

**REPORT OF THE  
PUBLIC ACCOUNTS COMMITTEE  
ON  
THE REPORTS OF THE DIRECTOR OF AUDIT  
ON  
THE ACCOUNTS OF THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
FOR THE YEAR ENDED  
31 MARCH 2011  
AND THE RESULTS OF  
VALUE FOR MONEY AUDITS (Report No. 57)**

*February 2012*

*P.A.C. Report No. 57*

## 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 - 3
Confidentiality undertaking by members of the Committee	2 - 3	3
The Committee's Report	4 - 5	3
The Government's Response	6	4
<b>Part 3      Report of the Public Accounts Committee on Report No. 54 of the Director of Audit on the Results of Value for Money Audits [P.A.C. Report No. 54]</b>		
Laying of the Report	1	5
The Government Minute	2 - 4	5 - 6
<b>Part 4      Report of the Public Accounts Committee on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2010 and the Results of Value for Money Audits (Report No. 55) [P.A.C. Report No. 55]</b>		
Laying of the Report	1	7
The Government Minute	2 - 30	7 - 26

## CONTENTS

	<u>Paragraph</u>	<u>Page</u>
<b>Part 5</b>	<b>Committee Proceedings</b>	
	Consideration of the Director of Audit's Report	1 27
	Meetings	2 27
	Arrangement of the Report	3 - 4 27
	Acknowledgements	5 27
<b>Part 6</b>	<b>Observations of the Public Accounts Committee on the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2011</b>	1 28
<b>Part 7</b>	<b>Chapter</b>	
	<b>1. Food labelling and nutrition labelling of infant and special dietary foods</b>	
	A. Introduction	1 - 3 29
	B. Nutrition labelling of infant and special dietary foods	4 - 35 29 - 39
	C. Food labelling	36 - 80 39 - 57
	D. Conclusions and recommendations	81 57 - 72
	<b>2. Records management work of the Government Records Service</b>	1 - 22 73 - 80

## CONTENTS

	<u>Paragraph</u>	<u>Page</u>
<b>3. Water losses from unauthorised consumption and inaccurate metering</b>		
A. Introduction	1 - 4	81 - 82
B. Enforcement action against unlawful water taking	5 - 27	82 - 89
C. Inspection of unauthorised water consumption	28 - 44	89 - 96
D. Management of water meter accuracy	45 - 53	96 - 99
E. Performance reporting	54 - 55	99 - 100
F. Conclusions and recommendations	56	100 - 108
 <b>SIGNATURES OF THE CHAIRMAN, DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE</b>		 109
 <b>CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 57 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT</b>		 110
 <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		111 - 112
 <u>Appendix relating to Part 2: "Procedure"</u>		
<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'		113 - 115

## CONTENTS

### Page

Appendix relating to Part 3: "Report of the Public Accounts Committee on Report No. 54 of the Director of Audit on the Results of Value for Money Audits  
*[P.A.C. Report No. 54]*"

---

<b>Appendix 3</b>	Progress made in implementing improvement measures for the footbridges and subways identified by the Audit Commission	116 - 118
-------------------	---	-----------

Appendices relating to Part 4: "Report of the Public Accounts Committee on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2010 and the Results of Value for Money Audits (Report No. 55)  
*[P.A.C. Report No. 55]*"

---

<b>Appendix 4</b>	Location of the five commercial buildings and the five footbridges in the Central District	119
<b>Appendix 5</b>	Letter of 5 January 2012 from the Secretary for Development	120 - 121
<b>Appendix 6</b>	Latest position of the progress made by the Education Bureau on matters outstanding in the Government Minute laid before the Legislative Council in May 2011	122 - 133
<b>Appendix 7</b>	Latest progress in implementing Audit's recommendations on the Community Investment and Inclusion Fund	134 - 135

## CONTENTS

### Page

#### Appendices relating to Part 5: "Committee Proceedings"

<b>Appendix 8</b>	Witnesses who appeared before the Committee	136
<b>Appendix 9</b>	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. 57 on Thursday, 1 December 2011	137 - 138

#### Appendices relating to Chapter 1 of Part 7: "Food labelling and nutrition labelling of infant and special dietary foods "

<b>Appendix 10</b>	Opening statement made by the Secretary for Food and Health at the public hearing on 6 December 2011	139 - 143
<b>Appendix 11</b>	Opening statement made by the Director of Food and Environmental Hygiene at the public hearing on 6 December 2011	144
<b>Appendix 12</b>	Opening statement made by the Director of Audit at the public hearing on 6 December 2011	145 - 147
<b>Appendix 13</b>	Letter of 4 January 2012 from the Secretary for Food and Health	148 - 164
<b>Appendix 14</b>	Letter of 7 December 2011 from the Director of Food and Environmental Hygiene	165 - 170

## CONTENTS

### Page

Appendix relating to Chapter 2 of Part 7: "Records management work of the Government Records Service"

**Appendix 15** Letter of 19 December 2011 from the Director of Administration 171 - 196

Appendices relating to Chapter 3 of Part 7: "Water losses from unauthorised consumption and inaccurate metering"

**Appendix 16** Opening statement made by the Director of Water Supplies at the public hearing on 1 December 2011 197 - 199

**Appendix 17** Letter of 19 December 2011 from the Director of Water Supplies 200 - 215

**Appendix 18** Letter of 20 January 2012 from the Director of Water Supplies 216 - 217

**Appendix 19** Letter of 20 December 2011 from the Director of Water Supplies 218 - 220

**ACRONYMS AND ABBREVIATIONS** 221 - 223

## The Establishment of the Committee

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:

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

**Clerk** : Ms Miranda HON Lut-fong



*Procedure*

---

**The Committee's Procedure**      The practice and procedure, as determined by the Committee in accordance with Rule 72 of the Rules of Procedure, are as follows:

- (a) the public officers called before the Committee in accordance with Rule 72 of the Rules of Procedure, shall normally be the Controlling Officers of the Heads of Revenue or Expenditure to which the Director of Audit has referred in his Report except where the matter under consideration affects more than one such Head or involves a question of policy or of principle in which case the relevant Director of Bureau of the Government or other appropriate officers shall be called. Appearance before the Committee shall be a personal responsibility of the public officer called and whilst he may be accompanied by members of his staff to assist him with points of detail, the responsibility for the information or the production of records or documents required by the Committee shall rest with him alone;
- (b) where any matter referred to in the Director of Audit's Report on the accounts of the Government relates to the affairs of an organisation subvented by the Government, the person normally required to appear before the Committee shall be the Controlling Officer of the vote from which the relevant subvention has been paid, but the Committee shall not preclude the calling of a representative of the subvented body concerned where it is considered that such a representative could assist the Committee in its deliberations;
- (c) the Director of Audit and the Secretary for Financial Services and the Treasury shall be called upon to assist the Committee when Controlling Officers or other persons are providing information or explanations to the Committee;
- (d) the Committee shall take evidence from any parties outside the civil service and the subvented sector before making reference to them in a report;
- (e) the Committee shall not normally make recommendations on a case on the basis solely of the Director of Audit's presentation;
- (f) the Committee shall not allow written submissions from Controlling Officers other than as an adjunct to their personal appearance before the Committee; and

- (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 the Reports of the Director of Audit on:

- the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2011; and
- the results of value for money audits (Report No. 57),

which were tabled in the Legislative Council on 16 November 2011. Value for money audits are conducted in accordance with the guidelines and procedures set out in the Paper on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits' which was tabled in the Provisional Legislative Council on 11 February 1998. A copy of the Paper is attached in **Appendix 2**.

5. In addition, this Report takes stock of the progress of the action taken by the Administration on the recommendations made in the Committee's Report Nos. 54 and 55 and offers the Committee's views on the action taken. These are detailed in Parts 3 and 4 of this Report.

*Procedure*

---

6.       **The Government's Response**       The Government's response to the Committee's Report is contained in the Government Minute, which comments as appropriate on the Committee's conclusions and recommendations, indicates what action the Government proposes to take to rectify any irregularities which have been brought to notice by the Committee or by the Director of Audit and, if necessary, explains why it does not intend to take action. It is the Government's stated intention that the Government Minute should be laid on the table of the Legislative Council within three months of the laying of the Report of the Committee to which it relates.

**Laying of the Report** Report No. 54 of the Director of Audit on the results of value for money audits was laid in the Legislative Council on 21 April 2010. The Committee's Report (Report No. 54) was subsequently tabled on 14 July 2010, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 54 was laid in the Legislative Council on 20 October 2010. A progress report on matters outstanding in the Government Minute was issued on 4 October 2011. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 and 4 below.

**Construction of pedestrian crossing facilities**  
(Chapter 1 of Part 4 of P.A.C. Report No. 54)

3. The Committee was informed that:

Review of utilisation of footbridges and subways

- in March 2011, having consulted the respective District Councils (or their relevant committees), the Transport Department ("TD") finalised the shortlist of 40 pedestrian crossing facilities for review;
- in April 2011, the TD commenced the first phase of the review, which was completed in July 2011. The first phase of the review covered 18 facilities where improvement measures were being carried out. Straightforward measures, such as installation of directional signs, were expected to be completed by the fourth quarter of 2011. More complex improvement measures (e.g. reopening of subways which might attract street sleepers) would take longer time to complete. The TD started the next phase of the review in October/November 2011 with target completion in mid-2012 to cover the remaining 22 facilities. Further improvement measures identified would be initiated as soon as practicable after the review; and

Progress made in implementing improvement measures for the footbridges and subways

- details of the further progress made in implementing improvement measures for the footbridges and subways identified by the Audit Commission were set out in *Appendix 3*.

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

**Laying of the Report** The Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2010 and his Report No. 55 on the results of value for money audits were laid in the Legislative Council on 17 November 2010. The Committee's Report (Report No. 55) was subsequently tabled on 16 February 2011, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 55 was laid in the Legislative Council on 18 May 2011. A progress report on matters outstanding in the Government Minute was issued on 4 October 2011. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 30 below.

### **Equal Opportunities Commission**

*(Paragraphs 3 and 4 of Part 3 of P.A.C. Report No. 55)*

3. The Committee was informed that:

- the Equal Opportunities Commission ("EOC") had duly implemented the new measures arising from the recommendations of the compliance and management study. These measures had effectively enhanced the EOC's internal financial control and management capabilities; and
- the EOC was expected to conclude in a few months its review of the division of responsibilities within its senior management. It was also considering the creation of the Chief Operations Officer post in the context of the review.

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

**Provision of aquatic recreational and sports facilities**  
(Paragraphs 11 and 12 of Part 4 of P.A.C. Report No. 55)

5. The Committee was informed that:

De-gazetting of the Kiu Tsui Beach on Sharp Island

- in support of the promotion campaign carried out for the Hong Kong National Geopark, the Leisure and Cultural Services Department ("LCSD") had started organising canoe trips to Sharp Island since August 2011. Promotion leaflets were also sent to non-governmental organisations and canoe clubs in Sai Kung to encourage them to use the Kiu Tsui Beach ("the Beach") as a landing base so as to learn about the igneous rocks and marine life thereat. The number of visitors to the Beach from January to June 2011 had increased by 21.5% as compared with the corresponding period in 2010. The LCSD would continue to explore ways to enhance the facilities and usage of the Beach; and

Alignment of fees and charges of all swimming pool complexes and swimming training courses

- the LCSD continued with the review to examine the fee structures and fee levels of different types of recreation and sports facilities (including swimming pool complexes). The key issues being examined included the impact of changing the fee structures/levels on cost recovery rates, concessionary arrangements, and the implications of different fee alignment options, taking into account public affordability as well as latest analysis on the costing and utilisation patterns. As part of the exercise, the LCSD would also examine all the fees for recreation and sports programmes it organised (including swimming training courses), and assess the financial implications of changing or aligning the fees. The LCSD would continue to accord high priority to the review and would formulate proposals for consultation with the Legislative Council, District Councils and relevant stakeholders.

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

**University Grants Committee funded institutions — General administrative services**

*(Paragraphs 13 to 14 of Part 4 of P.A.C. Report No. 55)*

7. The Committee was informed that the working group of the Joint Committee on Student Finance overseeing the consultancy study on the review of the mechanism for setting and adjusting the levels of living expenses loans for post-secondary students met on 13 October 2011 to review progress of the study.

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

**Services provided by the Official Receiver's Office**

*(Paragraphs 17 and 18 of Part 4 of P.A.C. Report No. 55)*

9. The Committee was informed that the Official Receiver's Office had been reviewing the level of its fees and charges and would consult the Legislative Council Panel on Financial Affairs.

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

**Recoverability of the outstanding advances to the United Nations High Commissioner for Refugees**

*(Paragraphs 19 and 20 of Part 4 of P.A.C. Report No. 55)*

11. The Committee was informed that:

- the Administration had continued to urge the United Nations High Commissioner for Refugees ("UNHCR") to make renewed efforts to appeal to the international community for donations with a view to settling the outstanding advances, which remained at \$1,162 million. The Security Bureau had written to the Head of Hong Kong Sub-office of the UNHCR in March and August 2011 to reiterate the Administration's stance on the matter and register the Hong Kong community's expectation of an early recovery of the outstanding advances; and



- although it was not optimistic that repayment could be made in the near future in view of the pressing service demands on the UNHCR worldwide, the Administration would continue to urge the UNHCR for an early settlement of the outstanding advances.

12. The Committee wishes to be kept informed of the action taken by the Administration to pursue the repayment of the outstanding advances to the Government.

### **Footbridge connections between five commercial buildings in the Central District**

*(Paragraphs 21 and 22 of Part 4 of P.A.C. Report No. 55)*

13. The Committee was informed that the Lands Department ("Lands D") had coordinated a joint meeting in August 2011 with the owners of Buildings I and II (the location of these Buildings is shown in **Appendix 4**) and representatives of the Buildings Department, the Transport Department and the Highways Department to discuss the concerns and requirements of both owners in the footbridge proposal. The Lands D and the concerned departments would continue to follow up the matter.

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

### **Small house grants in the New Territories**

*(Paragraphs 23 and 24 of Part 4 of P.A.C. Report No. 55)*

15. The issues relating to small house grants in the New Territories were discussed in the Public Accounts Committee Report No. 39 published in February 2003. In the course of the Committee's public hearing on those issues, the then Secretary for Housing, Planning and Lands undertook in December 2002 to complete within the tenure of his office a review of the small house policy. However, despite the passage of some 10 years, the review had still not yet been completed. The Committee was repeatedly informed by the Administration that any major policy change would entail complex legal, land use and planning issues which required careful examination.

16. The Committee was concerned about the lack of progress in taking forward the review and asked whether the Administration had set a definite timetable for completing the review.

17. In her letter of 5 January 2012 in *Appendix 5*, the **Secretary for Development** replied that the existing small house policy had been in operation for a long period of time. Due to the complexity of the issues involved, the Administration was unable to set a definite timetable within which the review would be completed.

18. The Committee urges the Administration to expedite the review of the small house policy and wishes to be kept informed of further development on the review of the small house policy.

#### **The acquisition and clearance of shipyard sites**

*(Paragraphs 25 and 26 of Part 4 of P.A.C. Report No. 55)*

19. The Committee was informed that the Administration was compiling the necessary documents in preparation for the hearing scheduled for October 2012 to determine the amount of compensation payable to the ex-lessee.

20. The Committee wishes to be kept informed of the progress of action taken by the Administration.

#### **Emergency ambulance service**

*(Paragraphs 32 and 33 of Part 4 of P.A.C. Report No. 55)*

21. The Committee was informed that:

##### Measures taken to facilitate and ensure optimal deployment of emergency ambulance resources

- the Administration reported the results of the public consultation on the proposal to introduce the Medical Priority Dispatch System ("MPDS") to the Legislative Council Panel on Security ("Security Panel") in April 2010. The Administration would take the views and opinions of the

community and Legislative Council members into careful consideration in determining the way forward and details of the long-term plan. The Administration would follow up the recommended measures of the Committee and discuss the related matters in greater depth with the Security Panel;

Timetable and result of the review of the 12-minute target response time for emergency ambulance service

- if the proposed MPDS was accepted for implementation, it would lead to changes to the principle of ambulance dispatch and the mode of operations, and the response time targets would also be adjusted accordingly. The Administration would revisit the target response time for the emergency ambulance service after the way forward for the proposed MPDS was clear. The Administration would follow up with the Security Panel on an on-going basis; and

Review of the ambulance turnout time

- turnout time was part of the response time. The Administration would revisit the ambulance turnout time after the way forward for the proposed MPDS was clear. The Administration would follow up with the Security Panel on an on-going basis.

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

**Administration of the Sports Subvention Scheme**  
(Paragraphs 34 to 36 of Part 4 of P.A.C. Report No. 55)

23. The Committee was informed that:

Comprehensive review of the Sports Subvention Scheme

- taking into account the views expressed by stakeholders, the Leisure and Cultural Services Department ("LCSD") finalised the recommendations of the comprehensive review of the Sports Subvention Scheme ("the Scheme") in January 2011 and began implementing improvement measures from 2011-2012. Details were set out in the following paragraphs:

### Allocation of subvention

#### *Eligibility criteria*

- to enhance the transparency of the Scheme, the LCSD posted a notice on its website in July 2011 providing details of the eligibility criteria of the Scheme to facilitate new applicants in submitting applications for subvention in 2012-2013;

#### *Performance-based approach to determine allocation of subvention*

- National Sports Associations ("NSAs") would set more objective and quantitative performance targets in their annual plans for 2012-2013 for the four key performance areas, namely, Organisation of Programmes, Performance of Athletes, Development of Sport, and Corporate Governance and Compliance. When assessing the allocation of subventions to NSAs for 2012-2013, the LCSD would take into account NSAs' achievements of such targets in the past year;
- to allow NSAs more time to familiarise themselves with the new reporting system, the subvention adjustment system would be implemented from 2012-2013 onwards. The LCSD would present certificates of appreciation to NSAs that fulfilled the performance targets and were clear of any substantiated allegations or complaints in the previous year;
- in late 2011, the senior directorate of the LCSD would conduct a mid-year review to assess NSAs' achievement of performance targets and compliance with subvention requirements, as well as the need to provide assistance to NSAs;

#### *Standardising and rationalising the subvention approaches*

- in determining the amount of subvention granted to an NSA for different categories of programme in 2011-2012, the LCSD took into account the estimated income that could be derived from programmes as well as the maximum subvention level for the eligible expenditure of the categories of programme concerned. In 2011-2012, the LCSD continued to adopt a lump-sum approach when allocating the subvention for five categories of programme, namely, international competitions held outside Hong Kong, national and junior squad training, regional squad training, training of officials, and meetings and conferences. The LCSD also continued to process the remaining five categories of programme

(i.e. local international competitions, development schemes, local competitions, schools sports programmes and community sports clubs projects) on a programme basis;

#### Monitoring the use of subvention and internal controls of NSAs

##### *Output-based approach to monitoring the use of subvention, and streamlined and simplified reporting requirements*

- from 2011-2012 onwards, NSAs were required to submit one consolidated Programme Report in the respective quarter of each programme (instead of three reports as was the previous practice), in addition to an annual auditor's report on the entire subvention. When scrutinising the Programme Reports, the LCSD adopted an "output-based" approach whereby it did not vet individual expenditure items against the corresponding items in the approved budget, except for certain key expenditure items such as air fares, hotel accommodation and pay rates for coaches and officials. This would enable NSAs to use the approved subvention more flexibly so long as they met their commitment on deliverables and fulfilled the broad funding principles;

##### *Systematic inspections*

- starting from 2011-2012, the LCSD had adopted a new risk-based approach for conducting on-site inspections of subvented programmes. Under this approach, the frequency of on-site inspections carried out by LCSD staff was determined with reference to the nature and complexity of the programmes as well as the risk level of NSAs;

#### Comprehensive guidelines and best practices

- the Corruption Prevention Department of the Independent Commission Against Corruption ("ICAC") had compiled a checklist on "Governance of National Sports Associations" to help NSAs further enhance their governance and internal controls. The ICAC and the LCSD would jointly organise a briefing in late 2011 to brief NSAs on the checklist and help them implement the best practices;

##### *Auditing standards and quality assurance inspections*

- from 2011-2012 onwards, the LCSD had required NSAs to improve the standards of audited accounts to the level of "providing reasonable assurance on NSAs' compliance with the relevant guidelines and

requirements". The LCSD's Quality Assurance Section had kept its senior management informed of the quality assurance work conducted on NSAs. The follow-up actions taken would be reported to the senior directorate of the LCSD in the mid-year review to be held in late 2011;

*Briefings and IT support for NSAs*

- the LCSD conducted a briefing in March and two workshops in April 2011 for NSA staff to introduce the improvement measures and relevant guidelines to help them comply with the requirements of the Subvention Agreement. An annual briefing would be held in late 2011 to advise NSAs of the latest government policies and initiatives for developing sports, as well as to share with them common irregularities observed and ways to avoid or rectify such problems;
- Phase I of the computerised system for the Scheme would be implemented in early 2012 to improve the LCSD's monitoring capacity. Phase II, which would help improve NSAs' communication, operational efficiency and online reporting capacity, would be completed in early 2013. The LCSD had conducted two briefings for NSAs in July 2011 to explain the proposed functions of the system and to collect their views;

Manpower support

- from 2011-2012 onwards, the LCSD had enhanced its monitoring capacity and provided additional support to NSAs to enhance their internal control and accounting capabilities; and
- the LCSD would continue to monitor the implementation of improvement measures with a view to enhancing the overall efficiency and effectiveness of the Scheme.

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

**Administration of the Direct Subsidy Scheme and Governance and administration of Direct Subsidy Scheme schools**

*(Chapter 1 of Part 8 of P.A.C. Report No. 55)*

25. The Committee was informed that:

General

- the Working Group on Direct Subsidy Scheme ("the Working Group") had considered and proposed various improvement measures, including those to enhance the transparency of the operation of school governing bodies. Since July 2011, the Working Group had been conducting extensive consultation with the Direct Subsidy Scheme ("DSS") school sector by gauging views of the Hong Kong DSS Schools Council, the School Management Committees ("SMCs")/the Incorporated Management Committees ("IMCs") members and DSS school principals on the proposed measures. By the end of 2011, the Working Group submitted a report with their final recommendations to the Secretary for Education for consideration. The Education Bureau ("EDB") would brief the Legislative Council Panel on Education ("Education Panel") in early 2012;

School fee remission/scholarship schemes

- the Working Group considered that DSS schools should put in place measures to enhance the transparency of the school fee remission/scholarship schemes at the earliest opportunity so that parents could have a better understanding of the schemes and make an informed assessment of their children's eligibility for fee remission/scholarship. For parents of prospective students, this could help them make an informed choice of schools for their children. In this connection, the EDB issued a circular in early July 2011 setting out the following new measures:
  - (a) DSS schools were required to consult their SMCs/IMCs or parent-teacher associations on the operation of their school fee remission/scholarship schemes and how the related information should be presented to ensure that it could be easily understood by parents and prospective parents of the school;

- (b) DSS schools were required to clearly indicate in the application form for admission and the School Profiles published by the Committee on Home-School Co-operation that needy students, including those from families receiving Comprehensive Social Security Assistance ("CSSA") and students receiving financial assistance provided by the Student Financial Assistance Agency ("SFAA"), could apply for school fee remission. DSS schools were also required to provide details of their school fee remission/scholarship schemes on the application form and a hyper-link in the School Profiles through which details of the school fee remission/scholarship schemes could be obtained on the school's website;
- (c) DSS schools were required to provide details of the school fee remission/scholarship schemes to all students newly admitted to the school by enclosing such details with the letter offering admission;
- (d) subject to the availability of funds under the school fee remission/scholarship schemes, in principle, DSS schools were required to offer school fee remission to students from families receiving CSSA and students receiving financial assistance provided by the SFAA. This should be clearly set out under the school fee remission/scholarship schemes for information of parents/prospective parents;
- (e) when notifying students of the application results for financial assistance provided by the SFAA, DSS schools were required to provide an application form for the school fee remission/scholarship schemes to each of the eligible students as well;
- (f) DSS schools should process applications for the school fee remission/scholarship schemes from newly admitted students before the new school year began as far as possible so that those eligible students would not be required to pay the school fee in advance. Likewise, if applications were received during the school year, they should be processed as early as possible;
- (g) DSS schools were encouraged to provide a simulation test for school fee remission on their websites so that parents would know



in advance the level of fee remission their children would be granted. This would facilitate parents' decision on school choice and/or whether to apply for fee remission; and

- (h) the EDB would provide on its website hotlinks to the school fee remission/scholarship schemes of individual DSS schools to facilitate interested parents in obtaining the required information;
- the Working Group would continue to explore additional measures for improving the implementation of the schemes such as further means to provide additional financial assistance to needy students, and would brief the Education Panel as appropriate;

#### Financial management

- starting from the audited accounts for the 2009-2010 school year, DSS schools were required to provide more detailed and comprehensive information concerning the schools' financial situation including details of any investments and other reserves in all accounts. The EDB would promptly follow up with the schools should it detect any irregularity;
- the Working Group was also considering other measures to enhance DSS schools' financial management, such as setting a ceiling on their accumulated reserves, modifying guidelines for investment, providing school personnel with training and devising new requirements for setting aside school fee income for maintenance or development of above-standard facilities including capital works, etc;
- the recommendations of the Working Group would be followed up with the Education Panel;

#### Monitoring school performance

- the EDB would set up an additional audit team to carry out audit inspections for more DSS schools. With the additional audit team, the EDB planned to conduct audit inspections at 18 DSS schools every year and expected that on average each DSS school would undergo such an audit inspection once every four years instead of once every seven years as at present. Follow-up actions would be taken on an on-going basis;

### International schools in the Direct Subsidy Scheme

- the Working Group was reviewing the justifications for continuing to allow School I to remain in the DSS. The recommendation of the Working Group would be submitted to the Secretary for Education by the end of 2011. The recommendation would then be followed up with the Education Panel;

### Human resources management

- the Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better personnel management among other things. Improvement areas on personnel management would cover the monitoring and check-and-balance mechanisms relating to staff recruitment, staff remuneration, promotion, performance management, etc. The recommendations of the Working Group would be followed up with the Education Panel;

### General administration

- the internal control checklist as mentioned above would also cover general administration issues such as trading operations, fund raising, and declaration of interests by staff. The EDB believed the checklist could help schools comply with its requirements. It would follow up the recommendation of the Working Group with the Education Panel;

### Other governance issues

- the Working Group was deliberating measures to enhance the transparency of school governing bodies and strengthen their internal control mechanism. In addition, the internal control checklist as mentioned above would help schools comply with the requirements in respect of the composition and operation of their SMCs/IMCs. The recommendations of the Working Group would be followed up with the Education Panel; and

Progress made in implementing the audit recommendations

- a summary of the progress of implementing the audit recommendations is in *Appendix 6*.

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

**Residential treatment and rehabilitation services for drug abusers**  
(Chapter 2 of Part 8 of P.A.C. Report No. 55)

27. The Committee was informed that:

Policy formulation and coordination

- a Working Group had been formed to advise on the preparation of the 6th Three-year Plan on Drug Treatment and Rehabilitation Services in Hong Kong (2012-2014) ("6th Three-year Plan"), which began in May 2011. The Working Group consisted of stakeholders from various fields as well as representatives of relevant government bureaux and departments. It served as an important platform for engaging all parties concerned to review services, map out future strategy and coordinate efforts. The 6th Three-year Plan was scheduled for release in the first half of 2012;

Resource alignment

- the Government continued to assist Centre 1 to transform some of the places originally designated for heroin abusers to serve psychotropic substance abusers ("PSAs"), and to improve its utilisation;

Allocation of resources to the Society for the Aid and Rehabilitation of Drug Abusers ("SARDA")

- in addition to the legitimate role of Centre 1 on serving opiate abusers, the Narcotics Division ("ND") and the Department of Health ("DH") continued to work with SARDA to expand the capacity of Centre 1 to serve PSAs and to enable more effective utilisation of resources. SARDA continued to forge ahead with Project SARDA, an initiative which began in August 2010 to convert 38 places originally designated

for heroin abusers in Centre 1 to serve young male adult PSAs aged 21 to 35. Improvements had been made to the Project by strengthening its vocational elements and launching a programme to render special care to new clients to help them adapt to life in the Centre. Up to 31 July 2011, the total number of admissions under Project SARDA reached 46 and the occupancy rate of Centre 1 was 56.6%, including 27 PSAs under Project SARDA. SARDA had also taken steps to further promote Project SARDA, including proactively strengthening collaboration with probation officers ("POs") of the Social Welfare Department ("SWD"), schools and other anti-drug agencies (e.g. counselling centres for psychotropic substance abusers ("CCPSAs")), and publicising the Project through the media and in anti-drug seminars held for targeted groups;

- the DH had completed the review on the service capacity and target occupancy rate of Centre 1. Taking into account the existing manpower strength resulting from various efficiency drives over the past decade and the need for different skills to serve more PSAs vis-à-vis opiate abusers after service re-engineering, the DH considered that with a physical capacity of 316 places, the realistic service capacity of Centre 1 should be 260. After careful discussion with SARDA and consideration of a host of relevant factors, the DH had decided to set an initial target occupancy rate of Centre 1 at 70% against the service capacity of 260 places, i.e. 180 places. The target occupancy rate was subject to further review by the end of 2011-2012. The Administration would keep the Committee informed of the progress;
- to facilitate monitoring of the financial positions of its service programmes, SARDA completed in July 2011 the application of an accounting template recommended by the Efficiency Unit ("EU") on the costing data of 2009-2010. The DH would require SARDA to conduct the costing exercise on an annual basis and extend the requirement to other drug treatment and rehabilitation centres ("DTRCs") subvented by the DH to facilitate benchmarking. The DH would shortly start to work with SARDA on the transition to a lump sum grant mode. Taking into account the time required for staff consultation and for the resource requirement for Centre 1 to be firmly established upon service re-engineering to serve more PSAs, the DH aimed to work with SARDA towards implementing the change in 2012-2013 financial year;
- to further improve SARDA's corporate governance pursuant to another EU recommendation, the DH and the ND had nominated three

non-official members to sit on its Executive Committee as members for SARDA's consideration and processing in accordance with its constitution. The plan was to enable the new arrangement to take effect at the next Annual General Meeting scheduled for the end of 2011. The Administration would keep the Committee informed of the progress;

#### Usage of treatment centres

- the SWD continued to disseminate updated information to POs on the occupancy rates of DTRCs and closely monitor the waiting time and use of DTRCs by probationers. As a result, there had been a noticeable reduction in the waiting time for admission to DTRCs by probationers. From December 2010 to end June 2011, over 76% of 232 probationers (i.e. 177) waited for only two weeks or less for admission to a DTRC as compared with the corresponding figure of 70% as reported in the Public Accounts Committee Report No. 55;
- on the Government's information collection and sharing system, the review of the pilot project on the Service Information System ("SIS") was near completion. In collaboration with bureaux/departments and relevant stakeholders, the ND was redesigning the SIS to be a more integrated platform among DTRCs as well as bureaux/departments with a view to streamlining the information collection procedures and facilitating continuous service improvement. This was expected to be completed by end 2012. More DTRCs would then be invited to join the new SIS;
- the SWD had since April 2011 started to share with the Education Bureau ("EDB") every six months information collected during licensing inspections on the number of drug abusers aged under 18 residing in DTRCs. This might provide a general overview covering also DTRCs not receiving any education subvention. The next round of information sharing would be conducted in October 2011;
- in addition, the ND and the SWD had streamlined the procedures of quarterly collection of utilisation statistics from DTRCs. To reduce reporting burden, a new form which combined the requirements of the ND and the SWD had been introduced since June 2011. The new form also contained information on the admission of drug abusers aged under 18 residing in DTRCs. It would be shared with the EDB to give the latter an overview of DTRCs not receiving any education subvention;

Treatment centres on government sites/premises

- after a review of relevant provisions of the land documents and the physical and service conditions of the respective DTRCs, the SWD had strengthened the monitoring of the existing non-subvented DTRCs through on-site inspections and concern visits, as appropriate, to keep in view the latest operation of these centres. The SWD also continued its effort to promote collaboration between non-subvented DTRCs and the anti-drug service sector to better promote utilisation of the existing services;
- the Lands Department ("Lands D") had completed inspection of the 11 existing DTRCs which had land grants or tenancy agreements with it, and had confirmed with the SWD, the DH and the ND, as the case might be, support for continual use by the existing grantees or tenants for DTRC purposes. Of the 11 DTRCs, two non-government-subvented centres had lower utilisation rates. Although they did not receive any government funding, the SWD had written to encourage them to improve their utilisation rate. The SWD had also made follow-up visits and discussion with the two DTRCs. Both had seen improvement in utilisation. The relevant departments would continue to follow up any land use irregularities that might arise in future and, where appropriate, liaise with the Lands D as the lessor/landlord;
- the Lands D had issued to staff internal guidelines regarding processing of new applications for land grant or tenancy for DTRC purposes and for monitoring in conjunction with the sponsoring bureau/department after the execution of the land grant or tenancy agreements concerned. Unless otherwise advised by the relevant bureaux/departments, the land documents would include a user clause, restriction upon alienation clause, commence-to-operate clause, and cessation or diminution of use clause. For non-subvented DTRCs, the land documents would stipulate that the DTRC operators would have to submit to the SWD annual accounts and/or reports on the operation of the centres if deemed necessary and appropriate by the SWD. The SWD would base on the said information to assess whether the centres were operated on a scale satisfactory to the Director of Social Welfare;
- on Case 3, the Lands D had circulated information on the site to government departments and asked through the Home Affairs Department and the SWD whether any party was interested in using it. Up to end July 2011, no application had been received;

- on Case 4, non-governmental organisation ("NGO") 2, in consultation with the SWD, was actively preparing the audited accounts and a report on the operation of Centre 21 in accordance with the relevant conditions of grant. Besides, to further strengthen the collaboration between NGO 2 and the anti-drug service sector with a view to enhancing utilisation of Centre 21, a service briefing was conducted at the Centre in May 2011 for about 40 social workers of the CCPSAs which served PSAs over the territory;
- as Centre 21 was intended not only to be a DTRC but also a training and rehabilitation centre for displaced persons in general, the SWD was actively liaising with NGO 2 to facilitate their service review and work out the optimal split of places for use as a DTRC and other purposes, having regard to changing service demand. The SWD had a series of discussions with NGO 2 on matters relating to the licensed capacity of Centre 21. In consultation with the ND and the Labour and Welfare Bureau, the SWD would continue to discuss with NGO 2 with a view to finalising its service plan and licensed capacity;
- the SWD had critically reviewed the application from Centre 37 for renewal of Certificate of Exemption ("CoE"). Relevant bureaux and departments had been consulted on the building safety of the Centre. None had raised objection to the application after considering the supporting documents signed by the Centre's Authorised Person/Registered Structural Engineer. The SWD was also satisfied with the Centre's measures to improve the living condition as well as operation and management. In the light of the above, the SWD renewed the Centre's CoE for 12 months on 24 June 2011. The SWD would continue to monitor the Centre closely and render assistance as appropriate;

#### Licensing of treatment centres

- the SWD had stepped up cooperation with relevant departments to assist and advise DTRC operators on licensing issues through consultation meetings. From January to July 2011, eight meetings were held with five operators. Separately, since May 2010, most DTRCs with CoEs had been able to submit realistic works schedules when they applied for CoE extension through working with the professionals they engaged. Two of the DTRCs now operating on CoEs might be able to obtain a licence by the end of 2011, to be followed by another five in 2012;

- to improve the identification of new sites/premises for DTRCs which required reprovisioning, the ND and the SWD established a new coordinating mechanism in February 2011, and had since been following up potential sites/premises being considered, and monitoring the progress of licensing and the needs of treatment centres operating on CoEs. They had also continued to keep track of the progress of identifying and acquiring suitable sites for re-provisioning DTRCs after the drawing up of an action checklist in April 2011. The SWD had also set up an improved record system to document the reasons for rejecting vacant sites/premises for use as treatment centres;
- commissioned by the ND, a new television and a new radio Announcements in the Public Interest were launched in July 2011 to promote the important role played by drug treatment and rehabilitation facilities (including DTRCs) and to call for community support for setting up such facilities. A new poster for the same purpose had also been on display since June 2011; and
- the expanded Special Funding Scheme ("SFS") of the Beat Drugs Fund ("BDF") was launched in May 2011. Under the new SFS, DTRC operators might apply for funding to carry out technical feasibility studies, commission Authorised Persons, employ project coordinators, carry out construction works and run programmes that promoted community support for DTRCs and for their works projects. A briefing session was arranged on 10 June 2011 for DTRC operators. Separately, the 2011 Funding Exercise of BDF, which was open for application in July 2011, had included projects to raise local community acceptance of treatment and rehabilitation facilities as a priority area.

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



**The Community Investment and Inclusion Fund**  
(Chapter 3 of Part 8 of P.A.C. Report No. 55)

29. The Committee was informed that:

Development of social capital

- to step up monitoring of the sustainability of the Community Investment and Inclusion Fund ("CIIF") projects, the Administration had completed the review on the framework of final performance reports to be submitted by grantees upon the expiry of funding periods, with reference to the definitions and assessment approaches adopted by local and overseas academics on sustainability. The Administration also required grantees to spell out in their reports measures to ensure sustainability of the projects. The Administration intended to submit its proposals to the Assessment and Evaluation Sub-committee at its meeting in September 2011 and, after collecting members' views, would submit the proposals to the CIIF Committee for endorsement. The proposals were expected to be implemented by end of 2011;
- to follow up on the Committee's recommendation of putting in place effective assessment tools, the Labour and Welfare Bureau ("LWB") had commissioned independent consultants to conduct a second evaluation study for the CIIF, including the design of a set of social capital outcome indicators and assessment tools for CIIF projects to evaluate the outcome of social capital development. The study commenced in October 2010 and would be completed by early 2012. In mid-2011, the consultants submitted to the LWB an interim report, the initial findings of which indicated that the CIIF had achieved positive outcome in the promotion of social capital development. The LWB would, in consultation with the CIIF Committee, actively follow up findings of the final report and consider the way forward for the CIIF; and

Progress in implementing Audit's recommendations

- the progress in implementing the remaining six recommendations in the Audit Report is set out in *Appendix 7*.

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

**Consideration of the Director of Audit's Report tabled in the Legislative Council on 16 November 2011** 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. 57 which, in its view, referred to more serious irregularities or shortcomings. It is the investigation of those chapters which constitutes the bulk of this Report.

2. **Meetings** The Committee held a total of 8 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 11 witnesses, including one Director of Bureau and three Heads of Department. The names of the witnesses are listed in *Appendix 8* 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. 57 on 1 December 2011 is in *Appendix 9*.

3. **Arrangement of the Report** The evidence of the witnesses who appeared before the Committee, and the Committee's specific conclusions and recommendations, based on the evidence and on its deliberations on the relevant chapters of the Director of Audit's Report, are set out in Chapters 1 to 3 of Part 7 below.

4. The video and audio record of the proceedings of the Committee's public hearing is available on the Legislative Council website.

5. **Acknowledgements** The Committee wishes to record its appreciation of the cooperative approach adopted by all the persons who were invited to give evidence. In addition, the Committee is grateful for the assistance and constructive advice given by the Secretary for Financial Services and the Treasury, the Legal Adviser and the Clerk. The Committee also wishes to thank the Director of Audit for the objective and professional manner in which he completed his Reports, and for the many services which he and his staff have rendered to the Committee throughout its deliberations.

*Observations of the Public Accounts Committee on the Report of the Director of Audit on the  
Accounts of the Government of the Hong Kong Special Administrative Region  
for the year ended 31 March 2011*

---

The Committee noted the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2011.

## **A. Introduction**

The Audit Commission ("Audit") conducted a review of the Centre for Food Safety ("CFS")'s work in the regulatory control of food labelling, with focus on the implementation of the nutrition labelling scheme ("NLS") under the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the 2008 Amendment Regulation"). The audit review also examined the adequacy of the nutrition labelling of infant and special dietary foods. Audit's findings were contained in two separate chapters of the Director of Audit's Report No. 57 ("Audit Report"), i.e. "Food labelling" (Chapter 3) and "Nutrition labelling of infant and special dietary foods" (Chapter 4).

2. The Committee held two public hearings on 6 and 8 December 2011 to receive evidence on the findings and observations in the above two chapters of the Audit Report.

3. The Committee's Report sets out the evidence gathered by the Committee which is relevant to the issues identified in the above two chapters of the Audit Report and was further revealed at the public hearings, as well as the Committee's conclusions and recommendations on those issues.

