SUPPLEMENTAL REPORT OF THE

PUBLIC ACCOUNTS COMMITTEE

ON

REPORT NO. 68 OF THE DIRECTOR OF AUDIT

ON

THE RESULTS OF

VALUE FOR MONEY AUDITS

January 2018

P.A.C. Report No. 68A

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The Establishment of the Committee The Public Accounts Committee is established under Rule 72 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region, a copy of which is attached in ***Appendix 1*** to this Report.

2. **Membership of the Committee** The following Members are appointed by the President under Rule 72(3) of the Rules of Procedure to serve on the Committee:

Chairman	**:**	Hon Abraham SHEK Lai-him, GBS, JP
Deputy Chairman	**:**	Hon Kenneth LEUNG
Members	**:**	Hon Paul TSE Wai-chun, JP Hon Steven HO Chun-yin, BBS Hon LAM Cheuk-ting Hon SHIU Ka-fai Hon Tanya CHAN
Clerk	**:**	Anthony CHU
Legal Adviser	**:**	YICK Wing-kin

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 contains the Public Accounts Committee's supplemental report on Chapters 1 and 4 of Report No. 68 of the Director of Audit on the results of value for money audits which was tabled in the Legislative Council on 26 April 2017. 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***. The Committee's Report No. 68 was tabled in the Legislative Council on 12 July 2017.

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

Meetings The Committee held a total of seven meetings and five public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of 24 witnesses, including two Directors of Bureau and seven Heads of Department. The names of the witnesses are listed in ***Appendix 3*** to this Report.

2. **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 chapter of the Director of Audit's Report, are set out in Part 4 below.

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

4. **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 Report, and for the many services which he and his staff have rendered to the Committee throughout its deliberations.

A. Introduction

The Audit Commission ("Audit") conducted a review on the Administration's support and monitoring of charities.

2. Hon Abraham SHEK Lai-him declared that he was a director of the Absolutely Fabulous Theatre Connection and the Heifer International Hong Kong Limited respectively, a founder member of the Construction Industry Charity Fund and a board member of the Construction Industry Skills Training Centre Limited. He was also a member of the School Council of St. Stephen's Girls' College. In addition, he was involved in the construction of the new headquarters of Scout Association of Hong Kong. Hon Paul TSE Wai-chun declared that he was a member of Scout Association of Hong Kong and was involved in the work of a number of charities. Hon SHIU Ka-fai declared that he was a member of the Assessment Committee of the Liberal Party Caring Foundation.

Background

3. As at September 2016, there were 8 923 charitable organizations recognized under the Inland Revenue Ordinance (Cap. 112) ("IRO") to be generally not liable to tax, and donations made to such organizations are tax deductible.[1] At present, the statutory definition of "charitable purpose" in Hong Kong is based upon the common law interpretation of English legislation dating back hundreds of years. The Inland Revenue Department ("IRD") has to refer to the case law in determining whether an organization is established for "charitable purposes".[2]

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1 Tax deduction for charitable donations has been provided since 1970 under IRO (first enacted in 1947). The aggregate amount of donations deductible for the year should not be less than $100 and should not exceed 35% of the total assessable profits/income (since the year of assessment 2008-2009).

2 The leading common law authority on the definition of charity is the case of *Income Tax Special Purposes Commissioner v Pemsel* [1891] AC 531 (HL). In that case "*four principal divisions*" of charitable purposes were listed as follows:
(1) trusts for the relief of poverty;
(2) trusts for the advancement of education;
(3) trusts for the advancement of religion; and
(4) trusts for other purposes beneficial to the community. The list was itself based on English legislation dating back to 1601, namely, the preamble to the *Charitable Uses Act 1601* in England. Also see *Halsbury's Law of England*, Vol 8, 5th ed, (2010), at para 2, footnote 25.

4. The charitable donations allowed for tax deduction by IRD had increased by 126% from $5.25 billion for the year of assessment 2005-2006 to $11.84 billion for 2014-2015. The number of taxpayers with tax deduction allowed for approved charitable donations totaled 588 000 in 2014-2015 with tax revenue foregone estimated to be over $1.5 billion.

5. There is no overall statutory scheme for the registration and regulation of charities in Hong Kong. Charities have full autonomy in choosing their own legal forms, either as incorporated bodies (e.g. companies) or unincorporated bodies (e.g. societies and trusts) to suit their operations in achieving their charitable causes.[3] Depending on their legal forms and whether they have sought recognition of tax-exempt status and government support, charities are subject to the monitoring and/or registration framework of different government bureaux/departments ("B/Ds") as follows:

- IRD processes applications for the recognition of tax-exempt status of charities under section 88 ("s88") of IRO.[4] As administrative procedures, IRD calls for accounts, annual reports or other documents from time to time from tax-exempt charities to review whether their objects still meet the eligibility criteria of "charitable purposes" and their activities are compatible with their objects. Subject to the consent of tax-exempt charities, IRD maintains a list of such institutions or trusts of a public character on its website ("s88 list");

- Lands Department ("LandsD") grants land by way of a private treaty grant ("PTG") at nominal or concessionary premium or short term tenancy at nominal or concessionary rent to some charitable organizations for operating schools, hospitals, and social welfare and community facilities. The charitable organizations are regulated by LandsD and supporting B/Ds to ensure their compliance with the conditions of land grant and policy intention of granting the land;

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[3] Of the 8 923 tax-exempt charities in the IRD's records as at 30 September 2016, 6 622 (74%) were companies, 813 (9%) were societies (including three companies and two societies which had been deregistered as at 30 September 2016 but had not been reflected in the IRD's records), 772 (8.7%) were incorporated management committees of school, 540 (6%) were trusts, 147 (2%) were statutory bodies and 29 (0.3%) were other forms.

[4] According to the legal advice obtained by IRD in 2003, s88 of IRO does not confer on it the power to grant tax-exempt status. What s88 provides is that charitable institutions or trusts of a public character are exempt from tax and they can seek recognition of such exemption by IRD if they like.

- Companies Registry ("CR") is responsible for administering and enforcing the Companies Ordinance (Cap. 622) for some 1.34 million limited companies, including charities incorporated as companies on the Companies Register. As at September 2016, there were 6 619 registered companies which obtained tax-exempt status under s88 of IRO;

- the Societies Office of Hong Kong Police Force ("HKPF") is responsible for administering the Societies Ordinance (Cap. 151) and granted registration or exemption from registration to 37 861 local societies as at September 2016. 1 000 societies so registered or exempted from registration were charities and 811 of which had obtained tax-exempt status under s88 of IRO;

- Education Bureau ("EDB"): Under the Education Ordinance (Cap. 279), all aided schools are required to set up incorporated management committees ("IMCs"). Direct Subsidy Scheme schools may opt to establish IMCs under the Ordinance. As at September 2016, 772 of the 846 IMCs on the EDB's Register of IMCs obtained tax-exempt status under s88 of IRO; and

- Home Affairs Bureau ("HAB"): The Chinese Temple Ordinance (Cap. 153) ("CTO") was enacted in 1928 to suppress and prevent mismanagement of Chinese temples and abuses of donated funds. The Chinese Temples Committee ("CTC") is established, with Secretary for Home Affairs as the Chairman, to regulate Chinese temples. As at September 2016, 347 of around 600 Chinese temples were registered with CTC under CTO, of which 45 were administered directly or indirectly by CTC with the remaining 302 managed by individuals or organizations. Of the 347 registered temples, 129 were managed by tax-exempt charities.

6. At the request of the Chief Justice and Secretary for Justice, the Law Reform Commission ("LRC") reviewed the subject on monitoring of charitable organizations and published a Report on Charities ("LRC Report") in December 2013, after completing a public consultation on the subject. LRC made a number of recommendations in its Report, including the definition and registration of charities, facilitation of good practice, financial reporting by charities and filing requirements for charitable fund-raising activities. In particular, LRC is of the view that IRD's s88 list does not constitute a formal "register" of charitable organizations. It is not a comprehensive or conclusive list of all charities in Hong Kong, and there may be a

danger that the public and charity donors may perceive that the s88 list confers on those charities the semblance of official sanction not intended by IRO. In addition, IRD fulfills a highly important function of reviewing the accounts of tax-exempt charities to ensure that only charities which carry out activities in compliance with their objects should continue to be granted tax-exempt status, underpinning to a large extent the confidence of the public in the charity sector.

7. Given that the recommendations touched on areas which fell within the policy responsibilities of several bureaux, HAB has been tasked to coordinate inputs from relevant B/Ds for formulating a response to LRC's recommendations for the Administration's consideration.

The Committee's Report

8. The Committee's Report sets out the evidence gathered from witnesses. The Report is divided into the following parts:

- Introduction (Part A) (paragraphs 1 to 13);
- Administration of tax exemption of charities and tax-deductible donations (Part B) (paragraphs 14 to 35);
- Administration of land granted to charities for operating welfare/social services (Part C) (paragraphs 36 to 76);
- Filing and disclosure requirements of charities incorporated/ established under three ordinances (Part D) (paragraphs 77 to 100);
- Regulation of Chinese temples (Part E) (paragraphs 101 to 114);
- Way forward (Part F) (paragraphs 115 to 116); and
- Conclusions and recommendations (Part G) (paragraphs 117 to 119).

Public hearings

9. The Committee held four public hearings on 6, 19 and 27 May and 27 June 2017 respectively to receive evidence on the findings and observations of the Director of Audit's Report ("Audit Report").

Speech by Director of Audit

10. **Mr David SUN Tak-kei, Director of Audit**, gave a brief account of the subject at the beginning of the Committee's public hearing held on 6 May 2017. The full text of his speech is in ***Appendix 4***.

Opening statement by Secretary for Home Affairs

11. **Mr LAU Kong-wah, Secretary for Home Affairs**, made an opening statement at the beginning of the Committee's public hearing held on 6 May 2017, the summary of which is as follows:

- as the support to and the monitoring of charities involved the work of a number of B/Ds, it was necessary for them to consider LRC's recommendations thoroughly and carefully as many of the recommendations carried substantial implications on charities in Hong Kong in terms of their definition, approval criteria and their operation;

- HAB had convened two inter-departmental co-ordination meetings since the release of the LRC Report to consolidate views of various B/Ds on enhancing the monitoring of charitable organizations and exploring ways to improve the procedures and arrangements for charities to apply for holding fund-raising activities;

- at least nine bureaux and quite a number of executive departments were currently involved in the legislation, licensing and land allocation work relating to charitable organizations and their fund-raising activities. Substantial integration work including policy co-ordination, resources allocation and even re-organization might be required for the B/Ds to consolidate all the relevant legislation and powers before a single policy bureau or department could be designated to administer and carry out the work. It took time for the Administration to study thoroughly and deliberate carefully;

- in the light of LRC's recommendations, HAB was exploring with the relevant departments some feasible administrative measures that might be introduced in the short term to enhance the transparency of charities and charitable fund-raising activities, so as to safeguard the public's right to information; and

- HAB would continue to co-ordinate inputs from B/Ds with regard to their responses to LRC's recommendations for overall consideration by the Administration, and would make reference to the recommendations in the Audit Report as well as the advice of the Committee on improving the monitoring of charities and fund-raising activities.

The full text of Secretary for Home Affair's opening statement is in ***Appendix 5***.

12. **Professor K C Chan, Secretary for Financial Services and the Treasury** made an opening statement at the beginning of the Committee's public hearing held on 6 May 2017, the summary of which is as follows:

- IRD would endeavor to implement the recommendations made in the Audit Report as follows:

  (a) a performance pledge had been set on the processing of applications for recognition of tax-exempt status of charities, and IRD would endeavor to give a reply to the applicants within four months, provided that all necessary information and documents had been supplied;

  (b) to enhance the monitoring of review cases, the Charitable Donations Section ("CDS") of IRD had included the number of uncompleted review cases with their age profile and their position in its monthly work report since February this year to facilitate the management to monitor the progress of these cases in a holistic manner;

  (c) an enhanced notification arrangement with CR and HKPF had been put in place for the timely updating of the list of tax-exempt charities recognized under s88 of IRO. Both CR and HKPF would relay the information of deregistered companies or societies to IRD on a regular basis; and

  (d) Commissioner of Inland Revenue had requested the responsible officers to check the validity of donation receipts more carefully and follow up with the taxpayers concerned when necessary; and

- the key responsibility of IRD was to make tax assessment and collect taxes so as to protect government revenue. As regards the recognition of tax-exempt status of charities, IRD had all along been adhering to

the principle of protecting government revenue in processing new applications and reviewing cases.

The full text of Secretary for Financial Services and the Treasury's opening statement is in ***Appendix 6***.

13. **Ms Bernadette LINN, Director of Lands** also made an opening statement at the beginning of the Committee's public hearing held on 6 May 2017, the summary of which is as follows:

- as land leases were executed in different periods and under different policies and social circumstances, even when the grantees involved were all charitable or non-profit-making organizations, the conditions of the leases were not the same;

- for 14 cases cited in the Audit Report, some leases were not cases of PTG or the user restriction clauses had a rather broad sense. As for the remaining cases, although "hostel" (translated as "旅舍" in Chinese) use was stated under the user clauses, there were no provisions in the leases to govern such aspects as the clientele, services and charges of the hostels in question;

- according to legal advice, there was no breach of the user restriction under land leases for the hostels or hotels involved in the relevant cases. However, as the land on which the hostels were located was generally granted to the relevant bodies for non-profit-making purposes, the crux of the matter was that the revenues derived from commercial operations of the hostels or hotels should be used on the charitable or social affairs of the organizations. In this regard, if a "submission of accounts" clause and a "no-profit-distribution" clause were included in the relevant land leases, the Administration would follow up on the matter according to the lease conditions. If there were no such clauses, but it was stipulated in the leases that the facilities should be of a non-profit-making nature and/or the operation of such facilities should meet the requirements of government departments, LandsD would seek legal advice and ask the grantees to provide the required information under these clauses if necessary; and

- LandsD agreed with the recommendations in the Audit Report that consideration should be given to incorporating the relevant clauses in line with the prevailing social circumstances and policy requirements

when granting land to charities or non-profit-making organizations at nominal premium in the future, or upon expiry of current leases or on receipt of applications for lease modification. In processing applications for land grant by way of PTG for welfare or social service uses in the future, LandsD would continue, in collaboration with the relevant policy bureaux, to make sure that land grant conditions would suitably reflect the policy objectives and requirements at that time.

The full text of Director of Land's opening statement is in ***Appendix 7***.

B. Administration of tax exemption of charities and tax-deductible donations

14. Given that the role of IRD was to protect the Government's revenue raised through taxes and recognition of tax-exempt status of charities would have a direct impact on the tax revenue, the Committee enquired about the measures that had been taken by IRD to ensure that charities' objects were meeting the eligibility criteria of "charitable purposes" and that their activities were compatible with their objects in accordance with the relevant provisions of s88 of IRO.

15. **Mr WONG Kuen-fai, Commissioner of Inland Revenue** replied at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (***Appendix 8***) that:

- IRD had been performing its role in accordance with IRO. Any organization wishing to seek recognition of tax-exempt status under s88 of IRO was required to submit an application to IRD with a copy of the governing instrument, lists of activities which had been carried out in the past 12 months as well as planned for the next 12 months. Where the organization had been established for 18 months or more, a copy of its financial statements for the last financial year was also required;

- when considering an application under s88 of IRO, IRD would examine, among other things, the governing instrument of the organization. In particular, IRD would scrutinize the object clause, income clause and dissolution clause to ensure that all the objects of the organization were charitable in nature and that there were adequate safeguards to prevent the channeling of funds for non-charitable

purposes. If the organization failed to meet the requirement, IRD would not approve the application; and

- the tax-exempt status of each approved charitable institution was subject to review regularly, normally on a cycle of four years, so as to ensure its objects were still charitable and its activities were compatible with its objects. IRD would ask the organizations to submit its annual report and financial statements, and seek clarification with the organizations if necessary. IRD might withdraw the recognition of tax-exempt status in accordance with the reasons stated in the Staff Handbook of CDS.

Tables showing the number of applications not approved by IRD in the financial years from 2012-2013 to 2016-2017 (up to 30 September 2016), as well as the number of review questionnaires issued by IRD in the review years from 2012 to 2016 (up to 30 September 2016) were provided in Appendix 8. At the request of the Committee, **Secretary for Financial Services and the Treasury** provided a copy of the Staff Handbook in Appendix 8, which set out the practices and work procedures of CDS of IRD.

16. At the request of the Committee, **Secretary for Financial Services and the Treasury** provided in his letter dated 16 May 2017 (Appendix 8) a breakdown of charities with their tax-exempt status withdrawn by IRD from 2012-2013 to 2016-2017 (up to September 2016). He supplemented that when a charity amended its objects in the governing instrument in a way that it was no longer exclusively charitable, it would not qualify for the status of a charitable institution or trust of a public character, i.e. the reason mentioned in paragraph 2.4(c)(iii) of the Audit Report.

17. According to paragraphs 2.2 and 2.16 of the Audit Report, IRD was not empowered under IRO to determine whether an organization was a charity or not and to overturn a charity's tax-exempt status solely because the charity had not complied with any obligations, whether statutory or not, and it had no authority to demand a charity to refund any items of expenditure which were not paid for the furtherance of its charitable objects. IRD had sought legal advice in 2003 relating to its power to take enforcement actions when a charity's act contravened its governing instrument. The Committee enquired:

- whether guidelines had been issued to CDS staff on the handling of tax-exempt status of a charity if it had breached its governing instrument; and

- given the limitations of IRO, whether IRD sought further legal advice after 2003 to ascertain its power and authority, and conveyed to the Financial Services and the Treasury Bureau ("FSTB") or other relevant B/Ds about such limitation and requested that amendments be made to IRO in order for it to take necessary enforcement actions.

18. **Commissioner of Inland Revenue** replied at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letters dated 16 and 26 May 2017 (***Appendices 8*** and ***9*** respectively) that:

- in view of public concerns regarding the control of charitable fund-raising activities, IRD sought the advice of the Department of Justice in September 2003. The legal advice was sought in a general policy context without reference to a specific case;

- CDS updated from time to time the Staff Handbook which mainly set out the work procedures of the section. Since CDS was a small section, its staff-members were aware of the details of the legal advice in 2003 through discussion, debriefing and experience sharing; and

- since the legal advice had been sought in 2003, IRD did not seek legal advice again on this matter. For meeting the legislative intent of s88 of IRO, IRD considered that there was no imminent need to review the relevant provisions of IRO. The key responsibility of IRD, as a tax administration, was the assessment and collection of taxes.

19. The Committee requested Commissioner of Inland Revenue to provide the full version of the legal advice. Commissioner of Inland Revenue provided the gist of the legal advice in his letter dated 4 May 2017 in ***Appendix 10***. A sanitized version of the legal advice was subsequently provided for members' reference only.

20. The Committee expressed concern about the role of IRD to effectively discharge its function in protecting tax revenue and performing its duties in relation to s88 of IRO, including the authority it had and legality of the actions taken, having regard to section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1)

about powers to be conferred to do or enforce the doing of any act or thing under any ordinance.

21. **Commissioner of Inland Revenue** responded at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (Appendix 8) that:

- in administering s88 of IRO, IRD carefully considered whether an organization fell within the meaning of "charitable institution" and had met the conditions for exemption set out under s88, taking into account all the circumstances; and

- the legislature had specifically set out the conditions for exemption under s88 of IRO. Section 40(1) of the Interpretation and General Clauses Ordinance did not confer upon IRD the power to add extra conditions for exemption, or to impose the same on an institution, in addition to those conditions which were specifically set out by the legislature under s88 of IRO.

22. Having regard to one of the recommendations in the LRC Report that IRD should maintain a robust role in overseeing the activities of charities for tax-exempt purposes by conducting more frequent reviews of the accounts of tax-exempt charities to ascertain whether the activities of these charities were compatible with their charitable objects, and that more resources be allocated to enabling the conduct of these more frequent reviews as this administrative measure, which could be implemented relatively quickly, would promote greater accountability among charities and improve their governance, the Committee enquired about:

- IRD's response to LRC's recommendations and actions/measures that had been taken/implemented by IRD to address LRC recommendations, in particular the ascertaining of charities' activities being compatible with their objects;

- given the limitations mentioned by IRD in taking enforcement actions against charities breaching their governing instruments or charities' objects, whether IRD considered its current actions taken on suspected breach cases fell short of LRC's recommendation in respect of IRD's role;

- whether the conduct of review and calling for financial reports of charities in a four-year interval sufficient in ascertaining charities remained charitable; and

- given that the number of charities had more than doubled from 4 435 in 2006 to 8 923 in September 2016 (paragraph 1.5 of the Audit Report), whether manpower of CDS was sufficient to cope with the workload arising from processing applications for tax-exempt status and conducting periodic reviews of charities.

23. **Commissioner of Inland Revenue** responded at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (Appendix 8) that:

- having regard to the relevant facts and circumstances of the case concerned and making reference to information obtained from other channels, IRD determined the frequency of review for individual tax-exempt charity. IRD conducted reviews on tax-exempt charities once every four years as a general practice, but IRD would initiate actions (e.g. early review on tax-exempt charities) if available information (e.g. from media, past record of the charity, third party information, etc.) indicated that suspected non-charitable activities had been carried out. Additional and sufficient attention would be given to tackle the "high risk" cases as necessary;

- to cope with the steadily-increasing number of charities applying for recognition of tax-exempt status as well as cases subject to review, the number of staff working in CDS increased from five to eight in April 2013. IRD considered that the current manpower resources of CDS could cope with the existing workload. IRD would consider seeking additional manpower resources through established mechanism if necessary;

- IRD issued on average 1 300 to 1 600 review questionnaires per year to tax-exempt charities from 2012 to 2015. Table 2 and Figure 4 of the Audit Report showed that the average processing time to complete a review and the number of cases and correspondence pending for attention of CDS both recorded a substantial drop in recent years; and

- in the periodic reviews, IRD examined the information provided in the review questionnaires, financial statements and list of activities to

identify suspected breaches and raised enquiries with the relevant parties. IRD considered the current review mechanism adequate.

24. The Committee enquired about an updated progress on Case C as mentioned in paragraph 2.12(c) of the Audit Report and the reasons for the long periods of inaction ranging from 9 to 16 months by IRD.

25. **Secretary for Financial Services and the Treasury** provided details regarding the case in his letter dated 16 May 2017 (Appendix 8) that:

- in response to IRD's enquiry, Organization C replied in June 2014 that the yearly rental payment of $480,000 was a fair amount for the premises with floor area about 20 000 square feet and a rateable value of $288,000 for the year ended 31 March 2009;

- IRD noticed that a related party transaction involving rental payment was disclosed in the financial statements for the year ended 31 July 2014 and enquired for the particulars of the owner of the premises and the relationship between the owner and the directors of Organization C. Organization C replied in June 2016 that owner of the premises were two individuals who did not have any relationship with Organization C;

- IRD then asked Organization C why the rental payment in respect of the premises was stated as a related party transaction. In October 2016, Organization C confirmed that the owners had never been its directors and that they operated a kindergarten which had been taken over by Organization C. IRD accepted that the rental payments, though higher than the rateable value, were not non-arm's length. As the objects of Organization C remained charitable and its activities were compatible with its stated charitable objects, IRD considered that it was a charitable institution; and

- the long periods of inactions for this case were due to the heavy workload of the subject officer and his inadvertence. Since 2016, follow-up actions were speeded up and IRD responded within one to four months from the receipt of the correspondence from Organization C.

26. Referring to the four cases (Cases D to G) highlighted in paragraph 2.14 of the Audit Report regarding charities' breach of directors' remuneration clause of their governing instrument, the Committee enquired:

- follow-up actions taken by IRD and whether IRD would withdraw a charity's tax-exempt status if it breached the clause of their governing instrument prohibiting directors from receiving remuneration, as in Cases D to G;

- on what basis IRD was satisfied with the remedial actions taken by the four charities, which were different in individual cases; and

- the stance of IRD in enforcing s88 of IRO in relation to the four cases, and follow-up actions that IRD could take if reviews by IRD had revealed irregularities.

27. **Secretary for Financial Services and the Treasury** provided details regarding the four cases in his letters dated 16 and 26 May 2017 (Appendices 8 and 9 respectively) that:

Case D

- IRD was of the view that the Executive Committee members of Organization D received remuneration in the capacity of an employee and that their remuneration did not appear to be excessive, though it might be a technical breach of the director's remuneration provision of its governing instrument as the governing instrument of the organization did not allow members of its Executive Committee or governing body to be appointed to any salaried office of the organization, the act did not affect its charitable status. No refund was made by the nine Executive Committee members to Organization D;

Case E

- in 1999, Organization E paid donations, described as "顧念款" totalling at $11,000 to a trustee, a monthly payment of $600 (totalling $7,200) and $2,500 to two Executive Committee members of the organization for their rendering of services, subsidization of their travelling expenses and as a subsidy to meet their financial difficulties. Upon IRD's enquiry, Organization E provided evidence to show that all the

payments totaling $20,700 had been fully repaid. Having regard to all relevant facts and circumstances, IRD considered that Organization E was a charitable institution and continued recognizing its tax-exempt status;

- in 2007, IRD found that one Executive Committee member was paid $21,400 for the year ended 31 March 2006 and received monthly payments totaling $22,100 for the year ended 31 March 2007. In reply to IRD's enquiry, Organization E provided evidence showing payments of $43,500 in total had been fully repaid and undertook not to make such payments in future. IRD considered that Organization E was a charitable institution and continued recognizing its tax-exempt status;

Case F

- Organization F's tax-exempt status was withdrawn in 2003 due to its failure to reply to IRD's enquiry letters. In 2011, Organization F requested to reinstate its recognition of tax-exempt status. IRD noticed from Organization F's audited financial statements for the years ended 30 June 2003 to 30 June 2013 that it had paid love gifts ranging from $3,773 to $53,582 to a pastor who was also a member of the Board of Elders as a gratuity to the pastor and not as remuneration. Upon advice by the IRD of the potential contravention of the clause relating to payment of remuneration to members of the Board of Elders in Organization F's governing instrument, the pastor returned the love gifts received in the past two years, i.e. $3,773 (for 2012) and $9,400 (for 2013) to Organization F. Having regard to all the relevant facts and circumstances, IRD considered that Organization F was a charitable institution and reinstated the recognition of its tax-exempt status in 2015;

Case G

- Organization G's tax-exempt status was withdrawn in 2006 due to its failure in responding to IRD's review questionnaire. In 2012, it requested reinstatement of its tax-exempt status. Organization G's audited financial statements for the years ended 31 December 2008, 2009 and 2010 had recorded directors' remuneration of $30,000, $130,000 and $80,000 respectively. Upon IRD's enquiry, Organization G advised that a director was paid because of his rendering of services to the organization. Upon advice by IRD of the

potential contravention of the clause relating to payment of remuneration to directors in its governing instrument, the director resigned from the Board of Directors in April 2013 and agreed to repay half of his remuneration for the years 2008 to 2012 to the organization. Having regard to all the relevant facts and circumstances, IRD considered that Organization G was a charitable institution and reinstated the recognition of its tax-exempt status in 2015;

- IRD examined, among other things, the governing instrument of an organization to ascertain if its objects fell within the meaning of "charitable purposes". In case a charity breached a clause of the governing instrument, it was a question of fact and degree whether such breach would fundamentally affect its charitable status;

- in each of the four cases, the charity's objects in its governing instrument remained exclusively charitable and its activities were at large compatible with its stated objects. There was no evidence that the members of their governing body had blatantly sought private advantages from the charities. Some of their trustees or directors had received remuneration or benefits in the capacity of other than director or trustee, i.e. an employee (in Cases D, F and G) or being old and needy members of the church (in Case E) and that the amount of remuneration or benefits received by them did not appear to be excessive. Having regard to all the relevant facts and circumstances including the scale and mode of operations of the charities, IRD considered that such breaches were technical breaches and did not fundamentally change the charitable status of the charities. Hence the recognition of their tax-exempt status was not withdrawn by IRD;

- if a charity blatantly breached the provisions of its governing instrument and IRD, after taking a holistic view, considered that such breach fundamentally changed its charitable status, it would withdraw the recognition of the tax-exempt status. There were no precedent cases in this regard; and

- in these four cases, IRD did not prescribe the form of remedial actions. The remedial actions were proposed by the charities concerned and could take different forms. So long as a charity's non-compliance with the clause relating to payment of remuneration to members of governing body did not fundamentally change its charitable status, IRD did not consider that it was legally defensible to withdraw tax-exempt status of the charity.

