

**For discussion  
on 7 November 2011**

**Legislative Council Panel on Financial Affairs  
Report on Write-off of a Judgment Debt**

**Purpose**

This paper consults Members on a proposal to write off an irrecoverable debt of \$17.03 million, inclusive of costs of action and interest, owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department (GLD)) for the disposal of unserviceable or obsolete government stores and confiscated goods. Subject to Members' views, we will seek the approval of the Finance Committee ("FC") to write off the debt as soon as practicable.

**Background**

2. Further to the Panel consultation in June 2005, we last consulted the Panel in June 2008 on a proposal to write off the debt in question owed to the Government by the Hong Kong Auctioneers & Estate Agency Ltd. ("HKAEAL"). HKAEAL had been the contracted auctioneer of GSD for the disposal of unserviceable or obsolete government stores and confiscated goods since the 1970s until 31 August 1998. The present debt case occurred in HKAEAL's last contract with the Government for the period from 1 April 1996 to 31 August 1998 ("the 1996 Contract"). A copy of the last Panel paper LC Paper No. CB(1)1771/07-08(05) is at Annex. A brief summary of the case and the remedial actions taken are set out below.

***The Debt Case***

3. Since the 1970s HKAEAL had been awarded with a contract through competitive bidding every two years to conduct auctions for the sale of unserviceable or obsolete government stores and confiscated goods and to

collect the proceeds for the Government. Except for some delays in payments of the auction proceeds to Government, HKAEAL's performance had been satisfactory under the contracts predating the 1996 Contract. Of the 58 auctions conducted during the contract period of the 1996 Contract, HKAEAL had only reimbursed the Government the proceeds from the first 43 auctions. The amount in default, inclusive of net sale proceeds and interest for late payments, was about \$15.8 million at the time. This problem, however, was not brought to the attention of GSD's senior management until after the 1996 Contract had expired.

4. GSD took immediate action to recover the debt. Eventually, after much negotiation and considerable efforts, a Deed of Settlement was concluded with HKAEAL's Managing Director on 31 March 1999 with a schedule of payment for full settlement of the outstanding amounts. Unfortunately, GSD only received several payments totaling \$6 million towards the debt, after which no further payments were received. GSD, through the Department of Justice ("D of J"), instituted legal proceedings against HKAEAL and the Managing Director for recovery of the remaining amount. In November 1999, the Court ordered that judgment be entered for the Secretary for Justice ("the Plaintiff") against HKAEAL and its Managing Director and that HKAEAL and the Managing Director should pay the Plaintiff the sum of \$10,742,838.17 plus interest from the date of judgment. The Court also awarded costs to the Government.

5. HKAEAL and the Managing Director failed to settle the judgment debt ordered by the Court. In June 2000, the Court made a winding-up order against HKAEAL. The Official Receiver was appointed liquidator. As the Managing Director had left Hong Kong in February 2000, D of J, representing GSD, was unable to petition for bankruptcy against him at the time<sup>Note 1</sup>. Upon the Managing Director's return to Hong Kong in April 2007, D of J took immediate legal action to recover the debt, including applying for examination of the Managing Director as to his assets and petitioning for bankruptcy against the Managing Director. A hearing on the bankruptcy petition was held on 5 September 2007 and the Court granted a Bankruptcy Order with costs against the Managing Director. Subsequently, D of J filed Proofs of Debt with the Official Receiver for the judgment debt plus costs of action and interest

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<sup>Note 1</sup> D of J issued a statutory demand pursuant to section 6A(1)(a) of the Bankruptcy Ordinance (Cap. 6) against the Managing Director in March 2000. However, D of J was unable to serve the documents on the Managing Director personally. Investigations revealed that he had left Hong Kong since 4 February 2000. D of J was therefore unable to petition bankruptcy against the Managing Director at the time.

calculated up to 5 September 2007, and the said sums together with the cost of the bankruptcy proceedings amounted to \$17,025,082.44.

### ***Remedial Actions Taken***

6. To forestall recurrence of such incidents, GSD had taken various improvement measures to guard against late payments. Under the contract commencing from September 1998 with the new contractor, the auctioneer was required to advise the department of the gross auction value within one working day after the auction date, based on which demand notes would immediately be issued to the auctioneer for the gross sale proceeds. For the two-year contract commencing September 2000, tighter controls over the receipt of auction proceeds were introduced. There was no late payment by the auctioneer since September 1998. To further strengthen controls, GSD (now GLD) has revamped the contract service mode since November 2002 - the auctioneer is hired to provide the professional service of conducting the auction only, while GLD collects auction proceeds direct from successful bidders. Successful bidders are required to pay the proceeds directly to the Government on the auction day. A release note for collecting the goods successfully bid for will only be issued to the successful bidders upon confirmation of receipt of the proceeds or upon clearance of the cheque. The arrangements have worked satisfactorily.