## **B. Nutrition labelling of infant and special dietary foods**

### Opening statements

4. At the Committee's public hearing held on 6 December 2011, **Dr York CHOW Yat-ngok, Secretary for Food and Health**, and **Mr Clement LEUNG Cheuk-man, Director of Food and Environmental Hygiene**, respectively made an opening statement. The full text of their statements is in *Appendices 10 and 11* respectively. **Mr Benjamin TANG, Director of Audit**, also made an opening statement, the full text of which is in *Appendix 12*.

5. The Committee referred to the Secretary for Food and Health's opening statement in which he said that some of the recommendations made by Audit were related to policy matters, and as such recommendations were different in nature from those arising from the value-for-money audit, the Administration would continue to

discuss with Members through other appropriate channels under the established mechanism, such as the relevant Panels.

6. The Committee asked the Secretary for Food and Health about the specific issues which, in his view, should be discussed by Panels instead of the Public Accounts Committee and the rationale behind.

7. The **Secretary for Food and Health** replied that some of the issues examined in Chapter 4 of the Audit Report, including those concerning nutrition labelling of infant and special dietary foods and the development of a code on marketing of milk powder for compliance by the trade, were related to policy matters and had been discussed by the Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene ("FSEH Panel"). In his opinion, such issues should continue to be pursued by the FSEH Panel.

8. On the other hand, the Committee noted the Director of Audit's explanation for conducting an audit review on the subject. According to the Director of Audit, although the Administration had undertaken in 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods, it had not informed the relevant Panel of the review timetable. Audit had therefore examined the adequacy of the nutrition labelling of infant and special dietary foods in the current audit review with a view to providing input to the Administration on whether there was a need to introduce nutrition labelling requirements covering such foods.

9. In view of the Director of Audit's remarks and the various inadequacies relating to nutrition labelling of infant and special dietary foods as identified by Audit, the Committee considered it appropriate for Audit to conduct a review on the subject and for the Committee to follow up the corresponding Audit Report. The Committee also pointed out that as the CFS under the Food and Environmental Hygiene Department ("FEHD") was the food safety authority in Hong Kong and operated with public funds, it was incumbent upon the Director of Audit to review if the CFS had cost-effectively performed its duties, including the implementation and enforcement of nutrition labelling legislation.

Infant and special dietary foods not covered by the 2008 Amendment Regulation, and regulation of nutrition information

*Absence of statutory framework governing the nutritional composition and labelling of infant formula*

10. The Committee pointed out that infants, young children and people with special dietary needs were generally more vulnerable, thus foods for them should be more strictly regulated, and the public expected the Administration to effectively regulate such foods marketed in Hong Kong. While the Secretary for Food and Health said in his opening statement that the Government had all along attached great importance to the safety of infant formula, the Committee noticed that currently there was no statutory framework governing the nutritional composition and labelling of infant formula in Hong Kong.

11. As highlighted in Chapter 4 of the Audit Report, the mandatory NLS under the 2008 Amendment Regulation, which came into operation on 1 July 2010, does not apply to infant and special dietary foods. Although the Administration had repeatedly informed the FSEH Panel that the NLS would not apply to infant and special dietary foods because they were regulated by different standards and guidelines developed by the Codex Alimentarius Commission ("Codex" — an international authority that develops food standards and guidelines), it had not disclosed to the FSEH Panel that compliance with the Codex standards and guidelines was not mandatory.

12. In addition, the Administration had neither proposed any ordinance or regulations to govern nutrition labelling of infant and special dietary foods marketed in Hong Kong, nor required such foods to comply with the relevant Codex standards and guidelines.

13. In the absence of a statutory framework governing the nutritional composition and labelling of foods for young children and people with special dietary needs, the Committee questioned:

- how the Administration could safeguard the safety of infant and special dietary foods in Hong Kong (including infant formula) or convince the public that it had attached a high priority to this area of work;

- why the Administration had not yet conducted a review on the need for introducing nutrition labelling requirements covering infant and special dietary foods, although it had undertaken to do so in as early as 2005; and
- why the Administration had not made compliance with the Codex standards and guidelines a statutory requirement.

14. The **Secretary for Food and Health** explained that:

- in drawing up the NLS, the Administration had already stated clearly that the scheme would not apply to infant formula or follow-up infant formula, or food for infants and young children because such foods were being regulated under different Codex standards;
- based on risk assessment, the CFS considered that there was risk in the safety of milk powder and hence it accorded a high priority to carrying out analysis of harmful substances which would adversely affect the health of infants. The CFS took milk powder samples (including infant formulae) at import, wholesale and retail levels for chemical and microbiological testing each year. Chemical testing covered testing for food additives, contaminants, toxins and other harmful residues whereas microbiological testing covered testing for bacteria and viruses. The CFS would also conduct enhanced surveillance in response to local and overseas food incidents, such as testing infant formulae for melamine following the detection of melamine in infant formulae in end 2008;
- the nutritional composition of infant formulae of different brands was indeed very similar. For normal healthy babies, paediatricians would advise parents that there would not be much difference if they switched from one brand of infant formula to another brand for their babies;
- the Administration noticed that the use of health claims to promote milk powder and other foods was becoming popular and some of the claims might be misleading. The Administration would take measures to deal with such problem; and
- while national authorities followed the Codex standards and guidelines generally, they could deviate from the Codex requirements as appropriate for the nutritional needs of their people. Therefore, different countries might have set different nutritional composition

requirements for formulae. All infant formulae or follow-up infant formulae sold in Hong Kong were imported. If the Administration was to set specific nutritional composition and labelling requirements governing infant formulae to be marketed in Hong Kong, it would have to consider carefully how the requirements could cater to variations in the formulae manufactured in different countries. The Administration would proceed with the work progressively and at the appropriate time.

15. It appeared to the Committee that the Administration was only concerned about the existence of harmful substances in infant foods, but did not see the need to prescribe specific nutritional composition requirements for such foods. It only relied on the milk powder manufacturers' compliance with the relevant requirements of foreign countries. As such, Hong Kong people had to accept imported formulae without knowing if the nutritional composition of the formulae were suitable for their infants.

16. Besides, the Committee noted from paragraph 3.3(a) of Chapter 4 of the Audit Report that in its food surveillance, the CFS had not selected any infant and special dietary foods for verification of the correctness of the nutrition information declared.

17. Against the above background, the Committee queried whether the existing regulatory regime in Hong Kong had provided sufficient control over the food safety of infant formulae.

18. The **Director of Food and Environmental Hygiene** and **Dr Constance CHAN Hon-ye, Controller, CFS**, stated that:

- having regard to the fact that milk powder marketed in Hong Kong was mainly of major international brands and the ingredients were from advanced countries, the risk in the nutritional composition of milk powder was not very high. Hence, the CFS had focused its efforts on detecting harmful substances to ensure the safety of milk powder;
- currently, the safety of infant formulae was regulated by section 54 of the Public Health and Municipal Services Ordinance ("PHMSO" — Cap. 132), which stipulated that all food for sale must be fit for human consumption. As food included infant formula, the CFS could regulate



its safety through section 54 and take prosecution action in cases where the infant formula was found to be unfit for human consumption; and

- in response to public concern, the CFS had adjusted its testing strategy and would start to conduct testing on the nutritional composition of infant formulae from 2012.

19. In his letter of 4 January 2012 (in *Appendix 13*), the **Secretary for Food and Health** elaborated on the Administration's plan to test the nutritional composition of infant formulae. He said that:

- at present, there were 28 brands of infant formula in the retail market according to the CFS's records. The CFS would take a total of 48 samples from among these different brands for testing of the 33 nutrients as required by Codex; and
- the testing would be conducted in two stages with 28 samples in 2012 and the remaining 20 in 2013. The 28 samples in 2012 would be taken from the most popular infant formula (0-6 months or 0-9 months) of each brand. For the 20 samples in 2013, priority would be given to other infant formulae and formulae for 9 months or above.

#### *Deviations from the Codex standards and guidelines*

20. As reported in paragraphs 2.16 to 2.21 of Chapter 4 of the Audit Report, an examination by Audit of selected infant and special dietary foods marketed in Hong Kong revealed that there were various deviations from the Codex standards and guidelines. The Committee cited Case 1 in paragraph 2.16(a) as an example.

21. Codex has prohibited the use of pictures of infants and women which idealises the use of infant formula on the container labels. However, Case 1 revealed that the picture of an infant was displayed on the container labels of Formulae 1 and 2, which were popular brands of infant formula imported from Country A. Furthermore, Codex requires infant formula to contain 33 essential nutrients (including iodine and biotin) and follow-up formula 25 essential nutrients. However, iodine and biotin were not shown on the nutrition labels of Formulae 1 and 2.

22. The Committee asked whether the Administration was aware of the above breaches of the Codex standards and guidelines in Hong Kong before the audit review, and whether actions had been taken to address the situation.

23. The **Controller, CFS** said that iodine and biotin was not shown on the nutrition labels of Formulae 1 and 2 because they were not regarded as essential nutrients in Country A. However, this did not mean that they did not contain iodine or biotin.

24. The **Secretary for Food and Health** stated in his letter of 4 January 2012 that:

- the Codex standards, including those for infant formula, were non-binding and voluntary in nature. They were established to provide reference for jurisdictions in formulating their own regulations based on their local situation. Since it was not a legal requirement in Hong Kong to comply with the Codex standards, no enforcement action had been taken. However, traders were encouraged to adopt relevant Codex standards as appropriate as a matter of good practice;
- the CFS adopted a risk-based approach in its strategies and the planning and implementation of food safety control measures. Based on available information, there was no evidence suggesting that formula-fed infants were deficient of iodine or biotin and hence detailed investigation into this matter was not carried out; and
- the CFS was currently working together with the Department of Health ("DH") and other experts and members of the Taskforce on Hong Kong Code of Marketing of Breast-milk Substitutes ("the Hong Kong Code"), and would consider incorporating the relevant Codex nutrition labelling requirements and composition of infant formula into the Hong Kong Code.

#### *Regulation of special dietary foods*

25. The Committee noted Audit's concern raised in paragraph 3.8 of Chapter 4 of the Audit Report that in the absence of a legal definition of "food for special dietary uses", consumers had difficulties in differentiating special dietary foods from others. Moreover, Audit found that there were food products serving special

population subgroups, but not regarded by the CFS as "food for special dietary uses". The requirements of the NLS should be applicable to such food products. Audit, however, found that some of these products appeared to have not complied with the NLS in various areas.

26. Under the above circumstances, the Committee queried how the Administration could effectively regulate the nutritional composition of special dietary foods and safeguard the health of people with special dietary needs.

27. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** responded that:

- foods for special dietary uses were products that were specially formulated for certain patients or physical conditions, products that must always be used under medical supervision, and products solely for tube feeding;
- products with statements such as "for children under age of 3, use under medical supervision only" or "use under medical supervision if use as sole source of nutrition" were not considered as food for special dietary uses. A lot of food products in the market, which were claimed to be suitable for diabetics, were not food for special dietary uses because ordinary people could also consume the products. Such products would be subject to the NLS and the CFS would take prosecution action if they were in breach of the scheme requirements; and
- in fact, the dietary needs of most people with different health conditions could be met by conventional food, which was already regulated under the PHMSO and its food-related regulations. Codex had not established compositional requirements for all types of special dietary foods since there was a wide range of foods for special dietary use. The CFS would study the current situation regarding labelling of such foods and make recommendations on the priority of regulating such products.

28. Regarding the three products in Case 5 (mentioned in paragraph 3.3(d) of Chapter 4 of the Audit Report) which were found by Audit to have variances for a number of nutrients between their declared values and the contents, the **Controller, CFS** said that the CFS had conducted testing on them. The results indicated that

one product was not satisfactory and the CFS had written to the relevant trader to seek its explanation. The other two products were satisfactory.

#### Development of the Hong Kong Code and the way forward

29. The Committee noted that the World Health Organisation issued the International Code of Marketing of Breast-milk Substitutes in 1981 ("the WHO Code") to contribute to the provision of safe and adequate nutrition for infants by, among others, ensuring the proper use of breast-milk substitutes on the basis of adequate information and through appropriate marketing and distribution. In the past 30 years since the issuance of the WHO Code, many countries had already developed their advertising and marketing guidelines applicable to their own countries for compliance by the trade.

30. The Audit Report, however, revealed that in Hong Kong, the Administration had not yet taken any measures to require compliance with the WHO Code. It mainly relied on milk powder manufacturers and distributors in Hong Kong to exercise self-discipline in compliance with the WHO Code and requirements in the relevant World Health Assembly ("WHA") resolutions in their marketing practices.

31. The Committee questioned why Hong Kong was lagging far behind other countries in requiring the trade to comply with WHO Code or introducing legislation to regulate the advertising and marketing of infant formula.

32. The **Secretary for Food and Health** replied that:

- it was the Government's policy to promote breast-feeding and infant formula was not treated as the main food for new born babies. At the time when the NLS was drawn up, it was agreed that the scheme should not apply to infant formula or follow-up infant formula as such foods should be treated separately. The Administration had not deliberately delayed the introduction of legislation to govern compliance with the WHO Code, but considered that it would be more appropriate to promote breast-feeding, which was also the aim of the WHO Code, and allow the trade to comply with the Code voluntarily;
- as Hong Kong relied on imported infant and follow-up infant formulae, the Administration had to examine carefully if legislation regulating

such foods was to be introduced. It had to make sure that milk powder manufacturers and importers would be able to comply with the requirements. Otherwise, the supply of infant and follow-up infant formulae in Hong Kong would be affected. The stable supply of formulae was particularly important in recent years because there had been cases of shortage of supply of infant formula due to the large number of mainlanders coming to Hong Kong to buy such formulae; and

- the Administration would first work on developing the Hong Kong Code. Afterwards, it would consider the need for introducing legislative control over the nutrition labelling of infant formula and the use of health claims in promoting infant formula.

33. **Dr LAM Ping-yan, Director of Health**, said that in general, milk powder manufactures and distributors in Hong Kong complied with the WHO Code in the promotion of infant formula for babies from zero to six months old. On the other hand, there was a growing trend of making misleading or exaggerated claims in promoting formula for young children aged between six and 36 months, and this was a cause for concern. He noticed that some advertisements exaggerated the nutrition of follow-up formula and seemed to suggest that children only need to take formula but not other food. There was thus a need to consider stepping up the regulation of such advertisements.

34. The Committee further asked whether the Administration would set a definite timetable for deciding on the need to introduce ordinance or regulations to govern the nutritional composition and labelling of infant foods.

35. The **Secretary for Food and Health** stated in his letter of 4 January 2012 and at the public hearings that:

- the Taskforce on the Hong Kong Code was set up under the DH in June 2010 to develop the Hong Kong Code. The objective of the Hong Kong Code was to regulate manufacturers and distributors of breast-milk substitutes and related products to prevent them from advertising and marketing their breast-milk substitutes and related products by way of malpractices. Besides, it was proposed that requirements including nutritional labelling and claims of breast-milk

substitutes and related products would be covered in the Hong Kong Code;

- it was expected that the drafting of the Hong Kong Code would be completed by early 2012. Upon completion of the drafting of the Code, the DH would consult the trade and collect the views of various parties. It was expected that the Hong Kong Code would be implemented within 2012;
- the Administration considered that it would be more advisable to make compliance with the Hong Kong Code voluntary as a start and the DH and the CFS would monitor the trade's adherence to the Code upon its implementation. Subject to the responses of the trade to the Hong Kong Code, the Government would consider in due course whether specific law or regulation governing nutritional composition and labelling of infant foods was necessary. In 2012, the CFS would conduct testing on the nutritional composition of infant formula available in the market in order to gather more information for future preparatory legislative work; and
- at present, the Administration could not decide when legislative control would be introduced.

## **C. Food labelling**

### Accuracy and legibility of food labels

#### *Accuracy of nutrition information on food labels*

36. The NLS requires all prepackaged foods to label the value/content of energy plus seven core nutrients (namely protein, carbohydrates, total fat, saturated fat, trans fat, sodium and sugars), or commonly known as "1+7", and any other nutrient for which a claim is made. The CFS conducts visual checking of nutrition labels and chemical analysis of declared nutrients on labels in selected prepackaged food products to ensure the trade's compliance with the NLS.

37. As reported in paragraph 2.5(a) of Chapter 3 of the Audit Report, the CFS checked 16,245 food samples in the first year of implementing the NLS and the compliance rate for visual checking was as high as 99.5%. However, Audit found that most of the food samples selected for checking were chosen from large chain

supermarkets which generally had a lower risk of non-compliance. The Committee enquired:

- why the Administration had focused on checking food samples from large chain supermarkets; and
- about the Administration's strategy to ensure that smaller food outlets such as ethnic shops and snack shops would also comply with the NLS requirements.

38. The **Secretary for Food and Health** responded that:

- large chain supermarkets took up a major share of prepackaged food sold in the market, out-numbering those sold in other food retail outlets. If the CFS could ensure their early compliance with the NLS, it would be in the best interest of the public. Hence, it was an appropriate enforcement strategy for the CFS to take more samples from supermarkets for inspection during the initial stage of the implementation of the NLS to ensure that the most popular prepackaged food items would comply with the requirements concerned;
- it might not be in the wider public interest if the CFS directed its enforcement actions specifically against small and medium enterprises ("SMEs"), including small groceries, market stalls and ethnic shops while neglecting large chain supermarkets immediately after the commencement of the legislation; and
- as for SMEs, particularly the small scale ones and shops selling food for ethnic minorities, the CFS's strategy was to focus more on publicity and education, rather than enforcement. The CFS arranged staff visits to such shops and distributed multi-language leaflets to ethnic shops so that they would have a more in-depth understanding of the legislation.

39. Noting that it was the CFS's conscious strategy to focus its enforcement efforts on large chain supermarkets during the initial stage of the NLS, the Committee queried why the CFS did not select food samples from small and medium retail outlets for checking, even though such shops had a higher risk of non-compliance. The Committee also pointed out that in cases where an SME was found to have breached the labelling requirements, the CFS could take other measures such as requiring the shop to stop selling the food products concerned

instead of taking prosecution action immediately. The Committee asked whether the CFS had considered adopting such an approach.

40. The **Secretary for Food and Health**, the **Director of Food and Environmental Hygiene** and the **Controller, CFS** explained that:

- at the early stage of implementing the NLS, the CFS did not know whether large chain supermarkets indeed had a lower risk of non-compliance and it would be inappropriate to assume that this would be the case. As the sales volume of prepackaged food in such supermarkets was huge, involving a large number of importers, suppliers as well as distributors and with a great variety of items, the Administration considered that it should focus on ensuring that supermarkets would comply with the scheme by taking more samples from them for checking;
- in the course of drawing up the NLS, the Administration had received comments from some LegCo Members and trade members that the nutrition labelling legislation would have more impact on SMEs, particularly the small scale ones and shops selling food for ethnic minorities. Some consumers of ethnic minorities also raised the concern that their country food might no longer be available in the market after the implementation of the scheme. Taking into account their concern, the CFS exercised flexibility in enforcement and directed its efforts to educating the SMEs about the scheme requirements initially;
- during the first year of the implementation of the NLS, although the CFS conducted more inspections on large chain supermarkets, it had also conducted inspections on SMEs, including ethnic shops and snack shops, and took enforcement actions where necessary. For instance, up to 24 June 2011, the CFS had found 111 food labels which did not comply with the scheme. Of these non-compliant cases, 41 (37%) were from large shops, 12 (11%) were from medium scale shops and the remaining 58 (52%) were from small scale shops; and
- to avoid the risk of corruption and inconsistent enforcement criteria adopted by Health Inspectors ("HIs"), the CFS had issued clear guidelines to its staff setting out the conditions under which they should institute prosecution or issue advisory/warning letters. For cases of serious irregularity and clear breaches of the legislation, such as absence



of nutrition labels or food labels, HIs were required to take prosecution actions no matter whether the shop concerned was a large supermarket or a small shop. For non-serious cases and technical breaches, such as indicating the "Use by"/"Best before" date in an improper format, HIs would not institute prosecution immediately. Instead, HIs would inform the shops of the requirements of the legislation and allow them some time for rectification. HIs would then conduct follow-up inspections to check if the irregularity had been rectified. If the irregularity still persisted, enforcement actions would then be taken.

41. The Committee further asked about the details of the guidelines issued by the CFS on the enforcement of the food and nutrition labelling legislation. The **Secretary for Food and Health** stated at the public hearings and in his letter of 4 January 2012 that:

- since 1 April 2011, the CFS had adopted a risk-based inspection approach as recommended in the Independent Commission Against Corruption ("ICAC")'s assignment report on enforcement of food labelling requirements. A database had been developed whereby all food outlets selling prepackaged food were profiled as high, medium and low risk based on four criteria, i.e. shop management, scale of business, type of food sold and track records. Ethnic shops and snack shops were categorised as high and medium risk groups, which would be covered in routine and targeted inspections. HIs were required to inspect about 50%, 30% and 20% of food labels from high risk, medium risk and low risk premises respectively and submit bi-weekly "Workdone Report for Label Checking/Sampling at Retail Outlets"; and
- the Internal Guidelines for Food Labelling Unit ("FLU") had been revised accordingly to set out the above new risk-based inspection requirement. The revised "Internal Guidelines for FLU (April 2011)" were given in Annex I of his letter. Section (B)(IV) of the internal guidelines specified the new risk-based inspection requirement while sections (J) and (M) set out the conditions under which HIs should institute prosecution and issue advisory/warning letters.

42. Regarding the testing of core nutrients by the CFS, paragraph 2.5(c) of Chapter 3 of the Audit Report revealed that of the 505 food samples chosen by the CFS for chemical analysis, only 30 (6%) had been tested for the "1+7" core nutrients, with 70% tested for only one nutrient. The nutrients selected for chemical analysis

were not necessarily the most essential ones or of higher risk of non-compliance having regard to the nature of the food products. Moreover, HIs were not required to document the justifications for their selection of food products for chemical analysis. The Committee asked about the criteria for selecting food products and nutrients for chemical analysis.

43. The **Controller, CFS** explained that:

- the CFS and the Government Laboratory ("GL") worked out a sampling plan at the beginning of each year, agreeing on the number of chemical analyses to be conducted each month and the nutrients to be tested for that month. The sampling plan took into account the availability of different equipment required for testing different nutrients;
- the Administration's testing target, which had been made known to the public, was about 500 samples a year. To be cost-effective, the CFS had initially focused its sampling on products with nutrition claims including "low sugar", "high calcium" and "low fat" etc. in the first year of implementation of the NLS; and
- HIs would purchase food samples from retail outlets based on the agreed sampling plan and in accordance with the districts/countries of origin/food categories which they were assigned, and send the samples to the GL for chemical analysis. An HI would not check all types of foods that were sold in a retail outlet or check all nutrients when conducting an inspection. For example, if an HI was assigned to check candies and biscuits in an inspection, he would focus on such foods and would not check other foods like soft drinks that were also sold in the same shop.

44. In view of the above reply that HIs would only select food samples from retail outlets based on the agreed sampling plan, the Committee queried whether the HIs only followed established rules and practices in performing their duties and ignored the need to select the most appropriate food products for testing in the light of actual circumstances. For example, Audit reported that a pack of soyabean milk containing a "low-sugar" claim was selected for chemical analysis of protein only, but not sugar. The reason for not testing sugar in the soyabean milk was not documented. The Committee therefore asked whether the CFS would:

- improve the documentation in conducting food sampling;

- test food samples for more or all of the "1+7" core nutrients;
- review its sampling strategy for compliance tests so as to cover a greater number of food products in each visit; and
- publish the results of its compliance tests, including the names of both complying and non-complying retail outlets, so as to enhance public awareness of the NLS and achieve deterrent effect.

45. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** replied that:

- the CFS would require its staff to document the justifications for their selection of food products for chemical analysis;
- the CFS also accepted Audit's view that more nutrients should be tested per food sample. For the 500 food samples for testing in the following year, half of them would be tested for all the "1+7" core nutrients. The CFS would also clearly set out the number of nutrients tested for different food samples when reporting the testing results;
- the CFS reviewed its strategy from time to time to identify areas for improvement. A retail outlet which was found to have breached the legislation would be categorised as high risk and subject to re-visits by HIs. During the re-visits, the HIs would select more food products from the retail outlet for testing; and
- the Administration would consider the suggestion of publishing the results of the compliance tests for the sake of enhanced public awareness and deterrence.

46. The **Secretary for Food and Health** added that as it was the CFS's target to cover as many shops as possible in its inspections during the first year of the implementation of the NLS, it could not test all the food products sold in each retail outlet. To be cost-effective, the CFS selected a few samples from different outlets for testing so that more outlets would be covered. After gaining more experience, the CFS had adjusted its sampling strategy to focus more on high-risk outlets.

47. In response to the Committee's enquiry about the overall compliance rate after the CFS had adopted a risk-based inspection approach since 1 April 2011, the **Controller, CFS** said that the compliance rate had slightly decreased from 99.3% to 99.1%.

*Tolerance limits for considering enforcement action*

48. The Committee noted from paragraph 2.5(e) of Chapter 3 of the Audit Report that for the purpose of considering enforcement action, the CFS adopted tolerance limits for certain nutrients in assessing whether a food product had complied with the NLS. However, the CFS did not disclose the tolerance limits when reporting the compliance rate. Audit also pointed out that some of the tolerance limits adopted by the CFS were "open-ended" in that there was no upper limit (or lower limit) beyond which the nutrition deviation would be disallowed.

49. The Committee enquired why the tolerance limits were open-ended and whether the Administration had informed stakeholders and the LegCo when consulting them on the limits.

50. The **Controller, CFS** replied that:

- the Administration had made reference to the practice of overseas countries in deciding the adoption of tolerance limits to determine compliance. The same approach was adopted by many other jurisdictions, including the United States, mainland China and Singapore. The tolerance limits were included in the CFS Technical Guidance Notes and uploaded onto the CFS website;
- the NLS aimed to promote a healthy diet by increasing the intake of beneficial nutrients while limiting the intake of harmful ones. Hence, the tolerance limit for beneficial nutrients (such as calcium) was set at  $\geq 80\%$ , meaning that the measured quantity of such nutrients should not be less than 80% of the declared value. On the other hand, the tolerance limit for harmful nutrients (such as cholesterol, trans fat and saturated fat) was set at  $\leq 120\%$ , meaning that their measured quantity should not be more than 120% of the declared value so as to limit the intake of such harmful nutrients;

- the Administration had discussed the issue of tolerance limits with stakeholders during various technical meetings, workshops and seminars before implementation of the legislation. The stakeholders consulted included importers/suppliers, manufacturers, food retailers, food traders and laboratory service providers. LegCo Members had also been consulted when the NLS was drawn up; and
- the Administration accepted Audit's recommendation and would disclose the tolerance limits adopted when the CFS announced the compliance results of its chemical analyses in the future.

*Results of the tests conducted by Audit*

51. As stated in paragraphs 2.6 to 2.11 of Chapter 3 of the Audit Report, Audit had conducted independent tests to evaluate the trade's compliance with the NLS. Audit's visual checking of nutrition labels in 55 retail outlets showed that 46 of them were suspected to have committed one or more non-compliances in their food products. Audit had also commissioned a local university to provide accredited laboratory services for testing selected food samples purchased from the market. Of the 70 food samples tested by Audit, 42 (60%) were suspected to be non-compliant. Of the 42 food samples, 22 (52%) had discrepancies fallen outside the CFS tolerance limits in two or more nutrients.

52. On the other hand, the Committee noted from the Director of Food and Environmental Hygiene's opening statement that the Administration's testing of the suspected non-compliant cases disclosed in the Audit Report yielded different results, as follows:

- regarding the 42 samples which were found to be unsatisfactory after Audit's independent laboratory testing, the CFS collected 40 samples from the outlets concerned for testing by the GL. The results showed that 18 were satisfactory and the CFS was seeking clarification from food traders on the discrepancies in testing results for 22 samples; and
- in other words, the analysis results of the GL showed that the non-compliance rate was about 34% instead of 60% as mentioned in paragraph 2.10(a) of the Audit Report.

53. The Committee enquired about the basis of the 34% non-compliance rate and the reasons for the discrepancies between the results of the testing conducted by Audit and by the GL. The Committee also asked whether the Administration had informed Audit of the discrepancies in the testing results when it was invited by Audit to give comments on the draft Audit Report so that Audit could address the discrepancies in finalising the report.

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

- as stated in paragraph 2.10(a) of the Audit Report, of the 70 food samples tested by Audit, 42 were suspected to be non-compliant, meaning that 28 were compliant. Adding these 28 samples to the 18 samples which were found to be satisfactory by the GL's testing, there should be 46 compliant samples out of 70 food samples. The compliance rate should thus be 66% while the non-compliance rate should be 34%;
- the discrepancies in the testing results might be due to the different strategies, sampling approaches and testing criteria adopted by Audit and the CFS; and
- for some suspected non-compliant cases found from visual checking by Audit, the FEHD had provided the results of its testing to Audit. However, for non-compliant cases found from laboratory testing, more time was needed before the test results were available. For example, the CFS had to collect food samples according to its procedures and the tests took time to produce results. In the circumstances, the FEHD could not inform Audit of its testing results in time before the deadline for giving formal comments on the draft Audit Report.

55. The **Director of Audit** said that the methodology, standards and testing criteria adopted by Audit for laboratory testing were largely the same as those of the CFS. However, it was not surprising to have different testing results for the same type of food products. For example, the same canned food product manufactured on different dates might yield different testing results.

*Legibility requirements for nutrition information*

56. As reported in paragraphs 2.15 to 2.18 of Chapter 3 of the Audit Report, the 2008 Amendment Regulation does not have adequate provisions (e.g. font size) to ensure the legibility of the nutrition information on food labels. Audit's market surveys found that the nutrition labels of some prepackaged foods were too small in font size, and the text and background of some were not shown in distinct contrast, thus making the nutrition information very difficult to read. Audit also noted that illegibility was one of the major obstacles to have hindered people from reading nutrition labels.

57. The Committee noted that the CFS had uploaded a set of draft guidelines onto its website to consult stakeholders. Given that illegible food labels would defeat the purpose of enabling consumers to make informed choice of foods by reading the labels for the information they required, the Committee questioned:

- why the Administration elected to consult the trade on the draft guidelines on the preparation of legible food labels instead of taking immediate actions to require the trade to make improvement, thereby safeguarding consumers' interest; and whether the Administration looked after the interest of traders at the expense of the interest of consumers; and
- about the parties which were being consulted.

58. The **Secretary for Food and Health** and the **Director of Food and Environmental Hygiene** explained that:

- when the NLS was drawn up, the FSEH Panel had discussed whether it was necessary to set mandatory rules on the package size of pre-packaged foods and the place of putting food labels, etc. It was agreed that the trade should be given time to comply with the legislation; and
- the Administration had not put traders' interest before consumers' interest. However, the trade had to adjust the packaging of food products in order to comply with the legislation. It was therefore proper to seek traders' views on the feasible ways of improving the legibility of food labels. Also, as the scheme had been implemented for some time, the Administration would also like to know the views of

consumers. Hence, both the trade and consumer groups and other stakeholders, such as food importers, distributors and patients' rights groups would be consulted.

#### Nutrition claims and health claims

59. The Committee noted that food traders had increasingly used nutrition and health claims to promote conventional foods (foods or drinks customarily consumed). While nutrition claims were governed by the NLS, health claims were not governed by any specific ordinance or regulations in Hong Kong. In 2005, the Undesirable Medical Advertisements (Amendment) Ordinance ("UMA(A)O") was enacted. But it only governed the prohibition/restriction on advertising relating to six groups of undesirable health claims on orally consumed products which did not cover conventional foods. The Administration could only rely on the general provisions of the PHMSO, such as by invoking section 61, to regulate health claims on conventional foods. Paragraph 3.8 of Chapter 3 of the Audit Report, however, revealed that up to August 2011, no successful prosecution under section 61 of the PHMSO had been brought against any food traders for improper health claims on conventional foods.

60. The Committee pointed out that the public expected the Administration to put in place proper legal framework to protect them from misleading or exaggerated health claims. In view of the unsatisfactory situation as highlighted by Audit, the Committee queried:

- about the reasons for the lack of regulation over health claims on conventional foods, and whether this was because the Administration considered the regulation of such claims unimportant;
- about the regulatory frameworks in overseas countries for dealing with misleading or exaggerated health claims on foods; and
- whether the FEHD had made any efforts to prosecute food traders under section 61 of the PHMSO, which outlawed a label or advertisement that falsely described the food or misled as to the nutritional or dietary value of the food, and what difficulties were encountered.



61. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** stated that:

- the CFS accorded top priority to conducting testing in relation to food safety and did not conduct testing that targeted at health claims on conventional foods. The CFS hoped to educate consumers about the importance of checking the validity of health claims through measures such as conducting joint studies on health claims with the Consumer Council;
- in order to invoke prosecution under section 61 of the PHMSO, there must be sufficient evidence as advised by the Department of Justice. There was a lot of grey area between valid health claims and misleading health claims. It was often difficult to have evidence proving that a health claim was intentionally misleading or false. Nevertheless, if it had come to the CFS's notice or a complaint had been received that a health claim was allegedly misleading or false, the CFS would consult the Department of Justice to consider if there was sufficient evidence to institute prosecution; and
- regarding the inadequacies in the CFS's oversight of use of nutrition claims on foods by the trade as identified by Audit, the CFS would issue specific guidelines to assist its staff in record keeping and taking of enforcement actions.

62. On the regulatory frameworks in overseas countries, **Mr Philip CHAN Kwan-ye, Deputy Secretary for Food and Health (Food)**<sup>2</sup>, said that:

- Codex had provided guidelines for the use of health claims on foods and set out the various conditions that should be met for permitting health claims. Such conditions included: health claims must be based on current relevant scientific substantiation, and must be accepted by or be acceptable to the competent authorities of the country where the food product was sold. However, Codex had not stipulated in its guidelines the health claims that were acceptable or unacceptable; and
- the Administration would keep in view of the development of regulatory frameworks for the use of health claims on foods in overseas countries, which would serve as reference in its consideration of how to improve the current legislation.

63. The Committee further asked why the UMA(A)O which was enacted in 2005 had not yet come into operation. **Dr Gloria TAM Lai-fan, Acting Director of Health** said that the UMA(A)O provided that health food products carrying medical claims but not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549) had to carry an additional disclaimer indicating so. This provision could only be brought into operation after the Chinese Medicine Ordinance had been fully implemented. The Administration expected that the UMA(A)O would be brought into operation in the first half of 2012.

#### Exemptions from nutrition labelling

64. Under the small volume exemption ("SVE") scheme, the FEHD may grant exemption in respect of any prepackaged food from the nutrition labelling requirements if it is satisfied that the annual sales volume of the food in Hong Kong would not exceed 30,000 units.

65. The Committee noted that various problems had arisen in the first year of the implementation of the SVE scheme. For instance, according to paragraphs 4.14 and 4.16 of Chapter 3 of the Audit Report, the CFS had difficulty in monitoring whether the limit of 30,000 units a year had been exceeded as it mainly relied on the sales volumes reported by food traders without conducting any checks to verify the accuracy of the reported figures. Also, the CFS could not monitor the sales volumes of the same product made by other food traders who had not applied for SVE. The Committee asked how the Administration would plug such loopholes.

66. The **Controller, CFS** responded that drawing on the experience gained from the first year of the implementation of the SVE scheme, the CFS would take improvement measures. Starting from September 2011, the CFS would visit selected food importers or wholesalers who had been granted exemption under the scheme every month and conduct document checks to ascertain the sales volume of their SVE products. Particular attention would be given to those traders who had failed to timely report the sales figures of their SVE products.

## Surveillance and enforcement work

### *Conduct of routine inspections and blitz operations*

67. According to paragraph 5.2 of Chapter 3 of the Audit Report, the FLU of the CFS conducted routine inspections and weekly blitz operations to check the trade's compliance with the food labelling requirements. Regarding the enforcement activities carried out by the FLU, the Committee noted from Table 8 in paragraph 5.3 that the number of prosecutions relating to breaches of general food labelling requirements had dropped from 47 in 2010 to 7 in 2011 (up to 30 June 2011), and the number of convictions had also dropped from 47 to 0 during the same period. The Committee queried whether the significant reduction in the number of prosecutions was due to the laxity of the responsible FLU staff or decreased manpower deployed to undertake enforcement duties.

68. In his letter of 7 December 2011 in (*Appendix 14*), the **Director of Food and Environmental Hygiene** gave an account of the reasons for the reduction in the number of prosecutions and convictions for food labelling non-compliant cases in the first six months of 2011 as compared with the corresponding figures in 2010. He stated that:

- over the years, the chained supermarkets/stores had come to know better the general labelling requirements, particularly after the implementation of the NLS in July 2010. Accordingly, the compliance rate on general labelling had improved, resulting in the smaller number of prosecutions being made in 2011; and
- routine inspections and blitz operations to check the trade's compliance with the food labelling and nutrition labelling requirements had been temporarily suspended from April to June 2011 in order to release staff to help deal with the outbreak of food incidents arising from the Japanese nuclear accident and the plasticiser incident in Taiwan. Inspections were resumed to normal in July 2011. The CFS would endeavour to check a comparable number of samples as in 2010.

69. On the conduct of blitz operations, Appendix C in Chapter 3 of the Audit Report revealed that Audit staff found various inadequacies in the blitz operation conducted on 8 June 2011 when they attended as observers in the operation. For example, although the blitz operation was intended to cover all retail outlets selling prepackaged foods in the target area, there was no shop along the three streets

selected for inspection. Moreover, a wet market and an ethnic shop (which were high-risk outlets) in the targeted shopping centre were not visited.

70. The Committee questioned why there were such omissions and whether the CFS had drawn up an action plan setting out the retail outlets, particularly the high-risk ones, in the target area that should be inspected before a blitz operation was launched.

71. The **Controller, CFS** responded that:

- the aim of blitz operations was to quickly scrutinise as many shops in the target areas as possible. A Senior HI was responsible for arranging the schedule of the weekly blitz operations, but the HIs taking part in blitz operations were not informed of the target areas in advance. They were only informed of the location and target areas (usually covering two shopping centres and two streets) in the morning of the operation;
- the CFS staff conducted regular on-line surfing of Internet shops selling foods and inspected such shops during blitz operations. However, the actual number of retail outlets in a target area might not be known before an operation because a lot of outlets selling foods were not required to register with the Government. As such, the HIs would only know the number of shops located in a target area after they arrived at the site;
- regarding the blitz operation conducted on 8 June 2011, the wet market was not visited probably because the HIs did not see it or due to the lack of time. In fact, in response to the Audit staff's request, the HIs concerned had spent some time on locating an Internet shop which was found to have moved already. Normally, the HIs would only check the whereabouts of a moved shop after the operation. As a result, fewer shops could be covered in the operation on 8 June 2011. Nevertheless, the CFS had already reminded its staff that they should try to cover all the shops in the target area in each operation; and
- the CFS accepted Audit's recommendation of building up a comprehensive database of all retail outlets in each geographical area and keeping it up-to-date, so as to avoid omitting some retail outlets when conducting enforcement operations.

*ICAC assignment report*

72. The Committee noted from paragraph 5.5 of Chapter 3 of the Audit Report that the ICAC completed an assignment report on the CFS's enforcement of food labelling requirements in September 2010. In the report, the ICAC commented that the CFS's strategy and inspection procedures were "fraught with loopholes for manipulation (e.g. cover-up of non-compliance)" and had fallen short of an effective enforcement mechanism. The Committee asked about the background of the ICAC study and the progress in implementing the ICAC's recommendations.

73. The **Director of Food and Environmental Hygiene** stated in his letter of 7 December 2011 and the **Controller, CFS** stated at the public hearings that:

- the ICAC study was initiated by the FEHD. As the FEHD was responsible for a lot of law enforcement work, it always discussed with the Corruption Prevention Department of the ICAC to ensure that sufficient safeguards were put in place to prevent corruption. Prior to the current audit review, the FEHD invited the ICAC in November 2009 to examine the CFS's enforcement work of food labelling requirements from the corruption prevention angle and to make recommendations on areas for improvement;
- the FEHD had accepted all but two of the recommendations made in the assignment report. The two recommendations were:
  - (a) *to take into account the residence of HIs when assigning districts to them for routine inspection:* This was not accepted because there were only 10 HIs in the FLU. To implement the ICAC's recommendation of not assigning an HI to conduct inspections in the district where he lived would pose operational difficulties in the deployment of staff for inspections. Moreover, the ICAC had made other recommendations that could enhance the integrity of site inspections, such as deploying two HIs to work as a team for blitz operations and requiring Senior HIs to regularly perform supervisory checks on the HIs' work. These measures had been implemented from 1 April 2011; and
  - (b) *to move the Chief HI's office to the FLU office to enable the exercise of direct supervision over the FLU:* This was not accepted because the Chief HI, apart from overseeing the FLU's work, was also responsible for strategic analysis and assisting the Senior

Superintendent and Superintendent in policy matters. Hence, it was more desirable to locate the Chief HI's office with those of the Senior Superintendent and Superintendent; and

- the ICAC had agreed with the FEHD not to take on the above two recommendations having noted its explanations on the inherent operational difficulties.

