <li>HAB wrote to FSTB with the above group's Report and sought the latter's confirmation on whether the Report had already fulfilled all the requirements stipulated in paragraph 10.1 to 10.6 of the Circular concerning submission of audited accounts.</li> </ul>
7.	15 May 2007	<ul style="list-style-type: none"> <li>FSTB advised that "in accordance with paragraph 10.3 of the [Circular], the detailed requirements and presentation of the annual financial report to be submitted might be determined by the Controlling Officer taking into account any specific requirements, and where necessary, in consultation with the Director of Accounting Services".</li> <li>On the basis of FSTB's advice, HAB considered that the audited financial reports (including detailed financial statements) submitted by the above group had duly fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding. As such, HAB did not require the groups to provide further information, i.e. an auditor's opinion on the financial report.</li> </ul>
8.	February 2010	<ul style="list-style-type: none"> <li>At HAB's meeting with the major performing arts groups on 9 February, HKCO expressed its concern over the impracticability of engaging an auditor to carry out compliance audit on all the terms and conditions of the FSA as stipulated in Annex C of the FSA. On 12 February, the major performing arts groups issued a joint letter to HAB which set out, among others, the concern raised by HKCO.</li> </ul>



No.	Date	Events / Development
9.	16 March 2010	<ul style="list-style-type: none"> <li>HAB wrote to FSTB to seek its advice on whether and how the requirement on an auditor's opinion on the financial report could be better framed to reflect the purpose of ensuring proper management and control of government funding instead of seeking an audit on every single details of the FSA which touches on non-financial matters.</li> </ul>
10.	25 March 2010	<ul style="list-style-type: none"> <li>FSTB advised HAB that, among other things, the relevant section of the Circular, from which the requirement in Annex C of the FSA originates, is mainly focused on the monitoring of financial matters of the subvented organisations. The Controlling Officer has the flexibility to require subvention organisations under his purview to define the objectives and scope of auditors' duties.</li> </ul>
11.	31 March 2010	<ul style="list-style-type: none"> <li>Having regard to the advice from FSTB, HAB revised Annex C in the FSA for 2010-11 to reflect better the intention of the requirement on an auditor's opinion on the financial report to ensure proper management and control of government funding.</li> </ul>
12.	21 April 2010	<ul style="list-style-type: none"> <li>On the day when the Report No. 54 of the Director of Audit – Chapter 6 Hong Kong Chinese Orchestra Limited was made public, HAB forwarded a copy of FSTB's advice concerning the requirement on an auditor's opinion on the financial report to the Treasury for information.</li> </ul>

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: (76) in SF(3) to HAB/CS/CR 7/7/8(C1) Pt. 4  
YOUR REF: CB(3)/PAC/R54  
TEL NO.: 2594 6615  
FAXLINE: 2802 4893

8 June 2010

Clerk, Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
(Attn: Ms Macy NG)

Dear Ms NG,

**The Director of Audit's Report on the  
results of value for money audits (Report No.54)**

**Hong Kong Chinese Orchestra Limited (Chapter 6)**

Thank you for your letter of 1 June 2010. The requested information is set out below:

- (a) Major performing arts groups are required to submit to the Home Affairs Bureau (HAB) a Self-evaluation Report on an annual basis according to the Funding and Services Agreement (FSA). The groups, including the Hong Kong Chinese Orchestra (HKCO), used to make reference to the reporting format of the funding submissions for their Self-evaluation Reports (please see template at Annex I).

HAB has worked out a detailed proforma to facilitate the groups to report the performance results of their core programmes in their respective Self-evaluation Report. The new proforma has incorporated the recommendations put forth in the Audit Report. It provides clear definitions and methodologies on the performance information to be included in the Report, such as the maximum venue capacity, the maximum audience capacity

stated in an approved seating plan, the number of paid audience, the number of complimentary tickets (including free tickets or complimentary tickets paid by the arts group), and the formulas for calculating ticket proceeds and ticket sale rates. Please refer to Annex II for details.

- (b) Paragraph 3.23 of the Audit Report pointed out that the HKCO had on two occasions arranged concerts as private functions for commercial sponsors. Based on the discussion at the HKCO's Council meetings, the two concerts were arranged with the aims to increase revenue and broaden the audience base. As such, our observer did not raise objection to the arrangement. We also note that the HKCO had paid full rental for hiring LCSD's venue for the said concerts and did not receive rental subsidy.
- (c) The artistic staff (including musicians, actors/ actresses and dancers) of the performing arts groups subvented by HAB are entitled to 12 to 56 days of annual leave in 2008/09<sup>\*</sup>.

We would also like to take this opportunity to provide further information on the clauses of the FSA. The FSAs between HAB and the performing arts groups are in line with the prevailing government subvention guidelines on support for subvented organisations. As reported to the Public Accounts Committee (PAC) earlier, it has not been our intention to seek a confirmation from an auditor on provisions of the FSA which touches on non-financial matters. The performing arts groups have engaged their auditors with the same understanding. We consider that the financial reports (including detailed financial statements) submitted by the performing arts groups had fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding. The subsequent amendments to Annex C are made to reflect better the intention of the clauses.

The Audit Commission suggested vide its letter to the PAC dated 18 May 2010 that HAB should consider adopting measures to ensure compliance by the HKCO and other performing arts groups with some of the FSA clauses that are outside the audit scope. In light of the recommendation of the Audit Commission, we will consult the Financial Services and the Treasury Bureau and take appropriate follow-up actions.

---

<sup>\*</sup> The artistic staff of one of the performing arts groups are employed on a part-time basis. The annual leave arrangement is not applicable to them.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gilford LAW', with a stylized, flowing script.

(Gilford LAW)  
for Secretary for Home Affairs

- cc. Chairman, Public Accounts Committee of the Legislative Council  
Executive Director, Hong Kong Chinese Orchestra Limited  
Secretary for Financial Services and the Treasury  
Director of Audit

主要演藝團體提交資助撥款申請有關主要活動的呈報範本  
Template on Core Programmes in the Funding Submissions by the Major Performing Arts Groups

主要節目 Core Programmes

(a) 節目名稱 (如適用, 請註明 新作/重演/ 小品/大型製作)  Programme Title (New /Re-run / Short Work / Full-length Production, if applicable)	(b) 日期  Date	(c) 場地  Venue	(d) 演出 場數  No. of performances	(e) 主辦 機構  Presenter	(f) 導演/指揮/ 編舞  Director/ Conductor/ Choreographer	(g) 最高 觀眾容量  Maximum Audience Capacity	(h) 預計購票 觀眾人數  Expected No. of Paid Audience	(i) 預計 贈票數目  Expected No. of Complimentary Tickets	(j) * 預計 入座率  Expected Attendance Rate (%)	(k) # 預計 門票收入  Estimated Ticket Proceeds (\$)
節目總數: Total No of Programmes:			總數: Total:			總數: Total:	總數: Total:	總數: Total:	總數: Total:	總數: Total:

\* 請以預計購票數目(不計贈票)計算。

Please include the expected paid audience (excluding complimentary tickets) for calculating this rate.

# 如未能提供每個節目的預計門票收入,請提供總預計門票收入。

If there is difficulty in providing breakdown of the estimated ticket proceeds by programmes, please only provide the total estimated ticket proceeds.