28. The Committee noted from paragraph 2.4(d) of the Audit Report that a charity whose tax-exempt status was removed because it was untraceable or failed to give reply to IRD's enquiries might apply for reinstatement of the recognition. The Committee enquired about the basis for IRD to reinstate the tax-exempt status of Charities F and G.

29. **Secretary for Financial Services and the Treasury** replied in his letter dated 26 May 2017 (Appendix 9) that:

- as indicated in paragraph 6.6.3 of the Staff Handbook of the CDS, in processing a reinstatement application from a charity, IRD had been adopting an approach similar to handling new applications and would examine all the necessary submissions from the charity afresh; and

- like handling new applications for tax-exempt recognition, IRD sought the necessary information in order to determine whether Organization F and Organization G were charities at law. After examining the relevant facts including their effort to rectify the breach in the past and their commitment to adhere to the provisions in the governing instruments in future, IRD considered that the object of both Organizations F and G remained charitable. The payment of love gifts by Organization F and remuneration by Organization G to members of their governing body was not material enough to fundamentally change their charitable status. As such, IRD reinstated the tax-exempt recognition of Organizations F and G in 2015.

30. **Commissioner of Inland Revenue** stated at the public hearing of 6 May 2017 that prior to the publication of the Audit Report No. 29 and the Public Accounts Committee Report No. 29 in 1997 and 1998 respectively, IRD had not required charities to include clauses prohibiting members of its governing body from receiving remuneration in their governing instruments. The Committee enquired whether some charities which were established before 1997 did not have such director remuneration clauses in their government instruments, and whether IRD would take follow-up actions against such charities if members of their governing bodies received remuneration.

31. **Commissioner of Inland Revenue** responded at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (Appendix 8) that:

- in the Audit Report No. 29, Director of Audit noted that, in 1987, IRD found that an approved charity had paid remuneration to its directors. Subsequently, IRD required charities to include a provision if they allowed payment of remuneration to directors who had special qualifications not otherwise available to the charities. The audit review revealed that seven approved charities, which were granted tax-exempt status before 1988, had a provision in their governing instruments permitting the payment of remuneration to directors in return for services actually rendered to the organizations, but the provision on the conditions for remuneration to directors had not been included. Although the seven approved charities were granted the exemption status prior to 1988 in accordance with the practice prevailing at that time, Director of Audit considered that, as the control on remuneration to directors would help guard against misappropriation of charities' income for the private gain of individuals, it was necessary that all approved charities should be subject to this control;

- for charities recognized by IRD as tax-exempt bodies before 1988, some of them might not contain the clause for the control on remuneration to directors. In response to the Audit Report, IRD had sought legal advice in 1997 as to whether it was legally proper to request existing charities to consider amending their governing documents in order to incorporate a provision relating to the remuneration to directors. According to the legal advice at that time, such provision was not vital to the recognition of tax-exempt status and IRD was not entitled to withdraw the tax-exempt recognition of those organizations which failed to accede to the request; and

- since 1988, all organizations applying for recognition of tax-exempt status under s88 of IRO had been required to have the director remuneration prohibition clause in their governing instruments. Such practice had been consistently implemented. For those tax-exempt charities which did not have such clause in their government instruments, when they notified IRD that they intended to revise some other clauses in their governing instruments, IRD would request them to incorporate or update the director remuneration clause.

32. The Committee enquired about follow-up actions taken by IRD in respect of Cases H and I highlighted in paragraph 2.15 of the Audit Report and whether the allocation of expenses not in furtherance of charitable objects already constituted a

breach of s88 of IRO which warranted a withdrawal of their tax-exempt status under the reason that "the charity no longer qualifies the status of a charitable institution or trust of a public character".

33. **Commissioner of Inland Revenue** responded at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (Appendix 8) that:

- upon IRD's enquiry, Organization H stated that the travelling expenses of $704,519 were expenses on flight tickets of overseas disciples to attend the funeral services of the master of the monastery in Hong Kong. IRD pointed out to Organization H that the travelling expenses did not appear to be expenses in furtherance of its charitable object, and asked about the remedial actions it would take. Organization H replied that to fulfill the public benefit requirement, it had resolved to claim back the travelling expenses from the disciples and so far $500,000 had been recovered and the balance would be recovered in due course. Having regard to all the relevant facts and circumstances and that Organization H had taken remedial actions, IRD considered that it remained a charitable institution with its tax-exempt status unaffected;

- IRD noticed that there was a grant for repairing the ancestral tomb and graveyard and asked Organization I in November 2009 how such activity was compatible with its charitable objects. The IRD withdrew the recognition of its tax-exempt status in 2011 after Organization I did not respond to its repeated enquiry;

- in 2014, Organization I requested IRD to reinstate the recognition of its tax-exempt status. Having examined the information provided by Organization I, IRD considered two payments of $236,223 in total appeared not to be expenses in furtherance of its charitable objects nor for public benefit. Organization I explained that the two payments were made as a donation to finance part of the construction cost of an ancestral temple and to repair the ancestral tomb and graveyard. Organization I was of the view that the payments were relevant in fostering education of the Confucian doctrine of filial piety for the advancement and improvement of standards of living of humans and their social, moral and physical well-being, and were compatible with its charitable objects. IRD did not share Organization I's view. Organization I, though still maintained its views regarding the two

payments, confirmed that it would not make similar donations/payments in future. Having regard to all the relevant facts and circumstances including the absence of other irregularities and the charity's undertaking of not making similar donations/payments in future, IRD considered that Organization I was a charitable institution and reinstated the recognition of its tax-exempt status in 2015; and

- insofar as Organizations H and I were concerned, there was no indication that they had carried on any trade or business and even if they had, profits derived from such trade or business should be chargeable to profits tax. The IRD considered that withdrawal of recognition of tax-exempt status was not warranted.

34. The Committee enquired about the follow-up actions taken on Case L (paragraph 2.19 of the Audit Report) and whether IRD had referred or would consider referring the case to other relevant enforcement authorities for further investigation in view of the conflicting information provided to IRD and that available from CR.

35. **Commissioner of Inland Revenue** responded at the public hearing on 6 May 2017 and **Secretary for Financial Services and the Treasury** supplemented in his letter dated 16 May 2017 (Appendix 8) that:

- two reviews were conducted in 2009 and 2014 and IRD considered the planned activities were compatible with Organization L's charitable object and concluded the reviews;

- Organization L provided a copy of audited financial statements for the year ended 31 March 2015 with two donation receipts dated 13 September 2015 and 31 July 2016 in the amount of $389.50 and $450 respectively, and an activity pamphlet to IRD. In March 2017, IRD asked Organization L to explain the inconsistencies between information previously provided by it and the audited financial statements for the year ended 31 March 2016. Organization L replied that it intended to, but had not yet carried out any church activity. The information previously submitted to IRD was activities that it planned to carry out and the donation receipts were merely sample receipts. Organization L stated that it did not maintain any bank account;

- when IRD conducted the review which started in 2014 and concluded in September 2016, the audited financial statements for the year ended 31 March 2016 were not available to IRD. The donation receipt dated 31 July 2016 fell outside the period covered by the audited financial statements ended 31 March 2016. As for the donation receipt dated 13 September 2015, though it fell within the period covered by the audited accounts ended 31 March 2016, there was no concrete evidence that the organization did receive the donation in question; and

- as Organization L had never carried on any activities over a long period of time, IRD withdrew the recognition of its tax-exempt status by a notice dated 15 May 2017.

C. Administration of land granted to charities for operating welfare/social services

36. The Committee noted from paragraphs 3.2 and 3.3 of the Audit Report regarding the land administration policy for PTG granted at nil, concessionary or full market premium which were laid down in papers submitted by the Administration to the Executive Council ("ExCo") in 1959 and 1981. The Committee asked Director of Lands to explain the policy intent of the 1959 and 1981 land administrative policy on PTG.

37. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (***Appendix 11***) that:

- in the absence of file records going back to the 1950s, LandsD had tried to deduce the policy intent of the 1959 ExCo Memorandum by making reference to the contents of the paper. LandsD noted that the Memorandum was presented as an information paper, one that set out in general the context under which different types of PTGs subject to nil/nominal, concessionary and full market premium respectively would be applicable and the general land administration arrangements. As such, the paper did not, and was not meant to, prescribe the standard terms and conditions for inclusion into the relevant types of PTGs;

- the principle conveyed by the 1959 Memorandum was that it would be important for the facilities/services operating from the PTG sites granted at nil premium for non-profit-making purposes to be run to the satisfaction of the appropriate Head of Department; and that any profit

derived from the permitted facilities/services under the PTG should not be distributed, but ploughed back to facilities/services serving worthy causes on site or off site; and

- as regards the 1981 ExCo Memorandum, LandsD considered that it was mainly applicable to circumstances where the grantee of a PTG for social service purposes at nil or concessionary premia wished to enter into partnership with a private developer to redevelop the sites, and where the private developer would be allowed to share the profit from a "commercial", income-generating element to be included in the redevelopment. The policy intent of the policy framework set out therein was to facilitate early redevelopment by allowing the partnership, and to capitalize on the commercial element to finance the redevelopment and support the maintenance and running of the social services activities.

At the request of the Committee, **Director of Lands** provided a copy of the memoranda for and decisions of ExCo on Land Administration Policy and Redevelopment of Sites Granted at Nil or Concessionary Premium for Social Services Purposes in ***Appendix 12***.

38. Taking note of the policy intent of the 1959 and 1981 policy directives set out in ExCo paper, the Committee further enquired how they were applied to and implemented in the land leases of the 14 sites granted by way of PTG as highlighted in the Audit Report.

39. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that:

- the land leases for the 14 sites were executed at different points in time, having regard to different circumstances as well as considerations prevailing then. LandsD provided a table in Appendix 11 which specified different lease conditions for the 14 sites;

- amongst the 14 sites highlighted in the Audit Report, Cases A, B and E with lease terms commencing between 1840s to 1880s held under virtually unrestricted leases were not PTGs. As such, both the 1959 and 1981 Memoranda should not be relevant. Cases C, D and K with lease terms/original lease terms commencing between 1920s to early 1950s were subject to very broad user restriction allowing much liberty

for the lessees, and no relevant information had been located so far about the existence or otherwise of specific policy intentions governing the three cases. In the circumstances, LandsD was not in a position to deduce whether the 1959 Memorandum was relevant;

- for the remaining 8 cases (Cases F, G, H, I, J, L, M and N) where the leases specifically permitted the running of hostel/dormitories, one or more of the following requirements had been stipulated in their lease conditions:

  (a) the permitted use(s) or operation should be run on a non-profit-making basis;

  (b) the operation should be conducted in all respects to the satisfaction of a certain head of department (usually the relevant monitoring department);

  (c) submission of accounts; and

  (d) no distribution of profit;

- LandsD considered that (a) and (d) above were different formulations supporting the principle conveyed in the 1959 Memorandum, i.e. that any profit derived from the permitted facilities/services under the PTG on nil/nominal premium should not be distributed, but ploughed back to facilities/services serving worthy causes on site or off site, according to the policy intention for the case in question. For (b) and (c) above, where included, they were also consistent with the principle of ensuring adequate control by the relevant government department(s); and

- since Case N involved the inclusion of the "commercial" elements of public vehicle parks and telephone exchange on full market value premium to facilitate the redevelopment of Grantee N's Headquarters, the 1981 Memorandum was relevant and was indeed mentioned in the relevant ExCo submission on the redevelopment project in Case N.

40. While the "no distribution of profits is allowed" condition was clearly stipulated in the land policy paper presented to ExCo in 1959, this clause was not specifically spelt out in the land leases granted by way of PTG except for Lease M. In addition, for those 11 sites highlighted in Table 5 of the Audit Report which had

hotels/serviced residence operation, submission of audited accounts were not required in Leases C, D, K, F, G, I and L. In this regard, the Committee enquired about:

- reasons for not specifically spelling out the clause "no distribution of profits is allowed" in the land leases granted by way of PTG;

- how LandsD could effectively monitor compliance by the organizations in the cases of the 13 sites (apart from Grantee M);

- how relevant supporting B/Ds could effectively monitor the distribution of profits derived from hotel operations were used to purposes acceptable to the Administration; and

- what remedial actions could be taken to address the problem.

41. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that:

- LandsD considered that "no distribution of profits" was not applicable to Cases A, B, C, D, E and K, given their background as explained in paragraph 39 above;

- although the leases for the remaining seven cases, i.e. Case F, G, H, I, J, L and N, did not carry a specific clause on "non-distribution of profits", four cases, i.e. Cases F, G, J and L, carried a clause requiring the operation concerned to be run on a non-profit-making basis. Such a clause was another formulation of the "no profit distribution" requirement. For the remaining three cases, Cases H and N carried a clause requiring submission of accounts while the remaining Case I carried a clause requiring the operation to be run to the satisfaction of Government; these clauses would give room for the Administration to make enquiries and monitor compliance with the spirit of "no distribution of profits";

- likewise, for those leases which did not contain a "submission of audited accounts" requirement, the requirement for demonstration of operation on a "non-profit-making" basis and/or the requirement for operation to be run to Government's satisfaction would give room for the Administration to make enquiries regarding the financial accounts where it was considered that such enquiries would help the checking of

compliance with the stated "non-profit-making" requirement and/or the "to Government's satisfaction" requirement; and

- LandsD agreed that the inclusion of specific clauses on "submission of audited account" and "no distribution of profit" into the PTGs concerned would give greater clarity about the obligations under lease and facilitate the Administration's compliance checking. Looking forward, for the 11 PTGs named in the Audit report (excluding the three virtually unrestricted leases), where the opportunities arose (such as when lease modification application and lease renewal were received), LandsD would recommend to the concerned sponsoring B/Ds the imposition of "submission of audited account" and "no distribution of profit" requirements and requested justifications if the recommendation was not accepted. The same arrangement would apply to the processing of new PTGs.

42. Referring to the grantees listed in Table 5 of the Audit Report, the Committee enquired whether income generated from hotels/serviced residence/hostel operation would be taken into account when deciding the level of subvention offered, and whether the Social Welfare Department ("SWD") had required the Grantees (except Grantee N) to submit accounts and/or relevant information relating to hostel/serviced residence/hotel operations for its scrutiny to ensure that they complied with the lease conditions.

43. **Ms Carol YIP, Director of Social Welfare** replied at the public hearing on 27 June 2017 and supplemented in her letter dated 11 July 2017 (***Appendix 13***) that:

- except for Lease N, the other land leases were not subject to the requirement for reduction of subvention based on the surplus derived from the income-generating facilities (including dormitories/hostels) operated on the sites concerned. Therefore, for the land leases which were under SWD's monitoring (i.e. Leases F, G, H, I, J, K and L), SWD had no plan to consider reducing the subventions provided to these organizations, unless there was such requirement in the land leases concerned in future;

- SWD was aware that the organizations concerned would use the surplus derived from the dormitories/hostels towards supporting other charitable services in accordance with the non-profit-making principle, for example, supporting the non-subvented social, educational, medical

services, etc., or meeting the operating deficits of other service units or the expenditure on repair and maintenance of facilities under their purview and would not be used for distribution of profits. These organizations would publish their audited statements (covering those relating to dormitories/hostels) in their annual reports or on their own websites; and

- there might have been unclear distribution of work among departments on the monitoring of dormitories/hostels operated by the organizations concerned in the past. After the issuance of the Audit Report, SWD had already liaised with the organizations concerned with a view to understanding the operation and surplus arrangements of the facilities concerned. The land leases under SWD's monitoring (i.e. Leases F to L) were not subject to the requirement of submission of audited accounts, except for Leases H and J. On this, SWD would strictly enforce the land lease requirements for Grantees H and J to submit audited accounts. As for other leases, SWD would continue the liaison with the organizations concerned and would, where considered necessary, ask them to submit audited accounts for the dormitories/hostels to ensure that the use of the surplus derived was non-profit-making in nature.

44. Regarding the submission of accounts/relevant information relating to hostel/serviced residence/hotel operations to ensure that they comply with the lease conditions, **Director of Lands**[5] supplemented in his letter dated 27 July 2017 (***Appendix 14***) that:

- without knowing the policy intention for Cases C, D and K and the applicability of the 1959 and 1981 policy directives to these cases, LandsD considered that it might not be reasonable to demand the Grantees of the three cases to submit accounts and/or relevant information relating to the hostel/hotel operation;

- "Submission of Account Clause" was incorporated in Leases H, J and M. For Leases H and J, the respective Grantees were required to submit annual audited accounts to Director of Social Welfare. LandsD was recently informed by SWD that the Grantees had not submitted audited statements of accounts which were considered in contravention of "Submission of Accounts Clause" included in the land

[5] Mr Thomas CHAN Chung-ching took up the post of Director of Lands on 1 July 2017.

grant document. LandsD had written letters to the respective Grantees on 5 May 2017 asking them to submit to SWD the audited accounts of the operation on site including the hostel portion to SWD on or before 1 June 2017. Both Grantees had requested more time to prepare the required statements and asked for extension of time up to 31 July 2017. SWD had no objection to the Grantees' extension request. If SWD considered their operation was not to their satisfaction or they requested further information to facilitate their consideration, LandsD as the administrator of the lease would assist within the power conferred to the Administration under lease;

- for Case M where the monitoring role and responsibility within the Administration was not clear, LandsD had taken a proactive role and had demanded submission of audited accounts and relevant information from the Grantee and would continue to monitor the operation of the hostels. Grantee M had submitted audited annual accounts of the hostel for the year 2013 up to the year 2015 and certifications from independent accountants regarding the ploughing back of hostel income to Charity M for the year 2013 up to the year 2015. LandsD had recently issued another letter to Grantee M urging for the early submission of the audited account for the year 2016 with certification together with breakdowns of the hostel income ploughed back by categories of uses for all the audited accounts submitted or to be submitted;

- the department within the Administration responsible for monitoring Case L was not clear. Hence, LandsD had also taken a proactive role and issued a letter to Grantee L on 22 December 2014 asking them to keep documentary proof to demonstrate compliance with lease conditions, particularly the "non-profit making hostel". In reply to LandsD, Grantee L provided an audited account for year 2016 on 6 June 2017 and stated that the surplus derived from the hostel had not been distributed. LandsD would issue a further letter to Grantee L requesting a certification from an independent auditor for their above statement including a breakdown of the hostel income ploughed back by categories of uses, e.g. education, welfare, etc.; and

- for the remaining Cases F, G, and I, as provided under lease their operation should be to the satisfaction of Director of Social Welfare. LandsD had been liaising with SWD with regard to the compliance with the relevant conditions in the leases. LandsD so far had not yet been approached by SWD for assistance to take lease enforcement

actions nor any request for demanding the Grantees of these three cases for submission of accounts and other relevant information in order to facilitate SWD's consideration/monitoring of whether their operations of hostel were to their satisfaction. LandsD would closely liaise with SWD for any necessary action to be taken under the leases.

45. The Committee noted that LandsD issued "The Protocol on the delineation of responsibilities on monitoring PTGs between Lands Department and supporting Bureaux and Departments" ("the Protocol") in 2014 and enquired about:

- measures that had been/would be taken to remind supporting B/Ds of their responsibilities, in particular about monitoring and enforcement of lease conditions throughout lease term; and

- assistance provided by LandsD to support B/Ds for formulating guidelines or a mechanism on monitoring and enforcing the lease conditions under their respective purview and details of the assistance offered.

46. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that:

- the Protocol issued in 2014 set out the general guidelines for B/Ds in considering matters concerning PTGs. LandsD believed that the Protocol, supplemented by the usual practice of researching into relevant precedents by both the sponsoring B/Ds and LandsD, would facilitate consideration of potential PTG cases;

- the Protocol itself served as an important reminder for B/Ds supporting the provision of facilities/services on PTGs. According to prevailing practice, LandsD would, after execution of the PTG, inform in writing all the concerned B/Ds so that they were aware of their respective monitoring role under lease;

- it was possible that relevant B/Ds might not have stock taken cases on the basis of the leases concerned and the specific provisions therein, particularly for leases executed years ago. To this end, LandsD would assist by taking stock of PTGs on nil or concessionary premia and key provisions therein by phases, taking into account resources available. The information would be shared with the relevant B/Ds. However,

LandsD would defer to the supporting B/Ds to set up their own guidelines for monitoring so as to achieve their policy intention in supporting the land grant on a case by case basis. But if any established breach of lease was identified by the responsible B/Ds, LandsD would follow up with appropriate lease enforcement action at their directives in the capacity of land agent of Government being the landlord; and

- where it was revealed that the monitoring role for individual lease conditions could not be attributed to a specific B/D due to the existence of grey areas, e.g. the hotel/hostel as an incoming-generating facility supported community/welfare services under the purview of different bureaux, LandsD would co-ordinate internally to arrive at a consensus and take a proactive role on monitoring if necessary.

At the request of the Committee, **Director of Lands** provided a copy of the Protocol in ***Appendix 15***.

47. The Committee enquired whether LandsD would consider specifying definitions on "hotel" and "hostel" in order to make such differentiation in future land leases for hotel operation on sites granted to non-governmental organizations at nil or concessionary premium.

48. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that for land leases granted at nil or concessionary premium, LandsD supported greater precision in setting out the uses permissible to reflect the policy intention and minimize ambiguity, and in so doing to address modern day expectations. When processing new proposals for PTGs or lease modifications/land exchanges involving the provision of hotels or hostels in recent years, LandsD had been mindful of the desirability of stipulating specifications such as the mode of operation, target clientele, basis of fee to be charged etc. in the relevant leases or service agreements associated with the leases. For instance, the PTGs under HAB's Youth Hostel Scheme was a typical example of how "hostel" had been elaborated under the leases concerned.

49. Noting that LandsD had not requested Grantee M in Case 1 of the Audit Report to submit accounts until August 2013 in response to a complaint received in April 2011, although the submission of accounts condition was clearly stipulated in the land lease, the Committee enquired about the reasons for the delay for LandsD to

take relevant action to review the accounts of Grantee M, as well as follow-up actions that had been taken since August 2013.

50. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that:

- the complaint received in April 2011 was related to the operation of a hotel on site and the suspicion that the running of a hotel on profit-making basis would be in breach of the PTG stipulating "hostel" as a permissible use, amongst others. In order to address the complainant's concern, LandsD focused initially on the alleged lease breach of the user restriction, seeking legal advice and liaising with relevant B/Ds to ascertain the policy intention;

- while Lease M carried a clause on the submission of accounts to LandsD, the clause specified that the grantee should submit the annual accounts "if so required". Until recent years, LandsD had been taking the view that the decision as to whether such submissions would be required should be taken by the B/Ds with policy responsibilities over the facilities on site, and when that decision was taken, LandsD would follow up accordingly by exercising its authority under the lease to require the accounts as the government's land agent. When following up on complaints concerning the case in recent years, LandsD had come to realize that the responsibility over that "submission of account" clause was not as clear cut as expected when the hostel as an incoming-generating facility on site supported community/welfare services both on site and off site under the purview of different bureaux. LandsD had therefore taken a more proactive role since 2013 by requesting audited accounts for the hostel from Grantee M in accordance with Special Condition No. (13) of the lease conditions;

- LandsD requested Grantee M to submit audited accounts for the hostel on the lot annually since 2013 and had so far received the annual audited accounts for 2013 up to 2015. LandsD had also received certifications by a Certified Public Accountant acting as Charity M's independent auditor that the hostel income for 2013 to 2015 had been applied by Charity M towards improvement and/or extension of charitable services provided by Charity M.[6] Meanwhile, LandsD was awaiting the submission of audited account for 2016 and the provision

[6] The certifications for 2014 and 2015 were received after the Public Accounts Committee's hearing on 27 May 2017.

of similar certification by an independent auditor regarding the ploughing back of hostel income to Charity M for the year 2016; and

- to further strengthen the Administration's monitoring over the ploughing back of hostel income, LandsD had recently requested Charity M and Grantee M to expand the certification by the independent auditors to include a breakdown of the hostel income ploughed back by categories of uses, e.g. education, welfare, church activities, etc. LandsD's intention was to share the information with the relevant bureaux to facilitate their monitoring of uses and relevant subventions under their purview.