74. The Committee noted the Director of Food and Environmental Hygiene's reply that the FEHD accepted all the recommendations of the ICAC (except the above two). On the other hand, the Committee noted from the Audit Report that despite the ICAC's recommendations that the CFS should adopt a risk-based inspection approach and develop a database of retail outlets for risk profiling and identification of inspection targets, Audit examination of the CFS's routine inspection work in March 2011 revealed that most of the food labels checked were still chosen from large chain supermarkets, which generally had a lower risk of non-compliance. Besides, the database of retail outlets being developed by the CFS was not yet complete.

75. In addition, the Committee referred to the ICAC assignment report which revealed that despite the magistrate's comments in one prosecution case that the FLU should ascertain the circumstantial evidence (i.e. the actual number of non-compliant food items on the spot) for future prosecution, no instruction had been issued to this effect. File search by the ICAC also showed that such information was still missing in the inspection records.

76. It appeared to the Committee that the lack of management action to follow up a magistrate's advice on prosecution matters cast doubt on the determination of the FEHD and the CFS to seriously implement the ICAC's and Audit's recommendations. The Committee questioned why the FEHD did not promptly act on the magistrate's advice.

77. In his letter of 4 January 2012, the **Secretary for Food and Health** informed the Committee that:

- it was regretted that the magistrate's advice, given on 9 October 2009 in relation to a case against general labelling irregularity, had not been followed up promptly, but improvement measures had since been

implemented in early 2011. HIs of the FLU had been required to ascertain, under the supervision of Senior HIs, the possession of circumstantial evidence before taking out prosecution since February 2011; and

- to better equip the staff concerned with the necessary legal knowledge, training courses were being conducted by the Training Section of the FEHD on evidence collection.

78. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** said that:

- after the ICAC had submitted the assignment report to the FEHD in November 2010, the FEHD held further discussions with the ICAC on the contents of the report and reviewed the internal operations of the department. The FEHD then informed the ICAC that it accepted the report's recommendations and implemented the recommended measures in April 2011. This showed the FEHD's serious approach in following up the ICAC's recommendations and in carrying out its duties; and
- the CFS had also implemented the ICAC's recommendation on seeking legal advice on the circumstances under which prosecution might be waived and requiring HIs to seek approval from a designated senior officer (the relevant Senior HI) for not taking prosecution action.

#### *Promoting the risk-based approach*

79. The Committee noted that both the ICAC and Audit recommended that the CFS should adopt a risk-based approach in carrying out its duties, such as in selecting the food products and the nutrients to be tested and in conducting routine inspections. Such approach was also adopted by other government departments, like the Water Supplies Department in detecting unlawful water taking cases. The Committee further pointed out that although departments had different responsibilities and would define "risk" differently, using a risk-based approach in deploying resources could help them achieve the most with their limited resources. The Committee therefore asked whether the Financial Services and the Treasury Bureau ("FSTB") would take the lead to promote such approach among government bureaux and departments in performing their duties.

80. **Ms Alice LAU, Deputy Secretary for Financial Services and the Treasury (Treasury)**<sup>1</sup>, responded that as bureaux and departments had different areas of responsibility, they would inevitably interpret "risk" in different ways. Nevertheless, she agreed that a risk-based approach could help bureaux and departments to obtain the best results with their limited resources and would provide useful reference to them in making decisions on deployment of resources. The FSTB would actively consider the suggestion of promoting a risk-based approach among bureaux and departments where applicable.

#### **D. Conclusions and recommendations**

81. The Committee:

##### Overall comments

- notes the Secretary for Food and Health's view that some of the recommendations of the Audit Commission ("Audit") in Chapter 4 of the Director of Audit's Report ("Audit Report") concerning nutrition labelling of infant and special dietary foods were related to policy matters and should be discussed through other appropriate channels;
- does not accept the above view of the Secretary for Food and Health, but agrees with the Director of Audit that as the Administration had undertaken in 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods but the Legislative Council had not been informed of the timetable of the review, it is appropriate for Audit to examine the adequacy of the nutrition labelling of infant and special dietary foods with a view to providing input to the Administration on whether there is a need to introduce nutrition labelling requirements covering such foods;
- is dissatisfied that the Secretary for Food and Health failed to express the above view and the Director of Food and Environmental Hygiene failed to inform Audit of the disagreements with certain evidence presented in the Audit Report (e.g. the discrepancies between the results of Audit's and the Administration's testing of the suspected non-compliant cases) when being invited to give comments on the draft of the report, but only made known the view and raised the disagreements at the Committee's public hearings;



- considers that because infants, young children and people with special dietary needs are generally more vulnerable, foods for them should be more strictly regulated, and the public expects the Administration to effectively regulate such foods marketed in Hong Kong;
- expresses astonishment and finds it totally unacceptable that:
  - (a) the Secretary for Food and Health has been inordinately slow in considering the introduction of appropriate ordinance or regulations to govern nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and Hong Kong is lagging behind many countries in regulating the various aspects of infant and follow-up formulae, in that:
    - (i) although the Administration undertook as early as 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods, no such review has yet been conducted after a lapse of six years;
    - (ii) despite the fact that many countries, including China, have already developed comprehensive ordinances or regulations governing the nutritional composition and labelling of infant and follow-up formulae to be marketed in their countries, Hong Kong has not yet developed such ordinances or regulations. Such situation is particularly unacceptable as there are frequent exchanges and cooperation between mainland China and Hong Kong on food related matters and enforcement measures and the standards governing foods (including infant and follow-up formulae) for the two places should be the same; and
    - (iii) since the International Code of Marketing of Breast-milk Substitutes was issued by the World Health Organisation ("the WHO Code") some 30 years ago, many countries have already developed their advertising and marketing guidelines applicable to their own countries for compliance by the trade. In Hong Kong, however, the Administration has not yet taken any measures to require compliance with the WHO Code;
  - (b) there are cases of blatant breaches of the standards of the Codex Alimentarius Commission ("Codex" — an international authority that develops food standards and guidelines) and the WHO Code, but since it is not a legal requirement in Hong Kong to comply with

the Codex standards and the WHO Code, the Administration has taken no action and has not considered the feasibility of proceeding against such breaches under the Public Health and Municipal Services Ordinance ("PHMSO" — Cap. 132); and

- (c) the Centre for Food Safety ("CFS") and the Food and Environmental Hygiene Department ("FEHD") have not given the appropriate priority to protecting the health of infants and people with special dietary needs, as reflected by the following:
  - (i) although the practice of promoting foods for infants through making nutrition, health and other claims is prevalent in Hong Kong and the Director of Health has admitted that the growing trend of making misleading or exaggerated claims in promoting formula for young children aged between six and 36 months is a cause for concern, the CFS has not taken proactive actions to verify the validity of such claims by obtaining scientific evidence from the food traders, or to stop them from making such claims; and
  - (ii) the CFS and the FEHD have not always properly followed through the complaints and enquiries they received relating to the nutritional value of infant and special dietary foods, as illustrated in Cases 4 to 7 in Chapter 4 of the Audit Report. The inadequacy in the follow-up actions may result in the delay of detecting, or inability to timely detect, potential threats to public health;
- urges the Secretary for Financial Services and the Treasury to:
  - (a) remind all government bureaux and departments that they should inform Audit of their disagreements with any contents of an Audit Report when giving comments on the draft of the report before the report is finalised, so that Audit can take their views into consideration when finalising the report or address the different views in the report; and
  - (b) promote the adoption of a risk-based approach among government bureaux and departments in the performance of their functions where appropriate, given that the resources of bureaux and departments are limited;

Nutrition labelling of infant and special dietary foods

*Infant and special dietary foods not covered by the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the 2008 Amendment Regulation")*

- expresses deep regret that:
  - (a) the mandatory nutrition labelling scheme under the 2008 Amendment Regulation does not apply to infant and special dietary foods, and the Administration has neither proposed any ordinance or regulations to govern nutrition labelling of infant and special dietary foods marketed in Hong Kong, nor required such foods to comply with relevant standards and guidelines developed by the Codex;
  - (b) although the Administration has repeatedly informed the Legislative Council Panel on Food Safety and Environmental Hygiene ("FSEH Panel") that the nutrition labelling scheme would not apply to infant and special dietary foods because they were regulated by different Codex standards and guidelines, it has not taken the initiative to disclose to the FSEH Panel and the public at the various meetings of the Panel held on this issue that compliance with the Codex standards and guidelines is not mandatory. Neither has the Administration disclosed the reasons for its failure to make compliance with such standards and guidelines a legal requirement;
  - (c) an examination by Audit of selected infant and special dietary foods marketed in Hong Kong (as reported in Cases 1 to 3 in Chapter 4 of the Audit Report) revealed that there were various deviations from the Codex standards and guidelines:
    - (i) in the nutritional composition and labelling of some infant and follow-up formulae;
    - (ii) in the use of nutrition and health claims and other claims to promote infant and follow-up formulae; and
    - (iii) in the use of claims in special dietary foods;

*Food labelling and nutrition labelling of infant and special dietary foods*

---

- (d) nutrition and health claims and other claims are commonly used by formula traders to promote infant and follow-up formulae, notwithstanding that Codex prohibits the use of nutrition and health claims for foods for infants and young children, and the WHO Code also recommends that there should be no advertising or other form of promotion to the general public of breast-milk substitutes (including infant formula and follow-up formulae); and
- (e) some special dietary foods contain many claims which may not be in line with the Codex standards and guidelines;
- is strongly of the view that given the various breaches of the Codex standards and guidelines by the trade, it is not in the public interest to continue relying on the trade to voluntarily comply with the Codex standards and guidelines;

*Regulation of nutrition information*

- expresses serious concern that:
  - (a) notwithstanding that the regulation of nutrition information for infant and special dietary foods is important because such foods are targeted at the more vulnerable subgroups of the population with special dietary needs, up to mid-2011, the CFS had not conducted any risk assessment studies on nutrition of infant and special dietary foods. In its food surveillance, the CFS focused on the chemical and microbiological testing of foods (including milk powder samples) and had not selected any infant and special dietary foods for verification of the nutrition information declared;
  - (b) in the absence of specific ordinance and regulations, the Administration mainly relies on the general provisions of the PHMSO to regulate infant and special dietary foods marketed in Hong Kong. Despite that section 61 of the PHMSO, which outlaws a label or advertisement that falsely describes the food or misleads as to the nutritional or dietary value of the food, can be invoked against malpractices identified in relation to infant and special dietary foods, the CFS has so far not invoked this section in relation to such foods;
  - (c) Audit's examination of selected infant and special dietary foods marketed in Hong Kong revealed that, for some of such foods

examined, there were obvious deviations between the nutrition information displayed on the nutrition labels and the nutrient contents. Some of the deviations would have fallen outside the CFS's tolerance limits and might have triggered the issue of warning/enquiry letters and enforcement actions, had the nutrition labelling scheme been applied to the products concerned. Besides, the products did not meet some of the scheme requirements;

- (d) in the absence of a legal definition of "food for special dietary uses", consumers have difficulties in differentiating special dietary foods from others; and
  - (e) as reported in Cases 11 and 12 of Chapter 4 of the Audit Report, Audit found that there were food products serving special population subgroups, but not regarded by the CFS as "food for special dietary uses". The requirements of the nutrition labelling scheme should be applicable to such food products. Audit, however, found that some of these products appeared to have not complied with the scheme in various areas;
- acknowledges that the CFS will start to conduct testing on the nutritional composition of infant formula from 2012;

*Development of a Hong Kong Code of Marketing of Breast-milk Substitutes ("the Hong Kong Code")*

- expresses serious disappointment that:
  - (a) at present, the Administration mainly relies on milk powder manufacturers and distributors in Hong Kong to exercise self-discipline in compliance with the WHO Code and requirements in the relevant World Health Assembly resolutions in their marketing practices;
  - (b) although the Administration has set up a task force in June 2010 to develop the Hong Kong Code and the Code is expected to be implemented within 2012, compliance with the Hong Kong Code will still be voluntary and the Code so far developed has not specified any requirements in respect of the nutritional composition of foods for infants and young children; and

- (c) the Administration will only consider whether it is necessary to introduce specific ordinance or regulations governing nutritional composition and labelling of infant foods after reviewing the responses of the trade to the Hong Kong Code;

*The way forward*

- expresses deep regret and finds it unacceptable that the Administration has failed to effectively discharge its role as the food safety authority in overseeing and regulating the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and hence public health has not been adequately safeguarded, in that:
  - (a) there is/are no separate ordinance or regulations to govern the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong;
  - (b) compliance with the Codex standards and guidelines, the WHO Code and the Hong Kong Code (about to be implemented) is only voluntary; and
  - (c) Audit has revealed various inadequacies in the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and in the Government's regulation of nutrition information displayed on food labels of these foods;
- acknowledges that:
  - (a) the CFS will work closely with the Department of Health to actively consider incorporating requirements on nutritional composition and labelling of infant and follow-up formulae marketed in Hong Kong into the Hong Kong Code, and to monitor the trade's compliance;
  - (b) the CFS will study the current situation regarding labelling of foods for special dietary uses and make recommendations regarding the priority of regulating these products; and
  - (c) the Department of Health will develop appropriate monitoring and reviewing mechanism, with a view to supporting the effective implementation of the Hong Kong Code. Besides, the Hong Kong Code task force is considering the relevant sanction mechanism;

*Food labelling and nutrition labelling of infant and special dietary foods*

---

- considers that the Administration has not taken adequate measures to protect public health, and strongly urges the Secretary for Food and Health to tackle the various problems raised in Chapter 4 of the Audit Report without delay. In particular, the Secretary should:
  - (a) set a definite timetable for conducting a review on the need to introduce nutrition labelling requirements covering infant and special dietary foods marketed in Hong Kong, including the need for introducing appropriate ordinance or regulations;
  - (b) expeditiously work out a plan to step up the statutory regulation of nutrition information on infant and special dietary foods marketed in Hong Kong; and
  - (c) keep the FSEH Panel and the Committee informed of the review results, details of the plan and the progress of implementation;

Food labelling

*Accuracy and legibility of food labels*

- expresses serious concern that:
  - (a) most of the food samples selected by the CFS for visual checking of compliance with the nutrition labelling scheme and for checking of compliance with the general food labelling requirements were chosen from large chain supermarkets, which generally had a lower risk of non-compliance;
  - (b) although the Administration reported to the FSEH Panel in July 2011 that the nutrition labelling scheme had been implemented successfully and the overall compliance rate was 99.3%, the CFS's compliance tests conducted were subject to various limitations, as follows:
    - (i) only 6% of the food samples chosen for chemical analysis had been tested for energy plus seven core nutrients, with 70% tested for only one of them;
    - (ii) the nutrients selected for chemical analysis were not necessarily the most essential ones or of a higher risk of non-compliance; and

- (iii) the tolerance limits for considering enforcement action against non-compliance with the nutrition labelling scheme were not disclosed in reporting the compliance rate;
  - (c) Audit's visual checking of nutrition labels in some retail outlets showed that a great number of suspected non-compliant food products were found available for sale in most of those outlets;
  - (d) Audit's laboratory tests found that 60% of the food samples tested were suspected to be non-compliant, and 52% of the samples had discrepancies fallen outside the CFS tolerance limits in two or more nutrients;
  - (e) for some nutrients in the food samples tested by Audit, there were large discrepancies between their nutrition contents and their declared values. Although the discrepancies did not fall outside the CFS tolerance limits (due to their "open-ended" characteristic), inaccurate nutrition information is not conducive to assisting consumers in making informed food choices;
  - (f) the 2008 Amendment Regulation does not have adequate provisions to ensure the legibility of the nutrition information on food labels, and the nutrition labels of some prepackaged foods marketed in Hong Kong were difficult to read due to small font size and the lack of contrast between the text and background; and
  - (g) in some retail outlets visited by Audit, suspected non-compliance with the general food labelling requirements was quite commonly found in their food products marketed;
- understands that the CFS consciously focused on large chain supermarkets during the initial stage of the nutrition labelling scheme (July 2010 to March 2011), but considers that the CFS should not neglect the need to conduct inspections on small and medium retail outlets, which have a higher risk of non-compliance, to ensure their compliance with the scheme;
  - acknowledges that:
    - (a) the CFS has adjusted its enforcement strategy by including more small retail outlets since 1 April 2011. Under the adjusted enforcement strategy, small retail outlets such as ethnic shops and



*Food labelling and nutrition labelling of infant and special dietary foods*

---

market stalls with unsatisfactory compliance records are categorised as high risk, while medium chain shops and large chain supermarkets with good compliance records are categorised as medium and low risk respectively;

- (b) to address the issue of legibility of food labels, the CFS has uploaded a set of draft guidelines onto the CFS website to consult the trade, with the objective of ensuring that consumers can read clearly the information on nutrition labels; and
  - (c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraphs 2.12, 2.21 and 2.27 of Chapter 3 of the Audit Report;
- recommends that:
- (a) the CFS should take effective measures to assist small and medium retail outlets to comply with the nutrition labelling scheme and monitor their compliance;
  - (b) the Director of Food and Environmental Hygiene should regularly publish the results of the CFS's compliance tests of food labels under the nutrition labelling scheme, including the names of both complying and non-complying retail outlets, to enhance public awareness of the scheme and to achieve deterrent effect; and
  - (c) the Director of Food and Environmental Hygiene should promptly initiate amendments to relevant legislation to ensure that there will be adequate statutory provisions governing the legibility of nutrition information on food labels, so as to safeguard the interest of consumers;

*Nutrition claims and health claims*

- finds it unacceptable that:
- (a) food traders have increasingly used nutrition and health claims to promote conventional foods (foods or drinks customarily consumed). While nutrition claims are governed by the nutrition labelling scheme, health claims are not governed by any specific ordinance or regulations in Hong Kong. The Administration can only rely on the general provisions of the PHMSO to regulate

health claims on conventional foods. Up to August 2011, no successful prosecution had been brought against any food traders for improper health claims on conventional foods;

- (b) the Undesirable Medical Advertisements (Amendment) Ordinance ("UMA(A)O"), which governs the prohibition/restriction on advertising relating to six groups of undesirable health claims on orally consumed products, was enacted in 2005 but the major amendments have not yet come into operation;
  - (c) the CFS staff had not taken proactive actions (e.g. by seeking scientific evidence from food traders) to verify the validity of the nutrition claims made by food traders, particularly those in advertisements. For the first year of implementing the nutrition labelling scheme, the CFS had only identified 12 inappropriate nutrition claims; and
  - (d) the CFS did not keep records on whether nutrition claims made on food products or in advertisements had been checked in its compliance tests, and whether the food samples selected for chemical analysis contained nutrition claims;
- acknowledges that:
- (a) the UMA(A)O will be brought into operation in the first half of 2012;
  - (b) the CFS will step up its enforcement efforts on nutrition claims and has followed up on the suspected non-compliant cases identified by Audit; and
  - (c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 3.16 of Chapter 3 of the Audit Report;
- urges the Director of Food and Environmental Hygiene to take effective measures to rectify the inadequacies in the CFS's oversight of use of nutrition claims on foods by the trade, including improving the CFS staff's capability and alertness in taking enforcement actions and reviewing the CFS's systems in relation to its enforcement work to identify any weaknesses, and keep the FSEH Panel and the Committee informed of the progress made;

*Exemptions from nutrition labelling*

- notes that under the small volume exemption ("SVE") scheme, the FEHD may grant exemption in respect of any prepackaged food from the nutrition labelling requirements if it is satisfied that the annual sales volume of the food in Hong Kong would not exceed 30,000 units;
- expresses disappointment that during the first year of the implementation of the SVE scheme, various problems had arisen, as follows:
  - (a) the CFS had difficulty in monitoring whether the limit of 30,000 units a year had been exceeded as there was delay by some food traders in reporting the monthly sales volumes of their SVE products, and the CFS mainly relied on the sales volumes reported by food traders without conducting checks to verify the accuracy of the reported figures. As a result, the CFS could not take timely action to revoke the exemption status of some products even if their sales volumes had exceeded 30,000 units;
  - (b) the CFS could not ascertain the overall sales volume of an SVE product because it could only monitor the sales volumes of an SVE product made by food traders who were granted exemption for the product, but not the sales volumes of the same product made by other food traders who had not applied for SVE;
  - (c) for the purpose of processing SVE applications, the CFS staff have to satisfy that the products do not carry any nutrition claims, but they may sometimes find it difficult to vet food labels written in languages other than Chinese and English; and
  - (d) many food traders withdrew their SVE applications after the CFS had given its approval in principle, and as a result, much of the CFS's work in processing the applications became abortive, involving unrecoverable costs of some \$2.9 million up to June 2011;
- acknowledges that:
  - (a) the post-implementation review of the SVE scheme is underway and the CFS will take into account Audit's observations and recommendations;

- (b) the CFS will continue to explore ways to monitor the overall sale volumes of SVE products;
  - (c) the CFS will remind the trade that all claims, irrespective of the language being used, would be regulated, and the trade should exercise due diligence to ascertain that all information provided on the package is accurate. The CFS will also explore ways to further support its staff in scrutinising food labels written in languages other than Chinese and English;
  - (d) to avoid possible abuse, with effect from November 2011, the CFS will only issue the SVE number to grantees that have already paid the exemption fees. The CFS will consider the practicability of introducing an application fee in the present review to address the problem of frequent withdrawals; and
  - (e) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 4.24 of Chapter 3 of the Audit Report;
- recommends that the Director of Food and Environmental Hygiene should conclude the post-implementation review of the SVE scheme promptly and take effective measures to plug any loopholes in the enforcement of scheme requirements having regard to the outcome of the review;

*Surveillance and enforcement work*

- expresses astonishment that:
  - (a) although the Independent Commission Against Corruption ("ICAC") recommended in its assignment report of September 2010 that the CFS should adopt a risk-based inspection approach and develop a database of retail outlets for risk profiling and identification of inspection targets, Audit examination of the CFS's routine inspection work in March 2011 revealed that most of the food labels checked were still chosen from large chain supermarkets, which generally had a lower risk of non-compliance. Besides, the database of retail outlets being developed by the CFS was not yet complete;

- (b) Audit examination of the CFS's blitz operation work in March 2011 revealed that most of the retail outlets inspected were located in shopping centres, and there were not many retail outlets along the streets selected for inspections. Audit staff attended as observers in a blitz operation conducted in June 2011 and noted that there were inadequacies in the operation (e.g. a few high-risk outlets were not visited);
  - (c) the CFS did not take adequate follow-up actions on irregularities of those food products which were only provided with the names and addresses of distributors or manufacturers outside Hong Kong;
  - (d) although the CFS guidelines provided that Health Inspectors ("HIs") were required to take subsequent follow-up actions on prosecution cases to ensure that the non-compliance did not persist, the guidelines contained no provisions on details of such actions, such as the timeframe and frequency of follow-up inspections. In some completed prosecution cases, there was no record of follow-up inspections conducted; and
  - (e) the CFS did not issue public alerts to draw the public's attention to the food safety problems of some food products which had been identified to contain undeclared allergens or unpermitted/excessive food additives;
- acknowledges that:
- (a) the CFS will continue to build up, improve and update its database of retail outlets to facilitate its inspection, surveillance, enforcement, risk management and public education work;
  - (b) the CFS will supplement internal guidelines to require HIs to cover as many retail outlets as practicable in blitz operations and on details of follow-up actions to be taken to ensure that any non-compliance cases identified would not persist;
  - (c) the CFS will take enforcement action and make immediate public announcements if test results show that food samples are detected with immediate health risks; and

- (d) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 5.24 of Chapter 3 of the Audit Report;
- recommends that the Director of Food and Environmental Hygiene should take actions to implement the ICAC's recommendations and the above Audit recommendations without delay;

*Publicity and education*

- expresses concern that:
  - (a) Audit's survey conducted in June and July 2011 revealed that although most of the respondents were aware of the nutrition labelling scheme, their understanding of the scheme was far from adequate. Besides, most respondents had not yet developed a habit of reading nutrition labels when purchasing prepackaged foods; and
  - (b) Audit's survey also revealed that there were differences in the level of awareness, perception and attitude on nutrition labelling among different categories of respondents, especially for senior citizens. Besides, there were obstacles hindering the public from using nutrition labels such as "font size too small", "the nutrition information could not be related to daily intake" and "the information provided was difficult to understand";
- acknowledges that:
  - (a) the CFS has started to implement a two-year enhancement publicity and education programme since July 2011, with a view to sustaining the educational efforts of the three-year campaign and motivating behavioural changes;
  - (b) the CFS will review the existing strategies and approaches in promoting the nutrition labelling scheme to different groups of the population, and seek to improve the user-friendliness of the nutrition labels; and
  - (c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 6.12 of Chapter 3 of the Audit Report;

- recommends that the Director of Food and Environmental Hygiene should implement the above Audit recommendations promptly; and

Follow-up action

- wishes to be kept informed of the progress made in implementing the various recommendations made by the Committee and Audit.

## **A. Introduction**

The Audit Commission ("Audit") conducted a review of the records management work of the Government Records Service ("GRS").

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

## **B. Overseeing of records management programmes**

### Records management programmes

3. According to paragraphs 2.3 and 2.4 of the Director of Audit's Report ("Audit Report"), the Director of Administration had issued the Records Management Manual ("RMM") to prescribe the code of practices for establishing records management programmes in government bureaux/departments ("B/Ds"). To better understand how B/Ds managed records, the Committee enquired about the details of the work procedures.

4. In her letter of 19 December 2011 in *Appendix 15*, the **Director of Administration** provided a flow chart showing details of the actions and procedures involved in each key stage of records management. She also stated that:

- as prescribed in the RMM, B/Ds should institute and implement a comprehensive records management programme to provide proper handling of government records through establishing control for the creation, organisation, maintenance and disposal of government records throughout their organisations; and
- some of the work processes presented as sequential in the flow chart might take place simultaneously, e.g. records creation and classification were often carried out as an integrated series of actions.

### Compliance with mandatory records management requirements

5. As stated in paragraph 2.7 of the Audit Report, General Circular No. 2/2009 "Mandatory Records Management Requirements" ("the Circular") introduced a



number of mandatory records management requirements, including management of e-mail records, records classification, records disposal (such as destruction of records subject to prior consent of GRS Director and transfer of records having archival value to the GRS), custody and storage of records, and protection of vital records. The Committee asked how the GRS ensured that B/Ds would comply with the mandatory requirements of the Circular and whether there were punitive measures for non-compliance.

6. The **Director of Administration** said in the same letter that the following measures were put in place to ensure B/Ds' compliance with the requirements:

- requesting heads of B/Ds to accord appropriate priority and resources to implement records management programmes in their organisations;
- requiring B/Ds to appoint Departmental Records Managers ("DRMs") to oversee the departmental records management programmes and providing training, briefings and written advice to DRMs. As members of Executive Officer ("EO") grade were often heavily involved in records management duties in B/Ds, the GRS would strengthen the training for EOs by including records management in the mandatory development programme for EO I starting from January 2012;
- conducting focused records management seminars for records managers and records management staff in selected B/Ds to increase their awareness of the mandatory records management requirements. Such seminars had been organised for the Hong Kong Police Force, Social Welfare Department, Lands Department, Housing Department and Fire Services Department;
- conducting service-wide surveys on records management practices of B/Ds with focus on their compliance with the mandatory requirements. The GRS had conducted the first survey in the second half of 2010 and would initiate another survey in the second half of 2012;
- for the three mandatory records management requirements with a deadline of April 2012 (i.e. to adopt the GRS standard classification scheme and disposal schedules for administrative records, to establish draft disposal schedules for programme records and to draw up an action plan identifying and protecting vital records), monitoring B/Ds'

compliance through their submission of quarterly reports with effect from September 2011;

- upon completion of the current round of records management studies for all B/Ds in 2012, conducting comprehensive records management reviews/audits of individual B/Ds to monitor their compliance with the mandatory requirements; and
- reminding B/Ds to re-circulate the relevant General Circulars at regular intervals.

7. The **Director of Administration** also said that the mandatory records management requirements were of equal application and force to the Government Regulations, and were binding on all government servants. For any non-compliance with the requirements, the staff concerned would be subject to disciplinary action, including verbal/written warnings, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, depending on the circumstances and severity of the misconduct/offence.

### **C. Management of archival records**

#### Records appraisal and workload of the Public Records Office

8. According to paragraph 4.3 of the Audit Report, the Public Records Office ("PRO") of the GRS carries out records appraisal to determine what records have archival value and should be retained permanently, and what records may be destroyed. The Committee enquired about the following:

- (a) the PRO's criteria for determining the archival value of records;
- (b) the number of man-hours that the PRO spent on carrying out appraisals on one linear metre of records; and
- (c) based on the estimate of the GRS, when it could clear the backlog of 59,000 records appraisals as mentioned in paragraph 4.4 of the Audit Report.

9. In her letter of 19 December 2011, the **Director of Administration** replied that:

- (a) the GRS had developed a set of appraisal guidelines in July 2009 based on the experience of other countries, with a view to providing a general framework to assist in the selection of archival records in a coherent and consistent manner. According to the guidelines, records likely to be selected as archival records might include the following:
- records that document or reflect the organisation, functions and activities of the Government;
  - records that document the formation process, implementation and outcome of significant policies, decisions, legislation and actions of the Government;
  - records that document the impact of the decisions, policies and programmes of the Government upon the physical environment, community, organisations and individuals;
  - records that document the interaction between the public and the Government as well as between the physical environment and the Government;
  - records that document the legal rights and obligations of individuals, groups, organisations and the Government; and
  - records that contain significant or unique information or aged documents that can enrich the understanding about the history, physical environment, society, culture, economy and people of Hong Kong;
- (b) there were currently three Archivist grade staff at the GRS responsible for records appraisal. Based on the time they spent on records appraisal, about 0.8 man-hour was required for appraising one linear metre of records in 2010; and
- (c) the GRS would explore measures, including seeking additional resources according to the established mechanism, in order to clear the backlog of 59,000 records appraisals in three years' time.

Destruction of records before appraisal by the PRO

10. The Audit Report revealed that in 2006 and 2007, the records centre, with the consent of the two government departments concerned, destroyed 2,815 time-expired records which were yet to be appraised by the PRO. In one of the above cases, the GRS had prepared microfilm images of the records before destruction but the PRO had not made use of the microfilm images to appraise their archival value. The Committee asked what the 2,815 destroyed records and the archival value of the microfilmed records as appraised by the PRO were.

11. The **Director of Administration** replied in her letter that:

- (a) 326 time-expired records destroyed by the records centre belonged to the Home Affairs Department. The remaining files were related to bankruptcy and liquidation cases of individuals and companies from the Official Receiver's Office ("ORO"). According to the microfilm of the records, these files involved 838 bankruptcy and 616 liquidation cases; and
- (b) regarding the records belonging to the ORO, the PRO, after appraising the microfilm of the paper records, had confirmed the archival value of the microfilmed records and stored them in the GRS.

12. The **Director of Administration** also said that the GRS, after investigation of the two cases, had counselled the staff concerned and reminded them to strictly follow the procedures for handling records disposal. In addition, the GRS had reviewed the relevant procedures and introduced a disposal check form to control the disposal process by setting out clearly the steps and the responsible officers involved. Since the implementation of such measures, there had been no inadvertent destruction of records by the records centre.

Condition survey conducted in 2002

13. According to paragraph 4.15 of the Audit Report, the GRS had commissioned a conservation adviser in 2002 to conduct a condition survey of its archival and library holdings and the results showed that about 30% of around 1,600 selected items were in a deteriorated condition. The Committee asked about the condition and degree of deterioration of those items.

14. The **Director of Administration** stated in her letter of 19 December 2011 that the GRS's conservation adviser classified the conditions of 1,611 selected items into five categories: viz. "Very good", "Good", "Middle", "Deteriorated" and "Very deteriorated". A total of 529 items (32.8%) were classified as "Very good" or "Good", 643 items (39.9%) were classified as "Middle" and 439 items (27.3%) were classified as "Deteriorated" or "Very deteriorated". For the 439 items classified as "Deteriorated" or "Very deteriorated", the **Director of Administration** also set out the details of their condition and degree of deterioration in her letter.

15. The **Director of Administration** further said that in light of the preservation strategies formulated based on the condition survey's findings, the GRS had implemented some measures apart from pursuing good handling and housekeeping practices. Such measures included housing each and every archival items in protective enclosures, enhancing insect and pest control, strengthening the GRS's professional capability to preserve and conserve archival items by entrusting the responsibility to the Curator grade since January 2008, enhancing climatic monitoring of the repositories and conducting another condition survey in October 2011 to revisit various strategies for improving the preservation of the GRS's holdings.

#### Accessioning and description of archival records

16. Accessioning is the process of registering and arranging the archival records before they are made available for public inspection. As stated in paragraph 4.27 of the Audit Report, up to June 2011, the GRS had a backlog of 280,000 archival records pending accessioning. In considering that the GRS on average completed accessioning of 30,000 archival records every year, Audit estimated that the GRS would take more than nine years to clear the backlog. The Committee enquired about the details of the action plan drawn up by the GRS to clear the backlog and when the backlog could be cleared.

17. The **Director of Administration** provided, in the same letter, the details of the action plan to clear the backlog of archival records, as follows:

- adopting a simplified approach since July 2010 for records description, which described archival records according to international standards and prepared different finding aids before records were made available

for public inspection, so as to shorten the process while providing the core descriptive information to facilitate on-line search;

- accessioning those records which would soon reach 30 years first so that they might be opened for public inspection when they reached 30 years; and
- speeding up the accessioning work through additional resources, including deployment of a temporary research assistant to assist in records accessioning since November 2011.

18. The **Director of Administration** also said that the GRS expected to clear the backlog of 280,000 archival records in three years' time.

#### **D. Manpower of the GRS**

19. The Committee asked whether the Administration considered that the current manpower of the GRS was sufficient for carrying out its different types of records management work, and whether there were plans to increase its manpower.

20. The **Director of Administration** responded in her letter that:

- there were three officer grades in the GRS, i.e. the Archivist, EO and Curator grades. Archivists were mainly responsible for selection and management of archival records, EOs were for records management while Curator grade staff undertook the duties of conservation and preservation of archival records;
- to enrich the professional knowledge and expertise of the above three grades of staff, records management training was provided to them and arrangements were also made from time to time for them to attend international conferences and seminars so that they might share experience with overseas archival and records management institutions; and
- notwithstanding the above, the GRS would continue to keep under review the establishment of different staff grades so as to ensure work quality and the provision of good service to the public for access to

archival records, and seek additional manpower as appropriate according to the established mechanism. The Administration would also review the GRS's work processes to further improve its efficiency and effectiveness, and monitor the situation closely to ensure that the GRS had sufficient manpower to cope with the workload.

## **E. Conclusions and recommendations**

21. The Committee notes the above replies of the Director of Administration. Given that there are a number of outstanding issues to be sorted out which may be related to the Government's overall policy on records management, the Committee recommends that the related issues be followed up by the Legislative Council Panel on Constitutional Affairs.

22. The Committee also wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.

## **A. Introduction**

The Audit Commission ("Audit") conducted a value for money audit on the actions taken by the Water Supplies Department ("WSD") to minimise water losses from unauthorised water consumption and inaccurate metering with focus on the following areas:

- enforcement action against unlawful water taking;
- inspection of unauthorised water consumption;
- management of water meter accuracy; and
- performance reporting.

2. **Mr MA Lee-tak, Director of Water Supplies**, made an opening statement at the Committee's public hearing on 1 December 2011. The full text of his statement is in *Appendix 16*.

3. In gist, the **Director of Water Supplies** said in his opening statement that:

- the quantity of water loss from unauthorised water consumption (i.e. 17.30 million cubic metres ("Mm<sup>3</sup>") which represented 2% of the total fresh water supply in 2010) was only a notional estimate. The adoption of a notional estimate with regard to local conditions was in line with the international best practice. As literature review revealed that figures of 0.5% to 4.3% had been used in the region, the WSD adopted 2%, a figure close to the average of the range, for the case of Hong Kong for estimation purpose, in view of Hong Kong's state of development;
- according to the accuracy limits of water meter of  $\pm 2\%$  and  $\pm 3\%$  as specified respectively in the meter procurement contracts and the Waterworks Regulations, the quantity of water loss from inaccurate metering amounted to 2% of the total fresh water supply in 2010 as mentioned in the Director of Audit's Report ("Audit Report") should be regarded as performance within the allowable limits, rather than a loss of government revenue;



*Water losses from unauthorised consumption and inaccurate metering*

---

- in the past years, the WSD had focused on increasing the percentage of the meter fleet with service year within the optimum service life. The WSD would now shift its focus to replacing meters with high service years or high recorded consumption left in the previous rounds due to different complications; and
- in view of the difficulties encountered during replacement of aged water meters, the WSD was considering the viability of applying for warrants from the Magistracy for entry into the premises to effect works, including the clearance of obstruction to access, and repair to plumbing and building fabrics for meter replacement, with costs incurred to be recovered from the parties concerned.

4. The Committee noted the Director of Water Supplies' remark that a figure in the range of 0.5% to 4.3% had been applied to estimate the notional quantity of water loss from unauthorised water consumption in the region. The Committee asked whether the situation of unauthorised water consumption in Hong Kong was serious, considering that the notional quantity of apparent water losses in Hong Kong, which referred to water consumed by users but not metered or charged, amounted to 4% of the total fresh water supply in 2010 as mentioned in the Audit Report. The **Director of Water Supplies** clarified that 4% was actually comprised of 2% for water loss from unauthorised water consumption and 2% for inaccurate metering, and such figures were estimates only.

## **B. Enforcement action against unlawful water taking**

### Apparent water losses

5. According to paragraph 1.7 of the Audit Report, the notional quantity of water losses from unauthorised water consumption and inaccurate metering totalled 34.94 Mm<sup>3</sup> in 2010, representing 4% of the total fresh water supply in the year and involving estimated notional water charges forgone of some \$160 million (\$79.2 million and \$80.8 million were attributed to unauthorised water consumption and inaccurate metering respectively). The Committee also noted from paragraph 2.9 of the Audit Report that from 2008 to 2010, the number of unlawful water taking convictions had increased by 52% from 60 to 91. Since unlawful water taking would result in loss of water and government revenue, the Committee asked what actions the WSD had taken to address the problem of unlawful water taking.

6. The **Director Water Supplies** said at the public hearing and in his letter of 19 December 2011 (in *Appendix 17*) that:

- the WSD had been adopting a two-prong approach in dealing with unlawful water taking, i.e. by detection and prosecution and by promotion and education against unauthorised uses. The WSD would strengthen work on these two areas by exploring new detection techniques and enhancing collaboration with concerned authorities and other sectors of the community, with a view to widening the detection webs for unlawful water taking activities;
- the WSD had started to adopt a risk-based approach in detecting possible unauthorised water consumption since 2011, through comparison of flow data registered by flow meters of individual district meter areas with aggregated meter consumption figures of individual consumers in the corresponding areas. When there were discrepancies between those two sets of figures, indicating abnormalities in water consumption, the WSD would take follow-up actions, including investigation and on-site inspection. It would also institute prosecution if unauthorised water use was identified; and
- the WSD would explore the feasibility of using data mining techniques to evaluate changes of individual consumers' water usage as an aid towards identifying suspected unauthorised water use.

#### Unlawful water taking at markets

7. The Committee noted from paragraph 2.16 of the Audit Report that the number of unlawful water taking convictions at the Food and Environmental Hygiene Department ("FEHD")'s markets had increased from 4 in 2008 to 18 in 2010, representing an increase of 350%. Moreover, there were repeated offences committed by the same stall operator. Notwithstanding this, the WSD had not informed the FEHD of the situation nor similar offences committed by other stall operators at the FEHD's markets. As a result, the FEHD could not take necessary follow-up action, such as issuing warning letters to the offenders.