### ***Investigations and Disciplinary Actions Taken***

7. In parallel with the actions taken to recover the debt, GSD had conducted internal investigation into the case. The Independent Commission Against Corruption was also invited to look into the possibility of corruption. These investigations completed in June 2001 indicated that the case did not involve fraud or corruption but there were inadequacies in the performance of some staff in performing their duties. Disciplinary actions were then taken against several staff who were involved in the case. Please refer to paragraph 9 of Annex A to the paper at Annex for details.

8. In the light of Members' advice at the Panel meeting in June 2005, GLD referred the case to the Police to establish whether other criminal offences might have been committed by HKAEAL or its Managing Director. The Police informed GLD in July 2007 that there was insufficient evidence to support a charge against any person.

## ***June 2008 Panel Meeting***

9. At the Panel meeting in June 2008, Members noted the latest position of the case and the Administration's intention to write off the debt after expiry of the relevant Bankruptcy Order in September 2011 for prudence and in view of the amount of money involved. Members asked the Administration to keep track of the development and seek the FC's agreement to write off the debt where appropriate.

### **Debt Recovery Actions Taken and Latest Position**

10. When ordering a judgment be entered against HKAEAL and the Managing Director for the debt in November 1999 (please see paragraph 4 above), the Court also granted an order of inquiry to trace the proceeds of the auctions. Based on the affirmation filed by Managing Director with the Court in January 2000, there was no evidence showing that the auction proceeds were used to purchase any assets and no assets could be identified for the purpose of tracing.

11. Notwithstanding that D of J was unable to petition bankruptcy against the Managing Director in early 2000 (please see paragraph 5 above), searches had been conducted on assets (e.g. landed properties) of the Managing Director and investigation agents had been engaged to conduct searches in 2000, 2001 and 2002 on the whereabouts of the Managing Director, and his assets in Hong Kong and the countries where he had previous connections. However, all these debt recovery attempts were futile.

12. With regard to the liquidation of HKAEAL, the company was wound up in June 2000. While the Official Receiver has not yet applied to the Court for an order releasing him as the liquidator<sup>Note 2</sup>, the Official Receiver confirmed in October 2002 that there was zero balance in the estate of

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Note 2 The Official Receiver has not yet applied to the Court for release under section 205 of the Companies Ordinance because the liquidation process has not been completed. The Official Receiver is still in the course of handling the consignment goods held by HKAEAL on behalf of their beneficial owners the identity of whom could not be found so far. The Official Receiver may need to seek direction from the Court in handling such consignment goods. Until all the consignment goods are either returned to the respective owners or disposed of, the liquidation process cannot be finalised. Even if the consignment goods are sold, the sale proceeds will not form part of the assets of HKAEAL.

HKAEAL and that it was unlikely that there would be a dividend payment.

13. With regard to the bankruptcy order granted against the Managing Director in September 2007, the Official Receiver confirmed in September 2011 that the Managing Director was discharged from bankruptcy in September 2011 and that there is no likelihood of dividend distribution to creditors, including the Government. According to the Bankruptcy Ordinance, the discharge of a person from a Bankruptcy Order releases him from all bankruptcy debts. Thus the Managing Director is now released from all bankruptcy debts, including the judgment debt in question. The Administration cannot take any action to recover any proved debt after the said discharge. The Annual Statements of Earnings and Property Acquired of the Managing Director prepared in accordance with the Bankruptcy Ordinance during the 4-year bankruptcy period did not show any income or property of the Managing Director that could satisfy the judgment debt or any part thereof.

14. In light of the debt recovery actions taken and the latest developments, after consulting D of J, we consider that all possible legal means to recover the debt have been exhausted in this case. The separate processes of the liquidation of HKAEAL and the bankruptcy of the Managing Director have not led to any dividends that can be distributed to the Government. It is ascertained that the debt owed by HKAEAL and the Managing Director is irrecoverable and consideration could be given to writing off the debt.

15. The total amount to be written off is \$17,025,082.44, broken down as follows :

<i>Item</i>	<i>\$</i>
Judgment sum	10,742,838.17
Costs of action and bankruptcy proceedings	244,315.55
Interest calculated up to 5 September 2007	6,042,928.72
Less contract deposit retained	(5,000.00)
<b>Total :</b>	<b>17,025,082.44</b>

## **Proposal**

16. For cases not involving fraud or negligence, the Financial Secretary

("FS") is empowered under section 38 of the Public Finance Ordinance (Cap. 2) to write off losses of public moneys, stores, etc. without financial limit. For cases involving fraud or negligence, FS may only exercise his power of write-off subject to such conditions, exceptions and limitations FC may specify. If fraud or negligence is involved, the current limit of delegated authority is \$500,000 in each case, or in respect of any one cause. Since the current case involves negligence of some GSD staff as set out in paragraph 7 above and the amount exceeds the financial limit, we propose to seek approval from FC to write off the irrecoverable debt. Subject to Members' views, we will seek FC's approval for writing off the debt as soon as practicable.

**Advice sought**

17. We welcome Members' views on the above proposal.

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Financial Services and the Treasury Bureau  
October 2011