年終自我評估報告內匯報主要活動表現的呈報表格  
**Proforma for Reporting the Performance Results of the Core Programmes in the  
Self-evaluation and Assessment Report and Year-end Report**

主要節目 Core Programmes

(a) 節目名稱 (如適用, 請註明 新作/重演/ 小品/大型製作)  Programme Title (New /Re-run / Short Work / Full-length Production, if applicable)	(b) 日期  Date	(c) 場地  Venue	(d) 演出 場數  No. of performances	(e) 主辦 機構  Presenter	(f) 導演/指揮/ 編舞  Director/ Conductor/ Choreographer	(g) 觀眾容量 Audience Capacity		(h) 門票數量 No. of Tickets			(i) 出售/ 派發門票率 Ticket Sale / Distribution Rate (%)			(j) 門票收入 Ticket Proceeds (\$)	
						(g1)	(g2)	(h1)	(h2)	(h3)	(i1)	(i2)	(i3)	(j1)	(j2)
						場地容量 (註 1)  Venue Capacity (Note 1)	場地容量 (扣除不予 出售的座 位) (註2)  Venue Capacity (Excluding blocked seats) (Note 2)	觀眾購買門 票數量 (註3)  Paid Audience (Note 3)	貴團購買作 免費派發用 途的門票數 量 (如有) (註4)  Tickets purchased by your group for free distribution (if any) (Note 4)	贈票數量 (註5)  Complimentary Tickets (Note 5)	扣除貴團購買作 免費派發用途的 門票及贈票  Excluding tickets purchased by your group for free distribution and complimentary tickets  h1/ g2 x 100%	扣除贈票 Excluding complimentary tickets  (h1+h2)/ g2 x 100%	所有門票 All tickets  (h1+h2+h3)/ g2 x 100%	觀眾購買門票 (h1的門票收入)  Paid Audience (ticket proceeds of h1)	所有門票 (h1+h2的門票收 入)  All tickets (ticket proceeds of h1+h2)
節目總數 Total No of Programmes:			總數 Total:			總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:	總數 Total:

註 1: 指有關場地的座位總數。

註 2: 指按照獲得有關場地管理單位書面核准的節目座位表, 可供出售/ 派發門票的座位數量。

註 3: 請包括所有已出售的收費門票, 包括經由貴團出售的收費門票。

註 4: 指所有由貴團自行購買的收費門票, 並以免費形式派發, 用作宣傳、公關、贊助、慈善或教育等用途。

註 5: 指沒有面值的門票。

Note 1: This refers to the total seating capacity of the venue concerned.

Note 2: This refers to the number of seats available for ticket sale/ distribution according to the seating plan approved in writing by the venue management concerned.

Note 3: Please include all kinds of priced tickets sold, including those sold via your group's own channel(s).

Note 4: This refers to all kinds of priced tickets purchased by your group for free distribution for promotional, public relations, sponsorship, charitable or educational purpose, etc.

Note 5: This refers to tickets with no face value.



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

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

圖文傳真 Facsimile : 2583 9063

電話 Telephone : 2829 4303

本署檔號 Our Ref.: UB/BAR/PAC/54 Vol.3

來函檔號 Your Ref.:

14 June 2010

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

(Attn: Ms Macy NG)

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Hong Kong Chinese Orchestra Limited (Chapter 6)**

I refer to the Secretary for Home Affairs' letter of 8 June 2010 providing additional information to the Public Accounts Committee (PAC).

In paragraph 2 of the letter, the Secretary for Home Affairs has said that "it has not been the Home Affairs Bureau (HAB)'s intention to seek a confirmation from an auditor on provisions of the Funding and Services Agreement (FSA) which touches on non-financial matters. The performing arts groups have engaged their auditors with the same understanding. The HAB considers that the financial reports (including detailed financial statements) submitted by the performing arts groups had fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding."

In this connection, we would like to point out that the requirements in Annex C of the FSA were made in accordance with Financial Circular No. 9/2004 (R54/6/INFO07) which stipulates that:

“1.6 ..... In all circumstances, they (Controlling Officers) should satisfy themselves that an appropriate system of cost control and monitoring is in place for overseeing the spending of public money by subvented organisations, having regard to economy, efficiency and effectiveness in the delivery of public service and use of public funds.

10.4 The auditors’ report accompanying the annual financial statement and annual financial report submitted should contain an expression of opinion as to —

(a) **On the annual financial statements of the subvented organisation —**

whether they give a true and fair view of the state of affairs of the subvented organisation as at the balance sheet date and of its financial result and cash flows for the year then ended.

(b) **On the annual financial report of the subvented programme(s) being audited —**

whether the subvented organisation has complied with, in all material respects, the requirements set by the Government (including the requirements to keep proper books and records and to prepare annual financial report of the subvented programme(s) in accordance with the books and records) and all the terms and conditions of the subvention as specified in the relevant subvention guidelines and other relevant documents.”

In our view, the previous audited financial reports (including detailed financial statements) submitted by the HKCO have only fulfilled the audit requirement in (a) above, but **not** the audit requirement in (b) above which aims to ensure the proper management and control of government funding. Paragraph 2.9 of the Audit Report is relevant. Therefore, we have reservation on the HAB’s view that financial reports submitted in the past by the performing arts groups (including the HKCO) “had fulfilled the purpose of Annex C of the FSA of ensuring proper management and control of government funding”.

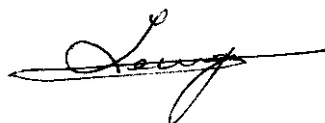


We understand that it is not the HAB's intention to seek audit assurance on non-financial provisions of the FSA. As a result, in Annex C of the FSA for 2010-11, the HAB has modified the audit requirement in (b) above such that the auditor only has to express an opinion on the HKCO's compliance with the Government's requirements on the keeping of proper books and records as well as the accounting requirements in Clauses 6(t), 8.1(d) and 10(d) of the FSA. However, as pointed out in paragraph 3 of my letter of 18 May 2010 to the PAC, a number of other specific requirements of the FSA are also important to the HAB as the Controlling Officer in monitoring the subvention to the HKCO. Examples include Clause 6(a) on internal controls, Clause 6(h) on code of conduct (for Board members and staff) and declarations on conflict of interest, and Clause 6(u) on procurement. **Therefore, we consider that the HAB needs to monitor the performing arts groups' compliance with these requirements to ensure that government funding to them has been properly managed and controlled.**

Having said the above, we appreciate the HAB's acceptance of our recommendation to explore measures for ensuring compliance by the HKCO and other performing arts groups with some of the FSA clauses that are outside the modified audit requirement.

A Chinese translation of this letter will be separately provided in due course.

Yours sincerely,

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

(Mrs Josephine NG)  
for Director of Audit

c.c. Secretary for Home Affairs (Fax No.: 2835 1380)  
Executive Director, Hong Kong Chinese Orchestra Limited (Fax No.: 2850 5374)  
Secretary for Financial Services and the Treasury (Fax No.: 2147 5239)



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

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

圖文傳真 Facsimile : 2583 9063

電話 Telephone : 2829 4303

本署檔號 Our Ref.: UB/BAR/PAC/54 Vol.3

來函檔號 Your Ref.:

18 May 2010

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

(Attn: Ms Macy NG)

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Hong Kong Chinese Orchestra Limited (Chapter 6)**

Thank you for your letter of 13 May 2010 seeking my view on whether the audit requirements in the Funding and Services Agreement (FSA) for the year 2010-11 can facilitate the auditors engaged by the Hong Kong Chinese Orchestra Limited (HKCO) to express an opinion as required in the FSA in the future.

According to Annex C to the FSA of 2010-11, the HKCO auditor shall, among other things, express an opinion on whether the HKCO has complied with the accounting requirements specified in Clauses 6(t), 8.1(d) and 10(d) of the FSA. As such, the auditor is no longer required to express an opinion on whether **all** the terms and conditions of the FSA have been complied with, as previously required under the FSAs of 2008-09 and 2009-10. The reduced audit scope under the 2010-11 FSA would facilitate the auditor to express an opinion in the future.

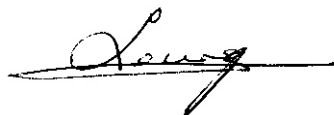
However, a number of specific requirements of the FSA (which would hence fall outside the audit scope under the 2010-11 FSA) are important to the Home Affairs Bureau as the Controlling Officer in monitoring the subvention to the HKCO. For example:

- (a) **Clause 6(a):** that requires the HKCO to adopt proper internal controls to ensure that the subvention is used in a cost-effective and accountable manner;
- (b) **Clause 6(h):** that requires HKCO employees/agents/sub-contractors to observe the “Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organisations”, and the adoption of the pro-forma “Declaration of Conflict of Interest” (Annexes D and E to the FSA); and
- (c) **Clause 6(u):** that governs the procurement of goods and services to ensure that all procurement is conducted in a fair, unbiased and competitive bidding basis.

Without the audit assurance, the Home Affairs Bureau may need to consider adopting other measures to satisfy itself that these essential requirements of the FSA have been properly complied with (see paragraph 10.4 of Financial Circular No. 9/2004 — R54/6/INFO7). The Home Affairs Bureau may wish to consult the Financial Services and the Treasury Bureau in this regard.