51. As regards the provision of operating agreement between Grantee M and the operator in relation to the development and operation of the hotel, **Director of Lands** replied in her letter dated 16 June 2017 (Appendix 11) that LandsD requested Grantee M in August 2014 to provide the operating agreement but Grantee M expressed difficulties due to confidentiality with what was said to be a private contract between Grantee M and the hotel operator. LandsD made the request again in May 2017 and had recently urged Grantee M to make its best endeavours to overcome the concern with confidentiality by measures such as seeking the consent of the other party for disclosure, disclosing the agreement with sensitive information redacted or providing a summary of the provisions.

52. With reference to paragraph 4 of Case 1 of the Audit Report, $16 million of hostel/hotel operation income was earned and the same amount was paid to Charity M according to Grantee M's audited accounts for the year ended March 2013. The Committee enquired whether SWD would consider the $16 million paid to Charity M when deciding on the subvention amount for Charity M.

53. **Director of Social Welfare** replied at the public hearing on 19 May 2017 and supplemented in her letter dated 16 June 2017 (***Appendix 16***) that Grantee M was required under the land lease to conduct the facilities in accordance with the relevant Ordinances and Regulations in all respects to the satisfaction of the then Director of Buildings and Lands. As mentioned in paragraph 3.13 of the Audit Report, pursuant to a letter of June 1989 issued by the then Director of Buildings and Lands, approval was given to allow surplus derived from the facilities operated by Grantee M to be used towards the improvement and/or extension of all charitable services provided by Charity M. The land grant condition did not require the

surplus derived from the facilities to be used for adjustment of the amount of subvention granted to Charity M by SWD for the operation of the subvented services.

54. The Committee noted from paragraph 7 of Case 1 of the Audit Report that LandsD did not have the expertise or knowledge to scrutinize the accounts submitted or determine whether the profit had been used in a manner and for purposes acceptable to the Administration. The Committee asked about the measures taken by LandsD to address the situation and the lessons to be drawn from the case.

55. **Director of Lands** explained at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 11) that:

- while LandsD did not possess the expertise or experience in scrutinizing financial accounts, it was hoped that measures, including the requirement for certification by independent auditors, request for the provision of breakdown and the sharing of breakdown with relevant B/Ds, would facilitate the monitoring of the principle of "no profit making"; and

- for new cases of PTGs on nil or concessionary premia, LandsD would ensure that responsibilities over the scrutiny of accounts were internally agreed and grey areas were removed before the leases were finalized, in order to facilitate the monitoring of compliance with no-distribution of profit requirement.

56. According to paragraph 3.15 of the Audit Report, ExCo approved Grantee N's application for granting a site for the construction of a new headquarters with income-generating facilities of a hostel and a canteen at nominal premium and a vehicle park at full premium based on the understanding that Grantee N's income was expected to exceed the amount of government subvention, thus reducing and eventually eliminating the annual subvention of Grantee N's activities. The Committee enquired about the justifications for Grantee N to operate the income-generating facilities, any restrictions on how the hotel/hostel should be operated and the relevant provisions in Lease N or other agreement between the Administration and Grantee N which gave effect to the above understanding.

57. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and in his letter dated 22 June 2017 (***Appendix 17***) that:

- in granting Lease N, ExCo had taken into account that revenue would be generated from Grantee N's income-generating facilities, hence allowing for reduction and eventual elimination of the Administration's annual subvention for Grantee N. It was the intention of ExCo to allow the hostel to provide service to the general public so as to generate income for Grantee N; and

- Grantee N wrote to Director of Social Welfare in June 1985, indicating that "it is anticipated that the income generated will be employed to repay the loan…Thereafter, it would be possible for an appropriate reduction to be made to the Government's annual subvention". This had given effect to ExCo's understanding that income generated from the income generating facilities at Grantee N's headquarters would enable Grantee N to gradually cease to be reliant on the Administration's subvention.

58. According to paragraphs 3.19 and 3.20 of the Audit Report, the net profit from the income-generating facilities of Grantee N had reached a level of $829 million over 18 years of operation. However, Audit noted that HAB had not taken any action on the review of the subvention reduction issue after it took the oversight of uniformed group (including Grantee N) since April 2000 until 2010-2011 when it froze Grantee N's subvention. In this regard, the Committee enquired about:

- the change in the level of subvention each year since 2000;

- why HAB had not taken any action to review the subvention reduction issue with Grantee N;

- factors considered by HAB in reducing subvention to Grantee N and whether these factors were different from those adopted by SWD before 2000 when HAB took the oversight of uniformed groups; and

- timetable in taking forward follow-up actions as stated in paragraph 3.21(a) and (b) of the Audit Report.

59. Regarding factors considered in reducing subvention to Grantee N, **Director of Social Welfare** replied at the public hearing 19 May 2017 and in her letter dated 16 June 2017 (Appendix 16) that:

- after repayment of the development costs by Grantee N, continued subvention of Grantee N's activities by SWD would have regard to the level of income from the project. In 1997, after considering a number of factors, SWD negotiated with Grantee N and withheld part of the government rent and rates subsidy in respect of the welfare facilities operated on the site, totalling $1.1 million, for 1994-1995, 1995-1996 and 1996-1997 from its reimbursement of government rent and rates to Grantee N, as an interim arrangement for initial reduction of recurrent subvention; and

- in 1999, after examining Grantee N's financial situation from 1995-1996 to 1997-1998, SWD found that Grantee N had operating surpluses. On this basis, SWD envisaged that there was room for further reduction in its subvention to Grantee N. After discussion with Grantee N, SWD withheld part of the reimbursement of the government rent and rates amounting to $1.47 million each year for 1997-1998, 1998-1999 and 1999-2000, i.e. totalling $4.41 million, to Grantee N.

60. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and in his letter dated 22 June 2017 (Appendix 17) that:

- in determining the level of subvention reduction, HAB would have regard to Grantee N's contribution to youth development in Hong Kong, its financial position and resources needed in the future;

- in 2004-2005 and 2005-2006, HAB reduced the subvention for most subvented youth uniformed groups, including reducing the subvention for Grantee N by $0.54 million and $0.67 million respectively. Apart from the general reduction in these two years, HAB agreed that it had not initiated negotiations with Grantee N to discuss additional subvention reduction specific to Grantee N during the period from 2000-2001 to 2009-2010; and

- the ExCo's decision did not specify a timeline for achieving the objective of eventual elimination of Grantee N's subvention. In light of the recommendations of the Audit Report, HAB had resumed the

negotiation with Grantee N with a view to agreeing on the level and timetable of further reducing Grantee N's subvention. In this process, HAB would take into account Grantee N's contribution to youth development in Hong Kong, its financial position and resources needed in the future. If HAB determined that the ExCo's understanding of eventual elimination of subvention could not be achieved, HAB would seek ExCo's endorsement for variation.

Secretary for Home Affairs provided information on the level of subvention provided to Grantee N from 2000-2001 to 2016-2017 in Appendix 17.

61. Regarding the operation of a canteen, a western restaurant and a lounge ("the three catering facilities") at Grantee N's headquarters, the Committee enquired about:

- the rationale of designating some catering facilities for the exclusive use of members of Grantee N;

- the difference between the handling of the canteen and the western restaurant and the lounge by the relevant authorities (i.e. HAB, LandsD and Planning Department ("PlanD")), in particular HAB's support for Grantee N's waiver application, and the definition of "ancillary accommodation and facilities" under the land lease;

- when HAB discovered that the three catering facilities had been open for public and whether HAB's investigation was initiated arising from public complaints or referrals from other government departments;

- whether HAB/SWD had been consulted before the western restaurant and the lounge obtained their respective licences; and

- follow-up actions taken by HAB in respect of the three catering facilities.

62. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and in his letters dated 22 June 2017 and 18 July 2017 (***Appendices 17*** and ***18*** respectively) that:

- with regard to the three catering facilities, the canteen should be opened to members of Grantee N only. In June 2015, HAB was

alerted by the Food and Environmental Hygiene Department ("FEHD") that the canteen, which was open to the public, should comply with the relevant lease conditions. Upon the request of HAB, Grantee N took action subsequently to obtain planning permission from the Town Planning Board and a temporary waiver from LandsD to permit the use of the canteen for restaurant purpose. In January 2016, HAB informed LandsD that it supported Grantee N's waiver application subject to the imposition of full administrative fee and waiver fee. The planning permission and temporary waiver were granted in December 2016 and March 2017 respectively;

- in general, PlanD and LandsD were responsible for advising whether the provision of the catering facilities within the concerned development complies with the Outline Zoning Plan and land lease respectively, while HAB was responsible for considering proposals from Grantee N regarding operations requiring HAB's approval under the lease. Under Clause 6(i) of the Special Conditions of Lease N, Director of Social Welfare (now Secretary for Home Affairs) should decide on whether a use could be regarded as "ancillary accommodation and facilities". In doing so, HAB would take into account the nature of the use and whether it was incidental to and directly related to the use permitted under lease. According to Lease N, the canteen should be open to members of Grantee N only. Since Grantee N's canteen was not operated as part of the hostel and its current operation as a restaurant could not be regarded as an ancillary facility to Grantee N's headquarters, planning permission and a waiver application were needed for the canteen to be operated as a restaurant. On the other hand, the western restaurant and lounge were operated as part of the hostel and were therefore regarded as ancillary facilities to the hostel;

- in light of the recommendations in the Audit Report, HAB was ascertaining with LandsD and PlanD that the operation of the western restaurant and lounge complied with the relevant land administration and planning requirements; and

- the canteen commenced operation in July 1994 and obtained a General Restaurant Licence in February 1996. According to Grantee N's record, the canteen was not operated as a restaurant and open to the public until it obtained a General Restaurant Licence in February 1996. The western restaurant and lounge commenced operation in October

1993 and August 1995 respectively. Such uses were prescribed in clause (6)(i) of the Special Conditions of Lease N (Appendix 17).

Ms Karen CHAN Pui-yee, Acting Director of Lands confirmed at the public hearing on 27 June 2017 that the operation of the western restaurant and lounge complied with the relevant land administration and planning requirements and could be open to the public.

63. Regarding whether SWD had been consulted before the western restaurant and the lounge obtained their respective licences, **Director of Social Welfare** replied at the public hearing on 19 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 16) that:

- the western restaurant and the lounge on the mezzanine floor, as ancillary accommodation and facilities of the hostel, could be open to the public; and

- SWD did not have file record showing that Grantee N had consulted SWD on the application for the General Restaurant License for the restaurant. There was also no record in the minutes of the meetings of the Management Committee about the discussion on the operation of the restaurant, western restaurant and lounge.

64. The Committee enquired whether HAB/SWD had obtained the statement of accounts of Grantee N's income-generating facilities, and if not, the reasons why not.

65. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 22 June 2017 (Appendix 17) that since 2000, Grantee N had not submitted independent statement of accounts of the income-generating facilities of its headquarters and the vehicle park to HAB. However, the relevant accounts had been incorporated in Grantee N's annual financial reports, which were submitted to HAB annually. In light of the recommendations of the Audit Report, HAB asked Grantee N to reactivate the Management Committee in May 2017 and to submit independent statement of accounts of the income-generating facilities of its headquarters and the vehicle park. At the request of the Committee, **Secretary for Home Affairs** provided the income and expenditure of Grantee N's income-generating facilities at its headquarters and Grantee N's operation as a whole for the past three years in Appendix 18.

66. **Director of Social Welfare** replied at the public hearing on 19 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 16) that after 1997-1998, SWD obtained the statements of accounts of Grantee N's income-generating facilities for the following years:

Year	Date of receipt
1998-1999	22 July 1999
1999-2000	4 July 2000
2000-2001	9 July 2001
2001-2002	8 June 2002
2002-2003	10 April 2003

67. According to paragraph 3.16 of the Audit Report, Grantee N should establish a Management Committee comprising its own representatives, Director of Social Welfare and the then Secretary for District Administration or their representatives to ensure the proper and efficient operation of the income-generating facilities of the headquarters and the vehicle park. The Committee enquired about:

- any change in scope, terms of reference and membership of the Management Committee before and after HAB took over the management and subvention of Grantee N in April 2000; and

- whether SWD/HAB had asked Grantee N to convene meetings of the Management Committee according to the lease condition before and after the period April 2000 to early 2017.

68. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 22 June 2017 (Appendix 17) that:

- meetings of the Management Committee had not been convened since 1998. When Grantee N reactivated the Management Committee in May 2017 upon HAB's request, there was no change to the Management Committee's scope and terms of reference. There were slight updates to the membership to reflect the change of supporting bureau from SWD to HAB; and

- while HAB had not requested Grantee N to convene meetings of the Management Committee before early 2017, after HAB assumed the role of supporting bureau for Grantee N in 2000, the representative of HAB had been attending Grantee N's Executive Committee meetings,

which discussed Grantee N's financial matters as a standing item, as an observer.

69. **Director of Social Welfare** replied at the public hearing on 19 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 16) that:

- according to the record of minutes of the meetings of the Management Committee, Grantee N held five meetings from 1993 to 1998; and

- HAB took over from SWD the management of Grantee N in 2000. SWD had not been involved in the related management work since then.

Director of Social Welfare provided the scope, terms of reference and membership of the Management Committee in Appendix 16.

70. The Committee asked about details of meetings of the Executive Committee of Grantee N in which the operation of the income-generating facilities of the headquarters and the vehicle park had been discussed.

71. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and in his letter dated 22 June 2017 (Appendix 17) that according to the Constitution of Grantee N, in between meetings of the Council of Grantee N, the Executive Committee should be the authority of Grantee N in respect of major policy decisions, coordination with the Chief Commissioner, control of funds and resources and financial support. A total of 105 meetings of the Executive Committee were held from January 2000 to May 2017. At all the meetings, the Executive Committee made regular reports on the operation of the income-generating facilities of the headquarters and vehicle park. The income and expenditure of the income-generating facilities were also discussed together with the annual budget of Grantee N.

72. Referring to Cases 2 and 3 highlighted in the Audit Report, the Committee enquired about the follow-up actions taken by SWD on the possible non-compliance of Leases G and H.

73. **Director of Social Welfare** replied at the public hearing at 27 June 2017 and supplemented in her letter dated 11 July 2017 (Appendix 13) that:

Lease G

- the organization indicated in 1968 that the dormitories were mainly to provide residential accommodation for students or young workers. After reviewing the service need arising from the shrinkage in demand for dormitories, lodge service was set up on the lot of Lease G with a view to providing on-the-job training for students of the adult education courses on hospitality services organized by the organization, and to equipping these students with adequate working experience to prepare for employment;

- SWD agreed that the use of the facilities concerned to provide lodge service was not appropriate. In June 2014, LandsD requested the Grantee to cease the operation of the lodge on the subject lot. In June 2016, the organization advised LandsD that the operation of the lodge on the subject lot had ceased in May 2016. Currently, the major service targets of the dormitories were students of the adjacent universities and tertiary institutions with residential needs, including referrals made by the universities or institutes concerned. The organization also planned to make use of the dormitories to meet the welfare needs of the society. The service targets under consideration were those who required short-term residential needs for various reasons. SWD would continue following up with the organization in ensuring that the use of the dormitories was compliant with the permitted uses under the land lease conditions and meanwhile help complement the contemporary welfare needs of the society; and

- there was no requirement for submission of audited accounts or the use of the surplus derived from the dormitories under the land lease concerned. Nevertheless, the Annual Reports of the organization had been covering the income and expenditure as well as the financial position of the hospitality services under its purview (including the dormitories on the subject lot). The information was also available on the internet. To SWD's understanding, the organization would transfer the surplus derived from the dormitories to a General Fund to support the operation of the non-subvented social, educational and medical services or the daily operation of the organization as well as its service/project development, or to meet the operating deficits of other service units. Part of the surplus would also be transferred to a

Maintenance Reserve Fund to meet the expenditure on maintenance items as required by law and/or due to the obsolescence of the facilities;

Lease H

- according to the organization, the service targets of the hostel currently included its co-operating partners, organizations and groups of the church body, students, visitors from overseas for conference purposes and tourists. As there was no explicit restriction about the users of the hostel facilities in the land lease, SWD considered that there was no non-compliant use of the hostel; and

- on the requirement to submit audited accounts, although Grantee H had not submitted the audited statements of accounts for the said centre according to the land lease requirement, SWD had exercised its monitoring of the SWD-subvented welfare facilities on the subject lot in accordance with the Funding and Services Agreement as executed with the organization. The organization had also, pursuant to the requirements under the Funding and Services Agreement, submitted the requisite financial reports to SWD for vetting. After the issue of the Audit Report, LandsD wrote to the organization requesting the latter to submit, as required under the land lease, the audited accounts covering the said centre to Director of Social Welfare by 1 June 2017. The organization responded earlier to LandsD, indicating that as they needed time to prepare for the audited accounts, they would like to apply for extension of the deadline for submission of the accounts until 30 July 2017. SWD would scrutinise the audited accounts to be received from the organization and would, where necessary, further follow up with the organization on how the surplus derived from the facilities operated on the subject lot should be used.

74. The Committee enquired about the guidelines or mechanism in place for HAB/SWD staff to monitor and enforce lease conditions throughout lease term under HAB/SWD's purview.

75. **Secretary for Home Affairs** replied at the public hearing on 27 May 2017 and in his letter dated 22 June 2017 (Appendix 17) that at present, HAB processed land applications and monitored and enforced lease conditions in accordance with the Protocol issued by LandsD in 2014. In light of the recommendations in the Audit

Report, HAB should consider the need of formulating further guidelines to assist HAB staff in monitoring and enforcing lease conditions.

76. **Director of Social Welfare** replied at the public hearing on 27 May 2017 and supplemented in her letter dated 16 June 2017 (Appendix 16) that for Lease N, in accordance with the land lease condition concerned, SWD appointed a representative to attend the meetings of the Management Committee from 1993 to 1998. Besides, a meeting was held between SWD and Grantee N in September 1999 to continue discussing the subvention reduction arrangement. Before HAB took over from SWD the management and subvention of uniformed groups in 2000, SWD monitored the uniformed group services provided by the grantee according to the prevailing Guide to Social Welfare Subventions, including review of service data information, service assessment visits and subvention inspection, etc.

D. Filing and disclosure requirements of charities incorporated/ established under three ordinances

77. According to paragraph 4.9 of the Audit Report, Audit's analysis found that 21 companies of the 263 non-compliant charities which were companies limited by guarantee had repeatedly failed to file annual returns for the period 2011 up to 2016 (i.e. 12 companies for 5 years and 9 companies for 6 years). The Committee enquired about:

- reasons for the charities' repeated breaches and follow-up actions that had been taken to address the problem;

- any bring-up system in place to facilitate the monitoring and enhancing the effectiveness of compliance checks on those repeated non-compliance cases, such as deployment of information technology; and

- latest progress on the two companies not identified by CR in its compliance check as highlighted in paragraph 4.9(a) and follow-up actions taken to prevent similar occurrence in future.

78. **Ms Ada CHUNG Lai-ling, Registrar of Companies** responded at the public hearing on 19 May 2017 and supplemented in her letter dated 29 May 2017 that (***Appendix 19***):

- when defaulting cases were identified during compliance checks carried out by CR, CR would issue notices-to-file to the companies concerned requesting rectification of the default within a specified period. If the non-compliance continued, CR would consider instituting prosecution and/or strike-off actions against the company concerned. In general, from past experience, most of the guarantee companies which were in default of filing obligations claimed that they did not have sufficient resources and/or manpower to prepare their annual financial statements on a timely basis, which in turn led to delays in the filing of annual returns to CR;

- actions taken against the 21 cases mentioned in paragraph 4.9 of the Audit Report and the latest progress were as follows:

Actions taken by CR	**Number of cases**
Already struck off from the Companies Register	2
Prosecuted and strike-off actions in progress	12
Strike-off actions in progress	5
Prosecution action in progress	1
Follow-up actions pending results of legal proceedings involving the Company	1
Total	**21**

- as referred to in paragraph 4.9(a) of the Audit Report, CR was enhancing the system for conducting compliance checks, including annual checks and weekly checks, to identify companies limited by guarantee which did not comply with the filing requirements of annual returns. As the requirement for the filing of annual returns by companies limited by guarantee had been streamlined under the present Companies Ordinance, this enabled CR to enhance its system by tracking the due date for the delivery of annual return by individual companies so as to take more timely follow-up actions.

79. The Committee noted from paragraph 4.10 and Table 6 of the Audit Report that 126 companies had filed their annual returns late for 2016, with 35 (28%) submitted their returns over 90 days with the longest delay being 229 days after the due date. The Committee asked about the actions taken on these charities, especially for long delay cases, in accordance with the relevant provisions of the Companies Ordinance.

80. **Registrar of Companies** responded at the public hearing on 19 May 2017 and supplemented in her letter dated 29 May 2017 (Appendix 19) that all the 126 companies mentioned in paragraph 4.10 and Table 6 of the Audit Report had delivered the outstanding annual returns for registration, among which 38 companies delivered the outstanding annual returns after CR had issued compliance notices; while 16 companies complied with the filing requirements after CR had instituted prosecution actions against them (including the case where the annual return was filed late for 229 days). Another 72 companies had delivered annual returns for registration after the due date for submission without being prompted by a notice-to-file, so CR considered that no further action was required.

81. The Committee enquired about the new measures and requirements on companies limited by guarantee under the new Companies Ordinance that replaced the old Companies Ordinance (Cap. 32) with effect from March 2014, and measures that had been implemented by CR to promote compliance with the filing requirements.

82. **Registrar of Companies** responded at the public hearing on 19 May 2017 and supplemented in her letter dated 29 May 2017 (Appendix 19) that:

- a company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration. The requirement to deliver certified copies of financial statements applied to all guarantee companies and was introduced to enhance transparency of company information;

- the requirements for filing annual returns had been streamlined. A company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration within 42 days after the company's return date. The return date was nine months after the end of the company's accounting reference period. Thus, the due date for the delivery of an annual return was determined with reference to a company's accounting reference date, which was more predictable when compared with the case under the old Companies Ordinance, making reference to the date of annual general meeting of the company concerned which might vary every year;

- an escalating scale of annual registration fees in the case of late filing of annual returns was introduced under the present Companies Ordinance to encourage timely compliance;

- to promote compliance with the filing requirements under the Companies Ordinance, CR would continue with their educational and promotional efforts. These included maintaining a thematic section on "Compliance" on CR's website which provided information on the obligation of a company and its officers, publication of posters, information pamphlets and circular letters, etc.; and

- CR's enforcement policy was premised on all of the companies on the Companies Register. As the Companies Ordinance did not have a separate category of companies which were charities, it was important to strike a reasonable balance between enforcement actions taken against charities which were incorporated as companies and other companies on the Companies Register.

83. Noting that there were 189 societies established for charity purposes as of September 2016 (paragraph 4.14 of the Audit Report), the Committee enquired how HKPF determined whether a local society was established for charity purposes.

84. **Mr Stephen LO Wai-chung, Commissioner of Police** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (***Appendix 20***) that the Societies Ordinance contained no definition of "charity" or "charity purposes". Should a society seek in the application form for society registration or exemption from registration that its establishment was solely or partly for charity purposes, the society would be categorized as charitable organization or charity-related organization.

85. The Committee enquired about the differences in terms of legal liabilities and other statutory requirements between a registered and exempted society, and under what circumstances and conditions a society could apply for exemption for registration.

86. **Commissioner of Police** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 20) that:

- under section 5A(2) of the Societies Ordinance, a local society should apply to the Societies Officer for exemption for registration if the society was established "solely" for religious, charitable, social or recreational purposes or as a rural committee or a federation or other association of rural committee. If the Societies Officer exempted a society for registration, he would issue a certificate of exemption from registration;

- where a local society was established for purposes other than those set out in section 5A(2) of the Societies Ordinance listed above, it should register with the Societies Officer under section 5A(1) of the Societies Ordinance; and

- there was no difference in terms of the duties and powers of the Societies Officer vis-à-vis a registered society and an exempted society under the Societies Ordinance. Similarly, there was also no difference in terms of legal liabilities and other statutory requirements of a registered society and an exempted society under the Societies Ordinance.

87. According to paragraph 4.17 of the Audit Report, HKPF carried out regular reviews on those societies which had not contacted HKPF in the preceding 10 years. The Committee enquired whether HKPF would consider more effective measures in identifying inactive societies registered/exempted societies so as to keep the list posted on HKPF's website up-to-date.

88. **Commissioner of Police** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 20) that:

- as required by section 14 of the Societies Ordinance, if a registered or an exempted society had subsequently dissolved itself, the office-bearers had the responsibilities to notify the Societies Officer of such dissolution in writing, not later than the expiration of one month after the dissolution took effect. HKPF had reminded the office-bearers of this requirement in the acknowledgement letter issued to the office-bearers upon completion of society registration. A reminder message was also posted on the website of HKPF;

- the Societies Office had issued internal orders to formalize the present practice of conducting regular reviews to identify inactive societies.

The computer registration system of the Police Licensing Office would be upgraded by fourth quarter of 2018 whereby the identification of inactive societies and the management of the registered and exempted societies list would be further enhanced;

- the Societies Office would modify the application form for societies registration or exemption for registration to offer an option for a society to provide an email address for electronic communication; and

- HKPF would also study the feasibility of establishing an internal notification system to notify the Societies Office if a local society organized any activity that required an application to HKPF, e.g. public order events, lion dances, etc., so that the Societies Office knew that the society was still active.

89. The Committee enquired about the follow-up actions and improvement measures to be taken by HKPF to prevent the occurrence of irregularities as highlighted in paragraphs 4.17 (b), (c) and (d) of the Audit Report.

90. **Commissioner of Police** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 20) that:

- paragraphs 4.17 (b) and (c) stated that HKPF conducted no reviews of inactive societies in 2015 and 2016 due to the fact that the Societies Office was fully occupied by other pressing operational priorities in those two years; and

- paragraph 4.17 (d) stated that the registered/exempted societies list was not updated as 19 societies that had been marked cancelled were still included in the society list posted on HKPF's website. The oversight was due to error in data migration during system upgrade and manual mistake during data input. The error was immediately rectified in January 2017 and the 19 societies were deleted from the registered/exempted societies list accordingly.

91. The Committee enquired about the number of new applications, withdrawal or strike off cases that HKPF normally handled in a year, and whether HKPF had enough manpower to handle such volume of cases each year.