8. The Committee further noted that under the existing market-stall tenancy agreement, the FEHD could issue a warning letter to a tenant for non-compliance with the legal provisions relating to the use of a market stall and could terminate a tenancy agreement after the issue of three warning letters to a tenant within a period

*Water losses from unauthorised consumption and inaccurate metering*

---

of six months. It appeared to the Committee that if the WSD had informed the FEHD, the FEHD could have taken effective enforcement actions against those tenants who unlawfully took water at the FEHD's markets and such actions could have great deterrent effect. The Committee questioned whether the WSD had tried its best to deter and prevent unlawful water taking activities at the FEHD's markets and what the WSD had done to address the problem.

9. The **Director of Water Supplies** replied that the WSD had liaised with the FEHD to strengthen the measures for prevention of unlawful water taking activities at public markets. The FEHD also accepted Audit's recommendations and would collaborate with the WSD in taking enforcement actions against such activities.

Unlawful water taking at construction sites

10. The Committee referred to paragraphs 2.32 and 2.36 of the Audit Report, which reported that there were nine conviction cases of unlawful water taking at government works sites from 2008 to 2010. In these cases, the site workers who were employees of the contractors, instead of the contractors, were prosecuted. The WSD had not notified the responsible government departments of the cases on the grounds of privacy as the defendants in those cases were employees of the contractors, who were individual persons.

11. Against the above background, the Committee asked:

- why the WSD could not institute prosecution against both the contractors and the site workers concerned, although it was obvious that the site workers had taken water unlawfully for use at their employers' construction sites;
- why in cases of residential developments' taking water unlawfully for flushing, the Owners' Corporations ("OC") concerned would be prosecuted, but government works contractors would not be charged even though their employees took water unlawfully for use at their sites; and
- whether the WSD agreed that the current practice would create an opportunity for contractors to evade the legal liability for unlawful taking of water, and whether the WSD would review its existing approach in dealing with similar cases to plug the loophole.

12. The **Director of Water Supplies** and **Mr Bobby NG, Assistant Director/Development of the WSD** responded that:

- in order to institute a prosecution, the WSD needed to identify the person taking water unlawfully and if he/she admitted committing the offence, he/she would be the one to be prosecuted; and
- to deter unlawful water taking activities at works sites, the WSD would review the existing contractor administration procedures with the Development Bureau ("DB") and provide more information, such as conviction cases of unlawful water taking at works sites and the contractors who had records of taking water unlawfully, to the related government departments so that they could help monitor whether there were any unlawful water taking activities at their works sites. If there were such activities, the departments could provide more evidence to the WSD for prosecution.

13. The **Director of Water Supplies** supplemented in his letter of 19 December 2011 that the WSD would solicit the DB's assistance to highlight in the contractor administration procedures that any unauthorised water uses at the contractors' works sites would be reflected in their performance reports. The WSD would also seek legal advice on how the contractor's responsibility for unlawful taking of water at works sites by employees of the contractors could be more effectively pursued based on the evidence collected.

14. The Committee referred to Case 3 in paragraph 2.32(b) of the Audit Report, in which a government works contractor commenced landslip preventive works in June 2008 but only applied for temporary water supply in November 2008, i.e. 132 days after commencement of the works. Upon receipt of the application, the WSD requested the contractor to provide additional information for the application. During this period, the contractor continued taking water unlawfully at the works site. In February 2009, i.e. 91 days after the contractor's first submission of application, the WSD received a revised application from the contractor and approved the application. According to the Project Administration Handbook for Civil Engineering Works ("the Handbook"), a contractor should submit an application for temporary water supply before the award of a contract to ensure water was supplied shortly after commencement of works.

*Water losses from unauthorised consumption and inaccurate metering*

---

15. The Committee questioned:

- why the WSD officers concerned had not taken the initiative to follow up the contractor's application for temporary water supply after requesting the contractor to provide additional information or promptly processed the contractor's revised application, and whether their slow response had resulted in prolonged unlawful water taking at the works site;
- whether the omission was due to the bureaucratic mindset of the WSD officers concerned which resulted in their failure to respond to a situation requiring timely actions, or the low priority accorded by the WSD to reducing water loss from unauthorised water consumption; and
- why the WSD had not solicited the assistance of other government departments to help ensure compliance with the requirements of the Handbook, such as by reminding their contractors to apply for temporary water supply before commencement of works.

16. The **Director of Water Supplies** stated that:

- the WSD officers concerned were not bureaucratic. Nevertheless, the WSD would remind its staff to take more initiative to follow up applications for temporary water supply from contractors before commencement of works, especially when the applications were late or additional information was required; and
- the WSD had already liaised with other government departments and would regularly remind them of the need to comply with the requirements of the Handbook, i.e. to apply for temporary water supply before commencement of works.

Unlawful water taking for flushing at residential developments

17. The Committee noted from Case 1 in paragraph 2.24(a) of the Audit Report that when the WSD investigated a complaint about unlawful water taking in Development A, the responsible WSD officers needed to wait some time before they were granted the right of access by the estate management office of Development A. Subsequently, the WSD officers gained instant access to Development A after obtaining a search warrant.

18. It appeared to the Committee that WSD officers often encountered difficulties in gaining prompt access to premises for conducting investigations of unlawful water taking activities. To ascertain the extent of the problem, the Committee enquired:

- about the number of cases in which the WSD had taken enforcement actions with a warrant and the circumstances of such cases from 2008 to 2010;
- how long it normally took for the WSD to obtain a warrant from the Magistracy for entering premises to conduct investigations, collect evidence or terminate unauthorised connections; and
- whether the obtaining of warrants would prolong the WSD's investigation and prosecution work.

19. The **Director of Water Supplies** and **Mr CHIN Chu-sum, Assistant Director/Customer Services of the WSD** responded that:

- to facilitate inspection and prosecution work, the WSD sometimes had to obtain a warrant from the Magistracy for entry to premises, if they failed to obtain such consent of the estate management offices concerned; and
- to successfully obtain a warrant from the Magistracy, WSD officers needed to produce proof to court that they had made the best attempt to obtain consent of the estate management offices concerned for entry to the premises but in vain. It would normally take one week for them to prepare such information and obtain a warrant from the Magistracy.

20. In his letter of 19 December 2011, the **Director of Water Supplies** stated that from 2008 to 2010, there were six cases in which the WSD required warrants to take enforcement actions against unlawful water taking activities. Five of the cases were related to suspected unlawful taking of fresh water for flushing and one case concerned suspected unlawful taking of fresh water for use in a restaurant.

21. The Committee further asked, besides prosecution, what other measures the WSD would carry out to prevent unlawful water taking activities, including those which would enable users to have water supply through proper channels and sources.

*Water losses from unauthorised consumption and inaccurate metering*

---

22. The **Director of Water Supplies** replied at the public hearing and in his letter of 19 December 2011 that the WSD would consider extending the network of sea water supply to areas without such supply and assisting estate management offices of residential developments to properly maintain their flushing systems through the expansion of the "Quality Water Recognition Scheme for Buildings" to flushing systems, with a view to reducing the risk of system breakdowns and hence the occurrences of unlawful tapping of fresh water for flushing.

23. Turning to Case 2 in paragraph 2.24(b) of the Audit Report, the Committee noted that the OC of Development B admitted taking fresh water unlawfully for flushing at two blocks for about 28 months in January 2008. In March 2008, the WSD requested the OC to remove the unauthorised connections and issued a summon to the OC, which was later convicted of the offences with fines of \$5,000 and a water charge of \$69,622. In May 2008, the WSD refused the OC's request for extending the removal time of unauthorised connections, the OC then submitted an application to the WSD for temporary water supply for flushing. In June 2008, the WSD requested the OC to revise the application and finally approved the application in September 2008. Between June and October 2008, the OC continued taking water unlawfully and the WSD issued another summon to the OC, which was convicted of the offences with fines of \$10,000 and a water charge of \$7,871. Up to November 2011, unlawful water taking continued in Development B notwithstanding that the OC had twice been convicted of the offences.

24. The Committee queried why unlawful water taking activities still continued in Development B despite the WSD's repeated enforcement actions. It asked:

- about the actions that the WSD would take to put such activities to an end and whether the WSD had sought the Department of Justice ("DoJ")'s advice on the need to apply for a review against the sentence imposed on this case; and
- whether the WSD considered that the level of penalties imposed on offenders convicted of unlawful water taking was too lenient to deter such activities, and whether the WSD would consult the DoJ on the need to review such penalties.

25. The **Director of Water Supplies** and **Assistant Director/Development** explained that:

- since Development B took water from its fire services installation for flushing, the WSD, after discussing with the Fire Services Department,

*Water losses from unauthorised consumption and inaccurate metering*

---

decided not to terminate the water supply to Development B for the sake of fire precaution. Instead, the WSD would institute another prosecution and was considering applying for a warrant from the Magistracy for entering the building to remove the unauthorised connections; and

- it was the DoJ's decision as to whether it should apply for a review against the sentence imposed on a case and the WSD would act on its advice. To enhance the deterrence against unlawful water taking activities, the WSD would first adopt measures to strengthen its prosecution work, including providing more information on the offenders to the court, so as to ensure that offenders would be given appropriate sentences. The WSD would periodically review the effectiveness of such measures and then consider reviewing the level of penalties, if the need arose.

26. As unlawful water taking still continued in Development B, the Committee requested the WSD to provide a progress report on Case 2 in two months' time after the public hearing.

27. In his letter of 20 January 2012 (in *Appendix 18*), the **Director of Water Supplies** informed the Committee that the WSD instituted the third prosecution and the OC of Development B was convicted of the offences. The OC was fined \$33,000 and was required to settle a water charge of \$51,781. The OC had removed the unauthorised connection and its application for temporary water supply for flushing had been approved by the WSD. The permanent flushing supply system of Development B was expected to commence by end February 2012.

### **C. Inspection of unauthorised water consumption**

#### Responsibilities and manpower of the Prosecution Unit ("PU")

28. The WSD's PU is responsible for conducting inspections and investigations of suspected unauthorised water consumption cases, carrying out surprise inspections of suspected premises and buildings, and instituting prosecution against unlawful water taking under the Waterworks Ordinance (Cap. 102) and the Waterworks Regulations. It currently has an establishment of 13 staff in four different ranks, including one Chief Technical Officer, three Waterworks Inspectors, three Assistant Waterworks Inspectors and six Customer Services Inspectors.



*Water losses from unauthorised consumption and inaccurate metering*

---

29. According to Table 4 in paragraph 3.3 of the Audit Report, from 2008 to 2010, the PU conducted 2,411 inspections of suspected unauthorised water consumption cases. The Committee asked:

- about the duties and responsibilities of each of the four ranks of staff of the PU; and
- whether the manpower of the PU was sufficient for handling its workload and whether the existing division of work among the PU staff could facilitate inspection and prosecution work.

30. The **Director of Water Supplies** and the **Assistant Director/Development** replied at the public hearing and in the letter of 19 December 2011 that:

- the PU was headed by a Superintendent (at the rank of Chief Technical Officer) and comprised of three prosecution teams, each headed by a Prosecution Officer (at the rank of Waterworks Inspector), who was assisted by an Assistant Prosecution Officer (at the rank of Assistant Waterworks Inspector) and two Customer Services Inspectors. The major responsibilities of the prosecution team were to conduct investigations, collect evidence, prepare reports, institute prosecution and attend court as prosecutor or witness;
- the main duties of each of the four ranks of staff were:
  - (a) *Superintendent*: to supervise the activities of the PU, examine cases reported to be in contravention of the Waterworks Ordinance and the Waterworks Regulations, take prosecution actions against offenders, perform as prosecutor in court, recommend revision of the related legislations if required and arrange staff training;
  - (b) *Prosecution Officer*: to supervise prosecution team, prepare case work connected with investigation and prosecution, prepare evidence and court statements, and perform as prosecutor in court;
  - (c) *Assistant Prosecution Officer*: to conduct on-site investigations, investigate complaints of irregularities lodged by the public and other agencies, collect evidence, prepare reports on such investigations, present evidence in court and act as government witness; and

*Water losses from unauthorised consumption and inaccurate metering*

---

(d) *Customer Services Inspector*: to conduct inspections, attend complaints of breaches of the Waterworks Ordinance and the Waterworks Regulations, and assist Prosecution Officers and Assistant Prosecution Officers in legal proceedings; and

- the major duties of the Superintendent were to institute prosecution and act as prosecutor or witness at court. Such work amounted to one-third of his workload. As for the other staff, they were mainly responsible for conducting investigations and inspections, which were often carried out by more than one staff from the team. To efficiently carry out these duties, the WSD had already deployed appropriate resources to the PU.

31. The Committee further asked about the number of investigations and inspections which were conducted by two PU staff together. The **Director of Water Supplies** explained in his letter of 20 December 2011 (in *Appendix 19*) that:

- since collection of evidence during investigation required simultaneous actions at different locations, for example, operating valves at ground floor and taps within the premises to ascertain that water was drawn through the illegal connection to the premises, and thus at least two and very often three staff would be deployed for the investigation; and
- from 2008 to 2010, all the inspections of suspected unauthorised water consumption cases were conducted with at least two staff.

32. Noting that all the inspections of suspected unauthorised water consumption cases had to be conducted by at least two PU staff together, the Committee queried why the WSD only allocated 13 staff to the PU and asked if the WSD would review the PU's manpower strength. The Committee also questioned:

- whether the WSD had accorded a low priority to minimising water losses from unauthorised water consumption and inaccurate metering, and hence it only deployed a team of 13 staff to handle such work; and
- whether legal and prosecution training were provided to the Superintendent and other staff of the PU to ensure that they had the necessary legal skills and expertise required for carrying out their inspection and prosecution duties effectively.

*Water losses from unauthorised consumption and inaccurate metering*

---

33. The **Director of Water Supplies** and the **Assistant Director/Development** responded that:

- the WSD would first adopt other measures and make use of data mining techniques to strengthen inspection and prosecution work. If the workload of the PU further increased, the WSD would review the manpower of the PU again;
- the WSD did not neglect its duties of minimising water losses from unauthorised water consumption and inaccurate metering. However, in view of the substantial amount of water losses due to water mains leakage and bursts (the notional quantity of such losses amounted to some 20% of the total fresh water supply in 2010), the WSD had to allocate more resources and manpower support to the replacement of water mains; and
- all the PU staff, including new recruits, had to undergo a one-week legal and prosecution training conducted by the Customs and Excise Department.

Staff training and assistance from government departments

34. Regarding the staff training provided to WSD officers, the Committee noted from paragraph 3.5 of the Audit Report that the PU only provided five training courses relating to unlawful water taking and prosecution to WSD officers from January 2004 to July 2011, including two half-day seminars in 2004, two sessions as part of the induction training for new recruits in 2008 and 2010 respectively and one half-day talk in 2011.

35. The Audit Report also stated that some WSD officers did not comply with the WSD's guidelines to conduct inspections when they discovered contraventions to the Waterworks Ordinance or the Waterworks Regulations, such as collecting evidence as far as possible and identifying the person committed the offence at the first instance, resulting in insufficient evidence for prosecution of the offence. Case 4 and Case 5 of the Audit Report were examples.

36. In view of the above, the Committee asked:

- why only a few training courses were organised by the PU in the past seven years and whether it was due to the PU's insufficient manpower; and
- whether WSD officers had the necessary knowledge for handling suspected unlawful water taking cases.

37. The **Director of Water Supplies** said at the public hearing and in his letter of 19 December 2011 that:

- the PU would arrange the uploading of training materials, including conviction cases, onto the WSD intranet for web-based training on handling suspected unlawful water taking cases to WSD officers. The WSD would also review the staff training needs and modes in December 2012 for further enhancement as necessary; and
- the WSD would also improve staff training and conduct regular training courses on handling suspected unlawful water taking cases for WSD officers, so as to enhance the quality of work. Moreover, the WSD would provide such training to officers of other target government departments to help detect such activities.

38. Paragraph 3.7 of the Audit Report stated that the number of referral cases by government departments of unauthorised use of water at construction sites was significantly reduced from 23 in 2008 to 4 in 2010, representing a reduction of 83%. The Committee asked if the WSD was aware of the situation and if government departments realised the need to report such cases to the WSD for follow-up action.

39. The **Director of Water Supplies** explained that each department would have its own considerations and work priorities. Nevertheless, the WSD would proactively seek assistance from other government departments for reporting suspected unlawful water taking cases to the WSD for follow-up action.

Investigations of suspected cases

40. According to paragraph 3.21 of the Audit Report, the responsible investigation officer of the PU should report the findings to the Superintendent of the PU after conducting an investigation on a suspected case of unauthorised water consumption. If termination of unauthorised connections, i.e. remedial action, was required, the Superintendent would refer the case to the responsible district officers of the Customer Services Branch ("CS Branch") for remedial action. In some cases, both the PU and the CS Branch took a long time to complete the actions and the examples were as follows:

- from October to December 2010, in 13 out of 43 cases requiring termination of unauthorised connections, the investigation officers of the PU took 11 to 25 working days after the last inspections to report the findings to the Superintendent of the PU; and
- from October to December 2010, in 13 out of 43 cases, the district officers of the CS Branch took more than 10 working days to complete the remedial action.

41. The Committee enquired why:

- the responsible investigation officers of the PU took such a long time to report the findings to the Superintendent; and
- the CS Branch also took such a long time to complete the remedial action, and whether it was because the CS Branch lacked manpower support or the district officers concerned did not work seriously.

42. The **Assistant Director/Development** and the **Assistant Director/Customer Services** explained that:

- the PU sometimes needed a longer time to collect evidence and prepare reports so as to increase the chance of successful prosecution. In order to closely monitor the work progress, the PU had been using a computerised record system to record details of the investigation on all suspected cases and the progress of follow-up action; and
- as the CS Branch was required to inform the offenders before terminating the unauthorised connections, sometimes it might need more

time to get in touch with the offenders. In cases where the offenders lived in villages or rural areas, the WSD might even need to seek help from the Home Affairs Department in order to contact the offenders.

43. The Committee further enquired:

- about the current establishment of the CS Branch; and
- whether the WSD would set time pledges for completing the different steps involved in handling cases of termination of unauthorised connections, with a view to avoiding delay by the PU and the CS Branch in handling such cases.

44. The **Director of Water Supplies** stated in his letter of 19 December 2011 that:

- the CS Branch currently had an establishment of 250 staff providing non-accounts-related services to the community, including handling cases of termination of unauthorised connections (which amounted to around 0.1% of the workload), installation and replacement of water meters, attending complaints from customers on water supplies, disconnecting and reconnecting water supplies, and providing emergency temporary water supplies etc; and
- the WSD had determined that upon completion of an investigation by the PU and if termination of unauthorised connection was required, the PU should notify the CS Branch within three working days from the date of completion of investigation for the latter's follow-up actions. The WSD would also set time limits for the following work:
  - (a) issuing notices (i.e. Form K) to offenders requiring them to engage licensed plumbers to carry out rectification work to terminate unauthorised connections;
  - (b) conducting inspection after the period allowed for rectification as stated in Form K so as to confirm if the work required had been complied with;
  - (c) issuing disconnection notice (i.e. Form J) if the unauthorised connections had not been terminated;

- (d) conducting inspection after the period allowed for rectification as stated in Form J and terminating unauthorised connections as necessary; and
- (e) applying for warrants from the Magistracy for entry to premises if offenders obstructed the WSD staff from making inspections or terminating unauthorised connections.

## **D. Management of water meter accuracy**

### Water meter replacement programmes

45. According to the Audit Report, the WSD completed a review of the accuracy of large water meters in May 1997 and the results revealed that the optimal service life of 25-millimetres ("mm") to 100-mm meters would be 7 years and that of 150-mm to 300-mm meters would be 4 years. However, ever since the last review in 1997, the WSD had not conducted any reviews of the replacement strategy for large water meters (i.e. 25-mm to 300-mm). Since the water charge revenue of large water meters accounted for 34% of the total water charge revenue in 2010-2011, the Committee asked if the WSD would consider adopting a risk-based strategy for determining the priority for meter replacement.

46. The Committee also noted from paragraph 4.32 of the Audit Report that the water authority of Singapore replaced meters for large-consumption customers every year. The water authority of Macao had developed new analysis models to locate problematic water meters. After adopting these models, it was estimated that the efficiency of meter replacement had increased by 20% as compared with the previous replacement scheme which was based on the manufacturing dates and meter readings. The Committee asked whether the WSD would consider adopting such overseas practices when drawing up its meter replacement plans.

47. The **Director of Water Supplies** said at the public hearing and in his letter of 20 December 2011 that:

- the WSD would adopt a risk-based strategy to determine the priority for water meter replacement. For instance, the WSD would determine the meter replacement cycles based on water consumption and water charge revenue involved, instead of optimal service life;

*Water losses from unauthorised consumption and inaccurate metering*

---

- the WSD would periodically review the optimal replacement cycles of meters based on statistical test data. In addition, it would conduct review to develop cumulative flow volume-driven replacement criteria for meter replacement to further improve the overall accuracy of water meters. The WSD would also make use of data mining techniques to identify those meters reaching the set cumulative flow volume from the meter fleet for replacement; and
- the WSD would conduct periodic reviews of meter replacement strategies, taking into account new methodologies available as well as good practices overseas.

Replacement of large water meters

48. As stated in paragraphs 4.14 and 4.20 of the Audit Report, as of July 2011, 6% of the 15-mm meters, 31% of the 25-mm to 100-mm meters, and 30% of the 150-mm to 300-mm meters had exceeded their optimal service lives of 12 years, 7 years and 4 years respectively. It appeared to the Committee that these figures reflected that the WSD had focused its efforts on replacing small water meters (i.e. 15-mm). In view of the high percentage of large water meters long overdue for replacement and the substantial amount of water charge revenue related to such meters, the Committee asked if the WSD would speed up the replacement of large water meters.

49. The **Director of Water Supplies** said at the public hearing and in his letter of 19 December 2011 that:

- the WSD would now focus on replacing the water meters long overdue for replacement. However, replacement of large water meters was not an easy task and the WSD staff often encountered difficulties when replacing these meters. As these meters were usually located at buildings' main distribution pipe and plumbing systems, the WSD needed to stop the water supply before replacement. Moreover, the replacement work would occasionally be held up because of the need to sort out issues, such as clearance of blocked access, arranging a suitable time slot for water stoppage for meter replacement, and awaiting customers to repair dilapidated plumbing and carry out building renovation works within their premises; and



*Water losses from unauthorised consumption and inaccurate metering*

- to solve the above problems, the WSD would obtain warrants from the Magistracy for entering premises to effect the works to facilitate the meter replacement.

50. The Committee further asked if the WSD had set a timetable for replacing the large water meters which had exceeded their optimal service lives. The **Director of Water Supplies** replied in his letter of 19 December 2011 that the WSD would acquire resources for replacing large water meters according to the following schedule:

<b>Age (Year)</b>	<b>Number of meters in service as at July 2011 (Quantity)</b>	<b>Target date of replacement</b>
<b>25-mm to 100-mm meters (optimal service life of 7 years)</b>		
Over 20	3	All by end 2011
11 to 20	3,196	80% by end 2012; remaining 20% by end June 2013
8 to 10	7,382	50% by end 2012; remaining 50% by end 2013
<b>150-mm to 300-mm meters (optimal service life of 4 years)</b>		
11 to 16	10	All by end March 2012
5 to 10	37	30 pieces by end 2012; 7 pieces by end June 2013

Replacement of water meters for government establishments

51. According to paragraph 4.25 of the Audit Report, as of July 2011, there were 9% of the water meters installed in government establishments which had exceeded their optimal service lives and 10 of them were 150-mm to 200-mm meters.

*Water losses from unauthorised consumption and inaccurate metering*

---

The Committee queried why even government departments did not observe the rule of replacing aged water meters.

52. The **Director of Water Supplies** explained that since fresh water supply to government establishments was free of charge, the WSD had not allocated a lot of resources to replace these meters in the past. However, as the replacement work of chargeable water meters was almost completed, the WSD could now allocate more resources to replace the aged meters at government establishments.

53. In response to the Committee's question, the **Director of Water Supplies** supplemented in his letter of 19 December 2011 that the 10 aged 150-mm to 200-mm meters were located at the following government establishments:

<b>Establishments</b>	<b>Quantity of meters</b>
Water Supplies Department	5
People's Liberation Army Forces	2
Drainage Services Department	2
Fire Services Department	1

## **E. Performance reporting**

54. According to paragraph 5.9 of the Audit Report, in 2010-2011, water charge revenue relating to large water meters (i.e. 25-mm to 300-mm) amounted to \$872 million, accounting for 34% of the total water charge revenue of \$2.56 billion. Despite of the substantial amount of water charge revenue involved, the WSD did not select large water meters for carrying out meter accuracy tests. The Committee enquired about the reasons for not conducting such tests for large water meters.

55. The **Director of Water Supplies** and **Mr WONG Man-ching, Chief Electrical and Mechanical Engineer/Maintenance of the WSD**, said that the total number of large water meters was small as compared with the total number of water meters. However, the WSD would select certain number of small and large water meters for meter accuracy tests every month. Moreover, the WSD often

encountered difficulties when carrying out such tests for large water meters, which might involve stoppage of water supply. Thus, the WSD considered that the most effective way for improving large water meter accuracy was to implement regular meter replacement programmes.

## **F. Conclusions and recommendations**

56. The Committee:

### Overall comments

- expresses astonishment that:
  - (a) in 2010, unauthorised water consumption and inaccurate metering led to a total water loss of 34.94 million cubic metres, representing 4% of the total fresh water supply in the year and involving estimated notional water charges forgone of some \$160 million (\$79.2 million and \$80.8 million were attributed to unauthorised water consumption and inaccurate metering respectively); and
  - (b) the Water Supplies Department ("WSD") has simply followed established practices and procedures when taking enforcement actions against unlawful water taking. It lacks the initiative to improve the strategies for addressing the unlawful water taking problem or identify ways to resolve the problems encountered in enforcement work. For instance, the WSD only started to adopt a risk-based strategy for detecting possible unauthorised water consumptions in 2011 but not earlier, and the WSD has not proactively explored ways to overcome the difficulties in promptly gaining access to premises for conducting investigations of unlawful water taking;
- notes that the WSD has focused on reducing water losses due to water mains leakage and bursts and has not accorded a high priority to minimising water losses from unauthorised water consumption and inaccurate metering, but does not accept such an approach and considers that the Director of Water Supplies should give an equally high priority to minimising water losses from unauthorised water consumption and inaccurate metering;

*Water losses from unauthorised consumption and inaccurate metering*

---

- acknowledges that the WSD will explore the possibility of using data mining techniques to evaluate changes of individual consumers' water usage and, if possible, compare them with those of similar types of consumers as an aid towards identifying suspected unauthorised uses;
- recommends that the Director of Water Supplies should:
  - (a) accord a sufficiently high priority to tackling the problem of unlawful water taking and inaccurate metering so as to minimise the loss of water and government revenue; and
  - (b) in addition to detection of unauthorised water consumption, study whether a risk-based strategy can be adopted to detect other irregularities and facilitate the WSD's work;

Enforcement action against unlawful water taking

- expresses serious concern and finds it unacceptable that:
  - (a) there was a significant increase in the number of unlawful water taking convictions from 60 in 2008 to 91 in 2010, representing an increase of 52%;
  - (b) the WSD has failed to take the initiative to seek the assistance of other government departments in preventing and deterring unlawful water taking activities, as illustrated by the following:
    - (i) some cases of unlawful water taking took place at the Food and Environmental Hygiene Department ("FEHD")'s markets, and the number of such cases increased from 4 in 2008 to 18 in 2010. However, the WSD did not inform the FEHD of unlawful water taking offences at public markets for the latter to take follow-up action;
    - (ii) from 2008 to 2010, nine cases of convicted unlawful water taking took place at government works sites. However, the WSD did not notify the responsible government departments of such cases at their works sites. In these cases, only the site workers who were employees of the contractors, but not the contractors, were prosecuted, and this would allow the

contractors to evade the legal liability for taking water unlawfully for use at their sites; and

- (iii) in Case 3 in the Director of Audit's Report ("Audit Report"), a government works contractor only applied for temporary water supply 132 days after commencement of works and the WSD approved the application 91 days later, contrary to the requirement of the Project Administration Handbook for Civil Engineering Works that such an application should have been made before the award of the works contract;
  - (c) for Case 3 in the Audit Report, the WSD's failure to closely monitor the situation (i.e. to follow up the application for temporary water supply after requesting the contractor to provide additional information and to promptly process the contractor's revised application) might have resulted in prolonged unlawful water taking at the works site and reflects that the mindset of the WSD officers concerned was too bureaucratic that they failed to respond to a situation requiring timely actions, e.g. applications for temporary water supply for works sites before commencement of works;
  - (d) from 2008 to 2010, there were 48 convictions of unlawful water taking for flushing, some of which were attributed to breakdowns of flushing systems in residential developments and hence the estate management offices concerned tapped water unlawfully to maintain water supply for flushing pending repair of the systems; and
  - (e) in Case 2 in the Audit Report, unlawful water taking continued in Development B notwithstanding that the Owners' Corporation ("OC") of the development had been convicted of the offences;
- acknowledges that:
- (a) the Director of Water Supplies has accepted the Audit Commission ("Audit")'s recommendations in paragraphs 2.12, 2.19, 2.29 and 2.38 of the Audit Report;
  - (b) the WSD now adopts a two-prong approach in dealing with unauthorised water losses, i.e. by detection and prosecution and by promotion and education against unauthorised uses. The WSD

*Water losses from unauthorised consumption and inaccurate metering*

---

will strengthen work on these two areas by exploring new detection techniques and enhancing collaboration with concerned authorities and other sectors of the community;

- (c) to deter unauthorised water uses at government works sites, the WSD will solicit the Development Bureau's assistance to highlight in the contractor administration procedures that any unauthorised water uses at the contractors' works sites will be reflected in their performance reports. The WSD will also seek legal advice on how the contractor's responsibility for taking water unlawfully at works sites by employees of the contractors can be more effectively pursued based on the evidence collected;
  - (d) for Case 2 in the Audit Report, the WSD instituted the third prosecution and the OC of Development B was convicted of the offences. The OC was fined \$33,000 and was required to settle a water charge of \$51,781. The OC has removed the unauthorised connection and its application for temporary water supply for flushing has been approved by the WSD. The permanent flushing supply system of Development B is expected to commence by end February 2012; and
  - (e) regarding unlawful water taking activities at the FEHD's markets, the Director of Food and Environmental Hygiene has accepted Audit's recommendations in paragraph 2.20 of the Audit Report;
- recommends that Director of Water Supplies should:
- (a) proactively seek the assistance of various government departments in preventing and deterring unlawful water taking, including providing the responsible government departments with information of convictions of unlawful water taking at their works sites;
  - (b) remind WSD officers of the need to take appropriate timely actions according to the circumstances of different situations. For example, they should promptly follow up and process applications for temporary water supply at works sites before commencement of works;
  - (c) in consultation with the Department of Justice, consider the need for reviewing the level of penalties imposed on offenders convicted

*Water losses from unauthorised consumption and inaccurate metering*

---

of unlawful water taking, with a view to enhancing the deterrence against such activities; and

- (d) adopt effective measures to enable users to have water supply through various proper channels and sources, so as to prevent unlawful water taking activities. These measures should include extending the network of sea water supply to areas without such supply, and proactively assisting estate management offices of residential developments to properly maintain their flushing systems, with a view to reducing the risk of system breakdowns and hence the occurrences of unlawful tapping of fresh water for flushing;

Inspection of unauthorised water consumption

- expresses dissatisfaction and finds it unacceptable that:
  - (a) the WSD has not allocated sufficient manpower to its Prosecution Unit ("PU") which only has an establishment of 13 staff and is responsible for conducting inspections and investigations of suspected unauthorised water consumption cases and instituting prosecution under the Waterworks Ordinance (Cap. 102) and the Waterworks Regulations. Moreover, the four ranks of staff in the PU, i.e. Chief Technical Officer, Waterworks Inspector, Assistant Waterworks Inspector and Customer Services Inspector, may not possess the necessary legal skills and expertise required for carrying out their prosecution work effectively;
  - (b) the PU only provided five training courses relating to unlawful taking of water and prosecution to WSD officers from January 2004 to July 2011 (including two half-day seminars, two sessions as part of the induction training for new recruits and one half-day talk), which may not be sufficient to equip its staff with the necessary knowledge for handling suspected unlawful water taking cases;
  - (c) some WSD officers did not comply with the WSD's guidelines to collect evidence when they discovered contraventions to the Waterworks Ordinance or the Waterworks Regulations, such as collecting evidence as far as possible and identifying the person who has committed the offence at the first instance, resulting in

*Water losses from unauthorised consumption and inaccurate metering*

---

insufficient evidence for prosecution of the offence. Cases 4 and 5 in the Audit Report are examples;

- (d) there were too few surprise inspections of suspected unauthorised water consumption cases in comparison with the estimated unauthorised water consumption cases;
  - (e) the WSD did not document its risk-based strategy on selecting buildings and premises for conducting surprise inspections; and
  - (f) there was a significant reduction in the number of referral cases by government departments of unauthorised use of water at construction sites, from 23 in 2008 to 4 in 2010, representing a reduction of 83%;
- expresses serious concern that:
- (a) investigation officers of the PU sometimes took an unduly long time to submit investigation reports. From October to December 2010, in 13 out of 43 cases requiring termination of unauthorised connections, the investigation officers took 11 to 25 working days after the last inspections to report the findings to the Superintendent of the Unit; and
  - (b) district officers of the Customer Services Branch ("CS Branch") sometimes took a long time to complete the remedial action of terminating unauthorised water consumption. From October to December 2010, in 13 out of 43 cases, the district officers took more than 10 working days to complete the remedial action;
- acknowledges that:
- (a) the Director of Water Supplies has accepted Audit's recommendations in paragraphs 3.11, 3.19 and 3.29 of the Audit Report;
  - (b) the PU will arrange the uploading of training materials, including conviction cases, onto the WSD intranet for web-based training to improve training on handling suspected unlawful water taking cases for WSD officers. The WSD will review the training needs and modes in December 2012 for further enhancement as necessary; and



*Water losses from unauthorised consumption and inaccurate metering*

---

- (c) the WSD has determined that upon completion of an investigation by the PU and if termination of unauthorised connection is required, the PU should notify the CS Branch within three working days from the date of completion of investigation for the latter's follow-up actions. The WSD will also set the time limits within which termination of unauthorised connections must be carried out;
- urges the Director of Water Supplies to:
  - (a) review the existing strategies for detecting and investigating suspected unauthorised water consumption cases and conducting surprise inspections, including allocation of resources and frequency of surprise inspections;
  - (b) immediately conduct a serious review of the PU, including its manpower strength, division of work and work procedures, and the legal skills and expertise of its staff with a view to enhancing the Unit's overall efficiency and the effectiveness of its prosecution work;
  - (c) regularly assess the training needs of WSD officers in handling suspected unlawful water taking cases and make improvement to staff training; and
  - (d) expeditiously set time limits within which termination of unauthorised connections must be carried out;

Management of water meter accuracy

- expresses dissatisfaction and disappointment that:
  - (a) the WSD has not conducted a review of the meter replacement strategy for large water meters (i.e. 25-millimetres ("mm") to 300-mm) since the last review in 1997. Neither has it adopted a risk-based strategy for determining the priority for meter replacement;
  - (b) the WSD has focused on replacing 15-mm water meters which are mainly used by domestic customers, but not the large water meters which are mainly used by non-domestic customers, despite that a high percentage of water charge revenue is related to large water meters;

*Water losses from unauthorised consumption and inaccurate metering*

---

- (c) as of July 2011, 9% of the meters installed in government establishments had exceeded their optimal service lives; and
  - (d) as of July 2011, 6% of the 15-mm meters, 31% of the 25-mm to 100-mm meters, and 30% of the 150-mm to 300-mm meters had exceeded their optimal service lives of 12 years, 7 years and 4 years respectively;
- acknowledges that:
    - (a) the Director of Water Supplies has accepted Audit's recommendations in paragraphs 4.18, 4.22, 4.28 and 4.34 of the Audit Report; and
    - (b) the WSD will periodically review the optimal replacement cycles of meters based on statistical test data. It will also conduct review to develop cumulative flow volume-driven replacement criteria for timely meter replacement to further improve the overall accuracy of the meters, and make use of data mining techniques to identify those meters reaching the set cumulative flow volume from the meter fleet for replacement;
  - recommends that the Director of Water Supplies should:
    - (a) adopt a risk-based approach in determining the priority for meter replacement, such as replacing the large water meters long overdue for replacement first, in view of the large amount of water charge revenue involved; and
    - (b) explore the appropriateness and feasibility of requiring non-domestic customers with large water meters to bear the cost of replacing the meters;

Performance reporting

- notes that, relating to enforcement actions, the WSD only included in its Controlling Officer's Reports performance indicators on the number of prosecutions and the total amount of fines imposed;

*Water losses from unauthorised consumption and inaccurate metering*

---

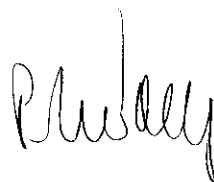
- is surprised that:
  - (a) the WSD did not publicise its annual targets on meter accuracy in its Annual Reports and performance pledge booklets; and
  - (b) the WSD did not select large water meters for carrying out meter accuracy tests despite the fact that the water charge revenue of such meters accounted for 34% of the total water charge revenue in 2010-2011;
- acknowledges that the Director of Water Supplies has accepted Audit's recommendations in paragraph 5.10 of the Audit Report;
- urges the Director of Water Supplies to consider carrying out accuracy tests of large water meters periodically in view of their substantial water charge revenue; and

Follow-up action

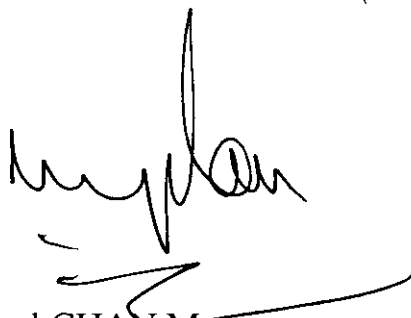
- wishes to be kept informed of the progress made in implementing the various recommendations made by the Committee and Audit.