A Chinese translation of this letter will be separately provided in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Josephine', written over a horizontal line.

(Mrs Josephine NG)  
for Director of Audit

c.c. Secretary for Home Affairs (Fax No.: 2835 1380)  
Executive Director, Hong Kong Chinese Orchestra Limited (Fax No.: 2850 5374)  
Secretary for Financial Services and the Treasury (Fax No.: 2147 5239)

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 : (77) in SF(3) to HAB/CS/CR 7/7/8(C1) Pt. 4  
YOUR REF : CB(3)/PAC/R54  
TEL NO. : 2594 6615  
FAXLINE : 2802 4893

11 June 2010

Clerk, Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
(Attn: Ms Macy NG)

Dear Ms NG,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)  
Hong Kong Chinese Orchestra Limited (Chapter 6)**

Thank you for your letter of 7 June 2010.

The Home Affairs Bureau appointed a consultant in March 2010 to conduct a study on funding for the performing arts. The study aims to review the objectives of public funding for the performing arts in Hong Kong, and draw up a comprehensive proposal on a sustainable funding mechanism for Government subvention of the performing arts groups, including looking into the assessment criteria as well as the level and models of public funding, to facilitate the flexible development of the sector. The consultant is in the process of seeking views from arts

groups and other stakeholders through interviews, focused group discussions and other means. The work of the consultant is scheduled for completion in 2011.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gilford LAW', with a stylized, flowing script.

( Gilford LAW )  
for Secretary for Home Affairs

c.c. Executive Director, Hong Kong Chinese Orchestra Limited  
Secretary for Financial Services and the Treasury  
Director of Audit



香港中樂團  
HONG KONG CHINESE ORCHESTRA

HKCO/ED/023/2010

4 May 2010

Ms Macy Ng  
Clerk  
Public Accounts Committee  
Legislative Council  
Hong Kong

Dear Ms Ng

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 54)  
Hong Kong Chinese Orchestra Limited ("HKCO") (Chapter 6)**

Thank you for your letter of 28 April 2010 requesting for information.

Adopting the same numbering as set out in your letter, we are pleased to present the required information as follows:-

- (a) A copy of the Memorandum and Articles of Association ("M & A") of HKCO is attached.
- (b) In addition to the 5 subscribers to the M & A of HKCO Orchestra who automatically became the first Voting Members of the HKCO, 22 persons applied to be Members of the HKCO since its establishment in Feb 2001. All applications had been accepted. As of today, there are altogether 23 Voting Members in the HKCO.
- (c) A copy each of the Corporate Governance Guidelines, Accounting Policies and Procedures Manual, Human Resources Policies and Procedures Manual, and Marketing and Development Policies and Procedures Manual are attached. **Please note that some of the contents may be commercially sensitive hence should not be divulged in public. We respectfully ask the same be kept in strict confidence and disclosure be limited to the Honourable Members of the Public Accounts Committee in order to protect the interests of HKCO.**

名譽贊助人  
HONORARY PATRON  
中華人民共和國  
香港特別行政區  
行政長官曾蔭權先生  
THE HON DONALD TSANG, GBM  
THE CHIEF EXECUTIVE  
HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA

前任主席 FOUNDING CHAIRMAN  
徐樹玲博士太平紳士(2001-2006)  
DR CARLYE W L TSUI BBS MBE JP

前任主席 PAST CHAIRMAN  
黃天祐博士(2006-2008)  
DR KELVIN WONG  
獲頒榮譽師(2008-2009)  
MR HENRY LAI

理事會 COUNCIL  
主席 CHAIRMAN  
徐樹玲博士太平紳士  
DR CARLYE W L TSUI BBS MBE JP

副主席 VICE - CHAIRMEN  
梁廣灝太平紳士  
IR EDMUND K H LEUNG SBS OBE JP  
陳偉佳博士  
DR CHAN WAI KAI

總幹事 HON SECRETARY  
李耀強先生  
MR RUCKY W K LI

理事 MEMBERS  
陳永華教授太平紳士  
PROF CHAN WING WAH JP  
丘日謙先生  
MR PAUL Y H YAU MH  
鄒小磊先生  
MR JACK S L CHOW  
梁善為先生  
MR SAMSON LEUNG  
黃家倫先生  
MR ALAN K L WONG

藝術總監 / 首席指揮  
ARTISTIC DIRECTOR /  
PRINCIPAL CONDUCTOR  
關嘉昌先生  
MR YAN HUICHANG BAS

行政總監  
EXECUTIVE DIRECTOR  
饒敏華女士  
MS CELINA M W CHIN

香港中樂團有限公司  
HONG KONG CHINESE ORCHESTRA LTD  
香港皇后大道中345號  
上環市政大廈7樓  
7/F, SHEUNG WAN MUNICIPAL  
SERVICES BUILDING,  
345 QUEEN'S ROAD CENTRAL  
HONG KONG  
TEL (852) 3185 1600  
FAX (852) 2815 8615  
E-MAIL [inquiries@hkco.org](mailto:inquiries@hkco.org)  
WEBSITE [www.hkco.org](http://www.hkco.org)



2002最傑出弘揚現代中樂榮譽大獎  
THE MOST OUTSTANDING ACHIEVEMENT IN ADVANCING CONTEMPORARY CHINESE MUSIC

2004傑出董事獎-法定/非分配利潤組織董事會  
DIRECTORS OF THE YEAR - STATUTORY/NON-PROFIT-DISTRIBUTING ORGANIZATION BOARD

2004最佳企業管治資料披露大獎-公營/非分配利潤類別  
BEST CORPORATE GOVERNANCE DISCLOSURE GOLD AWARD OF PUBLIC SECTOR/NOT-FOR-PROFIT CATEGORY



2001健力士世界紀錄 - 最大型胡琴合奏  
GUINNESS WORLD RECORD - LARGEST HUQIN ENSEMBLE

2003健力士世界紀錄 - 最大型鼓樂合奏  
GUINNESS WORLD RECORD - LARGEST DRUM ENSEMBLE

2005健力士世界紀錄 - 最大型笛子合奏  
GUINNESS WORLD RECORD - LARGEST DIZI ENSEMBLE

2005第二十八屆十大中文金曲金針獎  
THE 28<sup>th</sup> TOP TEN CHINESE GOLD SONG AWARD - THE GOLDEN NEEDLE AWARD

- (d) The pre-defined audience capacity was discussed and agreed under the broad principle of optimising viewing and most favorable acoustics effect for the audience. It is done generally on a case-by-case basis, especially when the concert involves additional equipment such as an image projector, and other theatrical elements such as a dance or live performance of calligraphy. The less favorable seats (sold at a lower price) would only be released when all the other tickets have been sold, or the sightline problem proves to be acceptable during the final rehearsals. These measures are especially essential in ensuring a good experience for novice concert-goers who may otherwise be discouraged from coming back for more HKCO events in future.

We understand that the case-by-case variation in the seating capacity of each concert may create difficulties for HKCO's **internal evaluation** of programming and marketing effectiveness. Therefore, we have adopted a pre-defined audience capacity of 1,496 seats and 1206 seats for the Hong Kong Cultural Centre Concert Hall and Hong Kong City Hall Concert Hall respectively (most of our concerts are held at these two venues). This defined capacity is for internal reference in our Self-evaluation report only. Attendance figure instead of attendance rate is used to better reflect the full picture of attendance. The attendance rate may however be different, depending on the physical setting of the venue and the nature of the art form. The said practice had been approved by the HKCO Council after long and detailed discussions in a number of meetings where representatives from the Leisure and Cultural Services Department were present.