92. **Commissioner of Police** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 20) that:

- the Societies Office handled a yearly average of around 9 000 to 10 000 applications, including 2 000 new applications for societies registration/exemption for registration. It further received a yearly average of around 100 notifications of dissolution of societies; a legal obligation which was placed on the office bearers pursuant to section 14 of the Societies Ordinance. For removal of societies from the registered/exempted societies list due to cessation of existence, the number of societies removed varied each year (ranged from 100 to 1 000); and

- in view of the increased workload, in 2011, one additional disciplined post was added to the Societies Office. The current manpower of six staff in the Societies Office was considered sufficient at this stage. The computer registration system of the Police Licensing Office would be upgraded by fourth quarter of 2018 whereby the efficiency and effectiveness of the Societies Office would be further enhanced.

93. The Committee noted that there was no provision under the Societies Ordinance requiring the submission of financial statements by a registered/exempted society, and hence requirement for submission of financial statements required of charities registered under the Societies Ordinance and Companies Ordinance, and incorporated management committees under the Education Ordinance was different. In this regard, the Committee enquired when the Societies Ordinance was last amended, and details of the amendments, and whether the Security Bureau planned to conduct a review of the Ordinance in the future.

94. **Secretary for Security** replied in his letter dated 29 May 2017 (***Appendix 21***) that:

- section 15 of the Societies Ordinance stated that the Societies Officer might, at any time, by notice in writing served on any society require the society to furnish him in writing with such information as he might reasonably require for the performance of his functions under the Ordinance. Such information required might include the income, the source of the income and the expenditure of the society or its branch. Failure to comply should be liable to a fine. The Societies Ordinance therefore did empower the Societies Officer to request a society to

provide information on the income, source of income and expenditure of the society or its branch; and

- the Administration from time to time reviewed the Societies Ordinance. Over the past 10 years, the Ordinance had been amended twice, namely, in 2008 in view of the Hong Kong Court of Final Appeal's judgement in *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* and in 2012 as a result of consequential and related amendments to the Companies Ordinance.

95. According to paragraph 4.30 of the Audit Report, some IMC schools had repeatedly submitted their audited financial statements late for the 2010-2011 to 2014-2015 school years, i.e. 68, 41 and 70 IMC schools for three, four and five years respectively. For eight of the 70 IMC schools which had submitted their audited financial statements late for five consecutive school years, the delays in their submission averaged over 190 days each. The Committee enquired whether:

- EDB was aware of the above situation and reasons for the repeated non-compliance; and

- EDB had closely monitored IMC schools with repeated non-compliance and actions taken to address the problems, and the implementation timetable of such actions.

96. **Mr Kevin YEUNG Yun-hung, Under Secretary for Education** replied at the public hearing on 19 May 2017 and **Secretary for Education** supplemented in his letter dated 29 May 2017 (***Appendix 22***) that:

- EDB had put in place proper mechanism to follow up with IMC schools that failed to submit their annual audited financial statements by the deadline. According to the established mechanism, EDB would liaise with the schools concerned to understand the reasons for the late submission and offer assistance where appropriate. The late submission by schools was mainly due to high turnover of accounting staff, inexperienced staff, change in auditors and late submission of audited financial statements by auditors. Some schools however failed to accord due priority to ensure timely completion and submission of the audited financial statements; and

- for those IMC schools that failed to submit the annual audited financial statements by the submission deadline, EDB would issue reminders to the schools concerned within two months after the deadline and the responsible EDB regional officer would closely follow up with the schools. Bi-monthly emails would be issued to escalate the outstanding cases to senior EDB officers for taking follow-up action with the schools. If the outstanding audited financial statements had been overdue for more than 10 months, EDB would approach the sponsoring body of the school to request immediate submission. Nevertheless, it should be noted that late submission beyond three months after deadline for the school years from 2010-2011 to 2014-2015 was on average of 5%. There were no outstanding annual audited financial statements for the said school years. EDB considered the established mechanism had been working effectively.

97. The Committee noted that EDB's guidelines stated that IMC schools might consider uploading the annual audited accounts onto the school website to enhance transparency. Audit's sample check revealed that of the 30 IMC schools, 27 had uploaded their financial summaries onto their websites but none of them uploaded their annual audited accounts. The Committee enquired about the reasons IMC schools did not upload their annual audited accounts and measures that had been taken to encourage IMC schools to adopt this good practice.

98. **Under Secretary for Education** replied at the public hearing on 19 May 2017 and **Secretary for Education** supplemented in his letter dated 29 May 2017 (Appendix 22) that to enhance transparency, aided IMC schools were advised to give a financial summary in their annual school reports which had to be uploaded onto school websites. Schools might also consider uploading their audited accounts onto their websites. Whilst some schools concurred with EDB that the uploading of financial statistics onto their websites would enhance transparency, some did not consider it necessary. EDB would encourage more schools to adopt the good practice of uploading their financial summaries/annual audited accounts onto their websites by updating relevant guidelines before the commencement of the 2017-2018 school year and promulgated these messages in related seminars and briefings for IMC schools in January 2018.

99. According to paragraph 4.23 of the Audit Report, under the Education Ordinance, an IMC school should prepare statements of the accounts of the school to be audited by a Certified Public Account (Practising) for submission to EDB within

six months for aided schools/seven months for Direct Subsidy Scheme schools after the end date of a school year/financial year. The Committee enquired about the requirements on the format of the audited financial statements, and whether the format had been vetted or approved by EDB , relevant B/Ds or sought the advice of professional accounting bodies in formulating such requirements.

100. **Under Secretary for Education** replied at the public hearing on 19 May 2017 and **Secretary for Education** supplemented in his letter dated 29 May 2017 (Appendix 22) that according to Section 40BB of the Education Ordinance, IMC schools were required to submit annual audited financial statements to the Permanent Secretary for Education at such time and in such manner as the Permanent Secretary might specify. The annual audited financial statements should include an income and expenditure account and balance sheet, be authenticated by the signatures of the supervisor of the school and one other manager authorized by the IMC of the school to act for that purpose. In this connection, EDB issued circular memoranda annually to call for submission of annual audited financial statements by IMC schools within six/seven months after the close of the relevant school year. EDB would specify in the circular the detailed reporting requirements, specifically providing templates for IMC schools to report the financial position of each individual grant they received from EDB during the school year. EDB maintained contacts with the Hong Kong Institute of Certified Public Accountants which had issued a circular (to be updated from time to time) on reporting on the audit of schools, providing guidance to auditors in relation to audits of financial statements of aided and Direct Subsidy Scheme schools.

E. Regulation of Chinese temples

101. The Committee noted from paragraph 5.12 of the Audit Report that HAB and CTC conducted a review of the provisions of CTO during 2012 to 2015 with a view to making legislative amendments to better reflect current practices and serve current needs. The Committee enquired about the proposed legislative amendments, and the progress and timetable in implementing the recommendations set out in the review.

102. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (***Appendix 23***) that:

- CTO was enacted in 1928 in view of the mismanagement of some Chinese temples and abuses of donated funds prevailing at that time.

Taking account of the changes in social conditions over time, it might not be consistent with the current social conditions if Chinese temples were not allowed to operate unless they were registered under CTO;

- HAB and CTC had started reviewing CTO to update the regulatory regime for Chinese temples in order to meet the present social conditions and needs while striking an appropriate balance between respecting religious freedom and safeguarding public interests. Upon the initial review, a number of proposed amendments to the provisions of the CTO had been put forward in 2015. These included replacing the mandatory registration requirement with a voluntary registration scheme and adding to the Ordinance a provision to provide Secretary for Home Affairs with power to participate in legal proceedings against mismanagement of Chinese temples and abuses of temples' funds. During March to May 2015, HAB and CTC conducted a public consultation on the proposed amendments. The public consultation document on the review on the CTO is in Appendix 23; and

- the results of the public consultation indicated that there was no clear consensus in the community on the major proposed amendments. In August 2016, CTC set up the Chinese Temples Ordinance Review Task Force to study the suggestions and directions of the proposed legislative amendments. The task force conducted its first meeting in November 2016. HAB and CTC would continue to explore the establishment of a reasonable and up-to-date regulatory regime for Chinese temples. HAB would report further recommendations to the Legislative Council Panel on Home Affairs in due course.

103. The Committee noted that there were around 250 unregistered temples in Hong Kong as at March 2015 and CTC had not taken any action against them. The Committee enquired how the Administration could prevent the mismanagement of these unregistered temples and abuses of donated funds, and effectively encourage those unregistered temples to register voluntarily and whether the voluntary registration scheme could ensure the effective management and monitoring of Chinese temples in Hong Kong.

104. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 23) that although further review of CTO was needed, there were various ordinances in place to safeguard the citizens and public interests against abuses of funds or mismanagement

of Chinese temples. If any temple contravened the requirements of the relevant ordinances, the government departments concerned would follow up in accordance with the ordinance(s). For example, the Theft Ordinance (Cap. 210) covered offences of fraudulent or deceitful solicitation of money. If a case concerned contention over a temple involving charitable interests or significant public interests, Secretary for Justice might, in accordance with the Trustee Ordinance (Cap. 29), performed his roles as the protector of public charities to safeguard public interests. The permitted uses of the land on which Chinese temples were situated were subject to the requirements in the relevant land leases.

105. In accordance with paragraphs 5.15 and 5.16 of the Audit Report, HAB would consider measures to enhance transparency and accountability of the temples' operation, including publishing audited accounts and financial statements for individual temples for public inspection. The Committee asked about actions that would be taken and timetable for implementation in this regard.

106. **Secretary for Home Affairs** replied at the public hearing on 27 June 2017 and supplemented in his letter dated 18 July 2017 (Appendix 18) that:

- currently, 45 temples were managed by CTC comprising 25 under direct administration (the "directly-administered temples") and 20 temples delegated to eight organizations for management (the "delegated temples") by means of signing of an agreement. Under the existing arrangements, the financial information of all directly-administered temples and nine delegated temples of CTC was included in the annual financial statement of the Chinese Temples Fund, which was audited by the Audit Commission and submitted to the Legislative Council every year for information and uploaded to the website of CTC for public inspection;

- in order to further enhance transparency, CTC planned to upload the relevant financial information of each directly-administered temple to the website of CTC by end of 2017. As for the delegated temples, CTC planned to include the new requirement of disclosing relevant financial information of the delegated temples upon renewal of the delegated agreements with the managing organizations. In the interim, the Secretariat of CTC would also discuss with the managing organizations and encourage them to disclose the relevant financial information of the temples as soon as practicable; and

- CTC would also encourage registered temples which received donations from the public to make reference to the Reference Guide on Best Practices for Charitable Fund-raising Activities promulgated by SWD with a view to enhancing the transparency of the operation of temples.

107. The Committee noted from paragraph 5.7(a) of the Audit Report that Organization A refused to enter into a new delegation agreement with CTC and as a result, Organization A continued to manage the temple and keep and use donations and revenues received without accountability to CTC. There was no record to show that CTC had followed up with Organization A since 2007. The Committee asked whether Secretary for Home Affairs was aware of the situation and what actions had been taken to address the issue.

108. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 that he had knowledge of this issue before he assumed office in July 2015. He said that HAB had been continuously following up with Organization A in respect of the renewal of the delegation agreement.

109. Referring to paragraph 5.7(a) of the Audit Report which stated that "there was no record to show that the CTC had followed up with Organization A since 2007", the Committee requested HAB to provide documents to substantiate the Secretary's statement made at the public hearing on 19 May 2017 that HAB had been continuously following up the issue with Organization A on the renewal of delegation agreement.

110. **Secretary for Home Affairs** provided the correspondence between CTC and Organization A in Appendix 23. He admitted at the public hearing held on 27 June 2017 that the last correspondence between CTC and Organization A was in October 2007. He advised in his letter dated 26 May 2017 (Appendix 23) that:

- according to the record of CTC, a delegation agreement between CTC and Organization A was officially signed in 1996 for managing the temple in accordance with the provisions set by CTC. Upon the expiry of the delegation agreement in July 2006, the two parties could not reach a consensus on the terms of the agreement and CTC agreed to extend the original agreement for a period of three months to October 2006 pursuant to the contractual terms in the original agreement. The

Secretariat of CTC subsequently issued four letters to Organization A in September and December 2006, and June and October 2007 respectively, requesting Organization A to sign the agreement (the correspondence between the Secretariat and Organization A are in Appendix 23), but received no reply from Organization A. As the two parties could not reach a consensus on the terms of the agreement, the CTC Secretariat had been suspending the signing of the agreement;

- CTC agreed that the existing arrangement was undesirable. Therefore, the Finance and Management Working Group of CTC took up the follow-up of the case of Organization A again in August 2016. At the general meeting held in November 2016, it was agreed that the case would be followed up by HAB and CTC Secretariat. In January 2017, a meeting was held among HAB, CTC Secretariat and the District Office of the district in which Organization A was based. The three parties agreed that the District Office could first discuss with Organization A the arrangement for signing a new agreement with CTC. In February 2017, the District Office made a request to Organization A to sign a new agreement with CTC. The District Office reported the situation of meeting with Organization A to the Secretariat through email in March 2017 (Appendix 23); and

- the CTC Secretariat issued a letter on 18 May 2017 to Organization A and requested Organization A to sign a new agreement with CTC as soon as possible, and stating that the Secretariat would consider other appropriate actions should there be no response received. Meanwhile, HAB was seeking legal advice on CTC's rights and possible actions under CTO or other ordinances to work out follow-up plans. HAB would report progress to the Public Accounts Committee on the follow-up actions for the case within one year.

111. Referring to paragraph 5.7(b) of the Audit Report, the Committee enquired about the latest progress of CTC's discussion with Organization B on renewal of a delegation agreement.

112. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 23) that the CTC Secretariat had been negotiating with Organization B since November 2015 about signing a new delegation agreement. A copy of the new delegation agreement had been provided to Organization B in April 2017 to explain the requirements of the

terms. The CTC Secretariat would expedite negotiation with Organization B to sign the agreement and handle the additional storeroom built by Organization B in compliance with the laws and the requirements of the agreement.

113. According to paragraph 5.11 of the Audit Report, in Organization D's submitted accounts, a staff messing expenditure of about $380,000 was recorded and was disproportionate to the operational expenses of the temples. CTC had not sought clarifications from Organization D. The Committee enquired about:

- details of the staff messing expenditure of $380,000, and reasons for the huge increase of such expenditure over the previous year; and

- reasons why CTC had not sought clarifications from Organization D over details of the expenditure, and whether CTC had properly performed its role in managing the delegated temples to ensure their use of funds complied with the delegation agreement.

114. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 23) that:

- according to the annual statement of accounts for the year ended December 2015 submitted by Organization D, the staff cost of Organization D (one full-time post and two part-time posts) in 2015 was $301,361;

- the staff messing expenditure of about $380,000 in the annual statement of accounts for the year ended December 2015 of Organization D was higher than the amount of $137,000 incurred in 2014. Organization D explained to the CTC Secretariat that the auditor had mistakenly included expenditure items unrelated to staff messing, such as cleansing expenses, offerings to deities, and repairs and maintenance expenses, in the "staff messing expenditure". In March 2017, Organization D submitted the re-audited annual statement of accounts for the year ended December 2015 to the Secretariat; and

- only about $154,484 out of the expenditure item of $380,000 should be counted as "staff messing expenditure", which was 13% higher than the expenditure of $137,143 as shown in the 2014 audited accounts and was considered acceptable. The staff messing expenditure was

actually meal and transport allowance provided to voluntary workers who rendered services to the temples. Three voluntary workers were providing long-term assistance to the temples including introducing the history of the temples to worshippers, providing fortune-telling service, selling joss sticks and cleansing the temples. Every year, Organization D organized activities during traditional festivals, and around 40 to 50 temporary voluntary workers would be recruited on each occasion and be provided with meal and transport allowance.

A breakdown of the re-audited expenditure item of about $380,000 was provided in Appendix 23.

F. Way forward

115. Noting that HAB had convened two meetings on 11 August 2015 and 4 October 2016 to discuss the LRC Report, the Committee enquired about the reasons for the Administration to take so long to respond to the recommendations made by LRC, short-term measures to be implemented and timetable in formulating medium and long-term measures.

116. **Secretary for Home Affairs** replied at the public hearing on 19 May 2017 and supplemented in his letter dated 26 May 2017 (Appendix 23) that:

- the Administration needed time to consider the recommendations of LRC thoroughly and carefully as they had significant implications on the definition and operation of charities in Hong Kong. HAB was co-ordinating inputs from the relevant B/Ds at meeting and through various communication channels in exploring possible way forward;

- upon release of the LRC Report in December 2013, HAB wrote to the following relevant B/Ds on 20 January 2014 inviting their consideration of LRC's recommendations:

  (a) eight bureaux (i.e. Constitutional and Mainland Affairs Bureau, EDB, Environment Bureau, FSTB, Food and Health Bureau, Labour and Welfare Bureau, Development Bureau and Security Bureau) and one department (i.e. Efficiency Unit) which HAB consulted in writing in January 2014;

(b) another seven executive departments (i.e. Agriculture, Fisheries and Conservation Department; CR; FEHD; Home Affairs Department ("HAD"); HKPF; IRD and SWD) which also provided comments to HAB; and

(c) Office of the Government Chief Information Officer which was responsible for the operation of the "GovHK" website; and

- on the basis of the responses from the relevant B/Ds, HAB made an initial assessment and considered that the challenges in implementing LRC's recommendations would come mainly from the LRC's three major recommendations, namely providing a statutory definition of "charitable organizations"; establishing and maintaining a register of charitable organizations by a single Government bureau or department; and delegating the same bureau or department to be responsible for co-ordinating the work of regulating charitable organizations and charitable fund-raising activities which were currently under the purview of different B/Ds. The major challenges were summarized below:

  (a) challenges in providing a statutory definition of "charitable organizations" or "charitable purposes":

    - one of the major recommendations of LRC was that a statutory definition should be provided for "charitable organizations" or "charitable purposes" covering 14 heads.[7]

[7] The 14 heads are:
(1) The prevention or relief of poverty;
(2) The advancement of education;
(3) The advancement of religion;
(4) The advancement of health;
(5) The saving of lives;
(6) The advancement of citizenship or community development, which includes (i) rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
(7) The advancement of arts, culture, heritage or science;
(8) The advancement of human rights, conflict resolution or reconciliation;
(9) The promotion of religious or racial harmony;
(10) The promotion of equality and diversity;
(11) The advancement of environmental protection or improvement;
(12) The relief of those in need by reasons of youth, age, ill-health, disability, financial hardship or other disadvantage;
(13) The advancement of animal welfare; and
(14) Any other purpose that is of benefit to the community.

The Administration should also establish a registration system for charitable organizations according to the definition proposed by the LRC; and

- clear objectives and purposes were required for providing a statutory definition of "charitable organizations" or "charitable purposes" and for establishing a registration system. In general, it was difficult for the Administration to introduce a new piece of legislation to provide merely a definition of "charitable purposes" or require charitable organization to register, without formulating a clear regulatory framework or enforcement arrangements. Owing to the diversity of these regulatory purposes, it was not easy to provide a definition of "charitable organizations" or "charitable purposes" which was applicable to various regulatory purposes and frameworks. No consensus in the community had been reached during LRC's public consultation exercise on whether some of the purposes (e.g. promoting human rights, resolving conflicts or settling disputes) should be considered as charitable purposes. Therefore, the Administration had to make a comprehensive assessment on different views expressed in the community when considering a statutory definition for charitable organizations;

(b) no consensus in the community on establishing and maintaining a register of charitable organizations by a single regulatory authority:

- as pointed out in the LRC Report, the findings of the public consultation revealed that no consensus in the community had been reached on the establishment of a single authority and the proposal of making an authority responsible for establishing a registration system, as well as co-ordinating the regulation of charitable organizations. Many charitable organizations even objected to the proposal as they worried that the charity commission would be given too much power without proper check-and-balance. They also considered that the administration cost of a commission might be shifted to charitable organizations, thus increasing their financial burden. For the religious sector, they even worried that the registration system would involve scrutiny of religious

organizations' charitable work, which might lead to interference with religious doctrines and activities and undermined the freedom of religion as enshrined in the Basic Law; and

- in view of the public views, LRC suggested that a register of charitable organizations be established and maintained by a single government department. However, the implementation of the registration system of charitable organizations without setting up a new independent regulatory authority was a highly complicated issue. HAB needed to consider further whether the worries of charitable organizations over financial burden and religious autonomy could be removed if the registration and regulation matters were handled by a government department or an organization instead of an independent charity commission; and

(c) a single bureau or department to co-ordinate the current work of B/Ds on the regulation of charitable organizations and charitable fund-raising activities:

- LRC recommended that the current work of different B/Ds involving the regulation of charitable organizations and charitable fund-raising activities should be delegated to one bureau or department. As a matter of fact, the current legislation, licensing and land allocation work relating to charitable organizations and fund-raising activities, as well as coverage of charitable purposes recommended by LRC, involved the duties of at least nine government bureaux and nine executive departments. Substantial integration work on, among other things, policy co-ordination, resources allocation and even re-organisation would be required for B/Ds concerned to consolidate all the relevant legislation and powers before a single policy bureau or department could be designated to administer and carry out the work;

- on 11 August 2015, HAB convened an inter-departmental meeting with eight other B/Ds (including FSTB, Labour and Welfare Bureau, Efficiency Unit, FEHD, HAD, HKPF, IRD and SWD), whose scopes of work under the current legislation and statute involved the monitoring of charitable organizations or charitable fund-raising activities, to discuss the approach to and the framework for regulation as proposed

in the LRC Report. Given the complexity of the issue, the B/Ds concerned agreed that the Administration should consider carefully the feasibility and implications of those recommendations from policy and practical implementation perspectives, as well as responses from relevant stakeholders; and

- one of the key rationales behind the recommendations made by LRC was to enhance the transparency of charitable organizations, especially those raising funds from the public, so as to protect the interests of donors. Relevant B/Ds agreed that departments currently responsible for issuance of permits or licenses relating to charitable fund-raising activities, i.e. FEHD, HAD and SWD, could consider how the regulation of charitable fund-raising activities under the existing regime could be enhanced.[8]

G. Conclusions and recommendations

Overall comments

117. The Committee:

- notes that:

(a) there is no overall statutory scheme for the registration and regulation of charities in Hong Kong. Depending on their legal forms and whether they have sought recognition of tax-exempt status and government support, charities are subject to the monitoring and/or registration framework of different government bureaux/departments ("B/Ds"). Charitable organizations may be recognized for tax-exempt purpose under section 88 ("s88") of the Inland Revenue Ordinance (Cap. 112) ("IRO") and the number of

[8] See Chapter 2 of Part 4 of the Committee's Report No. 68 on Monitoring of charitable fund-raising activities. In a reply dated 16 June 2017 to the Committee's enquiry on this Chapter, Secretary for Home Affairs replied that HAB would convene another inter-departmental meeting in end-June 2017 to examine how regulation of fund-raising activities for charitable causes could be strengthened and the transparency of public fund-raising activities be enhanced under the existing mechanism. Please refer to Appendix 14 of the Committee's Report No. 68. The meeting was subsequently held on 20 June 2017.

such organizations had grown rapidly from 4 435 in March 2006 to 8 923 in September 2016.[9] Charitable donations allowed for tax deduction under IRO had also increased by 126% from $5.25 billion for the year of assessment 2005-2006 to $11.84 billion for 2014-2015, amounting to tax revenue forgone of over $1.5 billion. The rapid rise in the number of philanthropies calls for the need of an effective monitoring framework to ensure that the charitable organizations exercise good governance, stewardship and ethical practices and uphold accountability and transparency to the public and for the donations they received; and

(b) the list of charitable institutions and trusts of a public character exempt from tax under s88 of IRO available on the Inland Revenue Department ("IRD") website for public information is not a comprehensive or conclusive list of all charities in Hong Kong. Without such a list, members of the public might not be able to ascertain the charitable status of an organization. In addition, IRO does not provide statutory definition of "charity" or "charitable purpose". Hence, what constitutes "charity" or "charitable purpose" in Hong Kong is for the courts to decide in individual cases in accordance with common law authorities;

Law Reform Commission Report on Charities

- notes that the Law Reform Commission ("LRC"), after conducting a public consultation in 2011, published a Report on Charities in December 2013 with a number of recommendations, some of which are related to the monitoring of charities,[10] including recommendations on the definition of charity, registration of charities, the framework for governance, accounting and reporting of charities, charities and tax, and the establishment of a charity commission. In particular, LRC is

[9] s88 of IRO provides tax exemption to charitable institutions or trusts of a public character. A charitable organization recognized under the provisions of IRO is not generally liable to tax, and donations to such an organization can be tax deductible.