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

---



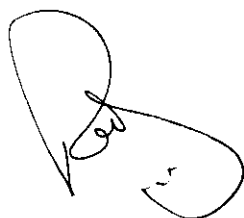
Philip WONG Yu-hong  
(Chairman)



Paul CHAN Mo-po  
(Deputy Chairman)



Abraham SHEK Lai-him



Ronny TONG Ka-wah



KAM Nai-wai



Cyd HO Sau-lan



Starry LEE Wai-king

1 February 2012

**CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 57  
DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT**

---

**Director of  
Audit's Report  
No. 57**

**P.A.C.  
Report No. 57**

<u>Chapter</u>	<u>Subject</u>	<u>Chapter</u>
3	Food labelling	1
4	Nutrition labelling of infant and special dietary foods	1
10	Records management work of the Government Records Service	2
12	Water losses from unauthorised consumption and inaccurate metering	3

**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.

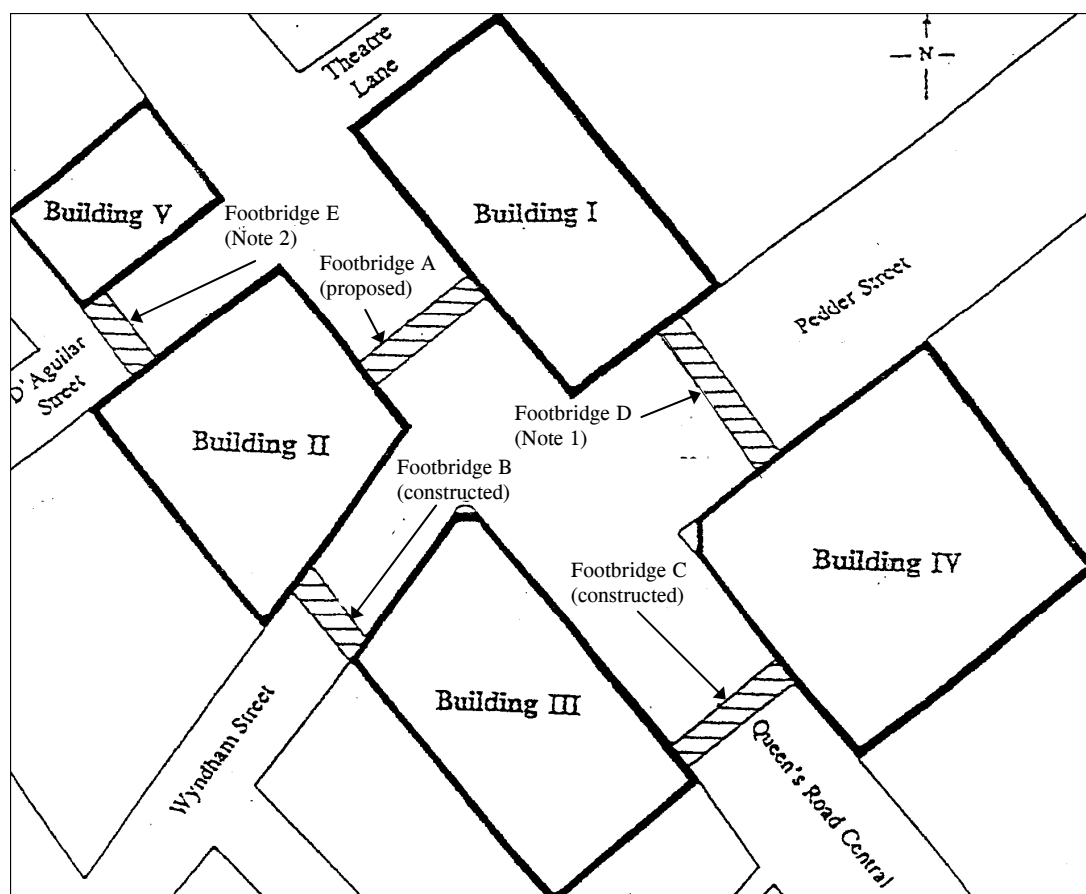
**Construction of pedestrian crossing facilities**  
**Progress made in implementing improvement measures for the footbridges and subways**  
**identified by the Audit Commission**

Director of Audit's recommendation	Responsible policy bureau/ department	Progress as at end September 2011
<b>Implementation of the improvement works and follow-up actions proposed in the TD's 2010 Review Report</b>		
1. Take early action to implement the proposed improvement works and follow-up actions proposed in the 2010 Review Report.	Transport Department (TD)	<p>Progress on implementing improvement works for the facilities identified in the 2010 Review Report was set out below:</p> <p><u>Subway across Tsuen King Circuit</u>  Apart from closing the subway, the TD was also exploring the feasibility of making available the subway for alternative use (e.g. storage) in consultation with the Lands Department.</p> <p><u>Footbridge across Tong Ming Street at Sheung Tak Shopping Centre</u>  The design of the proposed elevated walkway project, including the demolition of the ramps of the footbridge, was near completion.</p> <p><u>Further monitoring of the 19 identified pedestrian crossing facilities</u>  Improvement measures previously identified (e.g. providing additional signage) had been completed. The TD would continue to monitor the footbridges or subways with developments in progress in the vicinity with a view to identifying further improvement measures to enhance utilisation as necessary.</p>

Director of Audit's recommendation		Responsible policy bureau/ department	Progress as at end September 2011
<b>A footbridge alongside Hung Hom Bypass</b>			
2.	<p>Monitoring the utilisation of Footbridge J with a view to identifying ways to promote its uses.</p> <p>In consultation with other relevant government departments, explore alternative uses of Footbridge J, taking into account the planned development of the nearby areas.</p>	TD	<p>It was expected that utilisation of the footbridge would improve upon the opening of the Hung Hom Bay Promenade in September 2011.</p> <p>The TD was consulting the Leisure and Cultural Services Department and the Highways Department (HyD) on ways to promote the use of Footbridge J.</p> <p>Depending on the pedestrian flow pattern and utilisation of the footbridge upon the opening of the Hung Hom Bay Promenade in September 2011, further improvement measures would be considered, if necessary.</p>
<b>A closed subway in Sham Shui Po</b>			
3.	The Director of Highways and the Commissioner for Transport should examine the justifications for constructing Subway W, and its closure after completion, with a view to drawing lessons for better planning of grade-separated crossing facilities in future.	HyD TD	Follow-up actions for implementing the recommendation had been completed.
4.	The Commissioner for Transport should, in consultation with other relevant government departments (e.g. the Home Affairs Department and the Housing Department (HD)), review the future use of Subway W, including the prospect of opening it for public use.	TD	<p>The relevant departments were discussing ways to implement the proposal to reopen the subway for use by pedestrians, particularly on how to address the issue of possible attraction of the subway to street sleepers.</p> <p>In the meantime, the TD would work with relevant departments including the HyD and the HD to finalise the engineering details for the proposed reopening. The TD would consult the Sham Shui Po District Council on the proposal in due course.</p> <p>Apart from reopening the subway, the TD was also exploring the feasibility of making available the subway for alternative use (e.g. storage), in consultation with relevant departments.</p>

Director of Audit's recommendation		Responsible policy bureau/ department	Progress as at end September 2011
<b>Two footbridges in Tung Chung West</b>			
5.	The Commissioner for Transport should, in consultation with the Director of Highways, continue to monitor the problem of jaywalking near Footbridge K at Chung Yan Road after the completion of the at-grade crossing.	TD	Since the completion of the at-grade crossing in January 2010, the TD had conducted site visits about once every two months. According to the TD's observation, the problem of jaywalking at the concerned location had largely been addressed.
<b>Footbridges built under Castle Peak Road improvement project</b>			
6.	<p>Monitor road safety at the locations of the 11 footbridges along the Castle Peak Road (CPR) section, and identify measures to deter jaywalking and encourage pedestrians to use the footbridges.</p> <p>Continue to improve the pedestrian crossing facilities along the CPR section having regard to road safety, the residents' needs and other considerations.</p>	TD	The installation works for the "No Pedestrian" signs, directional signs near the footbridges and closing of gaps at railings had all been completed. Publicity leaflets had also been distributed to residents in the vicinity of the footbridges to encourage their use.

**Location of the five commercial buildings  
and the five footbridges in the Central District**



*Source: Planning Department records*

**Note 1:** *The construction of Footbridge D would be dealt with when a redevelopment proposal for Building IV was received.*

**Note 2:** *With reference to Footbridge E, it was pertinent to note that the lease of Building V was an unrestricted lease. The requirement for footbridge connections could not be incorporated into the lease conditions.*

政府總部  
發展局  
規劃地政科



香港添馬添美道二號  
政府總部西翼十七樓

**Planning and Lands Branch  
Development Bureau  
Government Secretariat**

17/F, West Wing,  
Central Government Offices,  
2 Tim Mei Avenue, Tamar, Hong Kong

電話 Tel.: 3509 8831

傳真 Fax : 2845 3489

本局檔號 Our Ref. DEVB(PL-L) 35/05/206 Pt 4

來函檔號 Your Ref. CB(4)PAC/CS(54 & 55)

5 January 2012

Ms Miranda Hon  
Clerk, Public Accounts Committee  
Legislative Council Secretariat  
(by Fax : 2840 0716)

Dear Ms Hon,

### **Follow-up to Public Accounts Committee Report No. 39**

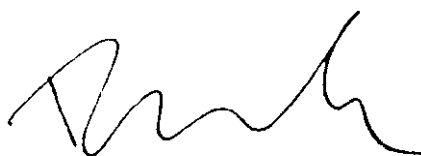
#### **Small House Grants in the New Territories**

Thank you for your letter dated 16 December 2011 to the Secretary for Development, conveying the concern of Public Accounts Committee about the progress of the review on the Small House Policy and enquiring whether the Administration has set a definite timetable for concluding the review.

We thank the PAC for its appreciation of the complexity of the issues involved in the review. We must, however, point out that the existing Small House Policy has been in operation for a long period of time, and any major change would entail complex legal, land use and planning issues which require careful consideration. Due to the complexity of the issues involved, we are unable to set a definite timetable within which the review will be completed.

We will continue to adopt a practical approach in taking forward the review and will keep in close liaison with the Heung Yee Kuk. We will consult the rural and the general community when concrete and specific proposals are available.

Yours sincerely,

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

( Derek Lai )  
for Secretary for Development



**Latest position of the progress made by the Education Bureau on matters outstanding  
in the Government Minute laid before the Legislative Council in May 2011**

**Chapter 1: Administration of the Direct Subsidy Scheme**

Recommendations	Latest known position
<b>Admission process</b>	
<p>2.15 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) take further action to facilitate the five schools to complete their procedures to acquire the non-profit-making status as soon as practicable; and</p> <p>(b) take proactive action to facilitate Direct Subsidy Scheme (DSS) schools to secure self-owned school premises within the specified period.</p>	<p>(a) The Inland Revenue Department and Companies Registry had accepted and approved the amendments of the Memorandum and Articles of Associations (MAA) of the new school sponsoring bodies, i.e. companies with non-profit-making status set up to take over the operation right from the existing school operators. The schools sent the MAAs to the Education Bureau (EDB) on 14 July 2011. The EDB would process the transfer of sponsorship in accordance with the existing rulings and guidelines. Meanwhile, having regard to the EDB's advice on the legal documents including the Assignment and Deed of Novations, the schools prepared additional information and supporting documents. The EDB was seeking legal advice on those documents; and</p> <p>(b) the two schools concerned had indicated that they would apply for vacant school premises through the School Allocation Exercise to be conducted by the EDB. The EDB would keep in view the availability of suitable vacant school premises and alert the schools as appropriate. In the meantime, the EDB would closely liaise with the two schools with a view to ensuring that they had a security of tenure for the school premises to avoid disruption to education services.</p>
<b>Service agreement with school sponsoring body</b>	
<p>3.13 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) take effective measures to expedite the entering into a school sponsoring body (SSB) Service Agreement with each of the SSBs of the five DSS schools that were required to enter into such an agreement.</p>	<p>(a) As at the end of August 2011, all but one DSS school had signed an SSB Service Agreement. The only remaining school had concern about a clause in the School Management Committee (SMC) Service Agreement. The EDB had met with the school in August 2011 to clarify details of the terms and conditions in the SMC Service</p>

Recommendations	Latest known position
	Agreement. Once the school accepted the revised clause of the SMC Service Agreement, it would sign the SSB Service Agreement.
<p>3.29 Audit had <i>recommended</i> that the Secretary for Education should ensure that all the requirements stipulated in the SSB Service Agreement were complied with by the DSS schools. Such requirements included:</p> <p>(e) the SSB should enter into a service agreement with the SMC/Incorporated Management Committee (IMC) within a reasonable time after school operation had commenced; and</p> <p>(h) the SSB should obtain prior approval from the EDB for any additions, alterations or improvement works to be carried out at the school premises.</p>	<p>(e) A letter was issued to all DSS schools on 22 February 2011 with outstanding Service Agreements (i.e. the agreements between the SSBs and the SMCs/IMCs) requesting them to take expeditious actions to sign the agreements. It was expected that all outstanding cases would be concluded by the end of 2011/early 2012. The EDB would closely monitor the progress. The EDB would also make it clear in its approval letters for all schools that joined the DSS that the SSBs were required to enter into a service agreement with the SMCs/IMCs within a reasonable time after the schools had commenced operation under the DSS. Follow-up actions as set out above would be taken on an on-going basis; and</p> <p>(h) the Working Group on Direct Subsidy Scheme ("the Working Group") was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration (e.g. observing the procedural propriety of additions, alterations or improvement works to be carried out at the school premises), personnel management and financial management. The recommendations of the Working Group would be followed up at the Legislative Council Panel on Education ("Education Panel").</p>
<b>Service agreement with incorporated school governing body</b>	
<p>4.7 Audit had <i>recommended</i> that the Secretary for Education should take effective action to:</p> <p>(a) expedite the entering into an SMC/IMC Service Agreement with each of the school governing bodies of the ten DSS schools that were required to enter into such an agreement.</p>	<p>(a) Eight schools had signed the SMC/IMC Service Agreements. Meetings were held with the remaining two schools in August 2011 to clarify details of terms and conditions in the Service Agreement. Further negotiation with the schools would be conducted to refine the terms and</p>

Recommendations	Latest known position
	conditions before the signing of the SAs. Follow-up actions as set out above would become part of the routine.
<p>4.22 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(b) take effective measures to expedite the signing of the outstanding tenancy agreements; and</p> <p>(c) ensure that the schools complied with the terms of the tenancy agreements and obtained prior approval from the EDB before carrying out, or permitting anyone to carry out, activity other than school operation in the school premises.</p>	<p>(b) The EDB had continued to maintain close liaison with the schools through regular dialogue and letter of exchanges to conclude the outstanding tenancy agreement cases. As at September 2011, five out of eight schools which did not execute any tenancy agreements had already signed the tenancy agreements with the Government, and amongst the seven schools which had signed the SSB tenancy agreements but not yet the SMC/IMC tenancy agreements, six schools had already signed the tenancy agreements with the Government. For the remaining four cases, the EDB would continue to actively discuss with the schools and resolve the difficulties to expedite the execution of all tenancy agreements. Follow-up actions as set out above would become part of the routine; and</p> <p>(c) the Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<b>Monitoring school performance</b>	
<p>5.23 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) request DSS schools to establish a mechanism to:</p> <p>(i) monitor their compliance on uploading school documents to the schools' websites in a timely manner; and</p>	<p>(a) The Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>

Recommendations	Latest known position
(ii) ensure that school documents uploaded to their websites were easily accessible and contained all the information that was required under the School Development and Accountability framework.	
<b>International schools in Direct Subsidy Scheme</b>	
<p>7.16 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(c) critically review the justifications for continuing to allow School I to remain in the DSS and take action to address the matter, if necessary.</p>	<p>(c) The Working Group was reviewing the justifications for continuing to allow School I to remain in the DSS. The recommendation of the Working Group would be followed up at the Education Panel.</p>

## Chapter 2: Governance and Administration of Direct Subsidy Scheme Schools

Recommendations	Latest known position
<b>Governance of Direct Subsidy Scheme schools</b>	
<p>2.8 Audit had <i>recommended</i> that the Secretary for Education should urge all DSS schools to:</p> <ul style="list-style-type: none"> <li>(a) include representatives of key stakeholders in their school governing bodies; and</li> <li>(b) disclose to the public information of their governing bodies, including the name, tenure of office and category of each school manager.</li> </ul>	<p>(a) &amp; (b) The Working Group was considering improvement measures and the introduction of an internal control checklist to further enhance the transparency of the operation of the school governing bodies. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>2.15 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <ul style="list-style-type: none"> <li>(a) ensure that parent school managers of the IMC were elected through a secret-ballot election conducted by the parent-teacher association of the school, in which all parents could participate, and keep proper records of the election;</li> <li>(b) ensure that all school managers were registered; and</li> <li>(c) inform the EDB within a month after a person ceased to be a school manager.</li> </ul>	<p>(a) to (c) The Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration (including general administration of IMCs/SMCs), personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>2.23 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <ul style="list-style-type: none"> <li>(a) monitor the attendance of school managers at school governing body meetings and take action, where necessary, to improve the attendance rate;</li> <li>(b) rectify the decisions made at their school governing body meetings where a quorum was not present;</li> <li>(c) take necessary measures to ensure that, in future, a quorum was present at every school governing body meeting; and</li> </ul>	<p>(a) to (d) The Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration (including general administration of IMCs/SMCs), personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>

Recommendations	Latest known position
(d) issue draft minutes of school governing body meetings in a timely manner and to properly record the deliberations and decisions made at these meetings.	
<p>2.28 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to ensure that:</p> <p>(a) a proper system was put in place for managing potential conflict of interest of school managers; and</p> <p>(b) the procedures for managing conflict of interest of school managers were complied with.</p>	<p>(a) &amp; (b)</p> <p>The Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<b>School fee remission/scholarship schemes</b>	
<p>3.9 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) take action to ensure that DSS schools set aside the required amounts of school fee income according to the levels of their school fees for the fee remission/scholarship schemes.</p>	<p>(a) DSS schools had been required to follow some new requirements in their submission of the audited accounts of the 2009/10 school year to the EDB. The new requirements, which would apply in future years, included reporting comprehensive information on the fee remission/scholarship provision in the audited accounts. They would enable the EDB to detect possible irregularities early and take timely follow-up action.</p> <p>The Working Group had discussed how to improve the implementation of the fee remission/scholarship schemes. The Working Group considered that enhancing the transparency of the school fee remission/scholarship schemes could help parents understand the schemes, facilitate an informed assessment of their children's eligibility for remission/scholarship, and help them make an informed choice of schools for their children. These measures should be put in place at the earliest opportunity. To this effect, the EDB issued a circular to all DSS schools on 5 July 2011 setting out the new measures to enhance the transparency of the school fee remission/scholarship schemes.</p>

Recommendations	Latest known position
<p>3.17 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) monitor the DSS schools' implementation and publicity of their fee remission/scholarship schemes; and</p> <p>(b) remind DSS schools to:</p> <p>(i) establish a mechanism for monitoring the proper implementation of their fee remission/scholarship schemes;</p> <p>(ii) provide full details (e.g. the eligibility criteria and the maximum percentage of fee remission) of their fee remission/scholarship schemes in their school prospectuses;</p> <p>(iii) upload details of their fee remission/scholarship schemes to their websites; and</p> <p>(iv) ensure that the eligibility criteria of their fee remission/scholarship schemes were not less favourable than the government financial assistance schemes to students.</p>	<p>(a) &amp; (b)</p> <p>The Working Group had discussed how to improve the implementation of the fee remission/scholarship schemes. Regarding the improvement measures for the fee remission/scholarship schemes in DSS schools, the EDB issued a circular to schools on 5 July 2011.</p>
<b>Financial management</b>	
<p>5.8 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) in consultation with the Financial Services and the Treasury Bureau, consider the need for setting a reserve ceiling for the accumulated operating reserves of DSS schools, and requiring the schools to return any surplus in excess of the ceiling to the Government according to Financial Circular No. 9/2004; and</p> <p>(c) take necessary action to ensure that sufficient information was provided in the development plans submitted by the schools to facilitate the EDB's monitoring of the implementation of the development plans.</p>	<p>(a) The Working Group was considering setting an appropriate ceiling for the accumulated operating reserves of DSS schools. It would also introduce related measures necessary for introducing the reserve ceiling. The recommendations of the Working Group would be followed up at the Education Panel; and</p> <p>(c) a template had been issued to schools for reporting detailed information including the time frame and resources required for the services/projects/activities in the development plans for proper monitoring by the EDB.</p>

Recommendations	Latest known position
<p>5.17 Audit had <i>recommended</i> that Secretary for Education should:</p> <p>(a) remind DSS schools of the requirements relating to self-financing activities stipulated in Financial Circular No. 9/2004.</p>	<p>(a) The Working Group was considering the introduction of an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>5.22 Audit had <i>recommended</i> that the Secretary for Education should consider requiring DSS schools to ensure that their non-local students were not cross-subsidised by the government subsidy for local students. For example, the EDB might require those schools which admitted non-local students to collect from the non-local students an amount of school fees not less than the DSS unit subsidy plus the approved school fees for local students.</p>	<p>The EDB planned to require DSS schools that admitted a few non-local students to collect from them an amount of school fees not less than the DSS unit subsidy plus the approved school fees for local students. The EDB was considering the implementation details.</p>
<p>5.44 Audit had <i>recommended</i> that the Secretary for Education should:</p> <p>(a) require DSS schools to formulate guidelines on the use of non-government funds.</p>	<p>(a) The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>5.52 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <p>(a) correctly record the fixed assets under their control in a fixed asset register; and</p> <p>(b) conduct physical stocktake at least once a year and investigate any discrepancies found, and report the results of stocktake to the school governing bodies.</p>	<p>(a) &amp; (b) The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>



Recommendations	Latest known position
<p>5.60 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <ul style="list-style-type: none"> <li>(a) prepare a financial statement for each fund raising activity and display the statement for a reasonable period of time on the schools' notice boards for the information of teachers, parents and students;</li> <li>(b) retain the financial statements for fund raising activities for audit purposes;</li> <li>(c) seek written permission from the EDB for the fund raising activities held for other organisations which were not approved charitable institutions, or not specifically approved by the EDB; and</li> <li>(d) formulate guidelines on fund raising activities and require their staff to comply with the guidelines.</li> </ul>	<p>(a) to (d)</p> <p>The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<b>Human resource management</b>	
<p>6.12 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <ul style="list-style-type: none"> <li>(a) formulate a proper staff recruitment policy and keep all the recruitment records which were consistent with the best practices promulgated by the EDB;</li> <li>(b) carry out recruitment of staff in an open and fair manner;</li> <li>(c) ensure that applicants were interviewed by selection panels appointed by the school governing bodies;</li> <li>(d) report to their school governing bodies the results of staff recruitment;</li> <li>(e) ensure that approval from school governing bodies was obtained before a teacher was appointed for a term of not less than six months; and</li> </ul>	<p>(a) to (f)</p> <p>The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>

Recommendations	Latest known position
(f) provide accurate information to the school governing bodies in seeking their approval for appointing new teachers.	
<p>6.17 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <p>(a) put in place a proper mechanism for determining the remuneration packages for their staff to ensure that the packages were fair and justifiable;</p> <p>(b) clearly set out the criteria (e.g. qualifications, experience, performance and expertise) and approval authority for determining the remuneration package of an appointee and any subsequent salary adjustment; and</p> <p>(c) ensure that all policies and measures on staff remuneration and administration were properly endorsed, documented and implemented.</p>	<p>(a) to (c)</p> <p>The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>6.21 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <p>(a) establish and implement an effective performance management system for their staff; and</p> <p>(b) review the operation of the performance management system periodically by making reference to the guidelines issued by the EDB.</p>	<p>(a) &amp; (b)</p> <p>The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>6.25 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to:</p> <p>(a) submit the staff performance appraisal results for the school governing bodies' consideration when seeking their decisions on matters of staff contract renewal; and</p> <p>(b) properly document the justifications for contract renewal decisions to prevent allegations of favouritism or unfairness.</p>	<p>(a) &amp; (b)</p> <p>The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>

Recommendations	Latest known position
<b>General administration</b>	
<p>7.12 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools to follow the EDB's guidelines on procurement as far as possible to ensure that all procurements were carried out in a fair, open and transparent manner. In particular, the EDB should remind schools to:</p> <ul style="list-style-type: none"> <li>(a) obtain sufficient number of quotations or tenders and document the justification and approval for any departure from the procurement procedures;</li> <li>(b) include evaluation criteria in tender documents for information of the tenderers;</li> <li>(c) set up two separate committees for tender opening and vetting, and tender approval for all tender exercises;</li> <li>(d) maintain the history of the appointments of the tender opening and vetting committee; and</li> <li>(e) require staff involved in purchasing and supplies duties to sign an undertaking that they would declare to the school governing body any current or future connections they or their immediate families had/would have with the suppliers, and bring the requirement to the notice of the relevant staff annually.</li> </ul>	<p>(a) to (e) The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>
<p>7.23 Audit had <i>recommended</i> that the Secretary for Education should remind DSS schools that:</p> <ul style="list-style-type: none"> <li>(a) prior approval from the EDB or the IMC was needed for trading operations and that profits from trading operations should only be applied for the purposes of directly benefiting the students;</li> <li>(b) profit from sale of trading items (other than textbooks) should be limited to 15% of the cost of purchase;</li> </ul>	<p>(a) to (e) The Working Group was considering introducing an internal control checklist for completion by DSS schools with a view to enhancing their internal control mechanism for better administration, personnel management and financial management. The recommendations of the Working Group would be followed up at the Education Panel.</p>

Recommendations	Latest known position
<p>(c) trading operators/suppliers should be selected through competitive tender/quotation exercises at regular intervals, preferably not exceeding three years;</p> <p>(d) acceptance of donations or advantages from trading operators/suppliers should be considered only in very exceptional circumstances with justification of compelling reasons; and</p> <p>(e) details of donations received from trading operators/suppliers should be disclosed in the school reports.</p>	

**Latest progress in implementing Audit's recommendations on  
the Community Investment and Inclusion Fund**

Audit Report para. no.	Audit recommendation	Latest progress
<b>Part 3: Development of social capital</b>		
3.16	<p><u>Project sustainability</u></p> <p>(a) validate the Community Investment and Inclusion Fund ("CIIF") information to be submitted to the Legislative Council ("LegCo") Panel (particularly information relating to project sustainability);</p> <p>(b) conduct reviews of project sustainability on a more regular basis; and</p> <p>(c) include project sustainability in the compilation and publication of performance information.</p>	<p>(a) &amp; (b) The Administration had completed the review on the framework of final performance reports to be submitted by grantees with reference to the definitions and assessment approaches adopted by local and overseas academics on sustainability. The Administration also required grantees to spell out measures to ensure sustainability of their projects in the reports.</p> <p>The Administration would make reference to the assessment tools recommended by independent consultants and issue questionnaires on project sustainability to the operating organisations within two years upon the expiry of the funding period. The initiative was expected to be implemented in mid-2012.</p> <p>The CIIF Secretariat would conduct random checks on data collected to ensure their accuracy. The Administration would report progress to the LegCo Public Accounts Committee ("PAC") in a timely manner.</p> <p>(c) The CIIF was collecting the relevant data through its second evaluation study. Data collection on project sustainability was still in progress. The relevant information was expected to be compiled and published by the end of 2011 and updated annually thereafter. The Administration would report progress to the PAC in a timely manner.</p>

Audit Report para. no.	Audit recommendation	Latest progress
3.27	<p><u>Pace of fund disbursement</u></p> <p>(a) review the overall achievement of the CIIF objectives and the need for planning new funding injection to sustain the CIIF's social function; and</p> <p>(b) depending on the outcome of the review, reconsider the scale of the CIIF operation.</p>	<p>(a) &amp; (b) To have a more comprehensive understanding of the CIIF's effectiveness in promoting social capital, the Labour and Welfare Bureau ("LWB") had commissioned independent consultants to conduct an evaluation study. The study commenced in October 2010 and would be completed by early 2012. In mid-2011, the consultants submitted to the LWB an interim report, the initial findings of which indicated that the promotion of social capital development had achieved the objectives of the CIIF, including building networks/groups for neighbourhood support, turning assets of the individual into those of the community, and enhancing social harmony. The LWB would, in consultation with the CIIF Committee, actively follow up findings of the final report and consider the way forward for the CIIF. The Administration would report progress to the PAC in a timely manner.</p>
<b>Part 4: Assessment and monitoring of projects</b>		
4.10	<p><u>Review of grantees' audited accounts</u></p> <p>Consider taking regulatory action (e.g. deferring quarterly reimbursements) on those grantees who repeatedly failed to submit audited accounts on time.</p>	<p>The Conditions of Grant (COG) already had provisions to regulate grantees who failed to submit their audited accounts as required. Under the COG, the LWB had the authority to require the grantee to refund forthwith all or any part of the grant which had been paid. In July 2011, the CIIF Secretariat introduced an internal mechanism where, upon grantees' failure to submit their accounts on time, the Secretariat would issue a written notice with a prescribed grace period. If the submission was still outstanding after the grace period, the Secretariat would take appropriate regulatory actions in accordance with the COG and defer the quarterly payment of grant.</p>

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

Mr MA Lee-tak	Director of Water Supplies
Mr Bobby NG Mang-tung	Assistant Director/Development Water Supplies Department
Mr CHIN Chu-sum	Assistant Director/Customer Services Water Supplies Department
Mr WONG Man-ching	Chief Electrical and Mechanical Engineer/Maintenance Water Supplies Department
Dr York CHOW Yat-ngok	Secretary for Food and Health
Mr Philip CHAN Kwan-yee	Deputy Secretary for Food and Health (Food) <sup>2</sup> Food and Health Bureau
Mr Clement LEUNG Cheuk-man	Director of Food and Environmental Hygiene
Dr Constance CHAN Hon-yee	Controller, Centre for Food Safety Food and Environmental Hygiene Department
Dr LAM Ping-yan	Director of Health
Dr Shirley LEUNG Sze-lee	Assistant Director of Health (Family and Elderly Health Services) Department of Health
Dr Gloria TAM Lai-fan	Acting Director of Health

**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. 57  
on Thursday, 1 December 2011**

Good morning, ladies and gentlemen. Welcome to the Public Accounts Committee's public hearing relating to Report No. 57 of the Director of Audit on the results of value for money audits, which was tabled in the Legislative Council on 16 November 2011.

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. 57, the Committee has decided, in respect of three chapters in the Report, to invite the relevant public officers and other personnel concerned to appear before the Committee and answer our questions. We have, apart from this morning's hearing, also set aside 6 December 2011 for public hearing on the other two chapters.



5. The public hearing this morning is on Chapter 12 of Report No. 57 on the subject of "Water losses from unauthorised consumption and inaccurate metering". The witnesses are: Mr MA Lee-tak (Director of Water Supplies), and Mr Bobby NG (Assistant Director/Development), Mr CHIN Chu-sum (Assistant Director/Customer Services), and Mr WONG Man-ching (Chief Electrical and Mechanical Engineer/Maintenance) of the Water Supplies Department.

6. I now invite members to ask questions.

**Director of Audit's Report No. 57, Chapters 3 and 4  
6 December 2011**

**Secretary for Food and Health  
Opening Remarks**

- First of all, I would like to thank the Audit Commission for auditing the work of the Centre for Food Safety (CFS) on regulating food labelling. I accept the recommendations made in the Report.
- Concerning the recommendations in the Report which are related to the value-for-money audit, we will work closely with the Public Accounts Committee to take follow up actions. We note that the Audit Commission has also made other recommendations, including those related to policy matters. As these recommendations are different in nature from those arising from the value-for-money audit, we will continue to discuss with Members through other appropriate channels under the established mechanism, such as the relevant Panels.
- We are committed to enhancing the effectiveness of the Nutrition Labelling Scheme (the Scheme) so that members of the public could select healthier food based on the information available on the nutrition labels.
- The Administration has also maintained close liaison with the trade through various channels on the implementation of the Scheme and adopted a number of measures to assist them in complying with the Scheme.
- With extensive public education and publicity programmes launched by CFS, consumers have gradually understood the importance of making good use of nutrition labels.
- According to a survey conducted by the Bauhinia Foundation Research Centre in June this year, nearly 80% of the respondents were aware of the implementation of the Nutrition Labelling Scheme in Hong Kong. Over 60% of the respondents would “frequently” or “sometimes” check the nutrition labels or nutrition claims before purchasing prepackaged food items. All in all, the survey agreed that the Nutrition Labelling Scheme had made a good start in promoting awareness, as well as in its acceptability and credibility and was worth supporting.
- To facilitate the public to make use of the nutrition information on prepackaged food to select suitable food items, CFS has launched a mobile application “Nutrition Calculator” (“NuCal”) in October 2011. With “NuCal” the public

can set up a personal database on food items for recording nutrition information of their favourite prepackaged food items. The estimated level of nutrient intake can be worked out by inputting the amount of food consumed. Users may then compare it with the upper limit of the daily intake and make necessary adjustments as appropriate. As at the end of November 2011, “NuCal” has recorded about 26 000 downloads.

### **Food Labelling**

- The Report covers roughly the first year of operation after the nutrition labelling legislation took effect. As it is only a short period of time after the implementation of the Scheme, it is inevitable that CFS would need to fine-tune and improve its enforcement strategy in light of its operational experience.
- The Nutrition Labelling Scheme came into operation on 1 July 2010. At the time when the legislation was enacted by the Legislative Council in 2008 and over the subsequent two-year grace period, quite a number of Legislative Councillors and trade members voiced their concern to the Government that the legislation would have more impact on many small and medium enterprises (SMEs), particularly the small scale ones and shops selling food for ethnic minorities. They suggested that flexibility in enforcement should be exercised in the first year of implementation. Accordingly, CFS focused more on publicity and education by arranging staff visits to these shops and distributing multi-language leaflets to ethnic shops so that they would have a more in-depth understanding of the legislation. CFS also offered further support to the ethnic shops through the relevant consulates in Hong Kong.
- Regarding the Audit observation that the majority of food samples came from large supermarkets, I would like to point out that this was a well-thought-out strategy formulated by CFS for the implementation of the Scheme at its initial stage. Large chain supermarkets take up a lion share of prepackaged food sold in the market, out-numbering those sold in other food retail outlets. The sales volume of prepackaged food in these chain supermarkets is huge, involving a large number of importers, suppliers as well as distributors and with a good variety of items. If we could ensure the early compliance with the Scheme by these chain supermarkets, it would be in the best interest of the public.
- CFS commissioned a consultant to carry out a survey about three to four months before the nutrition labelling legislation took effect. According to the survey, prepackaged food available in local supermarkets accounted for about 70% of market shares but only about 65% of prepackaged food in supermarkets complied with the nutrition labelling legislation. As such, it is an appropriate enforcement strategy for CFS to take more samples from supermarkets for

inspection at the initial stage of the implementation of the Scheme to ensure that the most popular prepackaged food items comply with the requirements concerned.

- It might not be in the wider public interest for CFS to direct its enforcement actions specifically against SMEs, including small groceries, market stalls and ethnic shops while neglecting large chain supermarkets immediately after the commencement of the legislation.
- CFS takes the enforcement work of nutrition labelling seriously. Before the audit review, the Food and Environmental Hygiene Department (FEHD) invited the Corruption Prevention Group of the Independent Commission Against Corruption (ICAC) in November 2009 to examine the enforcement work of nutrition labelling requirements and to make recommendations on areas for improvement. ICAC submitted a report to CFS in November 2010. After further discussions with ICAC, FEHD implemented the recommended measures in April 2011. This shows that CFS has adopted a vigorous, proactive and serious approach in carrying out its duties.
- CFS has accepted ICAC's suggestions by adopting a risk-based approach in selecting premises for food label inspection. Under the risk-based approach, retail outlets are classified as high, medium and low risk based on four criteria: shop management, scale of business, type of food sold and track records. With the high compliance rate of large chain supermarkets after the implementation of the Scheme, CFS has changed its sampling strategy since April 2011 and set 50%, 30% and 20% as the percentage of prepackaged food to be taken for inspection from high, medium and low risk outlets respectively. It takes time to refine our strategy. Besides, we would not like to see SMEs and small shops being hit hard all of a sudden. It so happens that the time covered by the Report coincides with the time when the new strategy was introduced. The Audit Commission also agreed to the recommendations made by the Corruption Prevention Group of ICAC.
- Separately, the Audit Commission opined that CFS had not adopted a risk-based approach in selecting food samples for testing.
- I would like to point out that CFS and the Government Laboratory (GL) accord top priority to testing related to food-safety incidents and harmful substances of higher risk so as to protect public health. As a result, the number of samples tested for compliance with nutrition labelling requirements will be relatively lower. Our testing target, which has been made known to the public, is about 500 samples a year. In order to collect a wide variety of food samples at the early stage after the enactment of the legislation, CFS might not have tested samples for all the "1+7" core nutrients. To be cost-effective, CFS has

initially focused its sampling on products with nutrition claims including “low sugar” and “low fat” etc in the first year of implementation. CFS accepts the recommendations made by the Audit Commission and will provide the details of the testing results in the future.

- The issue of font size of food labels being too small has also been raised in the Report. In this respect, CFS has uploaded a set of draft guidelines onto the CFS website to consult the trade, with the objective of ensuring that consumers can read clearly the information on nutrition labels.
- As for the number and percentage of suspected non-compliant cases stated in the Report, it is difficult to make an objective comparison between those provided by the Audit Commission and those by CFS as their strategies, sampling plans, standards and testing criteria are different. However, CFS has actively followed up the cases referred by the Audit Commission. Details will be provided by the Director of Food and Environmental Hygiene in due course.

### **Nutrition labelling of infant and special dietary foods**

- The Government has all along attached great importance to the safety of infant formula and carried out analysis of harmful substances based on risk assessment. Each year, CFS takes samples at import, wholesale and retail levels for chemical and microbiological testing. From 2007 to 2010, a total of 960 samples of milk powder (including 590 samples of infant formula) were taken for testing with satisfactory results.
- When drawing up the Scheme, we have already stated that it would not apply to infant formula or follow-up infant formula, or food for infants and young children because these foods are being regulated under different Codex standards.
- Nonetheless, CFS will continue to improve the food surveillance programme to include more infant formula and follow-up infant formula sold in Hong Kong in our chemical analysis work. As for the nutrition labels, nutrition claims and other claims of prepackaged food products for infants and young children, CFS is currently conducting a joint study with the Consumer Council (CC) to understand the local situation better before drawing up some concrete recommendations for the trade. It is expected that the findings of the study will be available in early 2012.
- For labelling of infant formula and follow-up infant formula, manufacturers and distributors must comply with the Food and Drugs (Composition and Labelling) Regulations (Cap 132W) and exercise self-discipline in compliance

with the WHO Code and requirements in the relevant World Health Assembly (WHA) resolutions in their marketing practices.

- The Department of Health (DH) set up a task force in June 2010 to develop the Hong Kong Code. The task force is working on the details and coverage of the Hong Kong Code with due regard to the details and scope of regulation recommended in the WHO Code and the WHA resolutions. The drafting work is expected to be completed shortly. DH will then consult the trade and collect the views of relevant parties. It is expected that the Hong Kong Code will be implemented within 2012.
- CFS will work closely with DH to actively consider incorporating requirements on nutritional composition and labelling of infant formula and follow-up infant formula sold in Hong Kong into the Hong Kong Code, and to monitor the compliance of the trade.
- Subject to the response of the trade to the Hong Kong Code, the Government will consider whether it is necessary to introduce legislation governing nutritional composition and labelling of infant foods.
- Codex has not established compositional requirements for all types of special dietary foods since there is a wide range of foods for special dietary use. CFS will study the current situation regarding labelling of these foods and make recommendations on the priority of regulating these products. In fact, the dietary needs of most people with different health conditions can be met by conventional food, which is already regulated under the Public Health and Municipal Services Ordinance and its food-related regulations.
- We are aware of the public concerns on infant and special dietary foods and will set the priority for legislative work when we review our legislation.
- For the suspected cases of labels or advertisements carrying false description or misleading elements as raised by the Audit Commission, CFS has sent letters to the relevant traders to seek scientific evidence for consideration of enforcement actions.
- Lastly, we would like to thank the Audit Commission for their observations. We will take follow-up actions actively and further enhance our enforcement efforts in food labelling.

**Director of Audit's Report No. 57, Chapters 3 and 4  
6 December 2011**

**Director of Food and Environmental Hygiene  
Speaking Note**

- As SFH has mentioned, the Centre for Food Safety (CFS) has been actively taking follow-up actions against the suspected non-compliant cases referred to in the Director of Audit's Report. Now, I would like to brief Members on the latest results of our follow-up actions :
- As stated in paragraph 2.7 of the Report, 350 suspected non-compliant food products were found in small retail outlets. As the Audit Commission could only provide information for 59 of them, the CFS can only handle these cases. Among them, 6 have been confirmed to be non-compliant, 6 confirmed to be compliant and 47 were no longer found for sale in the outlets. We will continue to check the availability of these products in the market in our future inspections.
- The CFS has taken follow-up actions on the 42 samples which were considered to be unsatisfactory after Audit's independent laboratory testing, as stated in paragraph 2.10 of the Report. We have collected 40 samples from these outlets and sent them to the Government Laboratory (GL) for testing. The results showed that 18 were satisfactory and we are seeking clarification from food traders on the discrepancies in testing results for 22 samples. In other words, the analysis results of the GL showed that non-compliant rate should be about 34% instead of 60% as mentioned in paragraph 2.10. Although this is still higher than the CFS's non-compliant rate of 7.8%, we believe the reason is, as we have pointed out earlier, due to the enforcement strategy in the first year of the nutrition labelling scheme.
- For the 17 suspected non-compliant cases on nutrition claims stated in paragraph 3.12, the CFS' investigation found that 3 were compliant, the labels in 6 cases were rectified, 1 was no longer for sale and 1 still under investigation. The CFS has sent warning letters to the relevant traders requiring them to revise the labels in respect of the 6 problematic products within 60 days.

**Public Accounts Committee of the Legislative Council  
Meeting on 6 December 2011  
Speaking notes of Mr Benjamin Tang, Director of Audit**

- First of all, I welcome the Secretary for Food and Health's acceptance of the recommendations made in the Director of Audit's Report (Audit Report) and his undertaking to take active follow-up actions.
- Regarding the Secretary for Food and Health's opening remarks that some of the recommendations in the Audit Report relate to policy matters and differ in nature from the recommendations normally made in value for money audits, I think there is a need for clarification.
- As mentioned in paragraph 1.15 of Chapter 3 of the Audit Report, Audit has conducted a review of the Centre for Food Safety (CFS)'s work in the regulatory control of food labelling. The Audit Report has also made a number of recommendations in this regard, but they do not relate to policy matters.
- Regarding Chapter 4 of the Audit Report, Audit fully understands that under the existing policy, the nutrition labelling scheme does not apply to infant and special dietary foods. However, as stated in paragraph 2.3 of the Audit Report, as early as 2005, the Administration undertook to review the need for introducing nutrition labelling requirements covering these foods in the future, though the relevant Panel of the Legislative Council (LegCo) was not informed of the timetable of the review at that time. Therefore, in the current audit review, Audit has also examined the adequacy of the nutrition labelling of infant and special dietary foods. The objective is to provide input to the Administration on whether there is a need to introduce nutrition labelling requirements covering such foods. This point is clearly stated in paragraph 1.15 of Chapters 3 and 4 of the Audit Report.
- Parts 2 to 4 of Chapter 4 of the Audit Report pointed out that there were various inadequacies in the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong. There is a need for the Administration to take actions to address the issues as a matter of urgency. Therefore, Audit has recommended in Part 5 that the Administration should conduct a review to critically consider introducing appropriate law or regulations to govern nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong (see paragraph 5.3(a)).
- The Secretary for Food and Health has stated in his opening remarks that when considering the need to introduce appropriate law or regulations, the Administration will, under the established mechanism, discuss with LegCo Members through appropriate channels, such as the relevant Panels. Audit hopes that the Administration and LegCo Members will critically consider the audit observations and recommendations in Chapters 3 and 4 of the Audit Report when discussing the relevant matters.