- (e) The two media firms mentioned in Case 4 were local dailies. The complimentary tickets were provided to the newspapers in exchange for promotion and publicity in their papers. This is a common PR and marketing bartering strategy to promote HKCO's concerts and to feed first-hand experience in the appreciation of Chinese orchestral music to their readers. The net benefits of such arrangements are far greater than the income from the sale of the tickets concerned.
- (f) Regarding the two concerts mentioned in Case 5 and Case 6 in paragraph 3.23 of the Audit Report, the respective numbers and percentages of the tickets sold in the first session of the concerts are as follows:

	Case 5	Case 6
Number of tickets sold (in public only)	905 (57.57%)	1592 (92.02%)
Total Number of tickets sold (including Promotional Tickets bought by HKCO)	1,039 (66.09%)	1,663 (96.12%)

- g) There are one large hall and two small rehearsal rooms at HKCO's base at the Sheung Wan Municipal Services Building. The facilities are unfortunately grossly insufficient for all of the Orchestra's sectional rehearsals and self-practices. Very often musicians have to make use of any space at the Sheung Wan base, such as sitting or standing in the corridors to practise. The smaller rehearsal rooms are extremely inadequate for instruments like *Suona*, *Sheng* or Percussion due to their high volume.


In view of a lack of space for rehearsals and self-practice sessions, we have submitted a document to the West Kowloon Cultural District Authority dated 11 December 2009, proposing to the Authority, among other suggestions, to designate a regular and appropriate venue for the HKCO for rehearsals and practice sessions, which will be instrumental to the professional development of the Orchestra.

- (h) In order to manage the performance of our musicians and to conduct thorough reviews, HKCO has adopted a 360 degree performance assessment system. The assessment not only encompasses a review of each musician's performing artistic capability, but also gives an indication on the musician's professionalism, team spirit, cooperation with others, discipline and demeanor etc. Depending on the assessed musician's position and grade, an assessment is done by at least 2 tiers of immediate supervisors. Contract renewal or salary adjustment cases are discussed thoroughly at the Human Resources Committee and the Council of the HKCO.

On top of the assessment of individual musician's performance, HKCO also adopts a system whereby senior musicians of the artistic department starting from assistant principals upwards will appraise, for virtually each concert, the performance of other musical sections or individual musicians from other musical sections. The senior musicians will also be asked to evaluate the guest conductors and soloists, as well as the venue facilities and score preparation for future reference.

As per your letter dated April 30, requesting the duties of each of the 20 artistic staff whose actual working hours were less than the conditioned working hours in 2008-2009, as mentioned in Table 9 in paragraph 4.4 of the Audit Report, and the musical instruments they played, the relevant information is attached.

Yours sincerely  
HONG KONG CHINESE ORCHESTRA LIMITED



Ms. Celina Chin  
Executive Director

**\*Note by Clerk, PAC:**

*Memorandum and Articles of Association of HKCO, Corporate Governance Guidelines, Accounting Policies and Procedures Manual, Human Resources Policies and Procedures Manual, Marketing and Development Policies and Procedures Manual, as well as the minutes of meetings mentioned in paragraph (d) not attached.*



<b>Musician</b>	<b>Musical instrument played</b>	<b>Duties</b>
Principal 1	Gaohu	Please see Appendix 1 and notes below
Principal 2	Liuqin	
Principal 3	Sheng	
Assistant principal 1	Erhu	Please see Appendix 2 and notes below
Assistant principal 2	Suona	
Assistant principal 3	Percussion	
Musician 1	Gaohu	Please see Appendix 3 and notes below
Musician 2	Erhu	
Musician 3	Zhonghu	
Musician 4	Gehu	
Musician 5	Bass Gehu	
Musician 6	Yangqin	
Musician 7	Pipa	
Musician 8	Sanxian	
Musician 9	Zhongruan	
Musician 10	Daruan	
Musician 11	Zheng	
Musician 12	Bangdi	
Musician 13	Guan	
Musician 14	Percussion	

Note: Apart from activities mentioned in appendices, other duties also includes time devoted in regular self-practice, practicing new scores, media interviews, shooting and programme meetings, these are not considered by Audit Commission in conditioned hours.

Principal Player

During each session of work, the appointee's duties include performance, accompaniment, rehearsal, recording, shooting for film production, shooting for video recording, other recording work, broadcasting, employee training, promotional activities and all such duties as may be reasonably arranged by the Orchestra.

The duties of a Principal Player of the Orchestra also include the followings:

1. To serve as lead player in ensemble playing;
2. To be responsible for training and maintaining the uniformity of the performance of all the instruments within the section of which he/she is a Principal, in terms of, for example, bowing, fingering, etc., and to be responsible for pitch accuracy and uniformity of timbres, in order to achieve the artistic standard required by the conductor;
3. To execute work involved in the distribution of duties to players as assigned by the Orchestra, the Artistic Director/Conductor, or any other authorised person(s) of the Orchestra, to assist the players concerned in enhancing their performance standards, and to execute other duties;
4. To convene and attend meetings of his/her section, and to make proposals for instrument reforms pertaining to the section, for works to be performed at concerts, for the acquisition of instruments, and for the enhancement of the artistic standard of the section;
5. To participate in all performances of the Orchestra and educational activities and, when required, to conduct demonstration talks;
6. To lead an ensemble of the Orchestra on school and community touring performances as and when required;
7. To maintain discipline among members of his/her section, to take a leading role, and to ensure that the players behave in a proper, appropriate manner and with professionalism when engaged in Orchestra activities;

8. To perform duties pertaining to recruitment and assessment for human resources of the Orchestra; and to attend all meetings pertaining to Orchestra business;
9. To assist the Artistic Director in the planning and promotion of various Orchestra activities, and execute duties thereto related;
10. To perform any other duties as assigned by the Orchestra and/or the Artistic Director.

Assistant Principal Player

During each session of work, the appointee's duties include performance, accompaniment, rehearsal, recording, shooting for film production, shooting for video recording, other recording work, broadcasting, employee training, promotional activities and all such duties as may be reasonably arranged by the Orchestra.

An Assistant Principal Player is also required to assist the Principal Player, and as and when required, to perform the Principal Player's role, in the execution of the following duties.

1. To assist the Principal Player of the section in maintaining the uniformity of the performance of all the instruments, in terms of, for example, bowing, fingering, timbres, etc, in order to achieve the artistic standard required by the Conductor;
2. To assist the Principal Player of the section, or any other authorised person(s) of the Orchestra, in the distribution of duties to players and to assist the players concerned in enhancing their performance standards, and to execute other duties;
3. To assist the Principal Player in maintaining discipline among players of his/her section, to take a leading role, and to ensure that they behave in a proper, appropriate manner and with professionalism when engaged in Orchestra activities;
4. To assist in convening meetings of his/her section, and to attend such meetings; also to assist in making proposals for instrument reforms pertaining to the section, for works to be performed at concerts, for the acquisition of instruments, and for the enhancement of the artistic standard of the section;
5. To act on behalf of the Principal Player and perform his/her duties under special circumstances;
6. To serve as lead player in ensemble playing;
7. To participate in all performances of the Orchestra and educational activities and, when required, to conduct demonstration talks;

8. To lead an ensemble of the Orchestra on school and community touring performances as and when required;
9. To assist the Artistic Director in the planning and promotion of various Orchestra activities, and execute duties thereto related;
10. To perform any other duties as assigned by the Orchestra and/or the Artistic Director.

Players

1. During each session of work, the appointee's duties include performance, accompaniment, rehearsal, recording, shooting for film production, shooting for video recording, other recording work, broadcasting, employee training, promotional activities and all such duties as may be reasonably arranged by the Orchestra.



香港中樂團  
HONG KONG CHINESE ORCHESTRA

HKCO/ED/028/2010

**(By fax 2537 1204 and e-mail)**

Jun 10, 2010

Ms Macy Ng  
Clerk  
Public Accounts Committee  
Legislative Council  
Hong Kong

Dear Ms Ng

**Re: The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 54)  
Hong Kong Chinese Orchestra Limited ("HKCO") (Chapter 6)**

Thank you for your letter of June 7, 2010 requesting for information. List of the requested information is at Appendix I.

Yours sincerely  
HONG KONG CHINESE ORCHESTRA LTD.