[10] Other recommendations of the LRC Report are related to the Administration's monitoring of charitable fund-raising activities, including imposing certain filing requirements in applications for charitable fund-raising licences or permits, setting up centralized telephone hotline for public enquiries and complaints in relation to charitable fund-raising activities and requiring charitable organizations to display their registration numbers on any documents and message transmitted by any means through which appeals for charitable fund-raising are made, etc. Please refer to Chapter 2 of Part 4 of the Public Accounts Committee Report No. 68 for the Committee's conclusions and recommendations on this section.

of the view that the role of IRD with respect to reviewing the accounts of tax-exempt charities is important to ensure that only charities which carry out activities in compliance with their objects should continue to be granted tax-exempt status, and that IRD fulfills a highly important function, underpinning to a large extent the confidence of the public in the charity sector. It recommends that IRD should maintain a robust role in overseeing the activities of charities for tax-exempt purposes by conducting more frequent reviews of the accounts of individual tax-exempt charities as and when necessary to ascertain whether their activities are compatible with their charitable objects. LRC believes that this administrative measure, which could be implemented relatively quickly, would promote greater accountability among charities and improve their governance. The majority of the respondents were in support of the recommendations made by the LRC Charities Sub-committee in the Consultation Paper;

- expresses grave concern about the following deficiencies in the existing regulatory framework relating to charities in Hong Kong as identified by LRC:

  (a) while the IRD's s88 list does not constitute a formal "register" of charitable organization, there may be a danger that the public and charity donors may perceive that the recognition of tax-exempt status and inclusion on the s88 list confers on those charities the semblance of official sanction not intended by IRO;

  (b) charities of different legal forms established under different ordinances can be subject to different statutory controls. For instance, charitable organizations established under the Companies Ordinance (Cap. 622) are required to prepare audited accounts, but that is not the case for charitable organizations established as societies registered under the Societies Ordinance (Cap. 151). For charities which are neither statutory nor subvented, they may operate under their own governing bodies without any public supervision; and

  (c) the definition of "charitable purpose" in Hong Kong is based upon the common law interpretation of English legislation dating back

hundreds of years.[11] Many of the more recently developed charitable purposes necessarily fall within the vague "*any other purpose*" classification. This has resulted in evolving case law on charitable purposes which is confusing and unclear;

- expresses grave concern and dissatisfaction and finds it unacceptable that the Home Affairs Bureau ("HAB") has been making slow progress in providing a response to the LRC's recommendations as evidenced by the following:

  (a) notwithstanding the guidelines contained in the Administration's General Circular that a detailed public response to an LRC Report should be provided within 12 months of its publication, HAB had simply repeated that it was still coordinating comments from relevant B/Ds for consideration of the way forward more than three years after the publication of the LRC Report in 2013; and

  (b) there were inadequacies in the internal consultation on LRC's recommendations. For example, while HAB had commenced the internal consultation process in January 2014 and received B/Ds' feedback from February to April 2014, it did not consolidate the views into a preliminary assessment paper until June 2015 and convened only three inter-departmental meetings on 11 August 2015, 4 October 2016 and 20 June 2017 respectively with the last two meetings focused only on monitoring of charitable fund-raising activities;

- understands that some recommendations set out in the LRC Report on Charities regarding the regulation of charities carry significant implications for charities in Hong Kong in terms of their qualification as charities and operation, and diverse comments have been received by LRC from the public; and notes that HAB is the coordination bureau

[11] The leading common law authority on the definition of charity is the case of *Income Tax Special Purposes Commissioner v Pemsel* [1891] AC 531 (HL), in that case "*four principal divisions*" of charitable purposes were listed as follows:
(1) trusts for the relief of poverty;
(2) trusts for the advancement of education;
(3) trusts for the advancement of religion; and
(4) trusts for other purposes beneficial to the community.
The list was itself based on English legislation dating back to 1601, namely, the preamble to the *Charitable Uses Act 1601* in England. Also see *Halsbury's Law of England*, Vol 8, 5th ed, (2010), at para 2, footnote 25.

to collect views from relevant B/Ds in formulating responses to LRC's recommendations for the Administration's overall consideration;

- strongly urges HAB to:

  (a) expedite the consultation with relevant B/Ds to formulate a substantive response to all LRC's recommendations, taking into account the areas for improvement identified in this Report and the Director of Audit's Report ("Audit Report"); and

  (b) in the interim period, explore administrative measures to improve the transparency and accountability of charities with a view to providing better safeguards to the public;

- notes that Secretary for Home Affairs has generally accepted the Audit Commission ("Audit")'s recommendation in paragraph 6.6 of the Audit Report;

Inadequacies in the monitoring of charities

Administration of tax-exempt status of charities

- stresses that under the existing legislative framework, IRD plays a vital and unique role in recognizing tax-exempt status of charities and reviewing the accounts of tax-exempt charities to ensure the eligibility of charities for tax-exempt status;

- expresses grave concern and dissatisfaction and finds it unacceptable about IRD's inadequacies and limitations in ascertaining whether charities' activities or expenditures are compatible with their objects, as evidenced by the following:

  (a) there were delays in taking follow-up actions on review cases. In one case (Case C in the Audit Report), IRD took more than five years to follow up on the irregularities identified in a charity, and on three occasions during the five years, IRD only requested further explanations and documents after long periods of inaction ranging from nine to 16 months;

  (b) there were four cases identified by Audit (i.e. Cases D to G in the Audit Report) in which the four charities concerned had paid remunerations to directors in breach of the directors' remuneration

clause in their governing instruments. While IRD drew the four charities' attention to the breach and sought their remedial actions, the remedial actions taken by them varied significantly (no refund of the remuneration paid in Case D, full refund of the remuneration paid in Case E, 5% and 50% of the remuneration paid refunded in Cases F and G respectively), and their tax-exempt status was not affected; and

(c) there were two cases identified in the Audit Report (i.e. Cases H and I) in which the expenditures of the charities concerned were not in furtherance of the objects of the charities. In both cases, the tax-exempt status of the charities was not affected;

- expresses grave concern and dissatisfaction and finds it unacceptable that IRD had not acted proactively to review the existing provisions of IRO on tax-exempt status of charities and to address its limitations in effectively performing its role in administering tax-exempt status of charities. IRD noted from a legal advice obtained in 2003 about the following limitations of s88 of IRO provisions:

  (a) Commissioner of Inland Revenue was not empowered to overturn a charity's tax-exempt status solely because the charity had not complied with any obligations, whether statutory or not;

  (b) IRD was not empowered to determine whether an organization was a charity or not; and

  (c) IRD had no authority to demand a charity to refund (in full or in part) any items of expenditure which were not paid for the furtherance of the charitable objects of a charity (e.g. payment of remunerations made to its director(s) or member(s) of its governing body).

  Such limitations fall short of public expectation as well as LRC's recommendation of IRD's role in administering the tax-exempt status of charities;

- expresses grave concern that on matters involving serious regulatory concerns, such as the use of funds not in furtherance of charities' charitable objects and serious breach of charities' governing instruments, IRD has failed to proactively seek advice from relevant B/Ds, for example, the Department of Justice and the Financial

Services and the Treasury Bureau, to clarify its power and authority in relation to the regulation of the charities' operation, and there are no clear guidelines for its Charity Donation Section ("CDS") on the performance of its regulatory functions, for example, the conditions under which CDS could issue warning letters or even withdraw tax-exempt status of a charity which no longer qualifies for the status of a charitable institution or trust of a public character as required under s88 of IRO. IRD should consider setting out clear guidelines for CDS in administering the tax-exempt status of charities more stringently and consistently;

- strongly urges IRD to conduct more frequent reviews of the annual accounts of tax-exempt charities as recommended by LRC to ascertain whether the activities of these charities and their operations are compatible with their charitable objects; and to take improvement measures on follow-up actions relating to matters of regulatory concerns, including exploring the possibility of reviewing the provisions of IRO to enable it to effectively perform the role of administering the tax-exempt status of charities;

- strongly urges the Administration to review which B/D should be more appropriate to be responsible for the overall regulation and monitoring of the operation of charities, such as making sure the charities comply with their governing instruments, bearing in mind that IRD's main duty is to administer tax-related matters;

Monitoring and enforcement of lease conditions for sites granted by private treaty grant to charities

- notes from the papers submitted to the Executive Council ("ExCo") in 1959 and 1981 that for land granted by way of private treaty grant ("PTG") at nil or concessionary premium for welfare purposes, very stringent powers of control would be included in the lease conditions, including no distribution of profits be allowed and they must be applied to improving the welfare services provided by the grantee. In situation where there was profit-making commercial element for redevelopment or expansion of facilities on the site, such income derived should be used for purposes acceptable to the Administration. Furthermore, direct subvention from the Administration should be reduced. In any case, the grantee should be made accountable for the income derived;

- expresses great dissatisfaction and finds it unacceptable that the Lands Department ("LandsD"), as the Administration's land agent, and relevant supporting B/Ds, failed to include stringent powers of control in land lease conditions over the usage of land granted at nil or concessionary premium to charities, making it difficult for LandsD and relevant B/Ds to effectively exercise control over the charities concerned and their operations on the sites, as evidenced by the following:

  (a) for the 14 sites granted to non-governmental organizations at nil or concessionary premium[12] identified in the Audit Report to have alleged hotel operations on them, only eight of the 14 land leases specified hostel or dormitory use but without specific provisions governing aspects of such use, such as clientele, services standards, hostel charges, definition of and differences between the terms "hostel" and "hotel", and whether the operations could be run on a commercial basis;

  (b) of the 11 leases with hotel/serviced residence operated on a commercial basis (excluding the three sites with virtually unrestricted use) examined by Audit, only one lease contained the no-profit-distribution requirement; and

  (c) of the abovementioned 11 leases, only four leases contained conditions requiring the submission of accounts for the operation of the hostels so that the relevant B/Ds would be able to monitor and ensure that the profits so derived would have been applied to purposes acceptable to the Administration;

- expresses grave concern and finds it unacceptable that LandsD and relevant supporting B/Ds had failed their duties to monitor the application and proper use of income generated from hostel/serviced residence on sites granted by PTG, as evidenced by the following:

  (a) for the four leases (Leases H, J, M and N in the Audit Report) which contained submission of accounts requirement, no accounts

[12] According to the Administration, three of the 14 sites were held on virtually unrestricted leases for which LandsD was not in a position to exercise any control under the land leases concerned and three sites were held on leases which referred to a broader use, for example, the leases permitted the lots to be used for any purposes carried out under the purview of the grantee organizations which might be governed by their respective Memoranda of Incorporation or incorporating ordinances.

on hostel operation had been received for Leases H and J by LandsD and Social Welfare Department ("SWD"). For Lease M, LandsD only requested the submission of accounts in August 2013 pursuant to a complaint received, 22 years after Grantee M had obtained an occupation permit for its redevelopment. For Lease N, no statement of accounts of Grantee N's income-generating facilities had been obtained since 2000 by HAB;[13] and

(b) Audit examination of Grantee M's statements of accounts revealed that for the years 2014 and 2015, notes to the accounts stated that the income derived from its hostel/hotel operation had been assigned to and belonged to Charity M, parent organization of Grantee M, and was not treated or accounted for as revenue of Grantee M. For three years from 2013 to 2015, payments totalling some $70 million had been made by Grantee M's appointed hotel/hostel operator in accordance with the agreed operating arrangement. Even though the then Director of Buildings and Lands had given a letter of approval in June 1989 that profits derived from the facilities were to be used towards the improvement and/or extension of all charitable services provided by Charity M, there was insufficient information to show that income derived from the hostel/hotel had been applied towards the social/charitable purposes in compliance with the lease condition and the 1989 letter of approval, apart from the assurance provided by Charity M's auditor in May 2014 and by Grantee M in March 2016. In addition, LandsD only requested Grantee M to submit its first statement of accounts in 2013, i.e. 22 years after the hostel came into operation;

- expresses concern that even though LandsD had issued a protocol in July 2014 delineating the responsibilities between LandsD and the B/Ds which supported various types of PTGs ("2014 Protocol"), there was still grey area in respect of the monitoring role in enforcing relevant lease conditions and other implementation difficulties. For example, in the case of Lease M, LandsD forwarded the statement of accounts for both the hostel/hotel and welfare facilities to SWD in May 2016 for comments on whether Grantee M had used profits derived from the facilities for the purposes as stated in the lease conditions and

[13] HAB took over from SWD the management of Grantee N in April 2000 and assumed the supporting B/D's role for Lease N. The income generating facilities of Grantee N came into operation in 1994.

the letter of approval of June 1989. SWD, however, was of the view that the hostel/hotel should not be treated as a welfare facility, and accordingly, would not comment in respect of the use of income derived from the hostel/hotel. LandsD, in response to Audit's enquiry, reckoned that it did not have the expertise or knowledge to scrutinize the accounts submitted or determine whether the profit had been used in a manner and for the purpose acceptable to the Administration. Monitoring of the income generated from Grantee M's hostel/hotel facilities might not be effectively carried out in ensuring its compliance with the relevant lease conditions;

- urges LandsD to review the implementation of the 2014 Protocol to examine whether there was room for improvement;

- notes that LandsD:

  (a) would, in consultation with the supporting B/Ds upon renewal of leases or on receipt of lease modification and when processing new PTG cases in future, consider including the no-profit-distribution and submission of accounts clauses to provide greater clarity regarding obligations under lease and facilitate the Administration's compliance checking;

  (b) is taking follow-up actions on Grantee M by requiring it to submit information, including statement of accounts for the hostel/hotel, the operating agreement between Grantee M and the operator in relation to the development and operation of the hotel, and has also requested Charity M and Grantee M to expand the certification by their independent auditors to include a breakdown of the hostel income ploughed back by categories of uses, e.g. education, welfare, church activities etc., so as to share the information with relevant B/Ds to facilitate their monitoring of uses of income and relevant subvention under their purview; and

  (c) would coordinate with relevant B/Ds to arrive at a consensus and take a proactive monitoring role in a situation where the monitoring role for individual lease conditions could not be attributed to a specific B/D due to the existence of grey areas, e.g. the hotel/hostel as an income-generating facility supporting community/welfare services under the purview of different B/Ds;

- notes that Secretary for Development and Director of Lands have agreed with Audit's recommendation in paragraph 6.7 of the Audit Report;

Monitoring subvention reduction arrangement and income-generating facilities of a lease

- notes that ExCo's approval for Grantee N to use the site for the construction of a new headquarters with income-generating facilities of hostel and a canteen at a nominal premium and the vehicle park at full premium was based on the understanding that Grantee N's income was expected to exceed the amount of subvention, and would gradually cease to be reliant on the subvention from the Administration. Grantee N should submit to the supporting B/Ds annually a complete statement of accounts and establish a Management Committee comprising Grantee N's members and representatives from the supporting B/D to ensure the proper and efficient operation of the income-generating facilities of the headquarters and the vehicle park;

Subvention reduction arrangement

- expresses serious dismay and finds it unacceptable that HAB, as the supporting government bureau for monitoring Grantee N since 2000, failed to properly manage the subvention reduction arrangement and monitor the operation of income-generating facilities on the site, as evidenced by the following:

  (a) the Management Committee only held five meetings from 1993 to 1998 with SWD's representatives attending the meeting, and had not held further meetings since then. Even though representatives of HAB had attended, as an observer, Grantee N's Executive Committee meetings which also discussed its financial matters, the Committee was not a designated forum for discussing the proper and efficient operation of the income-generating facilities;

  (b) there was no record showing that statements of accounts had been submitted to HAB since 2000 annually thereafter;

  (c) SWD had informed HAB in 1999 that, based on the financial situation of Grantee N from 1995-1996 to 1997-1998, it was expected that there was room for reduction in its subvention to

Grantee N.[14] However, HAB, after taking over the management of Grantee N, had not taken any action until 2010-2011 (10 years later) when it decided to freeze Grantee N's subvention;[15] and

(d) net profit from income-generating facilities of Grantee N had reached the level of $829 million from 1994 to 2011. From 1993-1994 to 2010-2011, the subvention level for Grantee N's activities totalled at $280 million. The agreement between HAB and Grantee N in February 2013 was that the annual subvention should be reduced from $17.28 million in 2012-2013 to $10.61 million in 2015-2016.[16] However, the agreed subvention reduction scheme had yet to give full effect to ExCo's understanding of eventual elimination of subvention and there was no record to show that HAB had taken follow-up action in this regard;

- notes that:

(a) HAB has asked Grantee N to reactivate the Management Committee in May 2017 and to submit independent statement of accounts of the income-generating facilities of its headquarters and vehicle park; and

(b) HAB has resumed the negotiation with Grantee N with a view to agreeing on the level and timetable of further reducing Grantee N's subvention. If HAB determines that ExCo's understanding of eventual elimination of subvention could not be achieved, it would seek ExCo's endorsement for variation;

Operation of catering facilities not complying with lease conditions

- expresses alarm and strong resentment, and finds it unacceptable that HAB and SWD had not exercised effective monitoring on the operation of catering facilities in the new headquarters of Grantee N, as evidenced by the following:

[14] SWD discussed with Grantee N and withheld part of the reimbursement of the government rent and rates amounting to $1.47 million each year for 1997-1998, 1998-1999 and 1999-2000, i.e. totalling $4.41 million to Grantee N.

[15] Annual subvention to Grantee N was frozen at $17.28 million from 2010-2011 to 2012-2013.

[16] HAB's subvention for Grantee N's activities was reduced to $15.06 million in 2013-2014 but increased to $25.66 million in 2014-2015 (due to the increase in subvention of all uniformed groups) and subsequently reduced to $23.44 million in 2015-2016.

(a) according to Lease N, Grantee N's canteen should form part of the headquarters and was for the exclusive use of members of Grantee N. However, the canteen had been operated as a restaurant open for general public on a commercial basis since 1996 without seeking planning permission by the Town Planning Board ("TPB"); and

(b) Grantee N had operated a western restaurant and a lounge open for general public. However, HAB and SWD had not ascertained with LandsD and the Planning Department ("PlanD") whether the operation of the two catering facilities was permitted use under Lease N and the relevant Outlining Zoning Plan;

- notes that:

(a) HAB has requested Grantee N to obtain planning permission from TPB and a temporary waiver from LandsD to permit the use of the canteen space for restaurant purpose. In December 2016, Grantee N obtained TPB's approval to use the canteen space for a temporary restaurant for three years. In March 2017, LandsD offered the waiver terms for Grantee N's acceptance; and

(b) HAB is ascertaining with PlanD whether the operation of the western restaurant and lounge complies with the relevant land administration and planning requirements. LandsD indicated at the public hearing that the western restaurant and lounge were permitted to operate as auxiliary facilities under the lease provisions and could be open to the public;

<u>Monitoring of Chinese temples</u>

- expresses grave concern and dissatisfaction and finds it unacceptable about the inadequacies in the regulation of Chinese temples by the Chinese Temples Committee ("CTC") in that Audit examination revealed that two temples had been managed by Organization A and Organization B after the expiry of the relevant delegation agreements in 2006 and 2007 respectively. Donations and other revenues were kept and used by the organizations concerned without accountability to CTC. There was no record showing that CTC had followed up with Organization A regarding the delegation agreement since October 2007. For Organization B, there was a breach of conditions of the agreement by erecting an unauthorized building structure at the temple

premises before the expiry of the agreement in 2007, but the issue dragged on for some 10 years and remained unresolved;

- expresses serious dissatisfaction and disappointment that Secretary for Home Affairs, in answering the Committee's enquiry about CTC's inaction in respect of the renewal of delegation agreement with Organization A for nearly 10 years since 2007, made an explicit statement at the public hearing on 19 May 2017 that he had knowledge of this issue before he assumed office in July 2015, and that HAB had been continuously following up the issue with Organization A, but he failed to provide any document to substantiate his statement, and later admitted at the public hearing on 27 June 2017 that the last correspondence between CTC and Organization A was in October 2007. As such, the later evidence from Secretary for Home Affairs is obviously inconsistent with the statement made by him at the public hearing on 19 May 2017;

- strongly stresses the importance that witnesses, when being invited to public hearings to provide evidence to the Committee, should be well-prepared and have thorough knowledge of the matters under investigation, and that they should provide accurate and complete information and should avoid giving misleading evidence to the Committee when responding to the Committee's enquiry;

- expresses serious dissatisfaction and disappointment that, in view of the diverse views received during the public consultation exercise, the review of the Chinese Temple Ordinance (Cap. 153) conducted in 2015 is still not yet finalized on the implementation of a proposed voluntary registration scheme. In view of reported cases of alleged mismanagement of Chinese temples and abuses of temple funds, there is a need for HAB to implement interim measures to safeguard the temple funds, and to enhance the transparency and accountability of temples' operation in general; and

- notes that:

  (a) HAB has taken follow-up actions on the case of Organizations A and B for signing a new agreement, and will take appropriate actions if no response is received; and

  (b) HAB, together with CTC, has set up the Chinese Temples Ordinance Review Task Force to study the suggestions on and

directions of the proposed legislative amendments to CTO, including the establishment of a reasonable and up-to-date regulatory regime for Chinese temples.

Specific comments

118. The Committee:

Administration of tax exemption of charities and tax-deductible donations

- expresses serious concern that there were inadequacies in IRD's monitoring of the progress of periodic reviews, taking follow-up actions on review cases and obtaining information on deregistration of tax-exempt charities, as follows:

  (a) notwithstanding that IRD carried out periodic reviews to ascertain the tax-exempt status of charities, there was no operative provision under IRO that required a charity to respond to IRD's requests for information and documents for the periodic reviews of its tax-exempt status within a specific time;

  (b) the monthly work reports prepared by CDS for IRD management could not provide a full picture of all the uncompleted review cases and their age profile because: (i) the reported figures did not cover those review cases where the charities concerned had not responded to CDS's queries; (ii) for review cases with several rounds of exchange of correspondence, the dates of the most recent correspondence pending attention did not reflect how long the cases had been in process; and (iii) there were omissions of uncompleted review cases in compiling the monthly reports. For example, while the monthly report showed that as at 30 September 2016, CDS had not attended to 60 submitted questionnaires and the waiting time for the earliest questionnaire was 42 days, Audit's analysis of IRD's database revealed that there were 635 reviews commenced or scheduled for commencement from 2006 to 2015 which had remained uncompleted as at 30 September 2016, of which 71 (11%) had remained uncompleted for over five years;

  (c) Audit sample check of 17 periodic review cases revealed delays by IRD in 15 (88%) cases, including in one case, IRD had not

attended to a questionnaire submitted by a charity in April 2009 until September 2016 (some 7.5 years later);

(d) in two review cases, the case officers had not requested the charities concerned to provide sufficient explanations on their donation expenditures to support that they were compatible with their objects, although such expenditures ($1 million in one case and $0.46 million in another) were the only activities of the charities concerned, using up all/most of their donations received for the years;

(e) in three review cases, CDS had taken over two years to deal with dormant cases. In one of the three cases, the charity had not commenced operation for 12 years since it was recognized as a tax-exempt charity; and

(f) while IRD had made arrangements with the Companies Registry ("CR") whereby companies to be struck off by CR would be brought to IRD's attention for IRD to take timely action on updating the list of tax-exempt charities and making enquiry on the disposal of assets of such companies after dissolution, IRD had not made similar notification arrangements with relevant B/Ds for tax-exempt charities which were established under other ordinances;

- expresses serious concern that Audit's sample check on IRD's desk audits on charitable donation claims had revealed that in one profits tax case, the supporting schedule filed by the taxpayer did not show whether the donations were made to tax-exempt charities but the assessing officer had allowed tax deduction without seeking clarification from the taxpayer. In two salaries tax cases, the assessing officers had allowed tax deductions although the donation was not made to a recognized tax-exempt charity in one case and the taxpayer's name did not match with the donor's name in another case;

- notes that:

(a) Commissioner of Inland Revenue has generally agreed with Audit's recommendations in paragraph 2.29 of the Audit Report, including incorporating the number of all uncompleted review cases with their age profile and their position in the monthly work report for management review, strengthening the control system

of charities' outstanding replies to enquiries raised by IRD and reminding staff of CDS to give due consideration to the materiality of the donation expenditures when deciding the extent of verification work; and

(b) Commissioner of Police has agreed with the Audit's recommendation in paragraph 2.29(f) of the Audit Report;

Administration of land granted to charities for operating welfare/social services

- notes LandsD's explanations that: (i) the land administration policy had evolved since 1959 with due regard to seven of the 11 cases which were submitted to ExCo for approval; (ii) the no-profit-distribution clause was not imposed in these seven cases which served as precedents for subsequent cases; and (iii) accordingly, the no-profit-distribution requirement in land granted for welfare purposes was no longer applicable;

- expresses concern that the current use of the hostels/dormitories under three leases (Leases G, H and N in the Audit Report) as hotels/serviced residence for the general public might not be in line with the policy intent based on which the supporting B/Ds recommended the land grants at nil or concessionary premium, i.e. the facilities were for meeting the grantee's purpose under Lease N and for meeting welfare purposes under Leases G and H;

- notes that:

  (a) Director of Lands has generally agreed with Audit's recommendations in paragraph 3.25 of the Audit Report;

  (b) Director of Social Welfare has agreed with Audit's recommendation in paragraph 3.26 of the Audit Report; and

  (c) Secretary for Home Affairs has agreed with Audit's recommendations in paragraph 3.27 of the Audit Report;

Filing and disclosure requirements of charities incorporated/established under three ordinances

- expresses concern that:

  (a) while the timely filing of annual returns by charities which were companies with CR was important for donors to gain access to their financial information so as to make an informed choice when making donations, there were cases of non-compliance with the filing requirements. Up to November 2016, some 1 237 annual returns for the years from 2011 to 2016 had not been filed by charities which were companies limited by guarantee. In particular, 21 companies had repeatedly breached the filing requirements, i.e. 12 companies for five years and nine companies for six years. For the 2016 annual returns submitted by 3 219 charities, 126 (3.9%) were late submissions. The delays were over 90 days in 35 cases;

  (b) the list of registered/exempted societies had not always been kept up-to-date because the Hong Kong Police Force ("HKPF") had not: (i) conducted any reviews of inactive societies in 2015 and 2016; (ii) requested 53 charitable societies which had not contacted HKPF for 10 years or more at the time of the 2014 review to furnish proof of their existence; and (iii) updated the list of registered/exempted societies in respect of 19 societies with society status marked cancelled; and

  (c) while an incorporated management committee ("IMC") of aided schools established under the Education Ordinance (Cap. 279) was responsible for handling funds and assets received from the Administration and donations from the general public, there were cases of late submission of audited financial statements by some IMC schools. Of the 305 late submissions of audited financial statements by IMC schools for the 2014-2015 school year, 26 (9%) IMC schools had submitted their audited financial statements later than 120 days after the submission due date, thus impeding the timely monitoring of their financial affairs by the Education Bureau and the public. Moreover, for the 2010-2011 to 2014-2015 school years, 68, 41 and 70 IMC schools had repeatedly submitted their audited financial statements late for three, four and five years respectively;

- notes that:

  (a) Registrar of Companies has generally agreed with Audit's recommendations in paragraph 4.12 of the Audit Report;

  (b) Commissioner of Police has agreed with Audit's recommendations in paragraph 4.19 of the Audit Report; and

  (c) Secretary for Education has agreed with Audit's recommendations in paragraph 4.31 of the Audit Report;

Regulation of Chinese temples

- expresses grave concern that:

  (a) while both the temples directly administered by the CTC and the temples managed by organizations under delegated authority from the CTC received voluntary donations from the public, only the financial information of the 25 directly administered temples and 9 of the 20 delegated temples was accounted for in the financial statements of the Chinese Temples Fund, which were posted on CTC's website for public inspection. CTC had neither made available the audited accounts of the remaining 11 delegated temples for public inspection nor required the delegated organizations to do so, thus impeding the timely monitoring of their financial affairs by the public;

  (b) there were cases of non-compliance with the submission of audited accounts and administrative report requirements by four delegated organizations. In one case, up to January 2017, a delegated organization had not submitted the audited accounts of its managed temple for the previous three years and its administrative reports for the previous 11 years. There were delays in submissions of three other organizations which together managed 15 temples. For example, for the organization with five managed temples, the audited accounts due for submission in March 2014, 2015 and 2016 were not submitted until December 2016; and

  (c) CTC had not sought clarifications from a delegated organization concerned although its submitted accounts for the five temples under its management for the year ended December 2015 showed

a staff messing expenditure of about $380,000 which was disproportionate to the amount of $137,000 incurred in the previous year; and

- notes that Secretary for Home Affairs has generally accepted Audit's recommendations in paragraph 5.15 of the Audit Report.