## **Food labelling**

- The Secretary for Food and Health has pointed out in his opening remarks that the Audit Report covers roughly the first year of operation after the nutrition labelling legislation took effect. As this is only a short period of time after the implementation of the nutrition labelling scheme, it is inevitable that the CFS would need to fine-tune and improve its enforcement strategy in the light of its operational experience. Audit fully agrees with this point. As stated in paragraph 1.17 of Chapter 3 of the Audit Report, the audit review has found areas which call for early attention. Audit has made timely recommendations to address the issues in order to facilitate the Administration to make improvements.
- The Secretary for Food and Health has also pointed out that the majority of food samples came from large chain supermarkets at the initial implementation stage of the nutrition labelling scheme. He considers it a well-thought-out strategy formulated by the CFS because large chain supermarkets take up a lion share of prepackaged food sold in the market, out-numbering those sold in other food retail outlets. Besides, there is a good variety of items sold in the supermarkets. It would be in the best interest of the public if early compliance with the scheme could be ensured. Audit agrees that the adoption of such strategy is reasonable at the initial implementation stage of the scheme. However, as inspections carried out by the CFS revealed that supermarkets had quickly complied with the requirements of the nutrition labelling scheme, the CFS should have taken early action to ensure that its limited inspection resources were effectively utilised. The CFS should have adjusted and improved its inspection strategy and adopted a more risk-based approach in its inspection work, so that retail outlets with a higher risk of non-compliance were also covered. In this connection, Audit's observations are in line with those of the Independent Commission Against Corruption in its assignment report submitted to the CFS in 2010.
- Regarding the Secretary for Food and Health's comment that it is difficult to make an objective comparison between the test results provided by Audit and those by the CFS due to differences in their strategies, sampling plans, standards and testing criteria, I think there is a need for clarification.
- As mentioned in paragraph 2.6 of Chapter 3 of the Audit Report, Audit's compliance tests were similar to those of the CFS. They comprised both visual checking and laboratory testing.
- For visual checking, Audit noted that the CFS mainly focused its checking on large chain supermarkets. Audit therefore deliberately selected some smaller retail outlets (e.g. wet market stalls, ethnic shops, snack shops and grocery shops) for checking. The objective was to help the Administration understand that these smaller retail outlets had a higher risk of non-compliance.

- For laboratory testing, the methodology, standards and testing criteria adopted by Audit were largely the same as those of the CFS. To carry out an independent laboratory testing, Audit commissioned a local university to provide accredited laboratory services. Same as those of the CFS, most of the food samples were purchased from large chain supermarkets. The tolerance limits Audit adopted were also the same as those adopted by the CFS for considering enforcement action (see paragraph 2.9). The main difference was that Audit selected food samples based on risk assessment while the health inspectors of the CFS exercised discretion in selecting food samples. The health inspectors were also not required to document their justifications for the food products selected. Furthermore, Audit selected more nutrients per food sample for testing. For example, in Audit's laboratory testing, about 90% of the food samples were tested for four or more nutrients. On the other hand, in the CFS's tests, for 70% of the samples, only one nutrient was selected for chemical analysis.

### **Nutrition labelling of infant and special dietary foods**

- We appreciate that the CFS takes food samples at import, wholesale and retail levels for chemical and microbiological testing each year. However as stated in Notes 14 and 21 of Chapter 4 of the Audit Report (pages 26 and 48), the CFS's chemical testing only covers testing for food additives, contaminants, toxins and other harmful residues, whereas microbiological testing covers testing for bacteria and viruses. As pointed out in paragraph 3.3(a) of Chapter 4 of the Audit Report, the CFS has not selected any infant and special dietary foods for verifying the correctness of the nutrition information declared.
- We also appreciate that the CFS is currently conducting a joint study with the Consumer Council on the nutrition labels, nutrition claims and other claims of prepackaged food products for infant and young children. However, as stated in paragraph 3.3(a) of Chapter 4 of the Audit Report, the joint study does not include infant and follow-up formulae.
- Finally, Audit welcomes the Administration's undertaking to actively consider incorporating requirements on nutritional composition and labelling of infant and follow-up formulae sold in Hong Kong into the Hong Kong Code, and to monitor the compliance of the trade. Besides, subject to the response of the trade to the Hong Kong Code, the Government will consider whether it is necessary to introduce legislation governing nutritional composition and labelling of infant foods.



中華人民共和國香港特別行政區政府總部食物及衛生局

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

Our Ref :FH CR 1/2191/11  
Your Ref : CB(4)/PAC/R57

Tel No : (852) 3509 8701  
Fax No : (852) 2136 3282

4 January 2012

Clerk to Public Accounts Committee  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn: Ms Miranda HON)  
(Fax No. : 2840 0716)

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No.57)**

**“Food Labelling” and “Nutrition Labelling  
of Infant and Special Dietary Foods”**

Thank you for your letter dated 13 December 2011. I write to provide you in response to the various issues set out in your letter.

- (a) The Centre for Food Safety (CFS) had adopted a risk-based inspection approach as recommended in Independent Commission Against Corruption (ICAC)'s assignment report on enforcement of food labelling requirements since 1 April 2011. A database has been developed whereby all food outlets selling prepackaged food have been profiled as high, medium and low risk (with ethnic shops and snack shops being categorised as high and medium risk group). High and medium risk shops have been covered in routine and targeted inspections. Health Inspectors are required to inspect about 50%,

30% and 20% of food labels from high risk, medium risk and low risk premises respectively with submission of bi-weekly “Workdone Report for Label Checking/Sampling at Retail Outlets”. The Internal Guidelines for Food Labelling Unit (FLU) has been revised accordingly to set out the above new risk-based inspection requirement. The revised “Internal Guidelines for Food Labelling Unit (April 2011)” and the “Workdone Report for Label Checking/Sampling at Retail Outlets” are attached at **Annex I** and **II** respectively. Section (B)(IV) of the Internal Guidelines for FLU specifies the new risk-based inspection requirement while Sections (J) and (M) set out the conditions under which the Health Inspectors should institute prosecution and issue of advisory/warning letters.


- (b) In relation to a case against general labelling irregularity on 9 October 2009, the magistrate commented that FLU should ascertain the circumstantial evidence for future prosecution. It was regretted that the magistrate’s advice had not been followed up promptly but improvement measures have since been implemented in early 2011. Health Inspectors of FLU are required to ascertain, under the supervision of Senior Health Inspectors, the possession of circumstantial evidence before taking out prosecution since February 2011. To better equip the staff concerned with the necessary legal knowledge, training courses are being conducted by the Training Section of the Food and Environmental Hygiene Department on evidence collection.
- (c) At present, there are 28 brands of infant formula in the retail market according to CFS’s records. CFS would take a total of 48 samples from among these different brands for testing of the 33 nutrients as required under Codex. The testing will be conducted in two stages with 28 samples in 2012 and the remaining 20 in 2013. The 28 samples in 2012 would be taken from the most popular infant formula (0-6 months or 0-9 months) of each brand. For the 20 samples in 2013, priority would be given to other infant formulae and formulae for 9 months or above.
- (d) A Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes was set up under the Director of Health (DH) in June 2010 to develop a Code of Marketing of Breastmilk Substitutes applicable to Hong Kong (Hong Kong Code). The objective of the Hong Kong Code is to regulate manufacturers and distributors of breastmilk substitutes and related products to prevent them from advertising and

marketing their breastmilk substitutes and related products by way of malpractices. Besides, it is proposed that requirements including nutritional labelling and claims of breastmilk substitutes and related products will be covered in the Hong Kong Code. It is expected that the drafting of the Hong Kong Code will be completed by early 2012. Upon completion of the drafting of the Hong Kong Code, DH will consult the trade and collect the views of various parties. It is expected that the Hong Kong Code will be implemented within 2012.

Upon implementation of Hong Kong Code, CFS and DH will continue to work closely to monitor the trade's adherence to the Hong Kong Code. Subject to the responses of the trade to the Hong Kong Code, the Government will consider in due course whether specific law or regulation governing nutritional composition and labelling of infant foods is necessary. In 2012, CFS will conduct testing on the nutritional composition of infant formula available in the market in order to gather more information for future preparatory legislative work.

- (e) Codex standards, including those for infant formula, are international standards for reference. They are non-binding and voluntary in nature, and are established to provide reference for jurisdictions in formulating their own regulations based on their local situation. However, they would serve as references by the World Trade Organisation in settling international trade disputes. Since it is not a legal requirement in Hong Kong to comply with Codex standards, no enforcement action has been taken. That said, traders are encouraged to adopt relevant Codex standards as appropriate as a matter of good practice.
- (f) CFS adopts a risk-based approach in its strategies and the planning and implementation of food safety control measures. Based on available information, there is no evidence suggesting that formula-fed infants are deficient of iodine or biotin and hence detailed investigation into this matter was not carried out. CFS is currently working together with DH and other experts and members of the Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes and will consider incorporating the relevant Codex nutrition labeling requirements and composition of infant formula into the Hong Kong Code.

Yours sincerely,



( Gillian LAM )  
for Secretary for Food and Health

c.c. Secretary for Financial Services and the Treasury (Fax no.: 2147 5239)  
Director of Audit (Fax no.: 2583 9063)  
Director of Food and Environmental Hygiene (Fax no.: 2877 9507)  
Director of Health (Fax no.: 2893 9613)

## **INTERNAL GUIDELINES FOR FOOD LABELLING UNIT**

### **(A) MAJOR DUTIES OF HIs(FL)**

- Label checking
- Sampling of prepackaged food
- Handling of complaints
- Reply written and verbal enquiries
- Comment on food label of milk and dairy products
- Processing the notification of the name and full address of manufacturer or packer of the prepackaged food submitted by the distributor or brand owner in Hong Kong
- Blitz operations
- Follow up discrepancy cases e.g. issue enquiry letter and warning letter
- Law enforcement
- Health education

### **(B) DIVISION OF WORK**

#### **(I) By territory**

- The whole territory is divided into 10 major areas and 1 HI(FL) is responsible for 1 major area.

#### **(II) By country of origin**

- The whole world is divided into 10 major global regions.
- Each HI(FL) is responsible for food items imported from certain countries.

#### **(III) By food category**

- All prepackaged foods are divided into 10 major categories.
- Each HI(FL) is assigned with a specific food category for label checking.
- Food categories for HIs(FL) will be rotated on a monthly basis.

**(IV) By risk-based premises**

- Database on food outlets selling prepackaged food has been compiled. Updating of database is an on-going process.
- Food outlets selling pre-packaged food will be classified as high, medium and low risk premises.
- The risk type is based on:
  - management of the shop;
  - scale of the business (e.g. chain store);
  - type of food sold (e.g. health food is high risk because of nutrient claims);
  - past adverse record (e.g. premises with previous labelling irregularities detected are classified as high risk)

**(C) LABEL CHECKING**

- General target in a year: about 55,000
- HIs(FL) will conduct routine label checking on assigned food category mainly in their respective areas.
- Label checking during weekly blitz operations by all HIs(FL) in selected district/area arranged by SHIs(FL).
- Follow-up label checking on complaints.
- Ad hoc issue on food products receiving public attention.

**(D) SAMPLING PROGRAMME**

**(I) Sampling for Analysis**

- Scheduled programme with specific food item and test type pre-arranged by Government Chemist.
- Each HI(FL) is assigned to take food samples (number and type of samples) according to their assigned country of origin.
- Follow-up sampling. e.g. complaint and re-sampling of unsatisfactory samples.
- Ad hoc sampling as required by Government Chemist. (e.g. seasonal food and food products receiving public attention)



**(II) Sampling for Labels Checking**

- Ad hoc sampling for detailed label checking as required by Government Chemist and senior officers.
- Follow up sampling e.g. complaints.

**(E) ACTION PLAN FOR HIs(FL)**

- Bi-weekly programme with location plan will be prepared by individual HI(FL).
- Work plan should include the date and zone(s) for label checking and sampling.
- The programme is based on criteria and requirements outlined in paragraphs B, C & D above.
- The programme is to be endorsed by SHIs(FL) before implementation.
- SHIs(FL) will conduct surprise checking on the performance of HIs(FL).
- All supervisory checks will be documented.

**(F) BLITZ OPERATION**

- Pre-arranged by SHIs(FL) on a weekly basis.
- The whole territory is divided into 19 districts and 1 district will be selected for each operation.
- It is expected to complete one round in about 5 to 6 months.
- Operational area will include 2 shopping centres and 2 streets. All premises selling pre-packaged food within the area will be covered.
- One senior HI(FL) is assigned as the team leader.
- All HIs(FL) will take part in the blitz operation and they will perform label checking duty in pair.
- Duties will focus on label irregularities in particular prepackaged food being sold beyond the 'used by' date".
- Results of operation will be collated and recorded by HI(in-charge) after the operation and submit to SHIs(FL) for scrutiny.
- SHIs(FL) will conduct surprise checking at the target location.
- All supervisory checks will be documented.
- Information on blitz operation will be kept in strict confidential and the access is restricted to need-to-know basis.
- Location and target area will only be released to HIs(FL) in the morning of D-day.

## **(G) WORK DONE REPORT**

- (1) HIs(FL) will submit report in prescribed format to SHIs(FL) showing:
  - risk type, name of premises checked, address of premises, no. of labels checked, no. of samples taken, no. of advisory/ warning letter issued, irregularities found, etc.

## **(H) SAFE-KEEPING OF FOOD SAMPLES AND EXHIBITS**

### **(I) Sample / Exhibit Room**

- (1) A room with locking device is reserved for safe-keeping of samples and exhibits.
- (2) The key of the room is kept by SHIs(FL).
- (3) A Key-Register for the movement of the room key is kept by SHIs(FL).
- (4) HIs(FL) have to make an entry onto the key-register stating the purpose whenever they take the room key. SHIs(FL) will make endorsement on the Key-Register ensuring that the opening of the room is on operational need.
- (5) Inside the Sample/Exhibit Room, each HI(FL) is allocated with 1 cabinet with locking device for storage of food samples and exhibits.
- (6) Currently, there are 4 freezers with locking device shared by 10 HIs(FL).

Note: 6 additional freezers will be purchased so that each HI(FL) will be allocated with 1 freezer individually.

### **(II) Register for Food Samples and Exhibits**

- (1) Each HI(FL) is required to keep an updated Register for samples taken in prescribed format.
- (2) SHIs(FL) will conduct surprise check on the Register against samples/ exhibits stored inside the Sample/Exhibit Room.
- (3) All supervisory checks will be recorded on the Register.
- (4) HIs(FL) are required to seek approval of SHIs(FL) to close the sample records.
- (5) Obsolete sample records will be kept and disposed of according to normal office practice.

**(I) DISPOSAL OF SAMPLES AND EXHIBITS**

- (1) Each HI(FL) is required to dispose obsolete samples/exhibits on a quarterly basis.
- (2) Apart from updating his/her own Register for samples/exhibits, he/she is required to prepare a list of samples/exhibits to be disposed of for SHIs(FL) checking and endorsement.
- (3) The disposal list will be recorded for future inspection by senior officers.
- (4) CHI(FL) will conduct quarterly checks to ensure proper disposal of samples/exhibits.
- (5) Procedures for disposal of food samples /exhibits:
  - (i) remove all the packaging materials and labels (including food labels marked by CFS)
  - (ii) all food samples and exhibits will be packed inside garbage bag.
  - (iii) liaise with Cleansing Section of Central/Western District Office to arrange for final disposal of food samples and exhibits. (Schedule of refuse collection vehicle and location of refuse collection point, etc.).
  - (iv) 2 HIs(FL) will escort the samples and exhibits during the way from FLU to refuse collection point.
  - (v) Chloride of lime will be applied onto to the food samples and exhibits before loading onto the refuse collection vehicle inside the refuse collection point.

**(J) ENFORCEMENT ACTION AGAINST FOOD LABEL IRREGULARITIES (EXCLUDING NUTRIENT LABELLING MATTER)**

During checking of the labels of prepackaged food on sale in the local market by HIs(FL), if any irregularity is found, a case file should be opened for follow-up action as follows:-

**(1) Non-serious Cases**

Informal sample must be purchased and a warning letter/advisory letter shall be issued to the vendor/distributor/importer drawing their attention to the contravention of relevant legislation.

In the warning letter, the parties concerned shall be asked to rectify the irregularity within a specified period of time (normally not more than four weeks). If the warning letter is not complied with, follow-up enforcement action including taking a formal sample followed by prosecution should be taken. The following irregularities warrant the issue of warning letter:

- (i) Incomplete or inappropriate food name (e.g. absence of specific indication, e.g. powdered, dried, frozen, concentrated, etc.).
- (ii) Ingredients not listed in descending order.
- (iii) Improper indication of ingredients (e.g. use of “or” or “and/or”) including allergens.
- (iv) Food additives not properly listed, e.g. functional class, specific name or INS no. missing or incorrect.
- (v) Incomplete manufacturer/packer’s name and address.
- (vi) Provide the distributor/ brand owner’s name and address and the country of origin only without notification of the manufacturer/packer’s information to CFS.
- (vii) Improper indication of net weight/net volume/numerical count (e.g. incorrect unit).
- (viii) No indication of special storage condition or instructions for use, where applicable.
- (ix) Food name and list of ingredients not marked in both English and Chinese where both languages are used on the label.
- (x) Information marked in English and Chinese not consistent to each other.
- (xi) Indication of the ‘Use by’/‘Best before’ date in the format of “Day/month/year”.

Issue of advisory letter will be sufficient for the following irregularities:

- Indication of the ‘Use by’/‘Best before’ date not in prescribed format but not misleading, such as
  - (a) MM/DD/YYYY
  - (b) 日日/月月/年年年年
  - (c) With the word “Date” after ‘Use by’/‘Best before’
  - (d) With the word “在” before “此日期或之前食用” or “此日期前最佳”

**(2) Serious Cases**

In case of serious irregularity which falls within the following criteria, a formal sample followed by prosecution should be taken. If the irregularity still persists, monthly prosecution should be taken.

- (i) Absence of any or all of the following information:
  - (a) Food name
  - (b) List of ingredients
  - (c) 'Use by' / 'Best before' date
  - (d) Manufacturer/packer's name and address or both the country of origin and the distributor/brand owner's name and address
  - (e) Net weight/net volume/numerical count
- (ii) Sale of food beyond 'Use by' date.
- (iii) False or misleading information (e.g. false food name).
- (iv) Alter the label without authorization.
- (v) No declaration of the actual or percentage amount of the ingredient with special emphasis on its presence or low content.
- (vi) Blank label.
- (vii) All information printed in foreign language(s) only.
- (viii) Indication of the 'Use by'/'Best before' date by other wordings, such as:
  - (a) Expiry date or expired date
  - (b) Sell-by date
  - (c) 賞味期限

**(K) FOLLOW-UP ACTION ON WARNING LETTERS**

- (1) HIs(FL) will visit the food outlet upon expiry of the warning letter to check for compliance.
- (2) If the non-compliance persists, necessary follow-up action will be taken.
- (3) If the irregularity has been rectified (i.e. the label is revised), a photo of the revised food label will be taken for record. Follow-up action is then completed.
- (4) If the food item is no longer displayed for sale, 3 subsequent inspections will be conducted before closure of the case.
- (5) The number of subsequent inspections and the time frame are not fixed

and may vary from case to case.

- (6) HIs(FL) have to obtain the approval from SHIs(FL) before closure of a case.

#### **(L) FOLLOW-UP ACTION ON PROSECUTION CASES**

- (1) Within four working days after the discovery of a serious irregularity/non-compliance of warning letter, HI(FL) will create a record in the Summons Tracking Facility System (STFS) and prepare a prosecution case file for the case.
- (2) E-mail to the concerned district office and inform of the prosecution action and request for the following information for the preparation of summons:
  - (a) Name of licensee (in English & Chinese);
  - (b) Shop sign and address of the premises (in English & Chinese);
  - (c) Size of the premises;
  - (d) All previous convictions (Date of Offence, Nature of Offence, Law Breached, Name of Defendant, Date of Conviction, Fine Imposed, Case No.);
  - (e) Type of licence;
  - (f) Copy of B.R.C.; and
  - (g) Copy of the layout plan indicating the licensed portion.
- (3) The reply from concerned district office will be properly documented in the summons paper.
- (4) If the licensee/proprietor of the premises is convicted of the said offence, a prescribed number of demerit points will be registered against their Licence, according to the “Procedural Guide for Demerit Points System” (HY-253).
- (5) After the result of prosecution has been received, HIs(FL) will inform the concerned district of the result of prosecution in respect of the licensed premises for their information and their action deemed necessary (Demit Point System).
- (6) If the food outlet is not a licensed premises, HIs(FL) will search from the main prosecution record in Food Labelling Unit to check whether it has previous convictions and record it in the summons file. He will also indicate if any warning letter has ever been issued to the food outlet concerned in the summons paper.
- (7) The result of prosecution will be properly recorded in the main prosecution record in Food Labelling Unit.

- (8) Subsequent follow up action will be taken by HIs(FL).
- (9) HIs(FL) have to obtain the approval from SHIs(FL) before closure of a case.

**(M) FOLLOW UP ACTIONS ON FOOD SAMPLES WITH UNSATISFACTORY TEST RESULTS**

**(I) Unsatisfactory results (chemical analysis), e.g. discrepancy between declared value on packaging and analysis result)**

**(a) General Labelling Issues**

- (1) Issue warning letter to vendor / distributor / manufacturer (as appropriate) upon confirmation of the unsatisfactory result. They are required to rectify the irregularity within a specified period of time (normally not more than four weeks).
- (2) If the warning letter is not complied with, subsequent follow-up action will be taken.

**(b) Nutrition Labelling Issues**

- (1) Issue a letter to the trader requiring him/her to give an explanation within 21 days.
- (2) If the explanation given by the trader is found to be unsatisfactory or there is no response from the trader, a warning letter will be issued to the trader who will be required to comply with the legislation within 60 days.
- (3) After the expiry of the 60 days' period, if the irregularity(ies) is/are not rectified or the product in question is not withdrawn from the market, necessary follow-up action will be taken.

**(II) Unsatisfactory results (chemical analysis) e.g. food additives exceeding legal standard.**

- (1) Once the unsatisfactory result of the food sample is confirmed, the HI(FL) shall report the case to SHI(FL). SHI(FL) shall keep CHI(FL) informed of the unsatisfactory results so that appropriate action will be taken.
- (2) HI(FL) has to submit alerting report through e-mail to SHI(FL) if the unsatisfactory result is confirmed. SHI(FL) will vet the report and

submit it through e-mail to CHI(FL) and Supt(FS)2.

- (3) A warning letter, signed by SHI(FL), shall be issued within 3 working days upon confirmation of the unsatisfactory result to notify the vendor / distributor / manufacturer of the analysis result. The retailer should be required to immediately stop the sale of the affected product and remove the product in question for disposal or for destruction under the supervision of HI(FL) in case of voluntary surrender.
- (4) HIs(FL) shall keep the food concerned under close surveillance until it has been totally withdrawn from the market. Necessary follow-up action will be taken as and when required.
- (5) Trace source of supply to stop further sale by requesting for source list and distribution list and investigate into suppliers and retailers on the list, where appropriate.

#### **(N) FOOD ALERT & RECALL PROCEDURE**

##### **(I) Unsatisfactory results (chemical analysis) e.g. food additives exceeding legal standard**

- follow-up action to be taken according to paragraph (L)(II) above.

##### **(II) Daily summary of food recalls due to allergens (incidents that are reported by food authorities and media agencies outside Hong Kong and may have local implications) which is referred by Risk Management Section, Food Surveillance and Control Division, Centre for Food Safety**

- (1) In case the food incident involves allergens, CHI(FL) will immediately notify SHI(FL) and HI(FL) the case. SHI(FL) will give the instruction to the HI(FL) for follow-up action.
- (2) HI(FL) shall conduct urgent sale check for the alleged food item at the local retail outlets to confirm whether the alleged food item is available for sale in Hong Kong local market.



- (3) If the allergic food is confirmed on sale in Hong Kong, HI(FL) shall alert the major retailers and local distributors if known about the food incident case and advise the vendor / distributor / manufacturer to cease the sale until further notice.
- (4) If the vendor/ distributor / manufacturer do not cease the sale, HI(FL) should report the case in detail to the SHI(FL) for onwards transmission to senior officers to seek directive. Decision will be made whether Section 78B of Cap. 132 will be executed.

**Remarks: This guideline is a general working procedures on time frames and follow-up actions on food samples with unsatisfactory test results. Please note that special procedure may apply on a case-by-case basis.**

**(O) MONITORING OF E-TRADERS (INTERNET SHOPS)**

- (1) A list of e-traders with website, contact e-mail address & telephone number, address of premises and major type of food sold are being kept in the office which will be continually updated.
- (2) A pre-scheduled online surfing and site visit to retail outlets of internet shops are arranged on a monthly basis.
- (3) The first Thursday of each month, the HI(FL) who is on office stand-by is required to conduct online surfing of e-traders and update the current information of the e-traders list on that day.
- (4) The office stand-by HI(FL) will also prepare a target list of e-trader upon the instruction of SHIs(FL) for site visit on the next Wednesday afternoon and submit result of operation and surfing finding to SHIs(FL) for scrutiny.
- (5) The second Wednesday afternoon (date of Blitz operation) of each month, all HIs(FL) will conduct site visits to the internet shops for label checking according to the target list during the Blitz operation.
- (6) Health education, delivery of Labelling pamphlet and taking samples for chemical analysis should also be made during the operation if necessary.

## **(P) RECORD KEEPING**

All HIs(FL) have to keep the following records:

- Label checking record
- Register for samples / exhibits
- Samples/exhibits disposal record
- Prosecution record
- Complaint record
- Notification record

## **(Q) SUPERVISORY CHECKS**

### **(I) SHIs(FL)**

- (1) SHIs(FL) are required to conduct supervisory checks to all their subordinates every two months.
- (2) Supervisory checks include:
  - site checking on the performance of HIs(FL),
  - re-inspections of label checking made by HIs(FL),
  - random label checking at retail outlets,
  - spot checks on prosecution cases/warning letters cases/enquiry letters.
  - surprise checks on blitz operations.
- (3) All supervisory checks will be documented.

### **(II) CHI(FL) & Supt(FS)2**

- (1) CHI(FL) & Supt(FS)2 will conduct surprise checks on the work of FLU on bi-monthly and quarterly interval respectively.
- (2) Surprise checks include:
  - all registers kept in FLU,
  - blitz operations,
  - random label checking at retail outlets,
  - spot checks on prosecution cases and warning letters cases,
- (3) All supervisory checks will be documented.

Food Labelling Unit

Food Surveillance & Complaint Section

Centre For Food Safety

January 2011

(Revised on April 2011)

## Workdone Report for Label Checking / Sampling at Retail Outlets

**Officer:** \_\_\_\_\_

**Month & Year:** \_\_\_\_\_

**Food Category:-**

- |                    |                         |
|--------------------|-------------------------|
| A. Bakery Products | F. Aquatic Products     |
| B. Candies         | G. Meat & Meat Products |
| C. Canned Food     | H. Preserved Fruit      |
| D. Dairy Products  | I. Sauces               |
| E. Drinks          | J. Misc.                |

**Group:-**

- |                      |                               |                             |                                   |
|----------------------|-------------------------------|-----------------------------|-----------------------------------|
| 1. Bakery Shop       | 6. Ethnic Shop                | 11. Market                  | 16. Shopping Centre               |
| 2. Bazaar            | 7. Food Factory (FF)          | 12. Medicinal Shop          | 17. Siu Mei & Lo Mei Shop (SM&LM) |
| 3. Cosmetics Shop    | 8. Fresh Provision Shop (FPS) | 13. Other Retails           | 18. Snack Shop                    |
| 4. Convenience Store | 9. Grocery                    | 14. Restaurant (eg. GR/LRR) | 19. Supermarket                   |
| 5. Department Store  | 10. Health Shop               | 15. School                  | 20. Vegetables/Fruit Shop         |

**Irregularities Detected:-**

- |   |  |
|---|--|
| I. Food Name                                | V. Name & Address of Manufacturer / Packer |
| II. List of Ingredients                     | VI. Net Weight / Volume or Count           |
| III. Durability                             | VII. Nutrition Labelling and Claim         |
| IV. Storage Condition / Instruction for Use | VIII. Others                               |

**Action Taken:-**

- |                        |                     |
|------------------------|---------------------|
| - Verbal warning (VW)  | - Legal Action (LA) |
| - Warning Letter (WL)  |                     |
| - Enquiry Letter (EL)  |                     |
| - Advisory Letter (AL) |                     |

Serial No.	Date	Risk (H/M/L)	Group	Shop Sign	Address	Sampling Y/N (If "Y", Formal/ Informal Sample)	Brand Name, Food Name, Flavour (Supplementary Information e.g. Net Weight/Volume)	Food Category	Irregularities for food label		Previous irregularities on food label		
									Irregularities detected	Action taken	Summons (Y/N)	Complaint (Y/N)	Warning / Enquiry / Advisory Letter (Y/N)



香港金鐘道六十六號金鐘道政府合署四十三及四十五樓  
43/F & 45/F, Queensway Government Offices, 66 Queensway, Hong Kong

電話 Tel :

傳真 Fax :

2867 5505

2530 1368

本署檔號 Our Ref. No.: FEHD/CFS CON 1/40/6

7 December 2011  
(urgent by fax : 2840 0716)

Ms Miranda HON  
Clerk  
Public Accounts Committee  
Legislative Council Complex,  
1 Legislative Council Road,  
Central,  
Hong Kong.

Dear Ms Hon,

**The Director of Audit's Report on the  
results of value for money audits (Report No. 57)**

**“Food labelling” and “Nutrition labelling  
of infant and special dietary foods” (Chapter 3 and 4)**

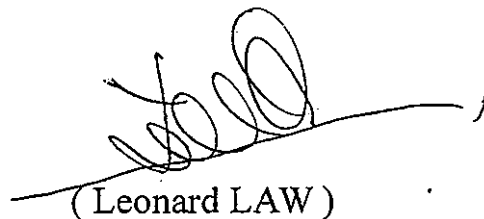
I refer to your letter of 6 December 2011 and would like to provide the requisite information as requested by the Public Accounts Committee in relation to Chapter 3 of the Director of Audit's Report (Audit Report) as follows :-

- (a) copy of the assignment report produced by the Independent Commission Against Corruption on “Enforcement of Food Labelling Requirements” (in English only) at **Annex I**. You may note that we have accepted all but two of the recommendations made in the assignment report. For the two recommendations (i.e. to take into account the residence of the Health Inspectors when assigning districts to them for routine inspection and to move the Chief Health Inspector's office to the Food Labelling Unit (FLU) office to enable the exercise of direct supervision over the FLU), the ICAC has agreed with us not to take on the recommendations having noted our explanations on the inherent

operational difficulties;

- (b) information on the dates and attendees for the meetings to discuss the tolerance limits in the CFS Technical Guidance Notes are given in **Annex II**; and
- (c) an account for the drop in the number of prosecutions and convictions in 2011 is given in **Annex III**.

Yours sincerely,

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

for Director of Food and Environmental Hygiene

c.c. Secretary for Food and Health (fax no. 2526 3753)  
Director of Health (fax no. 2893 9613)  
Secretary for Financial Services and the Treasury (fax no. 2147 5239)  
Director of Audit (fax no. 2583 9063)

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

## Annex II

### Dates and attendees of the technical meetings in which the issue of tolerance limits has been discussed

Round	Date	Attendees
1st round	6 August 2004	Importers/Suppliers
	15 September 2004	Food Retailers
	11 January 2005	Laboratory Service Providers
2nd round	6 April 2005	Manufacturers
	7 April 2005	Importers/Suppliers
	11 April 2005	Food Retailers
	13 April 2005	Laboratory Service Providers
3rd round	8 June 2005	Laboratory Service Providers
	9 June 2005	Manufacturers
	21 June 2005	Importers/Suppliers
	22 June 2005	Food Retailers
5th round	28 September 2007	Manufacturers
	8 October 2007	Laboratory Service Providers
	10 October 2007	Importers/Suppliers
	11 October 2007	Food Retailers
	9 November 2007	Traders for ethnic minority food
7th round	9 January 2008	Importers/Suppliers
	10 January 2008	Food Retailer
	11 January 2008	Manufacturers
8th round	19 March 2008	Food traders
	20 March 2008	Laboratory Service Providers
9th round	22 April 2008	Food traders
	7 May 2008	Food traders
10th round	18 June 2008	Food traders
	20 June 2008	Laboratory Service Providers

**Dates and attendees of the workshops/ seminars in which the issue of tolerance limits has been explained to traders**

**1. Workshops on Nutrition Labelling Scheme (Basic)**

<b>Date</b>	<b>Attendees</b>
25.7.2008	Traders in small and medium enterprises trading organic or health foods
1.8.2008	Food traders
12.8.2008	Laboratory service providers
2.9.2008	Traders in small and medium enterprises trading foods
23.9.2008	Food manufacturers, food importers/ suppliers
24.9.2008	Food retailers
16.10.2008	Traders of bakery foods
30.12.2008	Food traders
19.3.2009	Food traders (including health food)
22.6.2009	Food traders
5.8.2009	Traders of Japanese foods
28.10.2009	Food traders
9.12.2009	Food traders
31.3.2010	Food traders
26.4.2010	Food traders
2.6.2010	Food traders
21.7.2010	Food traders
22.9.2010	Food traders
20.1.2011	Food traders
27.6.2011	Food traders

## **2. Workshop on Nutrition Labelling Scheme (Advanced)**

<b>Date</b>	<b>Attendees</b>
23.1.2009	Food traders
28.4.2009	Food traders
29.7.2009	Food traders
8.10.2009	Food traders, especially those for Japanese foods
29.12.2009	Food traders
21.4.2010	Food traders

## **3. Experience sharing session on Nutrition Label Calculator**

<b>Date</b>	<b>Attendees</b>
12.6.2009	Food traders, especially small-medium entrepreneurs

### Note

The documents of the technical meetings and the draft Technical Guidance Notes were available on Food and Health Bureau and CFS websites for reference and comment by members of the public



### **Annex III**

The reasons for the drop in the number of prosecutions and convictions for food labelling non-compliant cases in the first 6 months of 2011 as compared with the corresponding figures in 2010 are as follows :-

- The chained supermarkets/stores have over the years come to know better the general labelling requirements, particularly after the implementation of the nutrition labelling scheme in July 2010. Accordingly, the compliance rate on general labelling has improved, resulting in the smaller number of prosecutions being made in 2011; and
- Routine inspections and blitz operations to check the compliance of the trade with the food labelling and nutrition labelling requirements were temporarily suspended from April to June 2011 in order to release staff to help deal with the outbreak of food incidents arising from the Japanese nuclear accident and plasticizer incident in Taiwan.

Inspections were resumed to normal in July 2011. CFS will endeavour to check a comparable number of samples as in 2010.

香港特別行政區政府  
政務司司長辦公室轄下行政署



The Government of  
The Hong Kong Special Administrative Region  
Administration Wing,  
Chief Secretary for Administration's Office

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

19 December 2011

來函檔號 Your Ref.:

Ms Miranda Hon  
Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

*Dear Ms Hon,*

**The Director of Audit's Report on the  
results of value for money audits (Report No. 57)**

**Records management work of  
the Government Records Service (Chapter 10)**

— Thank you for your letter dated 30 November 2011 on the above subject. As requested, we are pleased to provide the relevant information in the **Annex** to facilitate the Public Accounts Committee's consideration. A soft copy of our response in both English and Chinese will be sent to you via e-mail.

*Yours sincerely,  
Jennifer Mak*

( Miss Jennifer Mak )  
Director of Administration

c.c. Government Records Service Director  
Director of Audit  
Secretary for Financial Services and the Treasury

Encl

**Information Note for the Public Accounts Committee  
on Chapter 10 of the Director of Audit's Report No. 57  
“Records management work of the  
Government Records Service”**

**I. Record management programme**

(paragraphs 2.3 and 2.4 of the Audit Report)

The Records Management Manual (RMM) prescribes, among other things, that bureaux and departments (B/Ds) should institute and implement a comprehensive records management programme throughout their organizations. Such a programme is necessary to provide proper handling of government records through establishing control for the creation, organization, maintenance and disposal of government records.

2. Apart from the RMM, we have also issued guidelines and circulars to assist B/Ds in managing their records. A flow chart showing each key stage/process of records management as well as details of the actions and procedures involved are at Appendices I(a) and I(b) respectively. Although the processes are presented as if in a sequence, it should be noted that some of them may take place simultaneously, e.g. records creation and classification are often carried out as an integrated series of actions.

**II. Compliance with mandatory record management requirements**

(paragraphs 2.7 and 2.8 of the Audit Report)

3. We have promulgated vide General Circular No. 2/2009 a set of mandatory records management requirements for compliance by B/Ds. These requirements have a wide coverage, including proper management of e-mail records, records classification, records disposal (including destruction of records subject to prior consent of Government Records Service (GRS) Director and transfer of records having archival value to the GRS), proper custody and storage of records, and protection of vital records.

**\*Note by Clerk, PAC:** *Appendices I(a), II(a) and II(b) not attached.*

4. To ensure B/Ds' compliance with these mandatory requirements, we have/will put in place the following arrangements and measures -

- (a) requesting heads of B/Ds to accord appropriate priority and resources to implement a proper records management programme throughout their organizations;
- (b) requiring B/Ds to appoint Departmental Records Managers (DRMs) to oversee the departmental records management programme. In this connection, GRS has been reaching out to DRMs to provide the necessary support through training, briefings and written advice. As the majority of DRMs are Executive Officers (EOs) and members of the EO grade are heavily involved in records management duties in B/Ds, GRS will further strengthen the training for EOs by including records management in the mandatory development programme for EO I starting from January 2012;
- (c) strengthening records management support for B/Ds. GRS has conducted focused records management seminars for records managers and records management staff in selected B/Ds to increase their awareness of the mandatory records management requirements. Such seminars have already been organized for the Hong Kong Police Force, Social Welfare Department, Lands Department, Housing Department and Fire Services Department. We will continue to conduct such seminars for B/Ds to enhance their awareness and compliance of mandatory records management requirements;
- (d) conducting service-wide surveys on records management practices of B/Ds with focus on B/Ds' compliance with the mandatory requirements. GRS has conducted the first survey in the second half of 2010. Heads of B/Ds have been urged to implement the recommendations of the survey to further enhance records management in their organizations. GRS will initiate another survey in the second half of 2012;
- (e) for the three mandatory records management requirements with a deadline of April 2012, monitoring B/Ds' compliance through their

submission of quarterly reports with effect from September 2011;

- (f) conducting comprehensive records management reviews/audits of individual B/Ds to monitor their compliance with the mandatory requirements, among others. GRS will start such records management reviews/audits upon completion of the current round of records management studies for all B/Ds in 2012; and
- (g) reminding B/Ds to re-circulate the relevant General Circulars at regular intervals.

5. The mandatory records management requirements promulgated through General Circular No. 2/2009 are of equal application and force to Government Regulations. Accordingly, the mandatory records management requirements are binding on all government servants. Government servants who do not comply with the mandatory requirements may be subject to disciplinary action. Depending on the circumstances and seriousness of the misconduct/offence, the range of punishment that may be imposed on civil servants includes verbal or written warnings, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal.