Celina Chin (Ms)  
Executive Director

c.c. Secretary for Home Affairs (Fax no. 2840 1902)  
Secretary for Financial Services and the Treasury (Fax no. 2147 5239)  
Director of Audit (Fax no. 2583 9063)

名譽贊助人  
HONORARY PATRON  
中華人民共和國  
香港特別行政區  
行政長官曾蔭權先生  
THE HON DONALD TSANG, GBM  
THE CHIEF EXECUTIVE  
HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA

首任主席 FOUNDING CHAIRMAN  
徐樹珍博士太平紳士 (2001-2006)  
DR. CARLYE W. L. TSUI SBS MBE JP

前任主席 PAST CHAIRMAN  
黃天祐博士 (2006-2008)  
DR. KELVIN WONG  
賴麗榮律師 (2008-2009)  
MR. HENRY LAI

理事會 COUNCIL  
主席 CHAIRMAN  
徐樹珍博士太平紳士  
DR. CARLYE W. L. TSUI SBS MBE JP

副主席 VICE-CHAIRMEN  
梁廣瀾太平紳士  
IR. EDMUND K. H. LEUNG SBS OBE JP  
陳偉佳博士  
DR. CHAN WAI KAI

義務秘書 HON. SECRETARY  
李偉強先生  
MR. RICKY W. K. LI

理事 MEMBERS  
陳永華教授太平紳士  
PROF. CHAN WING WAH JP  
丘日謙先生  
MR. PAUL Y. H. YAU MH  
鄭小磊先生  
MR. JACK S. L. CHOW  
梁善為先生  
MR. SAMSON LEUNG  
黃家倫先生  
MR. ALAN K. L. WONG

藝術總監 / 首席指揮  
ARTISTIC DIRECTOR /  
PRINCIPAL CONDUCTOR  
關惠昌先生  
MR. YAN HUI CHANG SBS

行政總監  
EXECUTIVE DIRECTOR  
錢敏華女士  
MS. CELINA M. W. CHIN

香港中樂團有限公司  
HONG KONG CHINESE ORCHESTRA LTD.  
香港皇后大道中345號  
上環市政大廈7樓  
7/F, SHEUNG WAN MUNICIPAL  
SERVICES BUILDING,  
345 QUEEN'S ROAD CENTRAL,  
HONG KONG  
TEL (852) 3185 1600  
FAX (852) 2815 5613  
E-MAIL inquiries@hkco.org  
WEBSITE www.hkco.org



2002最佳出弘揚現代中樂榮譽大獎  
THE MOST OUTSTANDING ACHIEVEMENT IN ADVANCING CONTEMPORARY CHINESE MUSIC

2004傑出董事獎-法定/非分配利潤組織董事會  
DIRECTORS OF THE YEAR - STATUTORY/NON-PROFIT-DISTRIBUTING ORGANIZATION BOARD

2004最佳企業管治資料披露大獎-公營/非分配利潤類別  
BEST CORPORATE GOVERNANCE DISCLOSURE GOLD AWARD OF PUBLIC SECTOR/NOT-FOR-PROFIT CATEGORY

2001健力士世界紀錄-最大型胡琴合奏  
GUINNESS WORLD RECORD - LARGEST HUQIN ENSEMBLE

2003健力士世界紀錄-最大型鼓樂合奏  
GUINNESS WORLD RECORD - LARGEST DRUM ENSEMBLE

2005健力士世界紀錄-最大型笛子合奏  
GUINNESS WORLD RECORD - LARGEST DIZI ENSEMBLE

2005第二十八屆十大中文金曲金針獎  
THE 28<sup>th</sup> TOP TEN CHINESE GOLD SONG AWARD - THE GOLDEN NEEDLE AWARD

**Hong Kong Chinese Orchestra Limited**  
**香港中樂團有限公司**

	Name	姓名
<b>2009-2010</b>		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Tong, Carlson	唐家成
	Chan Wing Wah	陳永華
	Wong, Tin Yau Kelvin	黃天祐
	Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	* Chung, Shui Ming Timpson	鍾瑞明
	Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝
	Chan, Mo Po Paul	陳茂波
	* Yau, Yat Heem Paul	丘日謙
	* Li, Wai Keung	李偉強
	Wong, Pik Kuen Helen	黃碧娟
	Chow, Siu Lui	鄒小磊
	Wong, Yick Kam	黃亦鑑
	Leung, Sin Wai	梁善為
	Wong, Ka Lun	黃家倫
	Conway, Anthony Francis Martin	江偉
	Ng, Po Yee Jessica	吳寶儀
	Tam, Ping Lung	譚秉農
	Tsai, Annie	蔡三妮
<b><u>Council Members 理事會成員</u></b> <b><u>(as at Jun 11, 2010) 直至2010年6月11日</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Leung, Kwong Ho	梁廣灝
	Chan, Wai Kai	陳偉佳
	* Li, Wai Keung	李偉強
	Chan Wing Wah	陳永華
	* Yau, Yat Heem Paul	丘日謙
	Chow, Siu Lui	鄒小磊
	Leung, Sin Wai	梁善為
	Wong, Ka Lun	黃家倫



	Name	姓名
2008-2009		
<b>Voting Members 具備投票權利之會員</b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Chan Wing Wah	陳永華
	Wong, Tin Yau Kelvin	黃天祐
	Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	* Chung, Shui Ming Timpson	鍾瑞明
	Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝
	Chan, Mo Po Paul	陳茂波
	* Yau, Yat Heem Paul	丘日謙
	* Li, Wai Keung	李偉強
	Wong, Pik Kuen Helen	黃碧娟
<b>Council Members 理事會成員</b>		
	Lai, Hin Wing Henry	賴顯榮
	Tsui, Wai Ling Carlye	徐尉玲
	Chan, Kam Biu Joshua	陳錦標
	Chan Wing Wah	陳永華
	Chan, Wai Kai	陳偉佳
	* Chung, Shui Ming Timpson	鍾瑞明
	Leung, Kwong Ho	梁廣灝
	Chan, Mo Po Paul	陳茂波
	* Yau, Yat Heem Paul	丘日謙
	* Li, Wai Keung	李偉強
	Wong, Pik Kuen Helen	黃碧娟

	Name	姓名
<b>2007-2008</b>		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝
	Chan, Mo Po Paul	陳茂波
<b><u>Council Members 理事會成員</u></b>		
	Wong, Tin Yau Kelvin	黃天祐
	Lai, Hin Wing Henry	賴顯榮
	Chiu, Lai Kuen Susanna	趙麗娟
	Chan, Kam Biu Joshua	陳錦標
	Tsui, Wai Ling Carlye	徐尉玲
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝
	Chan, Mo Po Paul	陳茂波

	Name	姓名
2006-2007		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong	馬啓濃
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝
<b><u>Council Members 理事會成員</u></b>		
	Wong, Tin Yau Kelvin	黃天祐
	Tong, Carlson	唐家成
	Lai, Hin Wing Henry	賴顯榮
	Chiu, Lai Kuen Susanna	趙麗娟
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chan, Kam Biu Joshua	陳錦標
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳
	Leung, Kwong Ho	梁廣灝

	Name	姓名
<b>2005-2006</b>		
<b>Voting Members 具備投票權利之會員</b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong	馬啓濃
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳
<b>Council Members 理事會成員</b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Tong, Carlson	唐家成
	Fan, Kam Ping	范錦平
	Wong, Tin Yau Kelvin	黃天祐
	Lai, Hin Wing Henry	賴顯榮
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	Chiu, Lai Kuen Susanna	趙麗娟
	Chan, Kam Biu Joshua	陳錦標
	* Chung, Shui Ming Timpson	鍾瑞明
	* Chan, Wai Kai	陳偉佳

	Name	姓名
<b>2004-2005</b>		
<b>Voting Members 具備投票權利之會員</b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong	馬啓濃
<b>Council Members 理事會成員</b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fan, Kam Ping	范錦平
	Tong, Carlson	唐家成
	Chan Wing Wah	陳永華
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Wong, Tin Yau Kelvin	黃天祐
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong	馬啓濃

	Name	姓名
<b>2003-2004</b>		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong Tony	馬啓濃
<b><u>Council Members 理事會成員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fan, Kam Ping	范錦平
	Tong, Carlson	唐家成
	Chan Wing Wah	陳永華
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Wong, Tin Yau Kelvin	黃天祐
	Chan, Kam Biu Joshua	陳錦標
	Ma, Kai Loong Tony	馬啓濃