Follow-up action

119. The Committee 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 on the provision of funds to District Councils for implementing community involvement projects in districts annually ("DC-CIP funds") by the Home Affairs Department ("HAD").

2. Hon Abraham SHEK Lai-him declared that he was a member of the Business and Professionals Alliance for Hong Kong with some members being District Council ("DC") members. Hon Paul TSE Wai-chun declared that he was a DC member. Hon Steven HO Chun-yin declared that he was a member of the Central Committee of the Democratic Alliance for the Betterment and Progress of Hong Kong and many district organizations had invited him as a consultant or an honorary president. Hon LAM Cheuk-ting declared that he was a member of the Democratic Party with a number of its members being DC members and he himself was a member of North DC, and DC members belonging to the Democratic Party might have applied for and organized activities using the DC-CIP funds. Hon SHIU Ka-fai declared that he was a DC member and a member of the Liberal Party. Hon Tanya CHAN declared that she was a member of the Civic Party and DC members belonging to the Civic Party might have applied for and organized activities using the DC-CIP funds.

Background

3. Community involvement projects ("CI projects") are aimed at enhancing community spirit and social cohesion and promoting well-being of the people in the 18 districts of Hong Kong. CI projects, such as district festivals and activities to promote sports and culture, are funded by the DC-CIP funds provided by HAD and implemented through DCs. In 2015-2016, the provision of the DC-CIP funds amounted to $361.6 million. The number of CI projects implemented in 2015 was 37 827, which had a total of 18.6 million participants. According to the 2017 Policy Address announced in January 2017, the annual provision would be increased by $100 million from 2017-2018 onwards.

The Committee's Report

4. The Committee's Report sets out the evidence gathered from witnesses. The Report is divided into the following parts:

- Introduction (Part A) (paragraphs 1 to 7);

- Allocation and use of district council funds for community involvement projects (Part B) (paragraphs 8 to 23);

- Management of conflicts of interest in community involvement projects (Part C) (paragraphs 24 to 39);

- Implementation of community involvement projects (Part D) (paragraphs 40 to 49); and

- Conclusions and recommendations (Part E) (paragraphs 50 to 52).

Public hearing

5. The Committee wrote to Director of Leisure and Cultural Services and Director of Home Affairs respectively on 18 May 2017 to seek further information in respect of the irregularities revealed in the Director of Audit's Report ("Audit Report"). The Committee received replies from Director of Leisure and Cultural Services and Director of Home Affairs on 31 May and 6 June 2017 (***Appendices 24*** and ***25*** respectively). After studying the information received, the Committee decided to hold a public hearing on 17 October 2017 to seek further clarification from the relevant bureau/departments.

Speech by Director of Audit

6. **Mr David SUN Tak-kei, Director of Audit**, gave a brief account of the subject at the beginning of the Committee's public hearing held on 17 October 2017. The full text of his speech is in ***Appendix 26***.

Opening statement by Secretary for Home Affairs

7. **Mr LAU Kong-wah**, **Secretary for Home Affairs,** made an opening statement at the beginning of the Committee's public hearing held on 17 October 2017, the summary of which is as follows:

- HAD had consulted the Independent Commission Against Corruption on preparing guidelines on "other declarable interests" under the first-tier declaration of interests. As for the second-tier declaration of interests, HAD had asked each DC secretariat to remind DC members and committee members to declare interests as appropriate and remind

DC/committee chairmen to make rulings on interests declared and record these rulings in the meeting minutes;

- HAD had worked with each DC secretariat with a view to drawing up a set of good practices on the handling of interests declared and rulings made by DC chairmen and committee chairmen at meetings; and

- HAD would stipulate that the relevant provisions of declaration of interests in the DC standing orders would also be applicable to working groups.

The full text of Secretary for Home Affairs's opening statement is in ***Appendix 27***.

B. Allocation and use of district council funds for community involvement projects

8. The Committee enquired if the Administration had briefed DC members at the start of a new term on, amongst others, the purposes of the DC-CIP funds, the scopes of CI projects and procedures on declaration of interests.

9. **Miss Janice TSE Siu-wa, Director of Home Affairs,** said at the public hearing on 17 October 2017 and supplemented in her letter of 7 November 2017 (***Appendix 28***) that HAD organized induction briefings for DC members at the start of a new DC term. For the 2016-2019 DC term, two identical induction briefings were held on 8 and 12 January 2016 respectively. In the briefings, HAD introduced different manuals and guidelines related to the work of DCs, such as the Manual on the Use of DC Funds ("HAD Manual") and the Guidelines on the Remuneration Package for Members of DCs of the Hong Kong Special Administrative Region. In addition, the briefings covered the functions of the Home Affairs Bureau and HAD, and the Code of Conduct for DC members. Presentation by the Independent Commission Against Corruption on the conduct of DC members as public officers was also included in these two briefings. HAD also briefed DC members on, amongst others, the purposes of DC funds and the scope of CI projects.

10. According to paragraph 2.2(b) of the Audit Report, a portion of the DC-CIP funds was allocated to individual DCs taking into account a number of factors (e.g. population and socio-economic factors). However, HAD had not taken into account changes in the factors in allocating the DC-CIP funds (paragraph 2.5 of the Audit Report). As Director of Home Affairs agreed to conduct a review of the allocation of the DC-CIP funds in response to the Audit Report, the Committee

enquired about the progress of the review and enhancements that would be made to the allocation mechanism.

11. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and at the public hearing on 17 October 2017 and supplemented by her letter of 7 November 2017 (Appendix 28) that to maintain a reasonable degree of certainty and continuity in funding, a baseline allocation was calculated and maintained for each district unless there was an increase in overall funding for DC funds. When there was an increase[1] in the total provision of DC funds, the allocation for DCs in the past year would be allocated as baseline allocation. As for the additional provision, a portion of which would be allocated on an equal basis to the DCs and the remaining portion would be allocated according to the relevant factors (e.g. population and land area) by using the latest data. HAD had duly reviewed and adopted a new allocation arrangement. Starting from 2017-2018, the major portion (60.3%) of the total provision would be allocated according to the latest data of the relevant factors (e.g. population and socio-economic factors). HAD planned to adopt this arrangement to recalculate the allocation at the beginning of a new DC term, or when there was a further increase in the total provision in future. This would ensure any changes to the relevant factors could be duly and timely reflected in the allocation.

12. According to paragraph 2.9 of the Audit Report, for the period 2011 to 2015, the number of CI projects decreased by 3.3% (from 39 127 to 37 827), and the number of participants decreased by 13.3% (from 21.49 million to 18.63 million). However, the expenditure of CI projects increased by 17% (from $272.35 million to $319.52 million) (paragraph 2.10 of the Audit Report) in the same period. The Committee enquired about the reasons for the increase in the expenditure of CI projects despite the decrease in the number of participants.

13. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and at the public hearing on 17 October 2017 that as DCs might identify and initiate projects for implementation to meet the needs of their districts, the number of projects and participants might vary from year to year. The Administration had not set any targets for DCs on the number of CI projects to be carried out or the number of participants of these projects. She explained that the implementation of CI projects involved the procurement of goods and services as well as the engagement of project staff. The increase in price level and staff cost

[1] Between 2008-2009 and 2016-2017, there were three increases in overall funding for DC funds respectively in 2012-2013, 2013-2014 and 2015-2016.

over the years would have a bearing on the number and nature of projects organized/sponsored. As an illustration, the Composite Consumer Price Index increased by 16.8% for the period 2011 to 2015. Both DCs and other implementation parties had been striving to enhance the quality and variety of CI projects and higher operational costs for implementing CI projects had been observed. HAD had compared the latest figures for 2016 against those set out in the Audit Report up to 2015 and found that the expenditure per participant was comparable ($17.2 in 2015 versus $17.8 in 2016). HAD would continue to keep under review the number of CI projects and participants in the projects vis-à-vis the expenditure of the projects. In case there were any abnormal trends, follow-up action would be taken.

14. According to paragraph 2.9 of the Audit Report, the number of CI projects (comprising DC projects and projects of the Leisure and Cultural Services Department ("LCSD")) and the number of participants in CI projects were the two key performance indicators shown in HAD's Controlling Officer's Report. In March 2017, HAD and LCSD were verifying the accuracy of the statistics on the number of CI projects and the number of participants in CI projects (paragraph 2.14 of the Audit Report). The Committee enquired about the reasons for the verification process and the progress, and whether the figures of previous years would be updated.

15. **Ms Michelle LI Mei-sheung, Director of Leisure and Cultural Services,** said at the public hearing on 17 October 2017 and stated in her letter of 31 May 2017 (Appendix 24) and **Director of Home Affairs** stated in her letters of 6 June and 7 November 2017 (Appendices 25 and 28 respectively) that in light of the Audit's analysis of the project figures, both HAD and LCSD had verified the figures again and found that some discrepancies had arisen due to different categorization and timeframe of the statistics. HAD and LCSD had agreed to adopt measures to ensure the uniformity and accuracy of the project statistics. Specifically, a template would be made available for district staff to ensure that the figures were provided on the same basis among the 18 districts. The relevant figures would be verified by the LCSD Headquarters and compiled by the HAD Headquarters using a coordinated mechanism and consistent approach. The relevant statistics in the past years were revised on the basis of the new approach as follows:

	2011	**2012**	**2013**	**2014**	**2015**
No. of CI projects	33 593	34 010	34 522	34 534	33 712
No. of participants (million)	16.88	17.12	18.06	17.13	15.92

16. In paragraphs 2.17 and 2.18 of the Audit Report, Audit's analysis revealed that in 2015-2016, of the $205.63 million of funds spent on the 15 project categories, $146.27 million (71%) were spent on the three categories of arts and cultural activities, recreational and sports activities, and festival celebrations and district festivals. The funds spent on some project categories were small. In addition, Audit found that for some projects targeting specific groups of people, the number of projects and participants was low (paragraph 2.20 of the Audit Report). The Committee enquired whether the Administration would consider providing incentives or implementing measures to encourage DCs to initiate projects of other categories and targeting specific groups of people.

17. **Director of Home Affairs** replied at the public hearing on 17 October 2017 and stated in her letter of 6 June 2017 (Appendix 25) that as DC members were conversant with the needs of their respective districts/constituencies, they were in a better position to initiate projects that met the needs of their districts. Starting from 2017-2018, HAD would provide DCs with an analysis of the approved projects by categories for DCs' reference. DCs could make reference to the analysis in considering allocation of DC funds to the various project categories.

18. According to paragraphs 2.24 and 4.15 of the Audit Report, Audit noted cases where inaccurate and incomplete information had been input by district offices into the District Council Funds Information System ("DCFIS"). The evaluation results as contained in the project evaluation forms had not been input into DCFIS by the DC secretariats concerned. The Committee asked about the procedure in place for the DC secretariats to process information in DCFIS and the verification process to ensure the accuracy of data input.

19. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) that the DC secretariats input project data into DCFIS upon the approval of CI projects and after key milestones had been reached, e.g. approval for releasing advance payment, receipt of final reports and evaluation forms, etc. User procedures manual and guidelines on the classification of CI projects had been provided to assist the secretariat staff in inputting data into the system. The DC Secretary was responsible for ensuring the accurate recording of DC projects in DCFIS. HAD had reminded the DC secretariats to keep the data in DCFIS accurate, updated and complete.

20. According to paragraph 2.27 of the Audit Report, 10 of the 18 DCs had used funds designated for arts and cultural activities ("the designated funds") on other activities in 2015-2016, involving amounts ranging from $0.22 million to $1.09 million. The Committee enquired:

- whether HAD had ascertained the reasons why part of the designated funds were used on other activities and details of these other activities, and whether HAD had monitored the use of the designated funds;

- if the DCs concerned had not fully used up the approved designated funds, how the residual funds would be handled; and

- what measures would be taken to ensure that the designated funds were solely used for arts and cultural activities and the implementation timetable.

21. **Director of Home Affairs** explained at the public hearing on 17 October 2017 and in her letter of 6 June 2017 and supplemented in her letter of 7 November 2017 (Appendices 25 and 28 respectively) that:

- since the provision of designated funds for the first time in 2013-2014, HAD had required DCs to ensure that they would spend in each of the following years an amount no less than the amount spent by them on arts and cultural activities in 2012-2013 and that the two additional designated funds (i.e. $20.8 million since 2013-2014 and another $20.8 million from 2015-2016 to 2019-2020) would be spent solely on such activities;

- there would be cases where the actual expenditure incurred by these activities was different from the approved budget, such as the actual amount was less than the approved budget, some projects were cancelled due to inclement weather or other unforeseen circumstances, and payment rolled over to the next financial year, pending submission of supporting documents;

- all unspent DC funds, including those designated for arts and cultural activities, would lapse at the end of the financial year. In order to fully utilize the district allocation for the benefit of the community, DCs might decide to use the unspent balance of the designated funds to settle payments for approved CI projects in other categories. As a budgetary strategy, DCs might approve over-commitments of up to

25% of their respective district allocations and any unspent balance of DC funds could be used for settling payment of CI projects in general. It was not feasible to specify which particular projects had used up the said unspent balance in the designated funds;

- HAD regularly reminded District Officers ("DOs") that the designated funds should be fully spent on arts and cultural activities. HAD had included this specific reminder when notifying DOs of the annual district allocation at the start of the financial year. It had also encouraged the DC secretariats from time to time to speed up payments to ensure full utilization of the designated funds. To ensure DCs could fully use the designated funds, HAD had asked the DC secretariats to enhance budgetary control and management of the funds, e.g. by suitably considering over-committing on arts and culture projects, so that the funds could be spent as far as possible by the close of the financial year; and

- examples of approved CI projects under other categories which had art and culture elements were "2015年拉闊音樂賀中秋敬老綜藝音樂嘉年華" (categorized under "Festival celebrations and district festivals") and "勁歌熱舞同樂日 2015 Live Band Show" (categorized under "Recreational and sports activities").

22. In reply to the Committee's concern whether the DC secretariats had reminded DC chairmen and members of the relevant committees which approved these other activities that funds designated for arts and cultural activities would be used, **Director of Home Affairs** replied in her letter of 7 November 2017 (Appendix 28) that the unspent balance was seen by DCs as part and parcel of the funds for settling payment of approved CI projects in general, no reminders would be issued on the use of the unspent balance.

23. In reply to the Committee's enquiry on the classification of CI projects, **Director of Home Affairs** said at the public hearing on 17 October 2017 that the classification of CI projects was decided by staff of each DC secretariat when they input the relevant information into the computer system. In her letter of 7 November 2017 (Appendix 28), she supplemented that there were 23 categories on the list of CI projects. For the purpose of conducting analyses, the Audit had discounted some items (e.g. the employment of dedicated staff to assist DC in implementing CI projects) or counted items of similar nature collectively (e.g. "District Cultural Project Grant Scheme" and "Culture and Arts" were grouped

together). As for the item of "Others", the projects concerned were re-distributed to other related categories. As a result, a total of 15 project categories were reported in the Audit Report. Guidelines for classifying CI projects into different categories had been circulated to the DC secretariats and were attached to the letter.

C. Management of conflicts of interest in community involvement projects

24. The Committee noted that under the District Councils Ordinance (Cap. 547) ("DCO"), a DC may make standing orders for regulating its procedures and those of its committees, including procedures for managing conflicts of interest in CI projects. DCs had generally adopted the model text provided by HAD, with variations to suit their individual needs. In Part 3 of the Audit Report, it is revealed that some practices of DCs had deviated from DCO, such as allowing working groups to endorse CI project applications without seeking their DCs' further endorsement, and some DCs did not require their members to declare interests when handling matters through circulation of papers. The Committee asked the Administration whether HAD had reviewed the standing orders, procedures and forms used by each DC to make declaration of interests to ensure that they were appropriate and in compliance with the provisions of DCO.

25. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and explained at the public hearing on 17 October 2017 and supplemented in her letter of 7 November 2017 (Appendix 28) that:

- section 68 of DCO provided that a DC might make standing orders for regulating its procedures and those of its committees. In promulgating the model text provided by HAD for DCs' reference, HAD normally would highlight in bold the part of the model text adopted from the provisions of DCO and mark in italics those parts of text which the Administration considered necessary for inclusion in the DC standing orders;

- HAD had already requested DOs to review the standing orders of their respective DC to ensure that the principles and procedures laid out therein complied with the provisions of DCO as well as the model text of standing orders. HAD noted that ten DCs had adopted procedures on declaration of interest same as those of the model text and the other eight DCs had made only minor modifications to the model text; and

- HAD had also specifically impressed upon the DC secretariats of the need to seek DCs or their committees' endorsement of CI project applications recommended by working groups.

The relevant extracts of the model text of DC standing orders and the HAD Manual relating to declaration of interests were provided in Director of Home Affairs's letter of 12 July 2017 (***Appendix 29***). A table summarizing the reasons for differences between the standing orders of eight DCs[2] and the model text of DC standing orders is in ***Appendix 30***.

26. According to paragraph 3.8(a) of the Audit Report, Audit noted that 34 DC/committee members might have overlooked the need to declare connections with implementation parties when attending meetings to consider the earmarking of funding. The Committee enquired about measures that had been taken so far to ensure that DC/committee members declared their interests before earmarking funding for implementation parties.

27. **Director of Home Affairs** explained in her letter of 6 June 2017 (Appendix 25) that earmarking of funding was for budgetary and planning purposes only. Despite that funding had been earmarked, all funding applications from implementation parties were subject to DCs' vetting, scrutiny and separate approval. HAD had already requested DOs to remind DC/committee members to declare interests before earmarking of funding and the rulings made should be recorded in the minutes of meetings.

28. The Committee noted from paragraphs 3.9(a) and 3.10 of the Audit Report that Director of Home Affairs had agreed to provide guidelines with broad principles of what constituted "other declarable interests" to DC/committee members as appropriate to facilitate the reporting of such interests and enquired about the progress.

29. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) that HAD had consulted the Independent Commission Against Corruption for its advice on preparation of the guidelines. HAD aimed to provide broad principles of what constituted "other declarable interests" and along the line

[2] Eight DCs which have made some minor modifications for their standing orders based on the model text are Eastern, Wong Tai Sin, Kwai Tsing, Sai Kung, Sha Tin, Tai Po, Tsuen Wan and Yuen Long DC.

that key decision-making or influential positions in implementation parties held by DC/committee members should be considered as "other declarable interests" under the guidelines. **Director of Home Affairs** further said at the public hearing on 17 October 2017 and supplemented in her letter of 7 November 2017 (Appendix 28) that HAD had issued guidelines on "other declarable interests" in September 2017. As at early November 2017, the guidelines had been adopted by eight DCs. As for the other ten DCs, the DCs concerned were in the process of considering the guidelines; for example, by submitting them to DC/relevant committee for discussion and consideration. A copy of the guidelines is in Appendix 28.

30. The Committee noted from paragraph 3.13 of the Audit Report that, of the 129 cases of declaration of interests examined by Audit, in 73 (57%) cases, rulings had not been made and recorded on the interests declared, and the DC/committee members who had declared the interests continued their attendance in the meetings. The Committee enquired about the guidelines and procedures in place for DC Chairmen to make rulings on those members' attendance, withdrawal, making a speech and voting at the meetings. The Committee also enquired about the reasons why rulings had not been made and recorded on the interests as contrary to the standing orders requirement.

31. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and at the public hearing on 17 October 2017 and supplemented by her letter of 7 November 2017 (Appendix 28) that:

- the DC standing orders provided that any DC member who had pecuniary or other interests in any matter under consideration by the DC concerned or had connections with the beneficiaries or potential beneficiaries, including those on tender, quotation and DC funds had to, as soon as practicable after being aware of it, declare such to the DC concerned prior to the discussion of the relevant item. Based on the interests declared, the DC/committee chairman should decide whether the member might speak or vote on that matter, or should withdraw from the meeting;

- the HAD Manual also provided that DC members (including co-opted members) should make a declaration on any conflicts of interest which might be actual, potential or perceived. DC members should refrain from having business dealings with any party associated with projects financed by DC funds, which might bring DC into disrepute. If such

could not be avoided, the DC member should declare the transaction and withdraw from the relevant DC proceedings;

- HAD had drawn up a set of good practices on the arrangement for handling declaration of interests by DC members and co-opted members in vetting fund applications. As at early November 2017, eight DCs had adopted the good practices in their standing orders or procedures. The other ten DCs would go through the necessary consultation process before adopting the good practices. A copy of the good practices is in Appendix 28;

- although for some cases, rulings were not explicitly recorded in the minutes concerned, it had been the general understanding and practice that members with pecuniary interests in the funding applications would not vote on the specific funding application(s) in question. The DC secretariats concerned had already stepped up the arrangement by reminding the chairmen of meetings to make explicit rulings and ensure that such rulings were properly recorded in the minutes of meetings; and

- HAD had already requested all DC secretariats that as a standard practice they should remind DC/committee members to declare interests at the relevant meetings or upon circulation of papers, and record the rulings made by the chairmen in the minutes of meetings. The minutes of meetings were posted on DC websites for public scrutiny.

32. With reference to Case 1 in paragraph 3.5 and Case 2 in paragraph 3.13 of the Audit Report, the Committee enquired whether the DC secretariats concerned in these two cases had reminded the chairmen of the meetings to make specific rulings on the interests declared by members.

33. **Director of Home Affairs** advised in her letter of 7 November 2017 (Appendix 28) that for both Cases 1 and 2, the chairmen of the meetings concerned had not been reminded to make specific rulings on the interests declared by members. For Case 1, the secretariat concerned explained that it was an established practice in the DC concerned that members should not speak or vote on the items on which they had declared conflict of interest. For Case 2, the secretariat concerned explained that no explicit ruling was made in respect of members' declarations before September 2016 because all along, there was an implied consent from the chairman

and general acquiescence among members that where no direct conflict of interest was involved, those who declared interests could continue to stay at the meeting. HAD acknowledged that there was room for improvement and the secretariats concerned had already stepped up the arrangement by reminding chairmen of meetings to make specific rulings and ensure that such rulings were recorded in the minutes of meetings. A copy of correspondence from HAD to DOs on reminding the chairmen of meetings to make rulings on interests declared and record the rulings in the minutes of meetings was attached in the letter.

34. According to paragraphs 3.18 and 3.19 of the Audit Report, of the nine DCs examined by Audit, there were three working groups (under three DCs) that endorsed applications for CI projects on behalf of DCs/committees. The procedures for managing conflicts of interest as stipulated in DC standing orders were not applicable to working group meetings, and there were no laid-down procedures for handling conflicts of interest in working groups. The Committee asked whether the Administration had implemented measures to rectify the above situation.

35. **Director of Home Affairs** stated in her letter of 6 June 2017 (Appendix 25) and further explained at the public hearing on 17 October 2017 that the principle of requiring DC members to declare interests as appropriate applied to Council, committee, and working group meetings. Whilst working group was not explicitly mentioned in the standing orders in addition to the reference to "Council" and "committee", the HAD Manual had provided that DC members and co-opted members should make a declaration of interests before the relevant item was discussed. As working group members were either DC members or co-opted members, this would have governed the declarations of interests by members of working groups when handling CI projects. HAD had already reminded the DC secretariats that the stipulated procedures for handling conflicts of interest in DC/committee meetings also applied to working group meetings and would add the express reference to "working group" in the DC standing orders to put the matter beyond doubt.

36. According to paragraph 3.18 of the Audit Report, the minutes of working group meetings as reviewed by Audit had not disclosed essential information, such as members in attendance, interests declared and rulings on interests declared. The Committee asked the Administration to explain about these irregularities and measures to ensure that this would not happen in future.

37. **Director of Home Affairs** replied at the public hearing on 17 October 2017 and supplemented in her letter of 7 November 2017 (Appendix 28) that:

- except closed-door meetings, minutes of working group meetings were made available on the DC website. While the recordings of working group meetings were not required to be uploaded onto the DC website, the recordings were available upon public request;

- the secretariat of the working group concerned explained that the meeting minutes were prepared in accordance with Clause 43 of the Standing Order of the DC. Clause 43 followed the model text provided by HAD as follows: "[t]he minutes of meetings of a working group shall record the final decisions of the discussion only. They shall be uploaded to the homepage of the Council except for the closed-door sessions of meeting";

- this was a case of misinterpretation of Order 43 of the model text, which was intended to provide guidance that there was no need to record discussions of the working group in verbatim and that only the final decisions were required to be recorded. The intention was to streamline the work as there might be many working group meetings looking after many minute details of some projects. It was not the intention to allow the secretariat to leave out other essential details such as the attendance list and interests declared; and

- starting from 2017, the minutes of the working group concerned had incorporated more details of the meetings, including the list of members in attendance, interests declared and rulings on interests declared.

38. In reviewing the minutes of meetings of three working groups, Audit noted that the working groups had been delegated by their respective DCs with the authority to endorse a project application not exceeding $24,500, $100,000 and $200,000 respectively (paragraph 3.20). However, a DC might only delegate its functions to a committee under DCO. The Committee sought the Administration's explanation on this irregularity and the remedial actions taken.

39. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and further explained at the public hearing on 17 October 2017 and supplemented in her letter of 7 November 2017 (Appendix 28) that working groups

might make recommendations on CI project applications to DC or its committees for approval but working groups (not within the meaning of committee under section 71 of DCO) should not approve applications on their own. In June 2017, HAD reminded the DC secretariats that, for those working groups that were then endorsing CI project applications, they should (i) seek DC or the relevant committee's further endorsement on the working group recommendations; or (ii) properly constitute the working groups as committees under section 71 of DCO as appropriate. The relevant correspondence issued is in Appendix 28.

D. Implementation of community involvement projects

40. According to paragraph 4.6 of the Audit Report, one DC had reviewed the arrangement of designated non-governmental organizations ("NGOs") more than 10 years ago. The Committee enquired about the existing procedures for reviewing DCs' lists of designated NGOs and the reasons for the DC not reviewing its list of designated NGOs on a regular basis as well as the actions taken by HAD to assist DCs to review the lists.