### **III. Records appraisal**

(paragraphs 4.3 and 4.4 of the Audit Report)

#### ***Appraisal criteria***

6. Based on the experience of other countries, GRS has developed and adopted in July 2009 a set of appraisal guidelines with a view to providing a general framework to assist in the selection of archival records in a coherent and consistent manner. According to these guidelines, records likely to be selected as archival records may include the following -

- (a) records that document or reflect the organization, functions and activities of the Government;
- (b) records that document the formation process, implementation and outcome of significant policies, decisions, legislation and actions of the Government;

- (c) records that document the impact of the decisions, policies and programmes of the Government upon the physical environment, community, organizations and individuals;
- (d) records that document the interaction between the public and the Government as well as between the physical environment and the Government;
- (e) records that document the legal rights and obligations of individuals, groups, organizations and the Government; and
- (f) records that contain significant or unique information or aged documents that can enrich the understanding about the history, physical environment, society, culture, economy and people of Hong Kong.

7. GRS will continue to keep the appraisal guidelines under review to meet changing circumstances.

#### ***Manpower deployed on records appraisal***

8. At present, three Archivist grade staff at GRS are responsible for records appraisal as part of their duties. In general, the time required for appraising a record will vary depending on the complexity and content of the records to be appraised. Based on the time the relevant staff spent on records appraisal, about 0.8 man-hour was required for appraising one liner meter of records in 2010.

#### ***Clearing the backlog of records appraisals***

9. In addition to handling new appraisal requests, GRS will redeploy resources to clear the records appraisal backlog. Since there are existing vacancies in the Archivist grade, GRS has already started a recruitment exercise to recruit Assistant Archivists and expects that new recruits will report for duty in the next few months. GRS will actively explore measures, including seeking additional resources as appropriate according to the established mechanism, with the aim of clearing the backlog in three years' time.

#### **IV. Destruction of records by the records centre before appraisal**

(paragraphs 4.10 and 4.11 of the Audit Report)

10. The time-expired records destroyed by the records centre in 2006 and 2007 related to the Home Affairs Department (HAD) and the Official Receiver's Office (ORO). A total of 326 records belonged to HAD and a list of these records is at Appendix II(a). The remaining records were files relating to bankruptcy and liquidation cases of individuals and companies from ORO. According to a microfilm of the records, these files involved 838 bankruptcy and 616 liquidation cases. A list of these cases, each case of which may involve more than one record, showing the names of individuals and companies concerned is at Appendix II(b).

11. As regards records belonging to ORO, PRO, after appraising the microfilm of the paper records, has confirmed the archival value of the microfilm records and stored them in GRS. Although the names of individuals and companies in bankruptcy and liquidation cases are public information, PAC may wish to consider whether it is appropriate to include such personal data in the PAC report to be published.

12. GRS has conducted thorough investigations into the two cases in question. As a result of the investigations and to prevent recurrence of similar cases, GRS has –

- (a) counseled the staff concerned and reminded them to strictly follow the relevant procedures for handling records disposal;
- (b) reviewed the internal procedures for handling records disposal; and
- (c) as a result of (b), introduced since March 2008 a disposal check form to control the disposal process by setting out clearly the steps and the responsible officers involved. To complement the introduction of the disposal check form, all correspondence pertaining to a particular records deposit have since been put in a single case file to facilitate monitoring and processing of disposal requests.



13. Since the implementation of the measures mentioned in paragraph 12 above, there has been no inadvertent destruction of records by the records centre. GRS will keep the enhanced internal controls under review to prevent destruction of records before their archival value has been appraised.

#### **V. Condition survey conducted in 2002**

(paragraph 4.15 of the Audit Report)

14. In the condition survey conducted in 2002, GRS' conservation adviser classified the condition of 1,611 sampled items into five categories, viz. "Very good", "Good", "Middle", "Deteriorated" and "Very deteriorated". In brief, a total of 529 items (32.8%) were classified as "Very good" or "Good", 643 items (39.9%) were classified as "Middle" and 439 items (27.3%) were classified as "Deteriorated" or "Very deteriorated". A breakdown is given below -

<b>Condition</b>	<b>No. of items</b>
▪ Very good	91
▪ Good	438
Sub-total	529 (32.8%)
▪ Middle	643 (39.9%)
▪ Deteriorated	363
▪ Very deteriorated	76
Sub-total	439 (27.3%)
<b>Total</b>	<b>1,611 (100.0%)</b>

15. For the 439 items (27.3%) classified as "Deteriorated" or "Very deteriorated", their condition and degree of deterioration are set out in the table below for reference -

Format of records	Degree of deterioration		Condition
	Deteriorated	Very Deteriorated	
Files	267	32	Browning of paper, surface dirt, stains, creases and folds, tears, deteriorating self adhesive tape, improperly glued on secondary support like paper, cardboard, textile, loss of paper support, acidic ink, rust, insect and pest damage, cockling, paper support becoming brittle
Books, Booklets & Pamphlets	75	42	
Single Sheet Paper	7	1	
Architectural Drawings	1	0	
Maps	1	0	
Periodicals & Newspapers	1	0	
Still Photographic Materials, e.g. photographic prints, negatives and transparencies	4	0	Fingerprints , greasy, discolouration, insect damage, mould, deteriorating self-adhesive tapes, rust, stains, surface dirt
Picture & Sound Recordings (audiotapes)	1	0	Improperly glued on secondary support: textile
Microfilms	4	1	Mould, insect damage
Motion Picture Film	2	0	Acidic smell, image faded
<b>Total:</b>	<b>363</b>	<b>76</b>	

16. In light of the preservation strategies formulated based on the findings of the condition survey in 2002, GRS has implemented the following measures apart from pursuing good handling and housekeeping practices -

- (a) housing each and every archive item in protective enclosures;
- (b) enhancing insect control through an integrated pest management

programme to monitor the activity level of pest (including insects, fungi and rodents) in all archive repositories;

- (c) strengthening GRS' professional capability to preserve and conserve archival items by entrusting the responsibility to the Curator grade since January 2008;
- (d) enhancing climatic monitoring of the repositories with the installation of a real-time data logging system since January 2010; and
- (e) embarking on another condition survey in October 2011 with a view to revisiting the various strategies and improving the preservation of GRS' holdings.

## **VI. Accessioning and description of archival records**

(paragraphs 4.27 and 4.30(a) of the Audit Report)

17. To facilitate users in identifying the required records from GRS' voluminous archival holdings, GRS arranges records description, i.e. describes the archival records according to international standards and prepares different kinds of finding aids, before they are made available for public inspection. Records description is a related and the most time-consuming part of records accessioning. GRS has since 2006 deployed a Senior Assistant Archivist (SAA) to conduct records description.

18. Details of the latest action plan to clear the backlog of archival records pending accessioning, in addition to handling new accessioning cases, are as follows -

- (a) adopting a simplified approach since July 2010 to records description so as to shorten the process while providing the core descriptive information to facilitate on-line search;
- (b) according priority to records which will reach 30 years soon, i.e. accessioning these records first so that they may be opened for public inspection upon their reaching 30 years old; and

- (c) speeding up the accessioning work through additional resources. A temporary research assistant has assisted in records accessioning work since November 2011.

19. GRS will actively explore measures, including seeking additional resources as appropriate according to the established mechanism, with the aim of clearing the bulk of the backlog in three years' time.

## **VII. Manpower of GRS**

20. The officer grade staff of GRS comes from three grades, i.e. the Archivist, EO and Curator grades. According to the existing distribution of work, Archivists are mainly responsible for the selection and management of archival records; EOs are responsible for records management while Curator Grade staff undertake the duties of conservation and preservation of archival records.

21. To enrich the professional knowledge and expertise of the Archivist, EO and Curator grades staff, GRS arranges records management training for them. Arrangements are made from time to time for them to attend international conferences and seminars so that they may share experience with overseas archival and records management institutions. Since 2008, a total of 12 overseas training programmes in the form of conference/visit/training have been arranged providing 15 training places for them. Consultancy service will also be engaged where necessary, particularly on specific issues relating to electronic records management.

22. Notwithstanding the above, GRS will continue to keep under review the establishment of different grades from time to time so as to ensure work quality and the provision of good service to the public for access to archival records. We will also review the work processes of GRS to see if its efficiency and effectiveness can be further improved. We will monitor the situation closely to ensure sufficient manpower to cope with the different types of records management work. We will also seek additional manpower as appropriate according to the established mechanism.


Administration Wing, Chief Secretary for Administration's Office  
December 2011

**Records Management Processes**

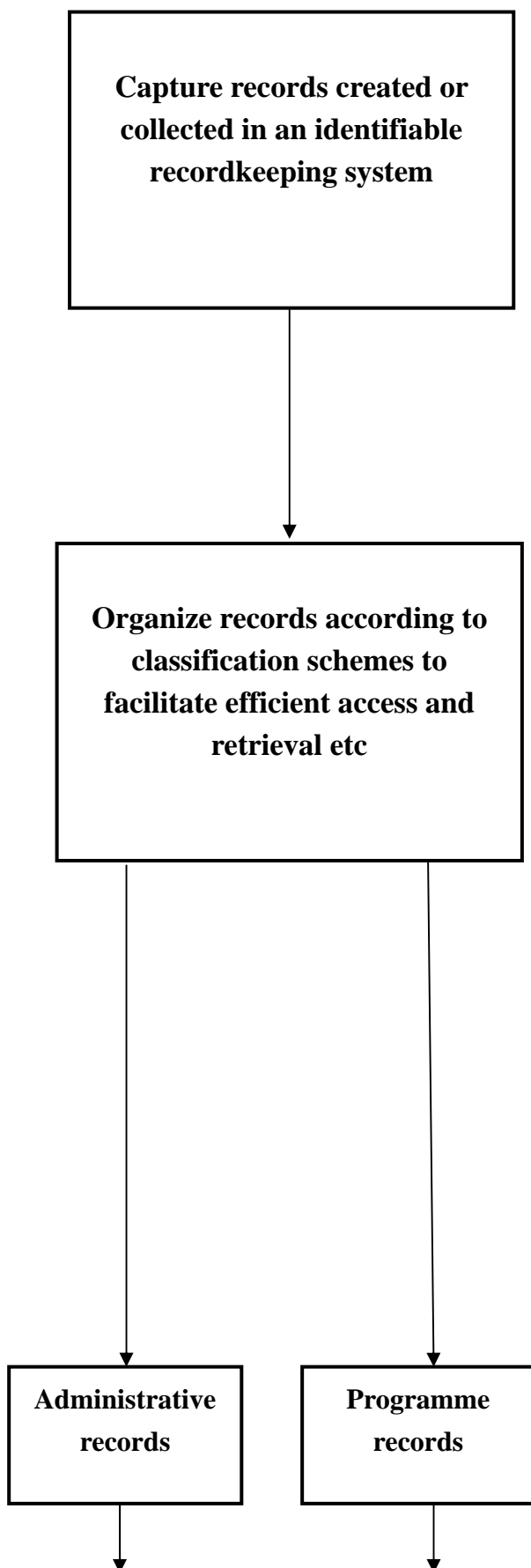
**I. Creation/Collection of Records by Bureaux and Departments(B/Ds)**

**Actions and Procedures**

**Create and collect records to meet operational, policy, legal and financial purposes, and document accurately and adequately government functions, policies, procedures, decisions and transactions**



- A record is any recorded information or data in any physical format or media created or received by a B/D during its course of official business and kept as evidence of policies, decisions, procedures, functions, activities and transactions.
- B/Ds should create and collect records to meet operational, policy, legal and financial purposes.
- B/Ds should identify their business functions and assess their information needs so as to create and capture adequate but not excessive records.
- The captured records should be complete: a record contains not only the content but also the structure (e.g. the structure of a memorandum covers its header and body) and contextual information (e.g. the contextual information of a memorandum includes sender, addressees, issue date, reference and security classification) necessary to document an official activity or transaction. It should be possible to understand a record in the context of the organizational processes that produced it and of other linked records.
- The following are examples of what records should be created and kept –
  - inward and outward communication with external persons and bodies directly relating to the functions and activities of the organization;
  - minutes and other records of meetings, consultations and deliberations pertinent to the decision-making process, formulation of policies and procedures or transaction of business;
  - major oral decisions and commitments; and
  - individual exercise of a discretionary judgment which has a major effect on the functions and activities of the organization.
- Records should be created in the most suitable medium and format that would facilitate access, use and preservation as required.
- For electronic mail records, B/Ds should print and file them in paper-based files.
- B/Ds should encourage the shared use of records as far as possible and minimize duplication and proliferation of unnecessary records.



### Actions and Procedures

- B/Ds should capture and maintain records created or collected in an identifiable recordkeeping system.
- A recordkeeping system is a manual or automated information system in which records are collected, organized and categorized to facilitate their retrieval, distribution, use, disposal or preservation. It should include at least a records classification scheme(s) with related index(es), a complete records inventory, records disposal schedules, vital records lists, and procedures and documentation for records coding, filing, retrieval, movement tracking, disposal as well as identification and protection of vital records.

### Actions and Procedures

- B/Ds should organize records according to classification schemes to facilitate efficient access and retrieval of records.
- A records classification scheme is a plan for logical arrangement of records according to one or more of the following: business functions, activities and contents of the records. It includes a coding system expressed in symbols (e.g. alphabetical, numerical and alpha-numerical) to show the logical relationship amongst the records.
- A proper classification scheme should have the following characteristics –
  - it should show linkages between individual records to provide a continuous record of activities;
  - it should enable records to be uniquely named and coded in a consistent manner over time;
  - it should properly determine security protection and appropriate access for different records;
  - it should be supported by vocabulary control to suit the complexity of the records of the organization; and
  - it should be current, comprehensive, logical, consistent and structured to provide an effective means for organizing and locating records.
- To ensure quality, a B/D's Departmental Records Manager (DRM) should approve new classification schemes and review existing classification schemes every two to three years according to the Government Records Service (GRS)'s guidelines.

**Organize  
administrative  
records  
according to  
GRS' standard  
classification  
scheme**



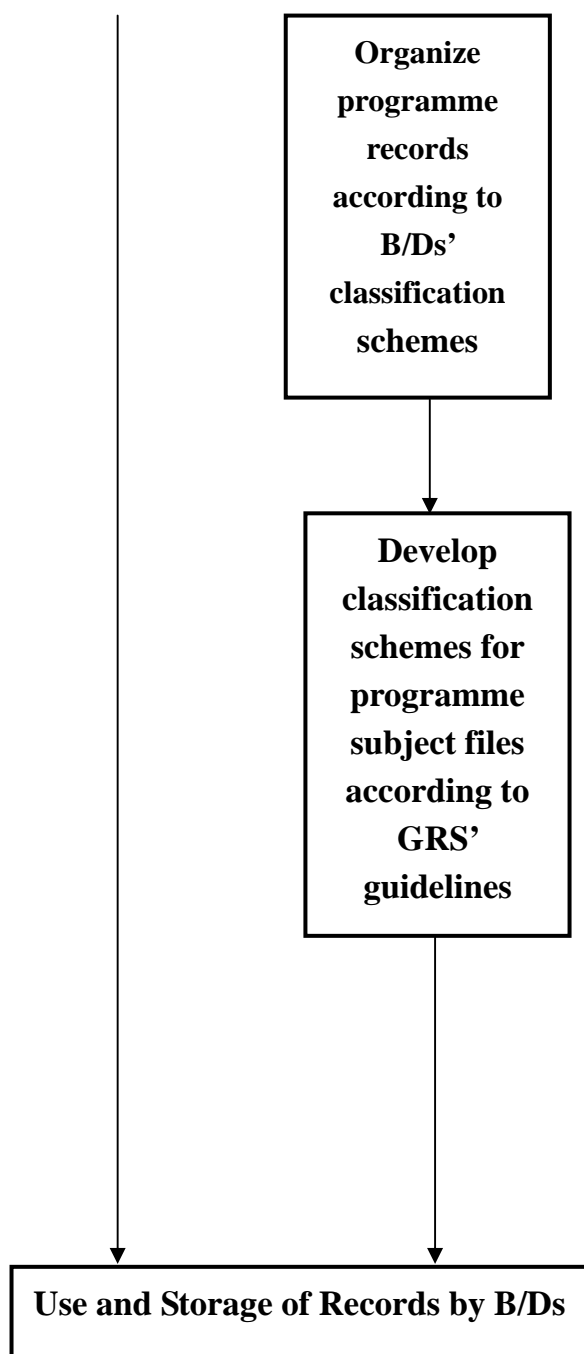
**Migrate the  
administrative  
subject files  
from the  
existing  
scheme(s) to  
the standard  
classification  
scheme  
according to  
GRS'  
guidelines**



### Actions and Procedures

- Administrative records are records created or received during the course of day-to-day administrative activities that deal with finance, accommodation, procurement and supply, establishment, personnel and other general administrative activities. Records of this nature are common to B/Ds.
- B/Ds should organize administrative records according to the standard records classification scheme developed by GRS.
- The standard scheme also facilitates B/Ds to adopt the set of General Administrative Records Disposal Schedules (which resembles the structure of the standard scheme to group disposal schedules) developed by GRS to dispose of time-expired administrative records.
- The standard classification scheme comprises six schedules, viz. Administration, Accommodation and Facilities, Equipment and Supplies, Finance, Personnel as well as Information Systems and Services, which provide primary subject terms for classifying administrative records by subjects.
- To adopt the standard classification scheme, B/Ds should take the following steps –
  - separate administrative subject files from other files (e.g. programme records not covered by the standard classification scheme);
  - match the existing administrative files with the appropriate primary subject terms and create secondary or lower subject terms to facilitate more precious classification of records as appropriate;
  - code the new files with appropriate file reference;
  - prepare a list of new files;
  - fix the implementation date for adopting the standard classification scheme; and
  - implement the standard classification scheme.
- B/Ds should adopt the standard classification scheme not later than April 2012.

### Actions and Procedures



- Programme records are records created or received by a B/D whilst carrying out the primary functions, activities or mission for which the B/D was established. Records of this nature are unique to each B/D.
- B/Ds should make reference to GRS' guidelines to develop its own classification scheme(s) for programme records.
- The procedures for developing a subject records classification scheme for programme records include –
  - understand the organization and functions of the B/D with a view to grouping and maintaining programme records according to functions and activities to which they relate;
  - itemize records to be classified by subject which is easily understandable by users;
  - reconcile the preliminary subject list with departmental guidelines to ensure consistency and quality of the scheme;
  - define topic coverage clearly to facilitate accurate classification;
  - prepare draft subject list for discussion with users and finalize the subject list;
  - select and assign file reference to easily identify files and show logical relationship between files; and
  - prepare alphabetical index which helps users to identify a suitable subject term for classifying a record as appropriate.



## II. Use and Storage of Records by B/Ds

### Actions and Procedures

#### **Maintain an accurate records inventory**

- An accurate inventory of records is a prerequisite for good records management because it facilitates efficient control and retrieval of records and provides basic information to support records management activities (e.g. establishing records disposal schedules).
- B/Ds should prepare and maintain an accurate inventory of records and update the inventory regularly to cater for changes.
- A records inventory on files should at least include the following information –
  - file title;
  - file reference number;
  - dated opened and dated closed; and
  - storage location.

### Actions and Procedures

#### **Store records in appropriate environment and facilities to facilitate access and protection**

- B/Ds should store their records in such a manner so as to facilitate user access and protection from unauthorized access, use, disclosure, removal, deterioration, loss or destruction.
- For storing classified records, B/Ds should follow the provisions in the Security Regulations.
- Records should be stored in an environment protected from dirt, insects and rodents, smoke, chemical exhausts, and away from direct sunlight and risk of water damage (e.g. under water pipes, near unblocked windows). Records storage area should be kept clean and smoking free. There must be an effective fire detection and suppression system installed in the records storage area.
- Records should be stored in equipment and facilities (e.g. cabinets, shelves) that are appropriate to the records format, size and other physical conditions.
- Records having long-term value (30 years or over) should be stored in an 24-hour air-conditioned environment with stable and controlled temperature and humidity, e.g. for paper-based records: temperature 20°C +/- 2°C and relative humidity 50 % +/- 5 %.

**Provide records to authorized users for access and conducting business**



**Track movement of records**



**Monitor bulk relocation of records to minimize the risk of loss**



#### Actions and Procedures

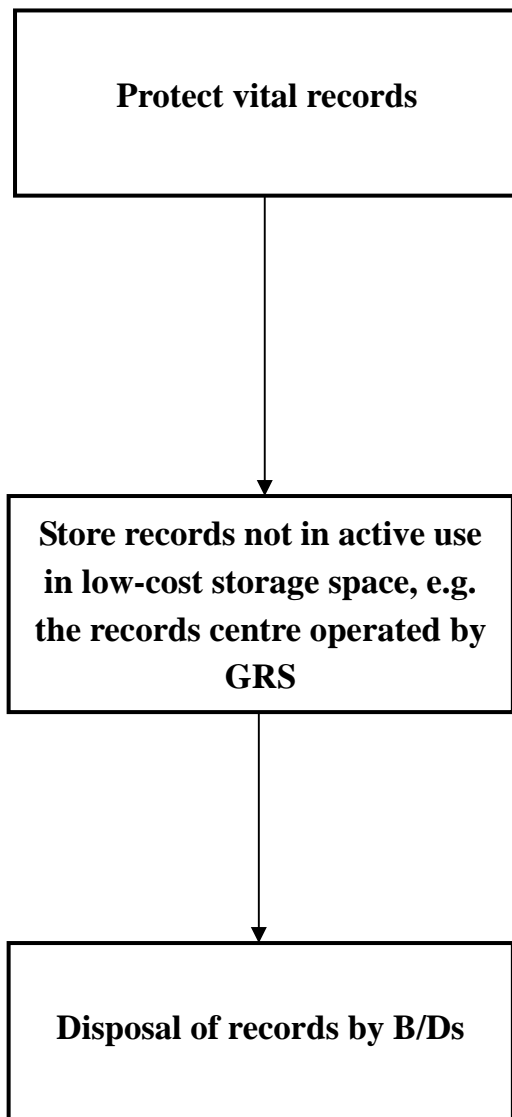
- B/Ds should adopt an effective means to retrieve records for authorized users in a timely manner.
- B/Ds should process and transmit classified records according to the Security Regulations.
- B/Ds should provide public access to their records according to the Personal Data (Privacy) Ordinance and Code on Access to Information.

#### Actions and Procedures

- B/Ds should track the physical movement of records to ensure that the records can always be located when required.
- B/Ds should adopt effective means (e.g. a bar-coding system) to track the movement of records.
- B/Ds should report loss of records cases to GRS immediately. The B/D concerned should investigate the case, implement improvement measures and consider taking disciplinary action or other administrative action against the staff concerned. GRS will consider the B/D's findings and actions and provide advice as appropriate.

#### Actions and Procedures

- B/Ds should make the following arrangement during bulk relocation of records to minimize the risk of loss –
  - designating an officer not below the rank of Executive Officer II or equivalent to oversee the task;
  - taking stock before the relocation exercise;
  - conducting a file inventory check after relocation;
  - documenting the inventory check; and
  - updating the new storage location immediately afterwards.



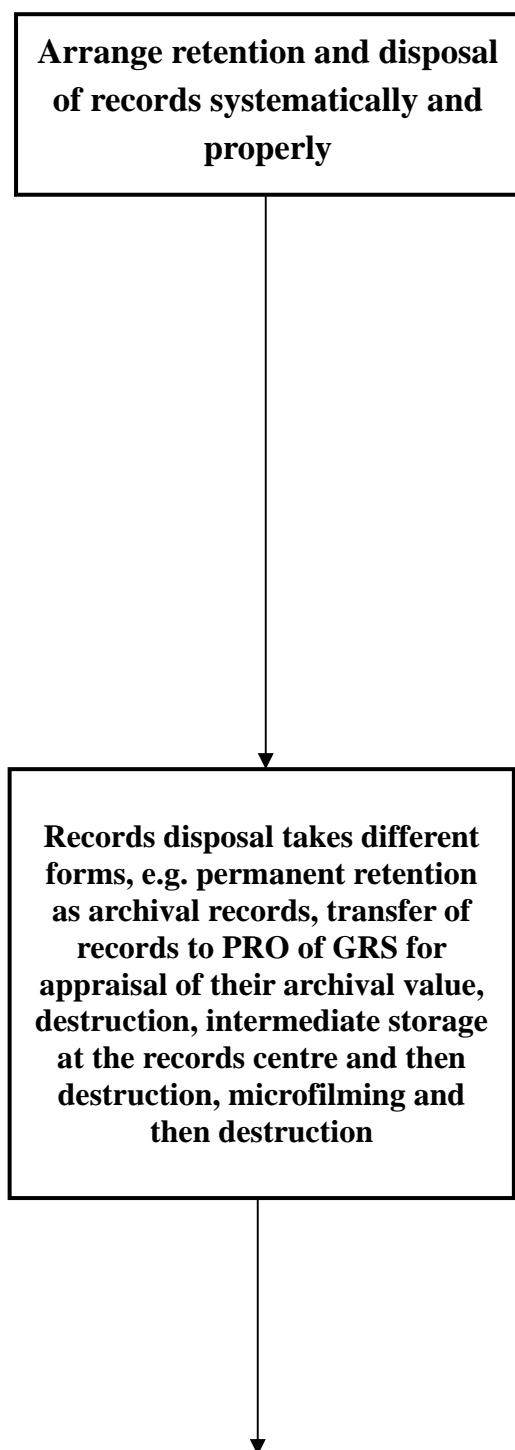
#### Actions and Procedures

- Vital records are those records containing information essential to the continued and effective operation of a B/D during and after an emergency or disaster.
- B/Ds should identify and protect their vital records by way of duplication or off-site storage to ensure uninterrupted operation of major business functions.
- B/Ds should draw up an action plan not later than April 2012 to establish and implement a vital records protection programme.

#### Actions and Procedures

- For records not in active use, B/Ds should consider storing them in low-cost off-site space, e.g. the records centre operated by GRS.

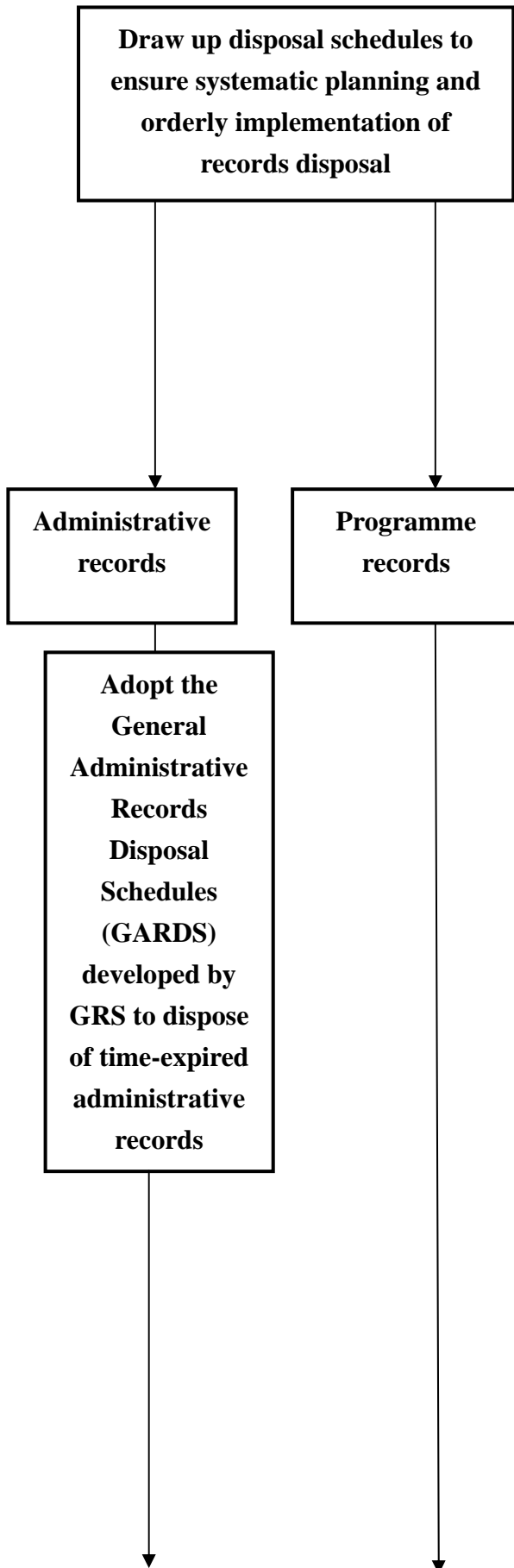
### III. Disposal of Records by B/Ds



#### Actions and Procedures

- Records accumulate and grow in the course of business. If records are not properly and systematically disposed of, useful and unwanted records will mix together making records retrieval difficult and time-consuming and hence affect operational efficiency. Furthermore, as records continue to build up, more resources will have to be set aside to meet storage needs.
- B/Ds should therefore properly plan and implement records disposal to achieve the following –
  - records are kept the right length of time to meet the purposes they are created and in compliance with laws and regulations;
  - unnecessary records accumulated is reduced, and broader and more effective use of existing records is promoted;
  - archival records are identified and preserved through transfer to the Public Records Office (PRO) of GRS; and
  - timely access to records is facilitated.
- Records disposal means the action taken on records no longer in active use which have little or no values to B/Ds. Records disposal takes different forms, e.g. permanent retention as archival records, transfer of records to PRO of GRS for appraisal of their archival value, destruction, intermediate storage at the records centre and then destruction, or microfilming and then destruction.
- GRS has the overall responsibility for authorizing the disposal of government records through approving records disposal requests and records disposal schedules.
- B/Ds must obtain the prior agreement of the GRS Director before they destroy any government records. B/Ds should transfer their records having archival value to PRO of GRS.

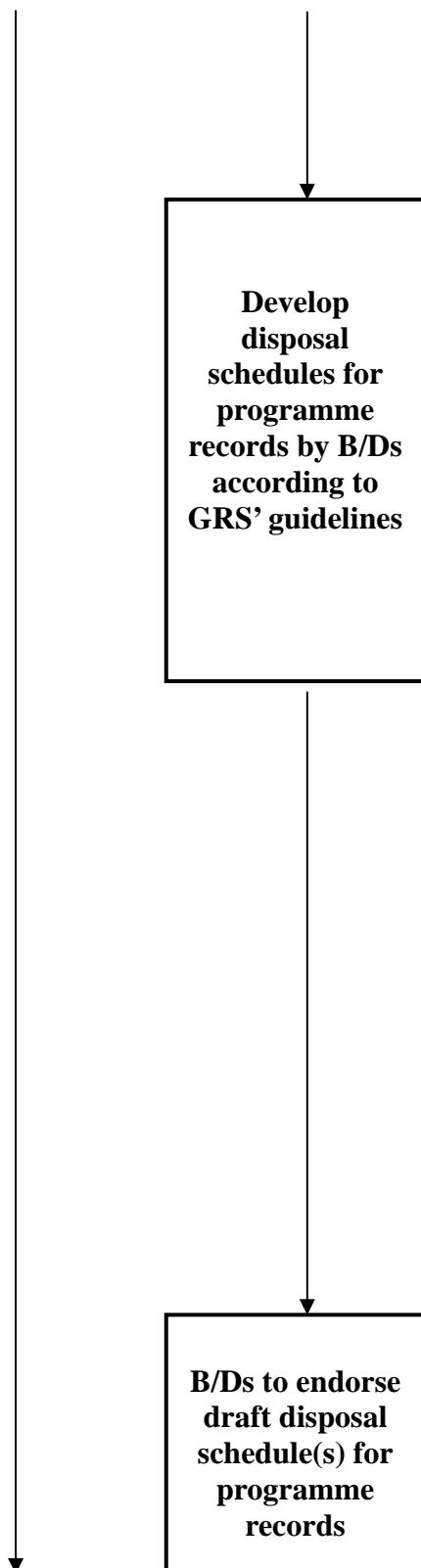
### Actions and Procedures



- A records disposal schedule is a systematic listing or description of B/D's records which indicates the arrangements to be made for their custody, retention period and disposal action.
- To ensure systematic planning and orderly implementation of records disposal after records have been kept the right length of time to meet the purposes they are created and in compliance with legal or statutory requirements, B/Ds should draw up records disposal schedules according to GRS' guidelines.
- B/Ds should prepare and forward to GRS draft disposal schedules covering all their programme records not later than April 2012.

### Actions and Procedures

- Administrative records are records created or received during the course of day-to-day administrative activities that deal with finance, accommodation, procurement and supply, establishment, personnel and other general administrative activities. Records of this nature are common to B/Ds.
- B/Ds should adopt the General Administrative Records Disposal Schemes (GARDS) developed by GRS to dispose of time-expired administrative records. PRO of GRS has incorporated its archival requirements (e.g. transfer of records to PRO for appraisal of their archival value) into GARDS for B/Ds' compliance.
- GARDS comprises six schedules, namely Administration, Accommodation and Facilities, Procurement and Supplies, Finance and Accounting, Human Resources as well as Information Systems and Services. The subject groups under each schedule set out the retention and disposal requirements of the relevant records.
- The retention and disposal requirements cover the retention period and disposal action (including transfer of records having potential archival value to PRO for appraisal and destruction) of time-expired administrative records.

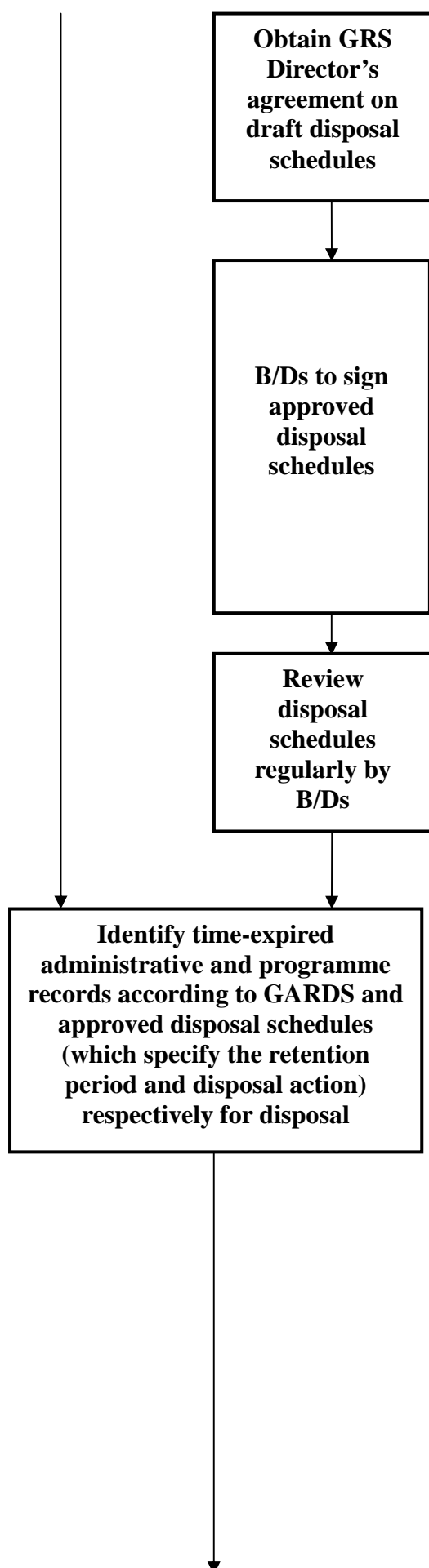


### Actions and Procedures

- Programme records are records created or received by a B/D whilst carrying out the primary functions, activities or mission for which the B/D was established. Records of this nature are unique to each B/D.
- B/Ds should, in consultation with GRS, develop disposal schedules for their programme records according to GRS' guidelines.
- The procedures for developing disposal schedules for programme records include –
  - conduct a records survey to inventory all the programme records in the B/D;
  - group records into records series which cover records created or received for specific activities, arranged according to a particular classification scheme;
  - identify disposal classes within a records series. A disposal class is a group of records in a records series having the same retention period and disposal action;
  - consider the following retention values of records by disposal class –
    - administrative value
    - operational value
    - legal value
    - fiscal value;
  - assign retention period; and
  - PRO of GRS will appraise the archival value of records and advise the B/D to assign appropriate disposal action, e.g. destruction, permanent retention by PRO, appraisal by PRO.

### Actions and Procedures

- Draft disposal schedules should be considered and endorsed by an officer not below the rank of Senior Executive Officer or equivalent of the B/D.



#### Actions and Procedures

- B/Ds should forward their draft disposal schedules for GRS Director's agreement. During the process, GRS will consider the draft disposal schedule and appraise the archival value of the records and discuss with the B/Ds concerned regarding the proposed retention period and disposal action with a view to finalizing the disposal schedules.

#### Actions and Procedures

- Finalized disposal schedules approved by GRS Director should be signed by an officer not below the rank of Senior Executive Officer or equivalent of the B/D.

#### Actions and Procedures

- B/Ds should review their disposal schedules at least once every five years to see whether amendments are required in light of changing circumstances.
- GRS has issued guidelines to B/Ds for conducting such review.

#### Actions and Procedures

- Regular disposal of records facilitates easy retrieval of records in active use, and minimizes costs for maintaining and storing records. Accordingly, it is necessary to arrange prompt disposal of time-expired records which have been retained for the period specified in the GARDS for administrative records and the approved disposal schedules for programme records and are ready for disposal.
- B/Ds should conduct review to dispose of time-expired records at least once every two years.
- When reviewing records for disposal, B/Ds should ensure that the retention and disposal requirements specified in the respective disposal schedules have been met, including –
  - the records have been kept the right length of time to meet the purposes they are created and in compliance with laws and regulations;
  - there is no outstanding action on the records concerned; and
  - the records concerned are ready for disposal.

**B/Ds to endorse disposal of records in writing**



**Obtain GRS Director's prior agreement on disposal/ destruction of any government records**



**Arrange disposal of time-expired records after obtaining GRS Director's agreement**



#### Actions and Procedures

- For proper internal control, disposal of records including destruction of records, should be considered and endorsed in writing by an officer not below the rank of Senior Executive Officer or equivalent in the B/D.

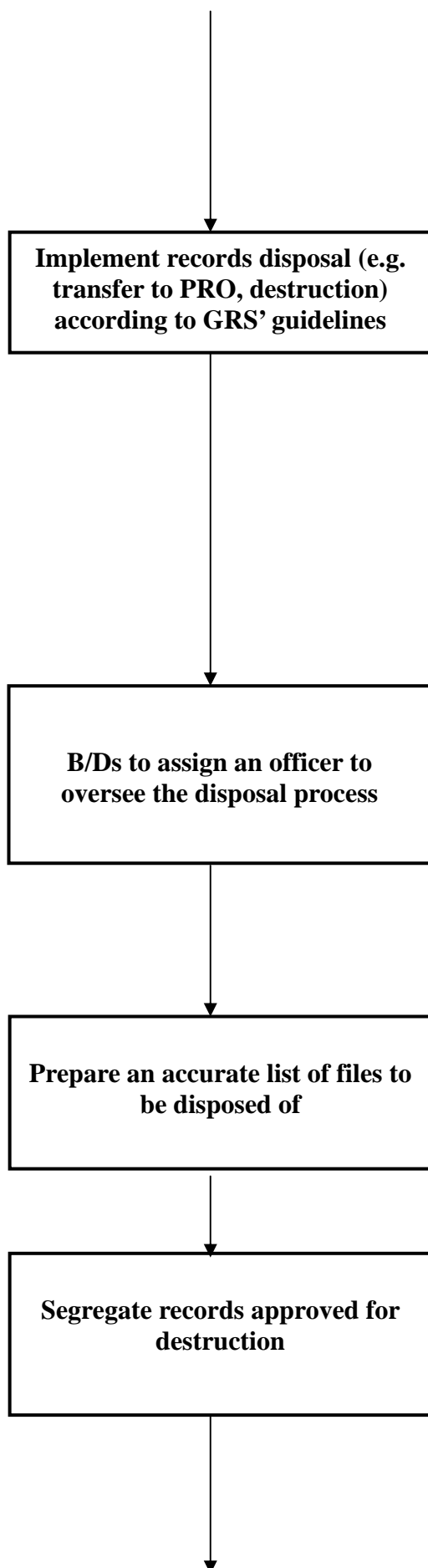
#### Actions and Procedures

- B/Ds must obtain the prior agreement of GRS Director before they destroy or dispose of any government records. This is to safeguard against premature disposal of records and destruction of records having archival value.
- When seeking GRS Director's agreement, B/Ds should provide information on the records concerned and confirm that the retention and disposal requirements specified in the respective disposal schedules have been met, including –
  - the records have been kept the right length of time to meet the purposes they are created and in compliance with laws and regulations;
  - there is no outstanding action on the records concerned; and
  - the records concerned are ready for disposal.