	Name	姓名
<b>2002-2003</b>		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fei, Barbara	費明儀
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
<b><u>Council Members 理事會成員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fei, Barbara	費明儀
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Wong, Tin Yau Kelvin	黃天祐

	Name	姓名
<b>2001 (Incorporation) 公司化</b>		
<b><u>Voting Members 具備投票權利之會員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fei, Barbara	費明儀
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	Wong, Tin Yau Kelvin	黃天祐
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
<b><u>Council Members 理事會成員</u></b>		
	Tsui, Wai Ling Carlye	徐尉玲
	Fei, Barbara	費明儀
	Fan, Kam Ping	范錦平
	Chan Wing Wah	陳永華
	Tong, Carlson	唐家成
	* Au Yeung, Tsan Pong Davie	歐陽贊邦
	* Chiu, Lai Kuen Susanna	趙麗娟
	* Lai, Hin Wing Henry	賴顯榮
	Wong, Tin Yau Kelvin	黃天祐

\* = Government Appointed Council Member 政府委任之理事會成員





香港中樂團  
HONG KONG CHINESE ORCHESTRA

HKCO/ED/027/2010

*(By fax 2537 1204 and e-mail)*

Jun 8, 2010

Ms Macy Ng  
Clerk  
Public Accounts Committee  
Legislative Council  
Hong Kong

Dear Ms Ng

**Re: The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 54)  
Hong Kong Chinese Orchestra Limited ("HKCO") (Chapter 6)**

Thank you for your letter of June 1, 2010 requesting for information. Adopting the same numbering as set out in your letter, we are pleased to present the required information as follows:-

- (a) (i) Despite about 90 years of Chinese orchestral music development, it is still much less established in the global arts world compared to its western counterparts, where the development of symphony orchestras dates back over 300 years. As such, the Hong Kong Chinese Orchestra has to adopt an aggressive marketing strategy to vigorously promote Chinese orchestral music and to broaden audience base.

The two cases stated in the Audit Report as "private functions" were regular concerts which had been planned as part of the programmes in the orchestral season.

名譽贊助人  
HONORARY PATRON  
中華人民共和國  
香港特別行政區  
行政長官曾蔭權先生  
THE HON DONALD TSANG, GBM  
THE CHIEF EXECUTIVE  
HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA

首任主席 FOUNDDING CHAIRMAN  
徐蔚玲博士太平紳士(2001-2006)  
DR CARLYE W L TSUI BBS MBE JP

前任主席 PAST CHAIRMAN  
黃天祐博士(2006-2008)  
DR KELVIN WONG  
賴顯榮律師(2008-2009)  
MR HENRY LAI

理事會 COUNCIL  
主席 CHAIRMAN  
徐蔚玲博士太平紳士  
DR CARLYE W L TSUI BBS MBE JP

副主席 VICE - CHAIRMEN  
梁廣福太平紳士  
IR EDMUND K H LEUNG SBS OBE JP  
陳偉佳博士  
DR CHAN WAI KAI

義務秘書 HON SECRETARY  
李健強先生  
MR RUCKY W K LI

理事 MEMBERS  
陳永華教授太平紳士  
PROF CHAN WING WAH JP  
丘日謙先生  
MR PAUL Y H YAU MH  
鄭小磊先生  
MR JACK S L CHOW  
梁善為先生  
MR SAMSON LEUNG  
黃家倫先生  
MR ALAN K L WONG

藝術總監 / 首席指揮  
ARTISTIC DIRECTOR /  
PRINCIPAL CONDUCTOR  
閻惠昌先生  
MR YAN HUICHANG BBS

行政總監  
EXECUTIVE DIRECTOR  
錢敏華女士  
MS CELINA M W CHIN

香港中樂團有限公司  
HONG KONG CHINESE ORCHESTRA LTD  
香港皇后大道中345號  
上環市政大廈7樓  
7/F, SHEUNG WAN MUNICIPAL  
SERVICES BUILDING,  
345 QUEEN'S ROAD CENTRAL  
HONG KONG  
TEL (852) 2185 1600  
FAX (852) 2815 5615  
E-MAIL inquiries@hkco.org  
WEBSITE www.hkco.org



2002最傑出弘揚現代中樂榮譽大獎  
THE MOST OUTSTANDING ACHIEVEMENT IN ADVANCING CONTEMPORARY CHINESE MUSIC

2004傑出董事獎-法定/非分配利潤組織董事會  
DIRECTORS OF THE YEAR - STATUTORY/NON-PROFIT-DISTRIBUTING ORGANIZATION BOARD

2004最佳企業管治資料披露大獎-公營/非分配利潤類別  
BEST CORPORATE GOVERNANCE DISCLOSURE GOLD AWARD OF PUBLIC SECTOR/NON-PROFIT CATEGORY



2001健力士世界紀錄 - 最大型胡琴合奏  
GUINNESS WORLD RECORD - LARGEST HUQIN ENSEMBLE

2003健力士世界紀錄 - 最大型鼓樂合奏  
GUINNESS WORLD RECORD - LARGEST DRUM ENSEMBLE

2005健力士世界紀錄 - 最大型笛子合奏  
GUINNESS WORLD RECORD - LARGEST DIZI ENSEMBLE

2005第二十八屆十大中文金曲金針獎  
THE 28<sup>th</sup> TOP TEN CHINESE GOLD SONG AWARD - THE GOLDEN NEEDLE AWARD


HKCO accepted private sponsorship for the two concerts in view of the following principles/consideration:-

1. To bring in extra income, which, in turn, would help reduce government subsidy;
2. It is an opportunity to tap/broaden into new/potential audience through networks of the sponsors; there would be a guaranteed number of audience through the sponsors' network;
3. The sponsors' brands could be leveraged to enhance HKCO's own brand and marketing efforts in seeking more sponsorships in the future.

In terms of the use of the venue, HKCO had complied with all requisite requirements in these two concerts as with all other concerts.

- (a) (ii) Regarding the distribution of complimentary tickets, a set of guidelines has been laid down in the Marketing Handbook by the Marketing Sub-Committee and endorsed by Council: an agreed number of complimentary tickets would be given to the sponsors according to the size of the sponsorship with flexibility to be exercised as stated in the Handbook. The number of tickets to be offered is based on the following criteria:-
1. The brand value and relevance of the sponsor to HKCO;
  2. Profile of clients/guests to be invited by the sponsor to the concert and HKCO;
  3. New opportunities for HKCO to promote Chinese orchestral music to non-regular concert goers;
  4. The potential to establish long-term partnership with the sponsor.
- (b) The Hong Kong Chinese Orchestra played a total of 1,148 and 1,183 pages of new score music for the 31<sup>st</sup> (August 2007 – July 2008) and 32<sup>nd</sup> season (August 2008 – July 2009) respectively.

As to the question of 'average time required to analyze and become familiar with one page of the new score', it is a highly complex consideration which may be risky to generalize. This is because the creativity, complexity and difficulty of each composition vary, often drastically, from one to another. Even for the same composition, different conductors may interpret the music differently according to the different orchestras and occasions in question. Their requirements on the



musicians, which are often linked to the practice time required, are thus different. The following 2 cases may, however, illustrate the point:

Case 1

Number of pages of new score: 2

Performance duration: 24 minutes

The two-page score consists of avant garde techniques and symbols which require controlled improvisation of each instrument group directed by the conductor. The rendition of the score would be different at each rehearsal and performance. Thus the “chemistry” between the musicians and conductor was crucial to get a satisfactory result. Many rehearsals were needed for that purpose. In addition, individual musicians would need extra practice hours as it involved unconventional methods for the performances.

Case 2


Number of pages of new score: 80

Performance duration: 15 minutes

The first draft of the new score was heavily revised after the first reading session of the orchestra. Even though the piece is only 15-minute long, because of some highly complicated sections of the score - from bar 5 to 45 and from bar 248 to 264 - which consist of mixed meters (highly complicated rhythms), it took considerable time for HKCO musicians to practise to the standard required by the conductor.

Added to that, the extremely fast passages from bar 293 to 358 for *gaohu*, *erhu* and *zhonghu* sections required the musicians to do extra respective sectional practices to achieve the technical fulfillment.

The fact is that sectional practice is also essential, making it all the more difficult to fairly and comprehensively quantify the time required for musicians to familiarize with new score music.