41. **Director of Home Affairs** explained in her letter of 6 June 2017 (Appendix 25) and at the public hearing on 17 October 2017 that:

- designated NGOs were generally well-established local or district-based organizations with long-term working partnership with DCs/district offices. They had the proven capability and good track record in organizing various CI activities, including large scale or theme-specific ones, for the local community and the people who lived, worked or studied in the districts. DCs would, for budget planning purposes, earmark a suitable portion of the DC funds for these NGOs at the beginning of the year;

- proposals for earmarking of funding for the designated NGOs would still need to be submitted to the respective DC/committees for consideration, and the individual funding applications would be subject to the usual application, vetting and disbursement procedures as set out in the HAD Manual. Applications from the designated NGOs were subject to the same level of scrutiny by the respective DCs/committees as with those submitted by other organizations; and

- HAD agreed that DCs should regularly review their lists of designated NGOs to ensure that only NGOs with good performance and track

records were included in the list. HAD would provide DCs with guidelines for this purpose within 2017 to facilitate the review.

42. According to paragraph 4.8 of the Audit Report, it was a usual practice that partner NGOs were selected with the assistance of the DC secretariats through open or restricted invitations. In paragraph 4.9 and Case 3, of the four DCs examined by Audit, for one DC, partner NGOs were selected through nominations by the DC members in charge of the CI projects concerned. The Committee enquired about the reasons for this irregular practice in adopting a less open and transparent practice in selecting partner NGOs.

43. **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) and explained at the public hearing on 17 October 2017 that:

- in line with the role of DCs, HAD had not stipulated the exact mechanism on the selection of NGO partners but had provided guidelines on public accountability and management of conflicts of interest in the HAD Manual. HAD was then gathering comments from the 18 DCs on their practices in selecting partner NGOs with a view to drawing up a set of best practices with emphasis on openness, transparency and accountability for reference by all DCs;

- as DCs needed some flexibility in undertaking CI projects to meet the diverse needs of their districts, it would not be practical to turn the best practices or guidelines into mandatory requirements for strict compliance by DCs. In processing and considering applications, including the selection of partner NGOs, DCs were advised to follow the guidelines set out in the HAD Manual;

- for the DC mentioned in paragraph 4.9 of the Audit Report, while there was a practice of assigning a DC member to be the "member in charge" of certain CI projects (e.g. where appropriate, suggesting an NGO to be an organizer/co-organizer), all decisions regarding the appointment of NGO(s) were made by the relevant committees/working groups rather than the individual DC members. The role of the "member in charge" was to make recommendations for committees/working groups' consideration and approval. In selecting a partner NGO, the committees/working groups would take into account such factors as the experience and track record of the NGO, and record their deliberations/considerations in the minutes. All committee/working

group meetings were open to public and their minutes were available on the DC website; and

- HAD and the DO concerned would explore with the DC possible enhancements to the mechanism for selecting NGOs taking into account the practice adopted by other DCs.

44. According to paragraphs 4.13 and 4.14 of the Audit Report, one DC examined by Audit had discontinued the use of any evaluation systems in the period 2011-2012 to 2016-2017 and another had not set any criteria for selecting CI projects for evaluation. The Committee noted that according to the HAD Manual, a DC should have an evaluation system in place to monitor the effectiveness of CI projects and enquired about:

- whether having an evaluation system was a mandatory requirement in the HAD Manual and the reasons for some DCs not having an evaluation system in place;

- the percentage of forms with the evaluators' comments for the three DCs concerned that adopted the system in 2015-2016; and

- measures taken by HAD to ensure that DCs set up a system for evaluating CI projects and set proper criteria for selecting CI projects for evaluation.

45. **Director of Home Affairs** replied at the public hearing on 17 October 2017 and in her letters of 6 June and 7 November 2017 (Appendices 25 and 28 respectively) that:

- the HAD Manual provided that an evaluation system should be put in place by all DCs to monitor the effectiveness of CI projects. For the DC mentioned in paragraph 4.13 of the Audit report, project completion reports were obtained from organizers and considered by the DC secretariat concerned. In November 2016, the DC concerned decided on an evaluation system and that DC members should be involved in the evaluation work to ensure the effectiveness of CI projects. Proper records of DC members' involvement in the evaluation system had been made since this financial year;

- DCs were given the flexibility to devise their own evaluation system but generally it was expected that DC members, co-opted members or district office staff who were not involved in the administration of the project concerned and who did not have an interest in the applicant organization and/or the project under evaluation should conduct visits or attend the activities on a random basis;

- HAD had already reminded DOs that a proper evaluation system should be put in place to monitor the effectiveness of CI projects and all projects meeting the criteria set should be evaluated. The DC concerned was reviewing the evaluation system with reference to other districts' good practices. HAD would monitor the progress of the review and offer assistance whenever required; and

- all the 3 DCs mentioned in paragraphs 4.13 to 4.17 concerned had used a standard evaluation form, which was basically the same as the one provided in the HAD Manual (a copy of the form is in Appendix 28). Part B of the standard evaluation form allowed the evaluators to put down their comments (i.e. item (g) "Other Comments") and around 2.7% of these forms were with evaluators' comments.

46. The Committee noted from paragraph 4.16 of the Audit Report that for five projects, while the actual number of participants was below 50% of the expected number of participants, the rating was "Very Satisfactory". In one project of one DC, while the actual number of participants was only 33% of the expected number, the rating was "Very Satisfactory". In two projects of another DC, while the actual number of participants was 100% of the expected number in one project and 123% in the other, the rating was only "Acceptable". The Committee enquired whether guidelines would be laid down to facilitate a common understanding of the evaluation system to reflect the actual situation in completing the review.

47. **Director of Home Affairs** explained in her letter of 6 June 2017 (Appendix 25) that there were different types and scale of CI projects. While evaluators (usually DC members without a direct interest in the project) could count the number of participants for events of a smaller scale (e.g. with a small number of participants), they might have difficulties in counting the same for large scale events such as carnivals. As there would be practical difficulties in devising guidelines that could ensure accuracy in evaluators' counting of the number of participants in certain types of events (e.g. carnival type events), HAD would remind the DC secretariats to follow up with the evaluators in cases the ratings given were not in

line with the actual outturn rates, say, by obtaining the evaluator's explanation or observations regarding the discrepancy.

48. According to paragraph 4.18 of the Audit Report, Audit examined 38 projects held in 2015-2016 at LCSD venues and found that in 30 (79%) projects, the audience size disclosed in the final report was higher than that recorded by LCSD venue management (with variances ranging from 3% to 323% and averaging 71%). The Committee asked about the methods used by LCSD and DCs and what follow-up actions had been taken to address the problem.

49. **Director of Leisure and Cultural Services** replied in her letter of 31 May 2017 (Appendix 24) and **Director of Home Affairs** replied in her letter of 6 June 2017 (Appendix 25) that the records kept by LCSD venue management were based on ticket sales report or ticket stubs collected or manual counting during admission. HAD indicated that figures set out in the final reports submitted to DCs were provided by the implementing parties. HAD had asked district offices to request the implementing parties to obtain the relevant figures from the LCSD venue management in completing the final reports so as to ensure the accuracy of the number of participants/audience in the final reports.

E. Conclusions and recommendations

Overall comments

50. The Committee:

- notes that the aims of the community involvement projects ("CI projects") are to enhance community spirit and social cohesion and promote well-being of the people in the 18 districts. The annual provision of the funds to District Councils for implementing CI projects in districts ("DC-CIP funds") was $361.6 million for the five years 2015-2016 to 2019-2020. According to the 2017 Policy Address announced in January 2017, the annual provision would be increased by $100 million from 2017-2018 onwards. The number of CI projects implemented under the DC-CIP funds in 2015 was 37 827, which had a total of 18.6 million participants;

- expresses grave concern about the inconsistencies and variations across different District Councils ("DCs") in managing CI projects and that those practices are not conducive to enhancing accountability and transparency in the use of the DC-CIP funds and are not in compliance with the practices of good governance as evidenced by the following:

  (a) the practice of reviewing the list of designated non-governmental organizations ("NGOs")[3] varied. Of the four DCs examined by the Audit Commission ("Audit"), one DC last reviewed its list more than 10 years ago;

  (b) despite that the Home Affairs Department ("HAD") Manual on the use of the DC-CIP funds has stipulated that a DC should have an evaluation system in place to monitor the effectiveness of CI projects, of the four DCs examined by Audit, one DC had discontinued the use of any evaluation systems in the six-year period 2011-2012 to 2016-2017 and another DC did not set any criteria for selecting CI projects for evaluation;

  (c) of the nine DCs examined by Audit, three working groups (under three DCs) had been delegated by their DCs with the authority to endorse a CI project application not exceeding $24,500, $100,000 and $200,000 respectively. However, those DCs have no statutory power to make such delegation arrangements, for section 71(5) of the District Councils Ordinance (Cap. 547) ("DCO") only provides that DC may delegate its functions to a committee; and

  (d) of the four DCs examined by Audit, one DC selected partner NGOs for implementing CI projects through nominations by the DC members in charge of the projects concerned instead of following the usual practice of selection through open or restricted invitations by the DC secretariat;

- understands that under section 68 of DCO, a DC may make standing orders for regulating its procedure and that of its committees; and each DC should be given some degree of flexibility to make its standing orders as well as work procedures to suit the characteristics and circumstances of individual DCs. However, it is imperative that DCs

[3] Designated NGOs are those which have a long-term working relationship with DCs and are earmarked with funds by DCs in their annual budgets for carrying out CI projects.

should ensure transparency and accountability in their consideration and approval of CI projects, which involve public money;

- strongly urges HAD to:

  (a) take necessary actions to ensure that the standing orders of each DC comply with the provisions of DCO;

  (b) take more effective measures to ensure that the work procedures of DCs/committees/working groups comply with the principles of transparency and accountability in considering and approving CI projects; and

  (c) remind DCs to ensure that the delegation of functions to working groups would not be in contravention of DCO;

<u>Allocation and use of district council funds for community involvement projects</u>

- notes that since the provision of designated funds for the first time in 2013-2014, HAD had required DCs to ensure that they spent in each year an amount no less than the amount spent by them on arts and cultural activities in 2012-2013, and that the two additional designated funds (i.e. $20.8 million since 2013-2014 and another $20.8 million from 2015-2016 to 2019-2020) would be spent solely on such activities;

- expresses serious concern that in 2015-2016, 10 DCs had spent funds designated for arts and cultural activities on other activities, ranging from $0.22 million to $1.09 million and totaling $6.8 million;

- expresses concern that while there were 15 project categories to classify CI projects, HAD had not prepared detailed guidelines for the DC secretariats to ensure consistency in the classification for all DCs. Given the nature of each project category and that there may be overlaps in scopes of different categories, each DC secretariat may adopt different criteria in its classification and the statistics compiled may not accurately reflect the scope or nature of CI projects implemented;

- urges HAD to:

  (a) liaise with and remind DCs that funds designated for arts and cultural activities should not be diverted to spend on other non-arts and cultural activities; and

  (b) prepare, in consultation with DCs, detailed guidelines to assist the DC secretariats in classification of CI projects;

Management of conflicts of interest in community involvement projects

- notes that DC standing orders provide that any DC member who has pecuniary or other interests in any matter under consideration by the DC concerned or has connections with the beneficiaries or potential beneficiaries must, as soon as practicable after being aware of it, declare such interest(s) to the DC concerned prior to the discussion of the relevant item. Based on the interests declared, DC/committee chairman shall decide whether the member may speak or vote in that matter, or should withdraw from the meeting;

- expresses great dissatisfaction and finds it unacceptable about the irregularities and deficiencies in respect of declaration of interests of DC/committee/working group members as evidenced by the following:

  (a) "other declarable interests" had not been clearly defined in DC standing orders. Of the 129 second-tier declarations of interests examined by Audit, which were made by DC/committee members at meetings held by seven DCs or their committees in 2016, in 122 (95%) declarations (made by 76 members), registrable interests regarding the positions (e.g. president or chairperson) held by members in implementation parties had not been reported in the first-tier declaration;

  (b) Audit's examination of the minutes of eight meetings (involving eight DCs) in 2016 revealed that in seven meetings (involving seven DCs) where DC/committee members considered the earmarking of funding for implementation parties, 34 members had not declared their connections with the implementation parties (e.g. as vice-chairmen or board members of the implementation parties);

(c) rulings[4] had not been made and recorded on the interests declared in 73 cases of the 129 cases of declarations of interests at meetings, contrary to the standing orders requirement. In the circumstances, those who had declared interests continued their attendance in the meetings;

(d) in relation to working groups under the nine DCs examined by Audit, in one of the three working groups (under three DCs) that endorsed applications for CI projects on behalf of DCs/committees, the minutes of meetings disclosed only the final decisions of project applications. Other information, such as members in attendance, interests declared and rulings on interests declared, had not been disclosed;

(e) the procedures for managing conflicts of interest as well as the need to publicize minutes of DC/committee meetings (containing information on declaration of interests) for public viewing were not applicable to working group meetings. There were no laid-down procedures for handling conflicts of interest in working groups; and

(f) the standing orders of nine DCs examined by Audit did not spell out how declarations of interests were to be made when matters were handled not in meetings but through circulation of papers, and for two of the nine DCs, applications for CI projects were frequently endorsed by DC/committee members through circulation of papers;

- notes that Director of Home Affairs has agreed with Audit's recommendations in paragraphs 3.9, 3.14 and 3.21 of the Director of Audit's Report ("Audit Report");

- notes that HAD issued guidelines on "other declarable interests" in September 2017;

[4] Standing orders of each DC stipulate similar procedures for handling interests declared as follows: (a) when a member of DC or a committee declares an interest in a matter, the chairperson of the DC or the committee shall decide whether the member: (i) may speak or vote on the matter; (ii) may remain in the meeting as an observer; or (iii) should withdraw from the meeting; and (b) all cases of declaration of interests shall be recorded in the minutes of the DC/committee meetings.

- urges HAD to:

  (a) keep in view the implementation of the guidelines on what constitutes "other declarable interests" which should be declared in the first-tier declaration;

  (b) make more efforts to remind DC members to declare their interests where appropriate;

  (c) remind DCs and the DC secretariats that chairpersons' rulings on interests declared by members of DCs/committees/working groups at meetings should be made and the rulings as well as their rationale should be recorded in the minutes; and

  (d) consider extending procedures for managing conflicts of interest to working group meetings as well as handling matters through circulation of papers;

Role of the District Council secretariat

- expresses grave concern about the role of the DC secretariats in assisting DCs in ensuring that the consideration, approval and evaluation of CI projects as well as the management of conflicts of interest comply with the principle of accountability and transparency and the principle of good governance; and

- urges HAD to consider preparing guidelines for the DC secretariats on how the DC secretariats could play a more active role in enhancing accountability, transparency and good governance in considering, approving and evaluating CI projects.

Specific comments

51. The Committee:

Allocation and use of district council funds for community involvement projects

- expresses serious concern that:

(a) HAD had not taken into account changes in the factors (e.g. population and socio-economic factors) in allocating the DC-CIP funds. For example, in allocating an amount of $256.11 million in 2015-2016, the allocation was based on the old data (e.g. district population) of 2008-2009, 2012-2013 and 2013-2014;

(b) in the period 2011 to 2015, the number of CI projects decreased by 3.3% from 39 127 to 37 827 and the number of participants decreased by 13.3% from 21.49 million to 18.63 million, while the expenditure of projects increased by 17% from $272.35 million to $319.52 million;

(c) HAD and the Leisure and Cultural Services Department ("LCSD") were yet to verify the accuracy of the CI project statistics (i.e. the number of CI projects and the number of participants in CI projects) when the statistics had already been published in the HAD's Controlling Officer's Reports;

(d) according to the HAD's Controlling Officer's Report, CI projects aim to achieve a wide spectrum of social objectives. However, of the $205.63 million of the DC-CIP funds spent in 2015-2016 on the 15 categories of DC projects, $146.27 million (71%) were spent on the three categories of arts and cultural activities, recreational and sports activities, and festival celebrations and district festivals, while only $59.36 million (29%) were spent on the other 12 categories. The funds spent on some of those 12 categories were small. For example, each of the categories of civic education ($2.42 million) and building management ($1.7 million) incurred a spending of less than 2% of the $205.63 million spent;

(e) for some DC projects targeting specific groups of people, the number of projects and participants was low. For example, of the some 6 900 DC projects in total, there were only 133 (1.9%) projects for people with disabilities or special needs, and of the some 15 million participants, there were only 19 000 (0.1%) ethnic minorities. There is room for DCs to increase the number of projects targeting specific groups of people; and

(f) while the computer system set up for managing the DC-CIP funds and CI projects contained useful data on the funds and projects,

HAD had not made use of the data to conduct analyses periodically to facilitate the management of the funds and projects;

- notes that:

  (a) Director of Home Affairs has agreed with Audit's recommendations in paragraphs 2.6, 2.28 and 2.29 of the Audit Report;

  (b) HAD has adopted a new allocation arrangement starting from 2017-2018 that less than half of the total provision would be allocated based on individual DC's allocation in the past year, and the major portion of the total provision would be allocated according to the latest data of the relevant factors, such as population and socio-economic factors; and

  (c) Director of Leisure and Cultural Services has agreed with Audit's recommendations in paragraph 2.29 of the Audit Report;

<u>Implementation of community involvement projects</u>

- expresses serious concern that:

  (a) as part of evaluation of CI projects, in rating an assessment item known as "No. of participants as compared with the estimated no. of participants", there were cases where the ratings given were not reflecting the actual situation. For example, in one DC project, the rating was "Very Satisfactory", while the actual number of participants was only 33% of the expected number; and

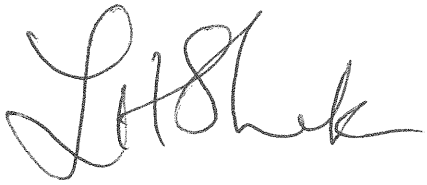
  (b) Audit examination of 38 CI projects held in 2015-2016 at performance venues of LCSD revealed that in 30 (79%) projects, the audience size reported by the implementation party was higher than that recorded by LCSD venue management, with variances ranging from 3% to 323% and averaging 71%; and

- notes that Director of Home Affairs has agreed with Audit's recommendations in paragraphs 4.10 and 4.20 of the Audit Report.

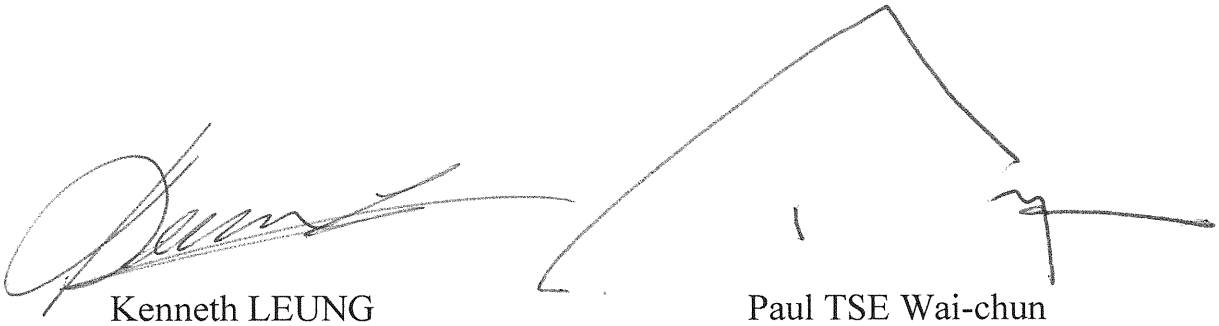
Follow-up action

52. The Committee 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



Abraham SHEK Lai-him
(Chairman)



Kenneth LEUNG
(Deputy Chairman)

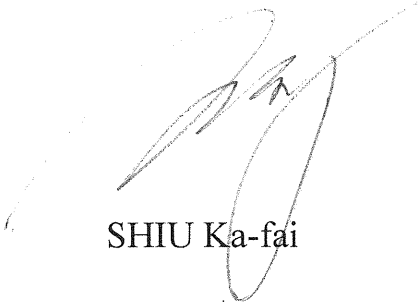
Paul TSE Wai-chun



Steven HO Chun-yin



LAM Cheuk-ting



SHIU Ka-fai



Tanya CHAN

9 November 2017

CHAPTER IN THE DIRECTOR OF AUDIT'S REPORT NO. 68 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT

Director of Audit's Report No. 68		P.A.C. Report No. 68A
Chapter	**Subject**	**Chapter**
1	Government's support and monitoring of charities	1
4	Provision of district council funds for community involvement projects	2

RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

72. Public Accounts Committee

(1) There shall be a standing committee, to be called the Public Accounts Committee, to consider reports of the Director of Audit –

(a) on the accounts of the Government;

(b) on such other accounts required to be laid before the Council as the committee may think fit; and

(c) on any matter incidental to the performance of his duties or the exercise of his powers as the committee may think fit.

(2) The committee shall also consider any report of the Director of Audit laid on the Table of the Council which deals with examinations (value for money audit) carried out by the Director relating to the economy, efficiency and effectiveness of any Government department or public body or any organization to which his functions as Director of Audit extend by virtue of any Ordinance or which receives public moneys by way of subvention.

(3) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. *(L.N. 214 of 2005)*

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

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

(3C) All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote. *(L.N. 214 of 2005)*

(4) A report mentioned in subrules (1) and (2) shall be deemed to have been referred by the Council to the committee when it is laid on the Table of the Council.

(5) Unless the chairman otherwise orders, members of the press and of the public shall be admitted as spectators at meetings of the committee attended by any person invited by the committee under subrule (8).

(6) The committee shall meet at the time and the place determined by the chairman. Written notice of every meeting shall be given to the members and to any person invited to attend a meeting at least 5 clear days before the day of the meeting but shorter notice may be given in any case where the chairman so directs.

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

(8) The chairman or the committee may invite any public officer, or, in the case of a report on the accounts of or relating to a non-government body or organization, any member or employee of that body or organization, to give information or any explanation or to produce any records or documents which the committee may require in the performance of its duties; and the committee may also invite any other person to assist the committee in relation to any such information, explanation, records or documents.

(9) The committee shall make their report upon the report of the Director of Audit on the accounts of the Government within 3 months (or such longer period as may be determined under section 12 of the Audit Ordinance (Cap. 122)) of the date on which the Director's report is laid on the Table of the Council.

(10) The committee shall make their report upon the report of the Director of Audit mentioned in subrule (2) within 3 months (or such longer period as may be determined by the Council) of the date on which the Director's report is laid on the Table of the Council.

(11) Subject to these Rules of Procedure, the practice and procedure of the committee shall be determined by the committee.

Paper presented to the Provisional Legislative Council by the Chairman of the Public Accounts Committee at the meeting on 11 February 1998 on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits'

SCOPE OF WORK

1. The Director of Audit may carry out examinations into the economy, efficiency and effectiveness with which any bureau, department, agency, other public body, public office, or audited organisation has discharged its functions.

2. The term "audited organisation" shall include -

(i) any person, body corporate or other body whose accounts the Director of Audit is empowered under any Ordinance to audit;

(ii) any organisation which receives more than half its income from public moneys (this should not preclude the Director from carrying out similar examinations in any organisation which receives less than half its income from public moneys by virtue of an agreement made as a condition of subvention); and

(iii) any organisation the accounts and records of which the Director is authorised in writing by the Chief Executive to audit in the public interest under section 15 of the Audit Ordinance (Cap. 122).

3. This definition of scope of work shall not be construed as entitling the Director of Audit to question the merits of the policy objectives of any bureau, department, agency, other public body, public office, or audited organisation in respect of which an examination is being carried out or, subject to the following Guidelines, the methods by which such policy objectives have been sought, but he may question the economy, efficiency and effectiveness of the means used to achieve them.

GUIDELINES

4. The Director of Audit should have great freedom in presenting his reports to the Legislative Council. He may draw attention to any circumstance which comes to his knowledge in the course of audit, and point out its financial implications. Subject to these Guidelines, he will not comment on policy decisions of the Executive Council and the Legislative Council, save from the point of view of their effect on the public purse.

5. In the event that the Director of Audit, during the course of carrying out an examination into the implementation of policy objectives, reasonably believes that at the time policy objectives were set and decisions made there may have been a lack of sufficient, relevant and reliable financial and other data available upon which to set such policy objectives or to make such decisions, and that critical underlying assumptions may not have been made explicit, he may carry out an investigation as to whether that belief is well founded. If it appears to be so, he should bring the matter to the attention of the Legislative Council with a view to further inquiry by the Public Accounts Committee. As such an investigation may involve consideration of the methods by which policy objectives have been sought, the Director should, in his report to the Legislative Council on the matter in question, not make any judgement on the issue, but rather present facts upon which the Public Accounts Committee may make inquiry.

6. The Director of Audit may also -

(i) consider as to whether policy objectives have been determined, and policy decisions taken, with appropriate authority;

(ii) consider whether there are satisfactory arrangements for considering alternative options in the implementation of policy, including the identification, selection and evaluation of such options;

(iii) consider as to whether established policy aims and objectives have been clearly set out; whether subsequent decisions on the implementation of policy are consistent with the approved aims and objectives, and have been taken with proper authority at the appropriate level; and whether the resultant instructions to staff accord with the approved policy aims and decisions and are clearly understood by those concerned;

(iv) consider as to whether there is conflict or potential conflict between different policy aims or objectives, or between the means chosen to implement them;

(v) consider how far, and how effectively, policy aims and objectives have been translated into operational targets and measures of performance and whether the costs of alternative levels of service and other relevant factors have been considered, and are reviewed as costs change; and

(vi) be entitled to exercise the powers given to him under section 9 of the Audit Ordinance (Cap. 122).

PROCEDURES

7. The Director of Audit shall report his findings on value for money audits in the Legislative Council twice each year. The first report shall be submitted to the President of the Legislative Council within seven months of the end of the financial year, or such longer period as the Chief Executive may determine. Within one month, or such longer period as the President may determine, copies shall be laid before the Legislative Council. The second report shall be submitted to the President of the Legislative Council by the 7th of April each year, or such date as the Chief Executive may determine. By the 30th April, or such date as the President may determine, copies shall be laid before the Legislative Council.

8. The Director's report shall be referred to the Public Accounts Committee for consideration when it is laid on the table of the Legislative Council. The Public Accounts Committee shall follow the rules governing the procedures of the Legislative Council in considering the Director's reports.

9. A Government minute commenting on the action Government proposes to take in respect of the Public Accounts Committee's report shall be laid on the table of the Legislative Council within three months of the laying of the report of the Committee to which it relates.