#### Actions and Procedures

- B/Ds should arrange disposal of time-expired records in accordance with the disposal action specified in the respective disposal schedules after obtaining GRS Director's agreement. The three most common disposal actions are (i) immediate destruction; (ii) transfer of records to PRO of GRS for permanent retention as archival records; and (iii) transfer of records to PRO of GRS for appraisal of their archival value before destruction.
- For records to be transferred to non-government bodies, due to such reasons as corporatization, privatization or outsourcing, the B/D concerned should send a list of records pending transfer to the GRS Director for prior agreement so that appropriate arrangements can be made for records having archival value for retention in PRO of GRS. This list should group records by disposal schedule and





- includes the information on the files (i.e. file title, file reference number, date opened and date closed).
- B/Ds should not transfer any government records outside the Government unless with the prior agreement of the GRS Director.

#### Actions and Procedures

- B/Ds should ensure that the disposal process is properly supervised and complies with the records disposal procedures according to GRS' guidelines.
- B/Ds should report unauthorized destruction of records cases to GRS immediately. The B/D concerned should investigate the case, implement improvement measures and consider taking disciplinary action or other administrative action against the staff concerned. GRS will consider the B/D's findings and actions and provide advice as appropriate.

#### Actions and Procedures

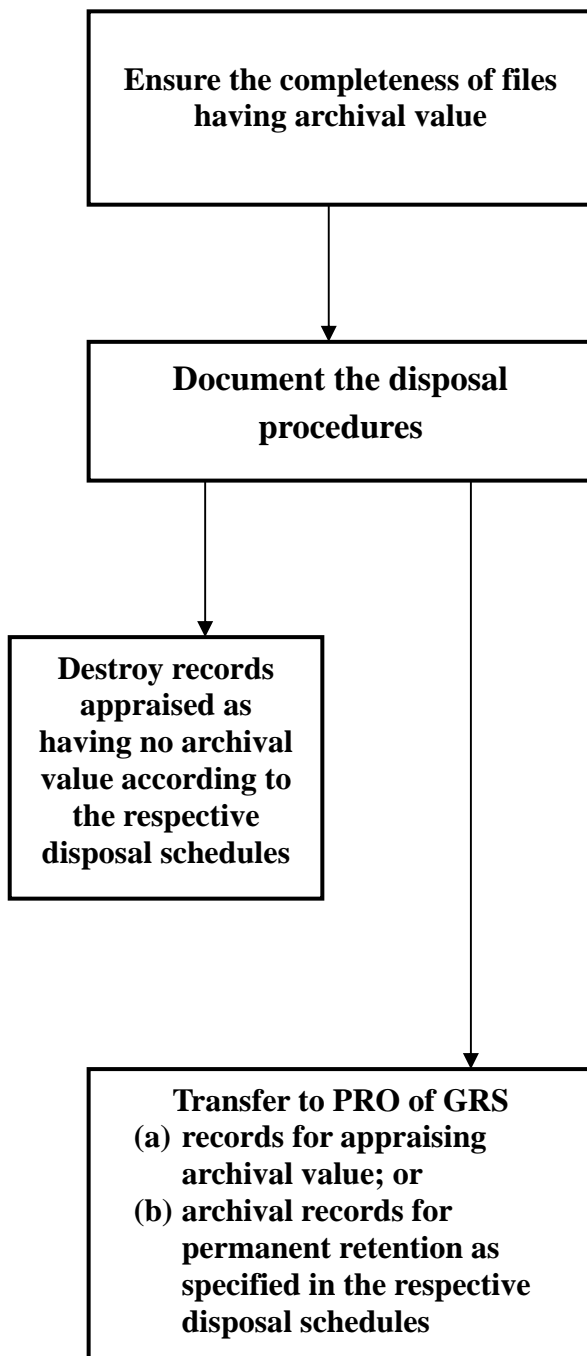
- To minimize the risk of inadvertent unauthorized destruction of records during the disposal process, B/Ds should designate an officer not below the rank of Executive Officer II or equivalent to ensure that the disposal process is properly supervised and the records disposal procedures are complied with.

#### Actions and Procedures

- B/Ds should prepare a list of files to be disposed of.
- Files to be disposed of should be physically checked against the list to ensure its accuracy.

#### Actions and Procedures

- B/Ds should task an officer to identify those records pending disposal and check to ensure that records approved for destruction do not mix up with those pending approval.



#### Actions and Procedures

- For files which should be transferred to PRO of GRS for appraisal of archival value or for permanent retention, B/Ds should check the contents of the files to ensure that no enclosures or minute sheets are missing.

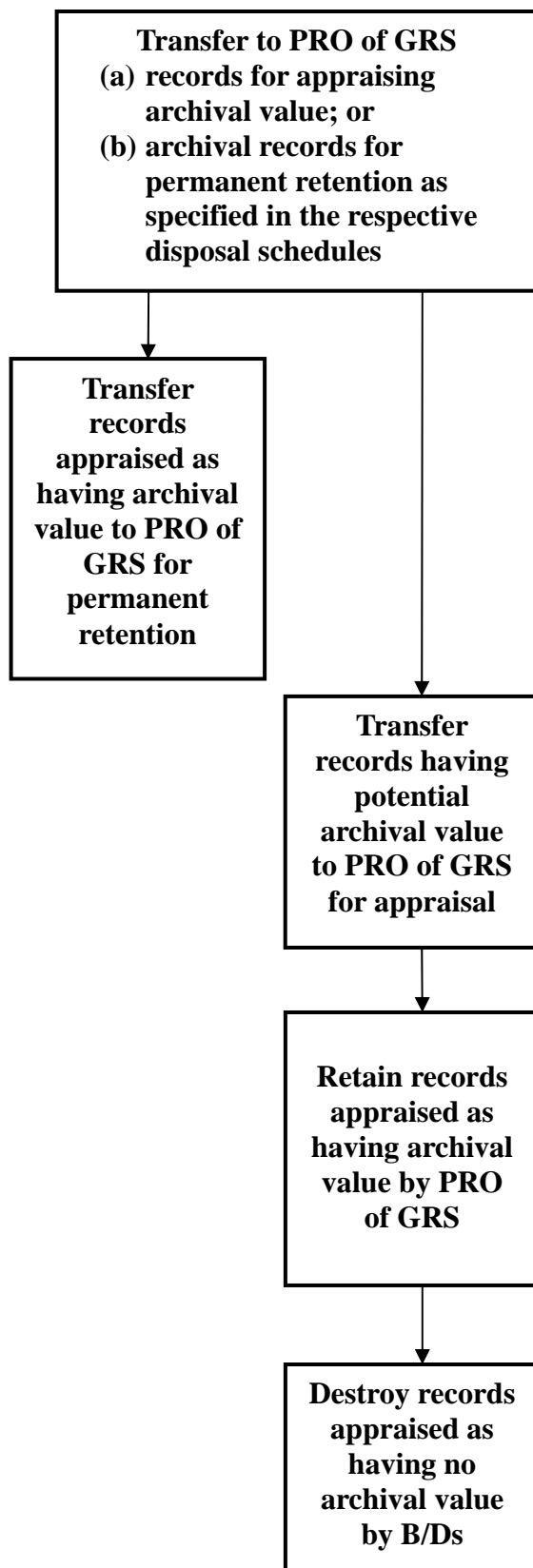
#### Actions and Procedures

- B/Ds should document the checks of the disposal procedures for accountability.

#### Actions and Procedures

- For files/records appraised as having no archival value according to the respective disposal schedules (i.e. disposal action is destruction), B/Ds should arrange physical destruction of the records through Government Logistics Department's paper recycling contractor as appropriate and maintain a list of records destroyed.
- B/Ds should destroy classified records according to the Security Regulations.

#### IV. Transfer of Records to GRS by B/Ds



##### Actions and Procedures

- B/Ds should transfer records to PRO of GRS for permanent retention as archival records or appraisal of archival value as specified in the respective disposal schedules.

##### Actions and Procedures

- B/Ds should systematically transfer its archival records to the control of PRO of GRS.
- When transferring archival records to PRO, B/Ds should provide a transfer list containing information on original file reference, description of records and covering dates and advise the access status of classified records.

##### Actions and Procedures

- B/Ds should forward the list of records having potential archival value to PRO of GRS for examination. The list should contain information on original file reference, description of records and covering dates.

##### Actions and Procedures

- Based on the paper appraisal as explained above, PRO may request B/Ds to forward selected records for physical appraisal.
- B/Ds' records appraised as having archival value will be permanently retained by PRO. For classified records, B/Ds should advise the access status.

##### Actions and Procedures

- B/Ds should destroy those records appraised as having no archival value after obtaining GRS Director's agreement.

**Public Account Committee  
Public Hearing on 1 December 2011**

**Opening Remarks of the Director of Water Supplies**

Water Supplies Department (WSD) accepts the recommendations of the Director of Audit's Report No. 57 Chapter 12 (the Report), some of which well support the new initiatives being pursued by the WSD progressively in light of the development of international best practices and work priorities.

2. The Committee may wish to note that the volume of unauthorised water consumption is only a notional estimate as specifically highlighted in the Report. The reason is that such consumption by nature cannot be measured until discovery of the unauthorised use, which should however be curbed as soon as it is identified. The adoption of a notional estimate with regard to local conditions is in fact the international best practice. Literature review revealed that figures of 0.5% to 4.3% have been used in the Region. The WSD adopts 2%, a figure close to the average of the range, for estimation purpose, in view of the state of the development of Hong Kong.

3. Unauthorised uses could be transient in nature, without permanent plumbing fixtures, undertaken within private areas or even concealed with concrete covers and the like. The detection of unauthorised uses is therefore no easy task, relying very much on inspections by the Prosecution Unit of the WSD and reports by the WSD front-line colleagues, such as meter readers and customer service inspectors, of irregularities spotted during their daily work of meter reading and inspection of plumbing of private parties following complaints, for example about water seepage. Referral by members of the public is another important source of information for revealing unauthorised uses. The WSD agrees that more extensive promotion and education activities and collaboration with different sectors of the Community would help in tapping the supporting resources of the Community, in particular the respective management authorities/agencies or work parties, to widen the detection webs for unauthorised uses. These could help to facilitate follow up actions by the WSD and the handling of the issue in a more cost effective manner.

4. In 2011, the WSD has started to adopt a risk-based approach for detecting possible unauthorised water consumptions through comparison of the flow data registered by flow meters of individual district meter areas

with the aggregated meter consumption figures of individual consumers in the corresponding areas. Discrepancies between these two sets of figures indicate abnormalities in consumption. The WSD will then take follow up investigation, site inspection and prosecution action, if unauthorised use is identified. The WSD will also explore the possibility of using data mining techniques to evaluate changes of individual consumers' water usage and, if possible, compare them with those of similar types of consumers as an aid towards identifying suspected unauthorised uses.

5. On the promotion of collaboration, the WSD has already liaised with the Government works departments and Food and Environmental Hygiene Department for control of unauthorised water consumption within their works sites and premises. The Department has also issued circulation letters to all estate management companies to solicit their support against unauthorised uses. The WSD is having discussions with the plumbing associations and institutions, and contractors association for collaboration on reporting unauthorised uses. Publicity and education against unauthorised uses will also be stepped up, riding on the extensive promotion activities of the Department on water conservation.

6. With regard to the concern on the accuracy of meters and the replacement programme of old meters, the WSD would like to advise the Committee that the mechanical meters being used by the WSD are the most cost-effective type of meters for measuring consumption, though upon aging they tend to under-register. The WSD aims to continue with the replacement of the 15 mm diameter meters, which are mainly used for domestic consumers, at 12-year intervals and the medium and large size meters, which are mainly used for non-domestic consumers, at intervals of 7 and 4 years respectively. The replacement intervals are set on the basis of cost-effectiveness consideration which, in essence, is to replace an old meter when the possible revenue forgone due to under-registration exceeds the cost of replacement. With the meter procurement contracts specifying an accuracy limit of  $\pm 2\%$  and the Waterworks Regulations specifying an accuracy limit of  $\pm 3\%$ , the 2% under-registration of the whole meter fleet as mentioned in the Report should be regarded as performance within the allowable limits and the corresponding under-registration, an allowable operational tolerance rather than an under-recovery of revenue.

7. The WSD has just completed a new round of study on the accuracy of the 15 mm diameter meters and is embarking on a similar study on the accuracy of the medium and large size meters. The percentage of under-registration of the whole meter fleet is now down to -1.6%, and for the

15 mm diameter meters, in particular, to -0.8%.

8. The effort of the WSD in rejuvenating the meter fleet is demonstrated by the progressive increase in the percentage of meters with service year within the optimum values. The percentage has increased from about 72% in 2007 to about 95% in 2011 for 15 mm diameter meters; about 15% in 2007 to about 71% in 2011 for medium size meters and about 5% in 2007 to about 75% in 2011 for large size meters. At present, about 230 000 meters are being replaced each year at a cost of some \$50 million.

9. Focus on water meter replacement in the past years has been placed on the rejuvenation of the largest number of water meters for increasing the percentage of the meter fleet within the optimum service life. With the efforts in recent years, the WSD considers that more attention can now be paid to replacing meters with high service years or high recorded consumption left over in the previous rounds due to different complications.

10. For the large size meters, the WSD is in parallel exploring the cost-effectiveness of using more durable electro-magnetic (EM) meters. For reference, the purchase cost of an EM meter of 300 mm diameter has come down to about \$40 000. Although the EM meter is still about seven times more costly than a mechanical meter, the purchase cost of which is about \$5 000, it is gaining popularity due to its durability and lower susceptibility to accuracy deterioration.

11. Replacement of aged meters has occasionally been held up by the need to sort out various issues such as blockage of access, agreement of a suitable time slot for stoppage of water supply for meter replacement, awaiting the consumer to repair the dilapidated plumbing within his premises, and on occasions pending the undertaking of building renovation works. To facilitate meter replacement under such circumstances, the WSD is considering the viability of applying for warrant from the magistracy as needed for entry into the premises to effect sufficient works including the clearance of obstruction to access, repair to plumbing and building fabrics for meter replacement with all costs so incurred recovered from the parties concerned.



本署檔案 Our Ref.: (2) in WSD TC 10/2011 (Pt. 9)

來函檔號 Your Ref.: CB(4)/PAC/R57

19 December 2011

**(By fax 2840 0716)**

Ms Lily SZE  
Clerk, Public Accounts Committee  
Legislative Council

Dear Ms SZE

**The Director of Audit's Report on the  
results of value for money audits (Report No. 57)**

**Water losses from unauthorised consumption and  
inaccurate metering (Chapter 12)**

I refer to your letter of 8 December 2011 requesting for supplementary information arising from the Public Accounts Committee's public hearing on 1 December 2011.

I have the pleasure to provide the required information as follows.

- (a) *regarding the eight categories of unlawful water taking cases as set out in Table 2 in paragraph 2.14 of the Director of Audit's Report ("the Audit Report"), please provide an analysis of the reasons giving rise to unlawful water taking in respect of each of the eight categories and the specific measures that the Water Supplies Department ("WSD") has taken/will take to address the unlawful water taking problem in respect of each category, particularly the "Flushing" category;*

The reasons applicable to all the eight categories of unlawful taking of water are:

香港灣仔告士打道七號入境事務大樓四十八樓

48/F, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong

電話號碼 Tel. : (852) 2829 4400

傳真號碼 Fax : (852) 2824 0578

電子郵件 E-mail : [wsdinfo@wsd.gov.hk](mailto:wsdinfo@wsd.gov.hk)

互聯網址 Web : <http://www.info.gov.hk/wsd/>

- (i) avoidance of water charges;
- (ii) expediency for maintaining water supply pending the repair of inside services of the registered consumers; or
- (iii) provision of water supply prior to the effecting of an authorised supply,

with (i) as the predominant reason for cases related to trade, domestic, cleansing, and irrigation, fire services and air-conditioning; (ii) for cases related to flushing; and (iii) for cases related to construction.

A two-prong approach is being adopted by the Water Supplies Department (WSD) to deal with unauthorised water losses - by detection and prosecution and by promotion and education against unauthorised uses. The WSD will strengthen work on these two areas by exploring new detection techniques and enhancing collaboration with concerned authorities and other sectors of the Community.

In 2011, the WSD has started to adopt a risk-based approach for detecting unlawful taking of water through comparisons of flow data of district meters with aggregated consumption figures of individual consumers in the corresponding areas. The WSD is also taking steps to explore the use of data mining techniques to evaluate changes of individual consumers' water usage in a bid to detect unauthorised uses. The WSD will explore the expansion of the "Quality Water Recognition Scheme for Buildings" to cover flushing water systems so as to improve the maintenance of such systems by the estate management companies, hence reducing the risk of system breakdowns and thereby, the situation of unlawfully tapping the fresh water resource for flushing.

The WSD will collaborate with different sectors of the Community through promotion and education activities for tapping the supporting resources of the Community to widen the detection webs for unlawful taking of water. In this regard, the WSD has already liaised with the Government works departments and the Food and Environmental Hygiene Department for prevention of unauthorised water uses within their works sites and premises and circulated letters to all estate management companies to solicit their support against unauthorised water uses. The WSD is also in discussions with the plumbing associations and institutions, and contractors association for collaboration on reporting unauthorised water uses. Relevant publicity and education programmes will also be stepped up, riding on the extensive promotion activities on water conservation.



- (b) *the number of cases in which the WSD had taken enforcement actions with a warrant and the circumstances of the cases in each of the years of 2008, 2009 and 2010;*

The number and the circumstances of the cases are shown in the table below:

<b>Year</b>	<b>No. of Cases</b>	<b>Circumstances of the Cases</b>
2008	0	Not applicable
2009	3	All concerned suspected stealing of fresh water for flushing.
2010	3	Two cases concerned suspected stealing of fresh water for flushing. The other concerned suspected stealing of fresh water for use in a restaurant.

- (c) *it was mentioned at the public hearing that the WSD had discussed the level of penalty of Case 1 (in paragraph 2.24(a) of the Audit Report) with the Department of Justice (“DoJ”) for its advice on lodging an appeal. Please provide a summary of the WSD’s discussion with the DoJ on the appeal and the reasons for not lodging the appeal subsequently;*

Upon conviction of the defendant company in Case 1 on 9 September 2009, the WSD considered that the sentence was unduly lenient and an application for a review against the sentence was made to DoJ. After reviewing the circumstances taking into account the average fine of concerned offences in the past and the actual fine imposed on the defendant company in this case, DoJ advised on 15 September 2009 that they did not agree that the case warranted a review of the sentence.

- (d) *it was mentioned at the public hearing that there were unlawful water taking cases at construction sites in which the employees of the contractors, instead of the contractors, were prosecuted and this might create an opportunity for the contractors to evade the legal liability. You undertook to review the WSD’s existing approach in dealing with similar cases and consider how such a loophole could be plugged. Please advise the Committee of the measures that the WSD will take to address the problem;*

The WSD will solicit assistance of the Development Bureau to highlight in the contractor administration procedures that any unauthorised water uses in the contractors' works sites will be reflected in the contractors' performance reports as deterrent against unauthorised water uses.

The WSD will also seek legal advice on how an employee's stealing of water can be imputed to his/her employer based on the evidence collected.

- (e) *how the WSD will improve the training, in terms of frequency, content and format, etc. for WSD officers on handling suspected unlawful water taking cases (paragraph 3.5 of the Audit Report refers);*

The Prosecution Unit (PU) of the WSD will arrange the uploading of all training materials, including conviction cases, onto the WSD intranet for web-based training.

A half-day training course will also be provided to the staff of relevant government departments once a year.

The training needs and modes will be reviewed in December 2012 for further enhancement as necessary.

- (f) *according to paragraph 3.23 of the Audit Report, in some cases requiring termination of unauthorised connections, the Prosecution Unit took 11 to 25 working days after the last inspections to report the findings, and the district officers of the Customer Services Branch took more than 10 working days to terminate the connections after receiving notifications from the Prosecution Unit. It was mentioned at the public hearing that the WSD would consider setting time pledges for completing the different steps involved in handling cases of termination of unauthorised connections. Please inform the Committee of the details of the time pledges to be set;*

Upon completion of an investigation by the PU and if terminating an unauthorised connection is required, the PU will notify the Customer Services Branch (CS), within three working days from the date of completion of investigation, for follow up actions.

The WSD will also set target on the time limit to undertake the following activities:

- Issue notice (Form K) to the offender requiring the offender to engage a licensed plumber to carry out rectification work to terminate the unauthorised connection.
- Carry out inspection after the period allowed for rectification in the Form K to confirm if the work required has been complied with.
- Issue disconnection notice (Form J) if the unauthorised connection has not been terminated.
- Carry out inspection after the period allowed for rectification in the Form J and terminate the unauthorised connection as necessary.
- Apply for an entry warrant from the Magistrate if the offender obstructs the WSD staff from making an inspection or terminating the unauthorised connection.

(g) *in connection with paragraph 3.23 of the Audit's Report, please provide the number of existing district officers of the Customer Services Branch who are responsible for handling cases of termination of unauthorised connections;*

The Customer Services Branch has an establishment of 250 staff providing non-accounts-related services to the Community. Other than handling cases of termination of unauthorised connections that amounted to around 0.1% of the workload, they are also responsible for installation and replacement of water meters; attending complaints from customers on water supplies; disconnecting and reconnecting water supplies; and providing emergency temporary water supplies etc.

(h) *it was mentioned at the public hearing that the WSD would consider setting a timetable for replacement of large water meters which had exceeded their optimal service lives (paragraph 4.20 of the Audit Report refers). Please provide the timetable;*

The WSD plans to acquire resources for replacing the large water meters following the schedule below:

<b>Age (Year)</b>	<b>Number of meters in service as at July 2011 (No.)</b>	<b>Target date of replacement</b>
<b>25mm to 100 mm meters (optimal service life of 7 years)</b>		
Over 20	3	All by end 2011
11 to 20	3 196	80% by end 2012 Remaining 20% by end June 2013
8 to 10	7 382	50% by end 2012 Remaining 50% by end 2013
<b>150 mm to 300 mm meters (optimal service life of 4 years)</b>		
11 to 16	10	All by end March 2012
5 to 10	37	30 numbers by end 2012 7 numbers by end June 2013

Some of the cases of meter replacement will involve the need to sort out issues such as clearance of blocked access and repairing of dilapidated plumbing and building renovation works by the registered consumers. The WSD will as necessary apply for warrants for entering the premises to effect the works to facilitate the meter replacement with all costs so incurred to be recovered from the registered consumers.

- (i) *as stated in Table 9 in paragraph 4.25 of the Audit Report, the 150-mm to 200-mm meters of 10 government establishments had exceeded their optimal service lives. Please provide a list of the government establishments concerned and a timetable for replacing those meters;*

The information on the 10 meters in Table 9 of the Audit Report is as shown below:

<b>Age of Meter</b>	<b>Size of meter</b>	<b>Establishment</b>	<b>Location</b>	<b>Present position</b>
13 years	200 mm	Water Supplies Department (Check meter <sup>Note 1</sup> )	Kwun Loong Lau	The check meter has already been replaced.
12 years	200 mm	Ditto	Kwun Loong Lau	Ditto
12 years	150 mm	Ditto	Yau Oi Estate	Ditto
12 years	150 mm	People's Liberation Army Forces	Naval Base, Stonecutter Island	The meter has already been replaced.
10 years	200 mm	Drainage Services Department	Sedimentation Tanks, Sewage Treatment Works, Stonecutter Island	The meter is scheduled for replacement in March 2012.
10 years	150 mm	Drainage Services Department	Chemical Dosing Facilities, Sewage Treatment Works, Stonecutter Island	The meter has already been replaced.
10 years	150 mm	People's Liberation Army Forces	Ngong Shuen Chau Barracks, Stonecutter Island	Ditto
10 years	150 mm	Fire Services Department	FSD Fire Boat Station, Tsing Yi	Ditto
5 years	150 mm	Water Supplies Department (Test meter <sup>Note 2</sup> )	Hau Tak Estate	The test meter is scheduled for removal by end 2011.
5 years	150 mm	Ditto	Hau Tak Estate	Ditto

Note 1 Check meters are for capturing data for comparison with the aggregated readings of the meters of all the consumers in the concerned building. They are not for billing purpose.

Note 2 Test meters are new types of meter being tested on-site for operational functionalities and/or durability. These meters are not used for billing and they will be removed after completion of tests.

- (j) *the latest report showing the WSD's annual total income from collection of water charges as well as the loss of government revenue due to under-collection of water charges and water losses from different causes, such as unauthorised water consumption, inaccurate metering, leakages in joints and fittings of water mains, and bursts and leaks in water supply and distribution systems;*

In 2010/11, the total income from water charges is HK\$ 6.44 billion including HK\$ 2.47 billion from bill payments, HK\$ 0.16 billion as notional income for supplies to Government establishments and HK\$ 3.81 billion of Government's contributions on free allowances to consumers and income from rates.

The percentage of water consumption and losses in 2010 are as shown below:

Authorised consumption	73.5%
Unauthorised consumption	2.0%
Meter inaccuracy	2.0%
Water mains leakage and burst	20.0%
Other losses such as leakage in consumers' inside services	2.5%
Total	100%

Because of the hilly terrain in Hong Kong, the water mains are subjected to high water pressure. Loss due to leakage is therefore an operational constraint rather than a loss. Moreover, unauthorised consumption is a notional estimate following international practice and the 2% under-registration of the meter fleet is within the allowable accuracy limit, hence an allowable operational tolerance.

- (k) *in the past three years from 2008 to 2010, whether the Senior Engineer who heads the Prosecution Unit had ever sought legal advice regarding his prosecution duties, or put up suggestions and taken actions to improve the WSD's prosecution work, and if he had, please provide the details;*

The Senior Engineer who heads the PU is also responsible for quality management works. He has in the past three years from 2008 to 2010 sought legal advice on the following matters:

<b>Area of Legal Advice Sought</b>	<b>No. of Cases</b>
Sufficiency of evidence to institute prosecution	7
Plead-not-guilty (PNG) cases requesting appointing court prosecutor	4
Clarification of points of law	2
Recommendation for not proceeding with the prosecution due to untraceable suspect's whereabouts for serving summons	1
Appeal (application for review of sentence)	1

He has also put up suggestions and taken actions to improve the WSD's prosecution work as stated below:

- Periodically reviewing and updating the Prosecution Unit Handbook which summarises current practices and procedures for the investigation and prosecution of suspected waterworks offences.
- Creating one additional Assistant Prosecution Officer post in the PU in 2008/09.
- Publishing the leaflet on "Unlawful taking of water is prohibited" in early 2009.
- Securing a contract car for use by the PU in June 2009.
- Periodically soliciting relevant legal training opportunities for PU colleagues.

(l) *a progress report on the WSD's enforcement actions on Case 2 (in paragraph 2.24(b) of the audit Report) by 31 January 2012 (Tuesday).*

Latest development after the public hearing on 1 December 2011 is summarised below :

- Sufficient evidence has been collected for instituting the third prosecution. The summons has just been issued.
- The WSD had issued a warning letter to the management office of the concerned building demanding the management office to remove the unauthorised connection before 14 December 2011. The management office had removed the unauthorised connection, which was confirmed by the WSD's inspection carried out on 14 December 2011.
- In view that the construction of the permanent flushing supply system (approved by the WSD in 2008) will take some time, the management office submitted on 13 December 2011 to the WSD an application for temporary water supply for flushing. The WSD granted approval to the application on 14 December 2011. The management office anticipates that the temporary supply will be completed in one week's time.

An updated progress report will be provided to the Committee by 31 January 2012.

(m) *according to paragraph 2.4 of the Audit Report, the Prosecution Unit has an establishment of 13 staff in four different ranks. Please provide:*

(i) *the duty lists of each of the four ranks of staff; and*

The duty lists are in Appendix I.

(ii) *a table showing the total annual salaries of all the 13 staff and the total water charges recovered for water taken unlawfully in each of the years of 2008, 2009 and 2010.*

The information is presented in the tables below.



**Total Annual Salaries (2009/10)**

<b>Post (Rank)</b>	<b>No. of Staff</b>	<b>Annual Staff Cost per officer (HK\$)</b>
Superintendent (Chief Technical Officer)	1	750,120
Prosecution Officer (Waterworks Inspector)	3	483,480
Assistant Prosecution Officer (Assistant Waterworks Inspector)	3	303,840
Customer Services Inspector	6	226,620
<b>Total Annual Staff Cost (HK\$)</b>	<b>4,471,800</b>	

**Total Water Charges Recovered**

<b>Year</b>	<b>Water Charges Recovered (HK\$)</b>
2008	316,488
2009	610,411
2010	1,035,254
<b>Total :</b>	<b>1,962,153</b>

Yours sincerely,

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, likely representing the initials 'LTMA'.

( L T MA )

Director of Water Supplies

c.c.     Secretary for Development (fax no. 3167 2591)  
           Secretary for Financial Services and the Treasury (fax no. 2147 5239)  
           Director of Audit (fax no. 2583 9063)

## **Appendix I**

### **Duties and Responsibilities Superintendent/Prosecution (S/P), WSD**

The Superintendent/Prosecution (short title S/P) is responsible to Senior Engineer/Prosecution and Quality Management (short title SE/PQM) for the enforcement of prosecution under the Waterworks Ordinance and Regulations, and his duties and responsibilities are detailed below :-

- (a) To plan, organise and supervise the activities of the Prosecution Unit.
- (b) To examine cases reported to be in contravention of the Waterworks Ordinance and Regulations and to take action to prosecute the offenders if appropriate.
- (c) To ensure prosecution procedures are followed in the proper manner, and provide assistance and advice to other staff of the Department in this respect.
- (d) To give advice and instructions to Prosecution Officers, carry out on-site investigation when required and perform as prosecutor in court when necessary.
- (e) To document court cases for reference and recommend revision of the legislation if required.
- (f) To liaise with court staff and personnel of other divisions or other departments/offices in connection with prosecution matters.
- (g) To prepare monthly progress report and arrange for the compilation of statistics on the work carried out.
- (h) To arrange for the necessary staff training.
- (i) To undertake other duties as assigned by SE/PQM and Chief Engineer/Development(1).

**Duties and Responsibilities**  
**Prosecution Officer (PO), WSD**

The Prosecution Officer (PO) is responsible to Superintendent/Prosecution (short title S/P) for the enforcement of prosecution under the Waterworks Ordinance and Regulations, and his duties and responsibilities are detailed below:-

- (a) To prepare case work connected with investigation / prosecution under the Waterworks Ordinance and Regulations.
- (b) To attend in court as Prosecutor.
- (c) To assist in routine office administration and general supervision of the subordinate staff.
- (d) To recommend to the Superintendent on matters presented by the Assistant Prosecution Officers within the provisions of the Waterworks Ordinance and Regulations.
- (e) To co-ordinate activities and liaise within the Unit and with the officers of the other sections / divisions of the Water Supplies Department and other government departments.
- (f) To prepare evidence and court statements.
- (g) To liaise with other departments in connection with enforcement matter.
- (h) To assist in the preparation of monthly reports on progress and the statistical returns for the quarterly report.
- (i) To make on-site investigations when required and direct / guide the Assistant Prosecution Officers in such investigations and in obtaining evidence.
- (j) To assist external investigation agencies (e.g. ICAC) when called upon to do so.

## **Duties and Responsibilities Assistant Prosecution Officer (APO), WSD**

The Assistant Prosecution Officer (APO) is responsible to Prosecution Officer (short title PO) for the enforcement of prosecution under the Waterworks Ordinance and Regulations, and his duties and responsibilities are detailed below:-

- (a) To liaise with other departments in connection with enforcement matters.
- (b) To make on-site investigations when required, prepare proper reports on such investigations and obtain document evidence.
- (c) To investigate complaints of irregularities lodged by the public and other agencies.
- (d) To conduct cases in court, present evidence in court and act as government witness.
- (e) To assist Government Counsel when required.
- (f) To co-ordinate activities and liaise within the Unit and with the officers of the other sections / divisions of the Water Supplies Department and other government departments.
- (g) To prepare evidence and court statements.
- (h) To assist in routine office administration and general supervision of the subordinate staff.

## **Duties and Responsibilities**

### **Consumer Services Inspector (CSI) of PU, WSD**

The Consumer Services Inspector (CSI) of PU is responsible to Prosecution Officer (short title PO) for the enforcement of prosecution under the Waterworks Ordinance and Regulations, and his duties and responsibilities are detailed below:-

- (a) To carry out inspections relating to unauthorised extensions, illegal draw-offs, pollution, misuse and wastage of water or other irregularities.
- (b) To attend complaints of breaches of the Waterworks Ordinance and Regulations.
- (c) To assist Prosecution Officers and Assistant Prosecution Officers in legal proceedings.
- (d) To assist in the preparation of statistical returns monthly progress reports of Prosecution Unit and in the estimation of the loss of water.
- (e) To liaise with other departments and other sections in this department in connection with enforcement matters.



本署檔案 Our Ref.: (5) in WSD TC 10/2011 (Pt. 9)

來函檔號 Your Ref.: CB(4)/PAC/R57

20 January 2012

(By fax 2840 0716)

Ms Lily SZE  
Clerk, Public Accounts Committee  
Legislative Council

Dear Ms SZE

**The Director of Audit's Report on the  
results of value for money audits (Report No. 57)**

**Water losses from unauthorised consumption and  
inaccurate metering (Chapter 12)**

I refer to your letter of 8 December 2011 requesting for supplementary information arising from the Public Accounts Committee's public hearing on 1 December 2011. We provided you with the supplementary information on 19 December 2011. We also advised you that an updated progress report on item (1) would be provided to you by 31 January 2012. The following is the updated progress report.

(1) *a progress report on the WSD's enforcement actions on Case 2 (in paragraph 2.24(b) of the audit Report) by 31 January 2012 (Tuesday).*

- Court hearing for the third prosecution was held on 17 January 2012. The Incorporated Owners were fined HK\$33,000 and had to settle a water charge of HK\$51,781.
- WSD's inspection on 14 December 2011 confirmed that the management office had removed the unauthorised connection. As the construction of the permanent flushing supply system will take

香港灣仔告士打道七號入境事務大樓四十八樓

48/F, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong

電話號碼 Tel. : (852) 2829 4400

傳真號碼 Fax : (852) 2824 0578

電子郵件 E-mail : [wsdinfo@wsd.gov.hk](mailto:wsdinfo@wsd.gov.hk)

互聯網址 Web : <http://www.info.gov.hk/wsd/>

some time to complete, the WSD approved the application submitted by the management office for a temporary flushing supply pending completion of the permanent flushing supply system. The temporary flushing supply, which was metered, was effected on 23 December 2011.

- The management office informed the WSD that the construction of the permanent flushing supply system is expected to commence by end February 2012.

Yours sincerely

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, likely representing the initials 'L T MA'.

( L T MA )

Director of Water Supplies

c.c. Secretary for Development (fax no. 3167 2591)  
Secretary for Financial Services and the Treasury (fax no. 2147 5239)  
Director of Audit (fax no. 2583 9063)





水務署

Water Supplies Department

APPENDIX 19

本署檔案 Our Ref.:(4) in WSD TC 10/2011 (Pt. 9)

來函檔號 Your Ref.:CB(4)/PAC/R57

20 December 2011

(By fax 2840 0716)

Ms Lily SZE  
Clerk, Public Accounts Committee  
Legislative Council

Dear Ms SZE

**The Director of Audit's Report on the  
results of value for money audits (Report No. 57)**

**Water losses from unauthorised consumption and  
inaccurate metering (Chapter 12)**

I refer to your letter of 15 December 2011 requesting for further supplementary information arising from the Public Accounts Committee's public hearing on 1 December 2011.

I have the pleasure to provide the required information as follows.

- (a) *of the inspections of suspected cases of unauthorised water consumption conducted by the Prosecution Unit from 2008 to 2010 as set out in Table 4 in paragraph 3.3 of the Director of Audit's Report ("the Audit Report"), the respective numbers and percentages of those inspections which were conducted by two staff together in each of the three years;*

香港灣仔告士打道七號入境事務大樓四十八樓

48/F, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong

電話號碼 Tel. : (852) 2829 4400

傳真號碼 Fax : (852) 2824 0578

電子郵件 E-mail : [wsdinfo@wsd.gov.hk](mailto:wsdinfo@wsd.gov.hk)

互聯網址 Web : <http://www.info.gov.hk/wsd/>

Collection of evidence during investigation requires simultaneous actions at different locations, for example operating valves at ground floor and taps within the premises to ascertain that water is drawn through the illegal connection to the premises, and at least two and very often three staff members are deployed for the investigation.

In each of the three years from 2008 to 2010, all such inspections were conducted with at least two staff members.

- (b) *in Case 2 (in paragraph 2.24(b) of the Audit Report), the Owners' Corporation ("OC") admitted in January 2008 taking fresh water unlawfully for flushing for about 28 months and was convicted of the offences in April 2008. Please advise whether the Prosecution Unit had informed the court of the above period of unlawful water taking (i.e. 28 months) and the related water charges that should be recovered; if it had not, what the reasons were; and*

In case 2, the Prosecution Unit did inform the Magistrate that the period of unlawfully taking of fresh water was 840 days, that is about 28 months. A water charge of HK\$ 69,622 for the concerned period was recovered as mentioned in paragraph 4 of the case summary in the Audit Report.

- (c) *regarding the Audit recommendation on conducting periodic reviews of the meter replacement strategies for 15-mm and large meters with reference to good overseas practices (in paragraph 4.34(a) of the Audit's Report), what actions the Water Supplies Department will take in response to the recommendation, and whether and how it will make use of data mining techniques to facilitate the replacement work.*

Drawing on the overseas experience and best practices, the WSD considers that the most effective strategy for improving meter accuracies is to implement regular meter replacement programmes and the optimal replacement cycles for small (15mm) meters, medium size (25 to 100mm) meters and large size (150 to 300mm) meters are now set as 12 years, 7 years and 4 years respectively. The WSD will periodically review the optimal replacement cycles of the meters based on statistical test data.

On top of these time-driven replacement cycles, the WSD will conduct review to develop cumulative flow volume-driven replacement criteria for replacement of meters to further improve on the overall accuracy of the meters. Data mining techniques would be useful for searching the meters reaching the set cumulative flow volume from the meter fleet for replacement.

Yours sincerely

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, likely representing the initials 'L T MA'.

( L T MA )  
Director of Water Supplies

c.c. Secretary for Development (fax no. 3167 2591)  
Secretary for Financial Services and the Treasury (fax no. 2147 5239)  
Director of Audit (fax no. 2583 9063)

## ACRONYMS AND ABBREVIATIONS

---

Audit	Audit Commission
B/Ds	Bureaux/Departments
BDF	Beat Drugs Fund
CCPSAs	Counselling centres for psychotropic substance abusers
CFS	Centre for Food Safety
CIIF	Community Investment and Inclusion Fund
CoE	Certificate of Exemption
CS Branch	Customer Services Branch
CSSA	Comprehensive Social Security Assistance
DB	Development Bureau
DH	Department of Health
DoJ	Department of Justice
DRMs	Departmental Records Managers
DSS	Direct Subsidy Scheme
DTRCs	Drug treatment and rehabilitation centres
EDB	Education Bureau
EO	Executive Officer
EOC	Equal Opportunities Commission
EU	Efficiency Unit
FEHD	Food and Environmental Hygiene Department
FLU	Food Labelling Unit
FSTB	Financial Services and the Treasury Bureau
GL	Government Laboratory
GRS	Government Records Service
HIs	Health Inspectors
Hong Kong Code	Hong Kong Code of Marketing of Breast-milk Substitutes

## ACRONYMS AND ABBREVIATIONS

---

ICAC	Independent Commission Against Corruption
IMCs	Incorporated Management Committees
Lands D	Lands Department
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
LWB	Labour and Welfare Bureau
MPDS	Medical Priority Dispatch System
ND	Narcotics Division
NGO	Non-governmental organisation
NLS	Nutrition labelling scheme
NSAs	National Sports Associations
OC	Owners' Corporations
POs	Probation Officers
PRO	Public Records Office
PSAs	Psychotropic substance abusers
PU	Prosecution Unit
RMM	Records Management Manual
SARDA	The Society for the Aid and Rehabilitation of Drug Abusers
SFAA	Student Financial Assistance Agency
SFS	Special Funding Scheme
SIS	Service Information System
SMCs	School Management Committees
SMEs	Small and medium enterprises
SVE	Small volume exemption
SWD	Social Welfare Department

## ACRONYMS AND ABBREVIATIONS

---

TD	Transport Department
UMA(A)O	Undesirable Medical Advertisements (Amendment) Ordinance
UNHCR	United Nations High Commissioner for Refugees
WHA	World Health Assembly
WHO Code	International Code of Marketing of Breast-milk Substitutes in 1981
WSD	Water Supplies Department