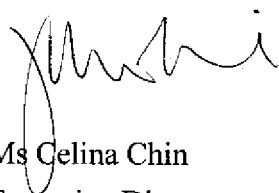
In addition to newly commissioned pieces, musicians are also required to prepare for other pieces and practise on their own before coming to group rehearsals. Even for 'old' pieces, there will be new interpretations by different conductors and/or on different occasions and musicians still need to practise to achieve artistic excellence. In order to ensure that musicians are up to artistic standards and requirements, HKCO has introduced a 360 degree performance assessment scheme encompassing assessment not only by peers in the same orchestral part but also by other orchestral parts.

We hope that the above has highlighted some characteristics of the work faced by HKCO musicians. We respectfully submit that in view of the dynamism and complexity of orchestral music, which is subject to the creativity of composers and conductors, it is very difficult to generalize for all concerts and all pieces on the average time required for musicians to analyse and become familiar with music scores.

A Chinese translation of this letter will be separately provided in due course. Thank you for your attention.

Yours sincerely

HONG KONG CHINESE ORCHESTRA LIMITED



Ms Celina Chin  
Executive Director

c.c. Secretary for Home Affairs  
Secretary for Financial Services and the Treasury  
Director of Audit



審計署  
香港灣仔  
告士打道七號  
入境事務大樓  
二十六樓

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

APPENDIX 22

電話 Telephone : 2829 4303

本署檔號 Our Ref.: UB/BAR/PAC/54 Vol.2

來函檔號 Your Ref.:

10 May 2010

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

(Attn: Ms Macy NG)

Dear Ms Ng,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 54)**

**Hong Kong Chinese Orchestra Limited (Chapter 6)**

I refer to the Hong Kong Chinese Orchestra Limited (HKCO)'s letter of 4 May 2010 to the Public Accounts Committee enclosing, among other things, information on the duties of the 20 artistic staff mentioned in Table 9 in paragraph 4.4 of the Audit Report.

In an attachment of the letter which presented a list of the musical instruments played by the artistic staff, the HKCO included a note that "Apart from activities mentioned in appendices, other duties also include time devoted in regular self-practice, sight reading, practicing new scores, media interviews, shooting and meetings, these are not considered by Audit Commission in conditioned hours".

We would like to clarify that in the analyses of scheduled working hours (Table 8 in para. 4.3) and actual working hours (Table 9 in para. 4.4), Audit has included the time of performances, rehearsals, outreaching community activities, self practices, meetings and other activities as shown in HKCO records (as mentioned in Note 14 to para. 4.9). In this regard, we would like to provide in the attached Appendix a breakdown (by work types) of the actual working hours of the 20 artistic staff. The time of self-practices, meetings and video-shooting included in counting their actual working hours has been highlighted for easy reference.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Mrs Josephine NG)  
for Director of Audit

c.c. Executive Director, Hong Kong Chinese Orchestra Limited (Fax No.: 2850 5374)  
Secretary for Home Affairs (Fax No.: 2840 1902)  
Secretary for Financial Services and the Treasury (Fax No.: 2147 5239)

公共審計 盡力盡善 *Excellence in Public Auditing*

## Appendix

### Breakdown of actual working hours for 2008-09

Staff	Actual working hours						
	Performances and rehearsals (local and overseas) (a)	Outreach community activities (b)	Training (c)	Self practices (Note 1) (d)	Meetings, discussions and recruitment exercises (e)	Audio-recording and video-shooting (Note 2) (f)	Total (g)
Principal 1	615	9	11	42	35	4	716
Principal 2	622	17	11	42	23	4	719
Principal 3	610	14	17	42	22	4	709
Assistant principal 1	627	11	8	42	23	4	715
Assistant principal 2	619	16	17	42	22	4	720
Assistant principal 3	667	16	12	42	22	4	763
Musician 1	607	8	8	42	22	4	691
Musician 2	577	9	8	42	22	4	662
Musician 3	529	9	8	42	23	4	615
Musician 4	526	9	8	42	22	4	611
Musician 5	606	14	8	42	22	4	696
Musician 6	597	19	11	42	22	4	695
Musician 7	601	16	11	42	22	4	696
Musician 8	648	17	11	42	23	4	745
Musician 9	589	11	11	42	22	4	679
Musician 10	611	15	11	42	22	4	705
Musician 11	637	19	14	42	22	4	738
Musician 12	603	13	17	42	22	4	701
Musician 13	614	12	20	42	23	4	715
Musician 14	674	21	11	42	23	4	775
<b>Total</b>	<b>12,179</b>	<b>275</b>	<b>233</b>	<b>840</b>	<b>459</b>	<b>80</b>	<b>14,066</b>
<b>Average</b>	<b>609</b>	<b>14</b>	<b>11</b>	<b>42</b>	<b>23</b>	<b>4</b>	<b>703</b>

*Note 1: A total of 14 half-day self practice sessions were scheduled in the duty rosters for the three months of September 2008, January and March 2009. While there were no attendance records for these sessions, Audit has included 3 hours for each session in counting the artistic staff's working hours (based on the contract provision that each work session would normally last for not more than 3 hours — see para. 4.2(a) of the Audit Report).*

*Note 2: The hours shown in column (f) included only those audio-recording and video-shooting for promotion purposes. Video-shooting hours during performances and rehearsals have been included under column (a).*

.....  
Linking people Delivering business 傳心意 遞商機

11 June 2010

Ms Macy Ng  
Clerk to the Public Accounts Committee  
Legislative Council Building  
6 Jackson Road  
Central  
Hong Kong

Dear Ms Ng,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 54)**

**Provision of Postal Services (Chapter 8)**

I refer to your letter of 14 May 2010 on the above subject.

Being a trading fund, Hongkong Post is charged with the responsibility of delivering efficient, reliable and affordable services to the local community while generating reasonable return to Government. A retail network broadly covering the entire territory is essential to fulfilling this social commitment.

Furthermore, there has been a sharp decline of global mail traffic in the last few years due to rising popularity of social networking software and different forms of electronic communication. Mail volume dropped by 2.1% and 5.6% in 2008-09 and 2009-10 respectively, mainly driven by substitution of personal correspondences. This evolving business environment poses a direct and significant impact on the financial performance of post offices located in residential districts or remote areas.

Hongkong Post Headquarters  
2 Connaught Place, Central  
Hong Kong

香港中環康樂廣場二號  
香港郵政總部

T + **29212203**  
F + **28680046**  
[www.hongkongpost.com](http://www.hongkongpost.com)

Out of the 97 post offices recording losses in 2008-09 (details at **Annex I**), 47 are located in sparsely populated areas. Despite being manned by only a bare minimum of two staff, their annual revenues (ranging from \$70,000 to \$2.1 million) could not fully offset salaries and rentals (between \$950,000 and \$2 million). Similarly, another 40 are located in moderately populated areas and manned by three to six staff with annual revenues (ranging from \$400,000 to \$3.7 million) falling short of salaries and rentals (between \$1.6 million and \$3.9 million). The remainder comprises eight larger outlets located in densely populated areas but whose annual revenues (ranging from \$4.4 million to \$24.8 million) were depleted by salaries, rentals and expenses incurred as a result of long opening hours necessary to cater for customer demands as well as two mobile post offices. In this context, salaries and rentals that make up over 80% of the operating expenditure for these post offices have risen by 10.8% and 26.3% respectively from 2004-05 to 2008-09.

Hongkong Post conducts regular reviews on the level of activities carried out by each post office and will take prompt action to adjust the staffing level and opening hours, relocate for lower rentals or downsize in situ whenever possible. Where alternative means of service provision is available and practicable, we will also close down post offices subject to local consultation. During the five-year period from 2004-05 to 2008-09, five post offices were closed down and eight were relocated or downsized in situ.

Apart from the above measures, we have spared no effort in pursuing cost reduction through re-engineering/automation and in opening up new revenue streams. On the former, a pilot eCentre was launched at an industrial building in Cheung Sha Wan whose opening hours running from 1 p.m. to 8 p.m. and self-service kiosks have shown some initial success in diverting the workload originated from internet traders and could eventually help to facilitate downsizing. On the latter, we are vigorously positioning Hongkong Post as the preferred partner of government departments in delivering one-stop agency services<sup>(note 1)</sup>. We are also exploring with several organizations the feasibility of taking over their bill payment functions.

---

(note 1) The one-stop agency service involving distribution/collection of application forms, vetting/verification of supporting documents and distribution of licenses for the Road Cargo System rendered recently to the Customs and Excise Department is a good example



On underpaid postage, Hongkong Post has already tightened up its internal monitoring system, appraised the verification procedures adopted at retail counters and mail processing centres, and stepped up random checking. As a result, we managed to recover over \$132,000 on surcharges from February to April this year – a threefold increase over the same period in 2009 – and will keep up such efforts. Finally, new posters are displayed at all post offices and uploaded onto our website to remind the general public of their responsibility to pay sufficient postage.

The Chinese translation of our response is at **Annex II** and a soft copy will be ready shortly. Please feel free to contact Mrs Iris Wong on 2921 2238 for further information or assistance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Y F Chan', written over a circular stamp or seal.

(Y F Chan)

for Postmaster General

cc Secretary for Commerce and Economic Development (fax no. 25376720)  
Secretary for Financial Services and the Treasury (fax no. 2147 5239)  
Director of Audit (fax no. 2583 9063)

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

**Breakdown of Post Offices Recording Losses in 2008-09**

<b>Hong Kong</b>		<b>Main Reasons</b>
1	Ap Lei Chau Post Office	(1) & (3)
2	Cloud View Road Post Office	(1) & (3)
3	Cyber Port Post Office	(1) & (3)
4	Happy Valley Post Office	(1) & (3)
5	Heng Fa Chuen Post Office	(1)
6	Hennessy Road Post Office	(2) & (3)
7	Hing Fat Street Post Office	(2) & (3)
8	Hing Man Street Post Office	(1) & (3)
9	Kennedy Town Post Office	(1) & (3)
10	Lei Tung Post Office	(1) & (3)
11	Peak Post Office	(1) & (3)
12	Perkins Road Post Office	(1) & (3)
13	Pok Fu Lam Post Office	(1) & (3)
14	Repulse Bay Post Office	(1) & (3)
15	Sai Ying Pun Post Office	(1)
16	Siu Sai Wan Post Office	(1) & (3)
17	Stanley Post Office	(1)
18	Wah Fu Post Office	(1) & (3)
19	Wyndham Street Post Office	(2) & (3)

- (1) Located in residential districts or remote areas
- (2) High staff costs and/or long operating hours
- (3) High market rentals

<b>Kowloon</b>		<b>Main Reasons</b>
1	Choi Hung Chuen Post Office	(1) & (3)
2	Chuk Yuen Post Office	(1) & (3)
3	Fu Shan Post Office	(1) & (3)
4	Granville Road Post Office	(2) & (3)
5	Ho Man Tin Post Office	(1) & (3)
6	Hung Hom Bay Post Office	(1)
7	Kowloon Central Post Office	(2)
8	Kwun Tong Post Office	(2)
9	Lai Kok Post Office	(1) & (3)
10	Lam Tin Post Office	(1) & (3)
11	Lei Cheng Uk Post Office	(1) & (3)
12	Lok Fu Post Office	(1) & (3)
13	Lok Wah Post Office	(1) & (3)
14	Mei Foo Sun Chuen Post Office	(1) & (3)
15	Mong Kok Post Office	(2) & (3)
16	Ngau Chi Wan Post Office	(1) & (3)
17	Ngau Tau Kok Post Office	(1) & (3)
18	Oi Man Post Office	(1) & (3)
19	San Po Kong Post Office	(2) & (3)
20	Sau Mau Ping Post Office	(1) & (3)
21	Sham Shui Po Post Office	(2)
22	Shek Kip Mei Post Office	(1) & (3)
23	Shun Lee Post Office	(1) & (3)
24	To Kwa Wan Post Office	(1) & (3)
25	Tsim Sha Tsui Post Office	(2) & (3)
26	Tsz Wan Shan Post Office	(1) & (3)
27	Wong Tai Sin Post Office	(1) & (3)
28	Yau Tong Post Office	(1) & (3)
29	Yau Yat Tsuen Post Office	(1) & (3)

- (1) Located in residential districts or remote areas
- (2) High staff costs and/or long operating hours
- (3) High market rentals

<b>New Territories</b>		<b>Main Reasons</b>
1	Butterfly Post Office	(1) & (3)
2	Cheung Fat Post Office	(1) & (3)
3	Choi Ming Post Office	(1) & (3)
4	City One Shatin Post Office	(1) & (3)
5	Fairview Park Post Office	(1) & (3)
6	Fanling Post Office	(1)
7	Fu Shin Post Office	(1) & (3)
8	Fu Tai Post Office	(1) & (3)
9	Heng On Post Office	(1) & (3)
10	Hin Keng Post Office	(1) & (3)
11	Kam Tai Post Office	(1) & (3)
12	Kam Tin Post Office	(1)
13	Kwai Chung Post Office	(1) & (3)
14	Kwai Shing Post Office	(1) & (3)
15	Kwong Yuen Post Office	(1) & (3)
16	Lai King Post Office	(1) & (3)
17	Lee On Post Office	(1) & (3)
18	Lei Muk Shue Post Office	(1) & (3)
19	Leung King Post Office	(1) & (3)
20	Ma On Shan Post Office	(1) & (3)
21	Mei Lam Post Office	(1) & (3)
22	On Ting Post Office	(1) & (3)
23	Po Lam Post Office	(1) & (3)
24	Sai Kung Post Office	(1)
25	San Tin Post Office	(1)
26	Sha Kok Post Office	(1) & (3)
27	Shek Wai Kok Post Office	(1) & (3)
28	Sheung Tak Post Office	(1) & (3)
29	Sun Chui Post Office	(1) & (3)
30	Tai Hing Post Office	(1) & (3)
31	Tin Yiu Post Office	(1) & (3)
32	Tin Yuet Post Office	(1) & (3)

- (1) Located in residential districts or remote areas
- (2) High staff costs and/or long operating hours
- (3) High market rentals

<b>New Territories</b>		<b>Main Reasons</b>
33	Tseung Kwan O Post Office	(1) & (3)
34	Tsing Yi Post Office	(1) & (3)
35	Tsuen Wan West Post Office	(1)
36	Wah Ming Post Office	(1) & (3)
37	Wan Tau Tong Post Office	(1) & (3)
38	Wo Che Post Office	(1) & (3)
39	Yeung Uk Road Post Office	(1) & (3)
40	Yuen Long Post Office	(2) & (3)

- (1) Located in residential districts or remote areas
- (2) High staff costs and/or long operating hours
- (3) High market rentals

<b>Outlying Islands</b>		<b>Main Reasons</b>
1	Airport Post Office	(2)
2	Cheung Chau Post Office	(1) & (3)
3	Discovery Bay Post Office	(1) & (3)
4	Lamma Post Office	(1) & (3)
5	Mui Wo Post Office	(1)
6	Peng Chau Post Office	(1)
7	Tai O Post Office	(1)

<b>Others</b>		<b>Main Reasons</b>
1	Mobile post office	(1)
2	Mobile post office	(1)

- (1) Located in residential districts or remote areas
- (2) High staff costs and/or long operating hours
- (3) High market rentals

## ACRONYMS AND ABBREVIATIONS

---

Audit	Audit Commission
CEDD	Civil Engineering and Development Department
CWRF	Capital Works Reserve Fund
DAS	Director of Accounting Services
EAC	EcoPark Advisory Committee
ENB	Environment Bureau
EPD	Environmental Protection Department
FC	Finance Committee
FSA	Funding and Services Agreement
FSTB	Financial Services and the Treasury Bureau
HAB	Home Affairs Bureau
HKCC	Hong Kong Cultural Centre
HKCH	Hong Kong City Hall
HKCO	Hong Kong Chinese Orchestra Limited
HKP	Hongkong Post
HyD	Highways Department
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
NGOs	Non-governmental organisations
OT	Overtime
PWSC	Public Works Subcommittee
TD	Transport Department
URBTIX	Urban Ticketing System
WEEE	Waste electrical and electronic equipment