10. In this paper, reference to the Legislative Council shall, during the existence of the Provisional Legislative Council, be construed as the Provisional Legislative Council.

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

Prof K C CHAN	Secretary for Financial Services and the Treasury
Mr Andrew LAI Chi-wah	Deputy Secretary for Financial Services and the Treasury (Treasury)2
Mr WONG Kuen-fai	Commissioner of Inland Revenue
Ms Judy YIP Wai-fun	Chief Assessor (Special Duties) Inland Revenue Department
Ms Bernadette LINN	Director of Lands
Ms Sophia CHIANG Chui-wan	Assistant Director of Lands (Headquarters)
Mr LAU Kong-wah	Secretary for Home Affairs
Mr Laurie LO Chi-hong	Deputy Secretary for Home Affairs (1)
Ms Carol YIP	Director of Social Welfare
Mr LAM Ka-tai	Deputy Director of Social Welfare (Services)
Ms Ada CHUNG Lai-ling	Registrar of Companies
Miss Angelina MOK Ka-shin	Acting Deputy Registry Manager (Registration)
Mr Alfred CHAU Kwok-leung	Acting Commissioner of Police
Ms Nicola YEUNG Chun-yee	Acting Superintendent (Licensing Office)
Mrs HONG CHAN Tsui-wah	Deputy Secretary for Education (4)
Ms Michelle ONG Wai-man	Senior Assessor (Appeals)4 Inland Revenue Department
Mr Stephen LO Wai-chung	Commissioner of Police

Mr Kevin YEUNG Yun-hung	Under Secretary for Education
Mrs Angelina CHEUNG FUNG Wing-ping	Deputy Secretary for Education (6)
Ms Florence HUI Hiu-fai	Acting Secretary for Home Affairs
Ms Karen CHAN Pui-yee	Acting Director of Lands
Miss Janice TSE Siu-wa	Director of Home Affairs
Mr Howard YAM	Assistant Director (3) Home Affairs Department
Ms Michelle LI Mei-sheung	Director of Leisure and Cultural Services

A brief account of Chapter 1 of Report 68
"Government's support and monitoring of charities"
by the Director of Audit
at the Public Hearing of the Public Accounts Committee
of the Legislative Council on Saturday, 6 May 2017

Mr. Chairman,

Thank you for inviting me here to give a brief account of Chapter 1 of Report No. 68 of the Director of Audit, entitled "Government's support and monitoring of charities".

This Audit Report comprises six parts.

Part 1 of the Report, namely "Introduction", describes the background of the audit.

Charities make an important contribution to Hong Kong. Therefore, the Government has provided various support to charities over the years, including: (1) tax deduction for donations made to the nearly 9,000 tax-exempt charities, totalling $11.8 billion for the year of assessment 2014-15; (2) granting land at a concessionary premium to charitable institutions; and (3) provision of recurrent subventions to charitable institutions for providing services in the education, health and social welfare sectors. However, there is no overall statutory scheme for the registration and regulation of charities in Hong Kong. Hence, they are subject to the monitoring of different government bureaux/departments (B/Ds), based on their legal forms and whether they have sought government support.

Part 2 of the Report mainly examines the Inland Revenue Department (IRD)'s administration of tax exemption of charities and claims for tax deduction of approved charitable donations.

The Audit Commission (Audit)'s examination revealed that due to limitations in the Inland Revenue Ordinance (IRO) provisions, the IRD had not been able to take appropriate regulatory actions against a charity found with expenses incompatible with its charitable objects or contravening its governing instruments during a periodic review of tax exemption status. However, in its Report on

Charities of 2013, the Law Reform Commission (LRC) recommended that the IRD should conduct more frequent reviews of tax-exempt charities for more effective monitoring purposes. To address the expectation gap, we have recommended that consideration should be given to review the IRO with a view to enabling the IRD to effectively perform its role of administering the tax exemption status of charities.

Part 3 examines the Government's administration of land granted to charities for operating welfare or social services.

Audit examination revealed that 11 sites granted to charities or a charity's subsidiary at nil or concessionary premium originally intended for operating welfare/social services were currently used to operate hotels or serviced residences on a commercial basis. However, only one of these 11 leases stipulated the no-profit-distribution requirement. We also found room for improvement in monitoring the compliance with lease conditions. For example, in four leases with conditions requiring the submission of accounts, the accounts were not always obtained. In one of these four leases, the Lands Department (Lands D) had not required the grantee to provide sufficient detailed information for a number of years to show that all profits derived from operating hotel facilities had been applied to purposes acceptable to the Government. In another lease, while the income-generating facilities had come into operation since 1993-94, the proposed arrangement to the Executive Council for the eventual elimination of annual subvention to the grantee was not yet fully implemented. We have recommended that the Lands D and the supporting B/Ds should consider incorporating appropriate conditions in leases granted at concessionary premium for operating welfare/social services in future, and strengthen the monitoring of lease enforcement action.

Part 4 of the Report examines the compliance with filing and disclosure requirements by tax-exempt charities which are incorporated or established as a limited company under the Companies Ordinance, a society under the Societies Ordinance, or an incorporated management committee of a school under the Education Ordinance.

Audit examination revealed cases of late or default on submission of documents by certain charities. We consider that timely filing of information of charities is important for donors to make an informed choice when making donations. In this connection, we have recommended that the Companies Registry, the Hong Kong Police Force and the Education Bureau should step up their monitoring of the

compliance with the filing and disclosure requirements.

Part 5 of the Report examines issues relating to the regulation of Chinese temples under the Chinese Temples Ordinance (CTO).

It is the Government's policy to respect the autonomy of religious organisations. Since the Government considers that the CTO, which was enacted in 1928, might be outdated in the present day context, only 45 temples, representing 8% of the Chinese temples in Hong Kong, were under the direct administration of the Chinese Temples Committee or managed by organisations under its delegated authority. We found inadequacies in delegated organisations' submission of temple accounts and administrative reports, and have recommended that the Home Affairs Bureau (HAB) should step up the monitoring of the delegated organisations' compliance with the terms of the delegation agreements.

Part 6 of the Report examines the way forward on the monitoring of charities with reference to the recommendations of the LRC Report on Charities published in 2013.

We noted that the HAB had been coordinating inputs from relevant B/Ds with a view to formulating a response to the recommendations of the LRC Report. We have recommended that the HAB and relevant B/Ds should take into account the views and recommendations set out in this Audit Report in formulating the response.

Our views and recommendations were generally agreed by relevant B/Ds. I would like to take this opportunity to acknowledge with gratitude their full cooperation, assistance and positive response during the course of the audit review.

(Translation)

Meeting of the Legislative Council Public Accounts Committee on 6 May 2017

Report No. 68 of the Director of Audit
Chapter 1: Government's support and monitoring of charities

Opening remarks by the Secretary for Home Affairs

Mr Chairman,

We are grateful to the Audit Commission for carrying out a value for money audit on Government's support and monitoring of charities and its various recommendations. The Legislative Council Public Accounts Committee (PAC) has selected this above topic for hearing, the relevant Government bureaux and departments will fully co-operate with the Commission to identify and implement effective and feasible recommendations as soon as possible, so as to enhance the transparency and accountability of charities.

2. The support to and the monitoring of charities involve the work of a number of bureaux and departments, so in addition to representatives from the Home Affairs Bureau (HAB), the Secretary for Financial Services and the Treasury, the Commissioner of Inland Revenue, the Director of Lands, the Director of Social Welfare and colleagues from other relevant bureaux and departments are all present at this hearing to jointly respond to the recommendations in the Audit Report and questions to be raised by PAC.

3. As mentioned in the Audit Report, the Law Reform Commission (LRC) published at the end of 2013 its Report on charities, the recommendations of which also involved the duties of a number of Government bureaux and departments. Since many recommendations in the LRC Report carry substantial implications on charities in Hong Kong in terms of their definition, approval criteria and their operation, bureaux and departments need to consider these recommendations thoroughly and carefully. HAB has been assigned to co-ordinate inputs from the relevant bureaux and departments in formulating responses to LRC's recommendations for the Government's overall consideration.

4. Since the release of the LRC Report on charities, HAB has convened two inter-departmental co-ordination meetings to consolidate views of various bureaux and departments on enhancing the monitoring of charitable organisations and explore ways to improve the procedures and arrangements for charities to apply for holding fund-raising activities. The recommendations in the LRC Report touch on relatively complicated issues, including providing statutory definition of "charitable organisations",

establishing a registration system for charitable organisations, compiling a list of charitable organisations to be managed and maintained by one single bureau or department. In fact, as it is clearly pointed out in the LRC Report that the findings of the public consultation indicated that no consensus in the community had been reached on the proposed establishment of a single authority (for example, an independent charity commission) to regulate charitable organisations of different purposes, types and backgrounds. Many charitable organisations even objected to the proposal as they worried that the charity commission would be given too much power without proper check-and-balance. They also considered that the administration cost of the commission might be shifted to charitable organisations, thus increasing their financial burden. For the religious sector, they worried that the registration system would involve scrutiny of religious organisations' charitable work, which might lead to interference with religious doctrines and activities and undermine the freedom of religion as enshrined in the Basic Law. As a result, the LRC finally agreed that a charity commission should not be established at this stage, and recommended instead that it should only be a long-term goal for the Government to set up a charity commission or a single regulatory authority.

5. The implementation of LRC's recommendations on the regulatory framework in the absence of a single regulatory authority is a highly complicated issue. For example, at least nine bureaux and quite a number of executive departments are currently involved in the legislation, licensing and land allocation work relating to charitable organisations and their fund-raising activities. Substantial integration work on, among other things, policy co-ordination, resources allocation and even re-organisation may be required for the bureaux and departments to consolidate all the relevant legislation and powers before a single policy bureau or department could be designated to administer and carry out the work. More importantly, views and responses from the public and various stakeholders (including various types of charitable organisations) have to be taken into account. As it takes time for the Government to study thoroughly and deliberate carefully LRC's recommendations and the relevant issues, it would not be desirable to take a decision in haste.

6. Nevertheless, in order to strike an appropriate balance between safeguarding public interests and allowing proper function of charities, the Government has been attaching great importance to enhancing the transparency and accountability of charities as well as charitable fund-raising activities. In the light of the recommendations in the LRC Report, we are now exploring with the relevant departments some feasible administrative measures that may be introduced in the short term to enhance the transparency of charities and charitable fund-raising activities, so as to safeguard the public's right to information. Some of these measures are in line with the direction of recommendations in the Audit Report. When responding to the various parts of the Audit Report later, HAB and other relevant bureaux and departments will

explain in detail those implemented or proposed improvement measures.

7. Meanwhile, HAB will continue to co-ordinate inputs from bureaux and departments with regard to their responses to LRC's recommendations for overall consideration by the Government. During this process, we will make reference to the recommendations in the Audit Report on improving the monitoring of charities and fund-raising activities as well as the advice of the PAC.

8. Professor K C CHAN, Secretary for Financial Services and the Treasury, and Ms Bernadette LINN, Director of Lands, will be speaking to PAC. After that, my colleagues and I will listen to Members' views and will be happy to answer any question. Thank you, Mr Chairman.

Report No. 68 of the Director of Audit

Chapter 1: Government's Support and Monitoring of Charities

Public Hearing of the Public Accounts Committee

(6 May 2017)

Speaking Notes of

the Secretary for Financial Services and the Treasury

(English translation)

Chairman,

First of all, let me thank the Audit Commission for its recommendations in relation to the Inland Revenue Department (IRD)'s recognition of the tax exemption for charities and the processing of tax-deductible donations.

2. The IRD will endeavour to implement the recommendations made in the Audit Report. On this, I would like to brief the Committee on the follow-up actions already taken and to be taken by the IRD.

3. As regards the processing of applications for recognition of tax exemption status of charities, the IRD has set a performance pledge for such applications in accordance with the Audit Commission's recommendation. The IRD published on its website on 1 April 2017 that it would endeavour to give a reply to the applicants within four months, provided that all necessary information and documents have been

supplied.

4. To enhance the monitoring of review cases, the Charitable Donations Section of the IRD has included the number of uncompleted review cases with their age profile and their position at the end of each month in its monthly work report for management review since February this year, so as to facilitate the management to monitor the progress of processing these cases in a holistic manner.

5. As for the timely updating of the list of tax-exempt charities recognised under section 88 of the Inland Revenue Ordinance (IRO), the IRD has put in place an enhanced notification arrangement with the Companies Registry and the Police Force, both of which will relay the information of deregistered companies or societies to the IRD respectively on a regular basis.

6. Regarding the Audit Commission's comments on individual charitable donation claims, the IRD has all along been attaching great importance to tax assessment and desk audits, and from time to time reminded its staff to stay vigilant. In this regard, the Commissioner of Inland Revenue has requested the responsible officers to check the validity of donation receipts more carefully and follow up with the taxpayers concerned when necessary.

7. I understand that the Audit Commission and Members expect the Government to strengthen the regulation on charities, including setting up a centralised registration system for charities and exercising

greater control on their governance, operational transparency, accounts, fund-raising activities and use of the funds raised. The Audit Commission thus recommended a review of the provisions of the IRO to enable the IRD to perform more effectively its role in administering the tax exemption status of charities.

8. I appeal to Members' understanding that the key responsibility of the IRD is to make tax assessment and collect taxes so as to protect government revenue. For example, in 2016-17, tax revenue collected by the IRD from various sources amounted to $290 billion, accounting for more than half of total government revenue. As regards the recognition of tax exemption status of charities, the IRD has all along been adhering to the principle of protecting government revenue in processing new applications and review cases.

9. The Law Reform Commission's earlier recommendations on improving the transparency and accountability of charities involve a range of policy considerations, including the definition of a charity, regulatory scope and approach, punitive mechanism, legislative amendments, etc. In view of this and the large number of stakeholders who have diverse views on some of the recommendations, the Government needs to carefully assess how these recommendations may be implemented and forge a consensus among the community and the Legislative Council for carrying out the regulatory work. The IRD will take part in and support the exercise.

10. Chairman and Members, may I once again thank the Audit

Commission for putting forward recommendations on how the IRD's work on recognition of the tax exemption for charities and the processing of tax-deductible donations may be improved. I, together with the Commissioner of Inland Revenue and our colleagues, would be happy to respond to questions the Committee may have.

11. Thank you, Chairman.

- Ends -

Public Accounts Committee

Legislative Council

Public Hearing on 6 May 2017

on Report No. 68 of the Director of Audit

Chapter 1: Government's support and monitoring of charities

Speaking Notes of the Director of Lands

Part 3 of the Audit Report examines how the Government controls the use of land held by charitable organisations as grantees under land lease.

2. Each and every lease is a separate private contract that reflects the intention of the contracting parties and the conditions of land grant accepted by both parties at the time of execution. As land leases are executed in different periods and under different policies and social circumstances, even when the grantees involved are all charitable or non-profit-making organisations, the conditions of the leases are not the same.

3. A land lease, once executed, shall be binding on both the Government and the grantees. We understand that public expectations for the Government and charities have increased with changes and advances over time. Nevertheless, from the perspective of lease enforcement, the Lands Department (Lands D), acting as a department enforcing land leases on behalf of the Government, must exercise reasonable judgement and take follow-up actions in accordance with lease conditions when determining whether a grantee is in breach of the lease or not.

4. Take the 14 cases cited in the Audit Report as examples. Three of them (i.e. Cases A, B and E) are not cases of private treaty grant, and the leases are virtually unrestricted in use. There are three cases (i.e. Cases C, D and K) where the user restriction clauses have a rather broad sense, and there is one case (i.e. Case G) where the lease restricts the use to "dormitories" (translated as "宿舍" in Chinese). As for the remaining seven cases, although "hostel" (translated as "旅舍" in Chinese) use is stated under the user clauses, there are no provisions in the leases to govern such aspects as the clientele, services and charges of the hostels in question.

5. According to legal advice, there is no breach of the user restriction under land leases for the hostels or hotels involved in the seven cases having considered that "hostels" are not specifically elaborated in the land leases, nor do "hostel" (旅舍) and "hotel" (酒店／旅館) have any definite legal definitions for differentiation on the interpretation under land leases. However, as the land on which the hostels are located was generally granted to the relevant bodies for non-profit-making purposes, the crux of the matter is that the revenues derived from commercial operations of the hostels or hotels should be used on the charitable or social affairs of the organisations, which is also believed to be the primary policy intention of the Government to grant such land in early years. In this regard, if a "submission of accounts" clause and a "no-profit-distribution" clause are included in the relevant land leases, the Government will follow up on the matter according to the lease conditions. If no such clauses are found in the land leases at the time of execution in line with the then prevailing policy intention, but it is stipulated in the leases that the facilities shall be of a non-profit-making nature and/or the operation of such facilities shall meet the requirements of government departments, we will seek legal advice and see if we can ask the grantees to provide the required information under these clauses.

6. As for the two confirmed or suspected cases in breach of lease uses (including Case N where a canteen, permitted under the lease, has been operating as a restaurant open to the public by the grantee; and Case G where a dormitory (translated as "宿舍" in Chinese), permitted under the lease, is suspected to be used as a serviced residence or a hotel), Lands D and the relevant bureau(x) and department(s) have commenced necessary follow-up actions.

7. We agree with the recommendations in the Audit Report that consideration should be given to incorporating the relevant clauses in line with the prevailing social circumstances and policy requirements when granting land to charities or non-profit-making organisations at nominal premium in the future, or upon expiry of current leases or on receipt of applications for lease modification. In fact, taking the Youth Hostel Scheme co-ordinated by the Home Affairs Bureau in recent years as an example, to ensure the development of youth hostels adhering to policy objectives, the rights and responsibilities of non-governmental organisations and the Government are governed by land leases and other legal documents collectively, which include specific clauses governing the setting of rentals, target tenants and others. In processing applications for land grant by way of private treaty for welfare or social service uses in the future, we will continue, in collaboration with the relevant policy bureaux, to make sure that land grant conditions will suitably reflect the policy objectives and requirements at that time.

- End -

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16 May 2017

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charity

As requested in your letter of 9 May 2017, I append below the information required –

(a) Section 88 of the Inland Revenue Ordinance (IRO) provides general tax exemption to charitable institutions or trusts of a public character. The Inland Revenue Department (IRD) has been performing its role in accordance with the IRO.

Any organisation wishing to seek recognition of tax exemption status under section 88 of the IRO is required to submit an application to the IRD with a copy of the governing instrument, a list of any activities which have been carried out in the past 12 months and a list of activities planned for the next 12 months. Where the organisation has been established for 18 months or more, a copy of its financial statements for the last financial year is also required.

When considering an application under section 88 of the IRO, the IRD will examine, among other things, the governing instrument of the organisation. In particular, the IRD will scrutinise the object clause, income clause and dissolution clause to ensure that all the objects of the organisation are charitable in nature and that there are adequate safeguards to prevent the channelling of funds for non-charitable purposes. When necessary, the IRD will ask the organisation to provide further information to support its application. If the organisation fails to meet the requirement, the IRD will not approve the application and the number of applications that have not been approved by the IRD for the financial years 2012-13 to 2016-17 (up to 30 September 2016) are as follows –

Financial year	Applications not approved
2012-13	122
2013-14	137
2014-15	153
2015-16	163
2016-17 (up to 30.9.2016)	188

The tax exemption status of each approved charitable institution is subject to review regularly (normally on a cycle of four years) so as to ensure its objects are still charitable and its activities are compatible with its objects. The IRD will ask the organisation under review to submit documents, including its annual report and financial statements. The number of review questionnaires issued by the IRD for the review years from 2012 to 2016 (up to 30 September 2016) are as follows –

Review Year	Review questionnaire issued
2012	1 347
2013	1 371
2014	1 589
2015	1 364
2016 (up to 30.9.2016)	1 035

In the course of review, if it is discovered that the organisation might have engaged in activities which are possibly at variance with its charitable objects or other key provisions in the governing instrument, the IRD will seek clarification with the organisation. Taking into consideration of information obtained from the organisation and other

sources, the IRD may withdraw the recognition of tax exemption status in accordance with the reasons stated in the Staff Handbook of the Charitable Donations Section (CDS) (for details please see item (c)).

(b) No. Paragraph 6.3.1 of the Staff Handbook of CDS has set out the five reasons for the IRD's withdrawal of recognition of tax exemption status of a charity. They have been listed out in paragraph 2.4(c) of the Audit Report with the two reasons set out in paragraphs 6.3.1.3 (untraceable despite of various efforts) and 6.3.1.5 (fail to reply to the IRD's enquiries) of the Staff Handbook combined to one reason in paragraph 2.4 (c)(iv) of the Audit Report.

(c) The table below shows the breakdown of charities with tax exemption status withdrawn by the IRD from April 2012 to September 2016.

Year	Number of charities with tax exemption status withdrawn	Reasons for withdrawal as stated in paragraph 2.4(c) of Audit Report			
		(i) The charity was dissolved or wound up	(ii) The charity has ceased operation or is dormant	(iii) The charity no longer qualifies for the status of a charitable institution or trust of a public character	(iv) The charity did not respond to the IRD's enquiries or considered untraceable despite various efforts
2012-13	128	53	12	-	63
2013-14	156	81	18	-	57
2014-15	175	109	23	-	43
2015-16	213	147	18	-	48
2016-17 (Up to September 2016)	113	51	17	-	45

As stated in paragraph 2.4(c)(iii) of the Audit Report, when a charity amends its objects in the governing instrument in a way that it is no longer exclusively charitable, it will not qualify for the status of a charitable institution or trust of a public character.

(d) For ease of reference, the organisations in the Cases (with an alphabet) mentioned in the Audit Report will be described as Organisation (with the corresponding alphabet) in the reply below.

Organisation C is a company limited by guarantee established in 2000s with the object of advancement of education and it operated a

non-profit making kindergarten. In response to the IRD's review questionnaire, Organisation C produced a set of audited financial statements for the year ended 31 July 2009 which disclosed that there were related party transactions involving payment of rent to a related company for the periods ended 31 July 2008 and 2009 respectively. Upon enquiries by the IRD in May 2012, Organisation C replied in November 2012 that it paid an annual rental of $480,000 to the related company in 2008 and 2009 for the use of the premises on which the kindergarten was operated and that the rateable value of the premises for the year ended 31 March 2009 was $288,000.

In response to the IRD's follow-up enquiry in March 2014, Organisation C stated in its reply in June 2014 that the yearly rental payment of $480,000 was a fair amount for the use of the premises. In replying to IRD's enquiries made in March 2015, Organisation C produced a copy of lease of the premises showing a monthly rent of $40,000.

In October 2015, the IRD commenced another review of Organisation C and noticed that a related party transaction involving rental payment was disclosed in the financial statements for the year ended 31 July 2014. The IRD enquired in May 2016 for the particulars of the owner of premises and the relationship between the owner and the directors of Organisation C. Organisation C, in its reply of June 2016 to the IRD's enquiry, stated that owner of the premises were two individuals who did not have any relationship with Organisation C and that the floor area of the premises was about 20,000 square feet.

The IRD asked Organisation C in September 2016 why the rental payment in respect of the premises was stated as a related party transaction. In October 2016, Organisation C confirmed that the owners had never been its directors and that they operated a kindergarten which had been taken over by Organisation C. Taking into consideration that the owners are not directors of Organisation C and the floor area of the premises, the IRD accepted that the rental payments, though higher than the rateable value, were not non-arm's length. As the objects of Organisation C remained charitable and its activities were compatible with its stated charitable objects, the IRD considered that it was a charitable institution. The review was closed on 13 March 2017.

The long periods of inactions for this case were due to the heavy workload of the subject officer and his inadvertence. Since 2016, follow-up actions were speeded up and the IRD responded within 1 to 4 months from the receipt of the correspondences from Organisation C.

(e) (i) To prevent disclosure of the identity of the parties concerned given the official secrecy provision in section 4 of the IRO, the relevant information are summarised below instead of producing the correspondence.

Case D

Organisation D is a company limited by guarantee established in the 1960s for the advancement of Buddhism. It carried out activities, including operating 5 centres and publishing monthly magazines and books to promote Buddhism. At all relevant times, Organisation D had 15 to 21 committee members on its Committee of Management (Executive Committee).

In March 2016, the IRD received a complaint that some members of the Executive Committee were in breach of the governing instrument of Organisation D by receiving remuneration. In response to the IRD's enquiry, Organisation D provided its audited financial statements for the years ended 31 March 2011 to 2015. Organisation D recorded total income ranged from $51 million to $114 million and total expenditure ranged from $40 million to $84 million. Upon further enquiry by the IRD, Organisation D submitted a breakdown of salaries and wages (**Annex A**) which showed that 9 Executive Committee members were paid remuneration for the years ended 31 March 2012 to 2014. All of them resigned or retired from the Executive Committee in December 2013, January 2014 and October 2014 respectively and no Executive Committee members received any remuneration for the year ended 31 March 2015. Organisation D advised that the Executive Committee members whose names were shown in Annex A received salaries and wages for rendering services as staff on full time basis and that the details of their duties were set out in their respective employment contracts. The IRD noted that Organisation D had filed employer's returns for the years ended 31 March 2012 to 2015 in respect of its employees including the Executive Committee members and the

capacities in which they were employed are shown in Annex A. In light of the above information, the IRD was of the view that the Executive Committee members received the remuneration in the capacity of an employee and that their remuneration did not appear to be excessive. Furthermore, the relevant employees had retired or resigned from the Executive Committee by 31 March 2015. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation D's payment of remuneration to its Executive Committee members, though might be a technical breach of the director's remuneration provision of its governing instrument, did not affect its charitable status.

In paragraph 2.14(a) of the Audit Report, the Director of Audit pointed out that ten Executive Committee members had received remuneration totalling $5 million in the year ended 31 March 2011. Details of the payment are shown in Annex A. It can be seen that nine of the Executive Committee members are the same persons receiving remuneration for the years ended 31 March 2012 to 2015. The additional member only received remuneration in the year ended 31 March 2011 and he was not on the payroll for the other years. For the reasons given in the preceding paragraph, the IRD considered that the charitable status of Organisation D was not affected.

Case E

Organisation E was established in the form of incorporated trustees in late 1970s for the advancement of Christianity and carried out church activities such as Sunday service and fellowship. Under its constitution, Organisation E has an Executive Committee consisted of not less than nine and not more than thirteen members; and a Board of Trustees, consisted of not less than five and not more than seven trustees. Members of the Executive Committee and Board of Trustees are elected from the members of the organisation at its annual general meeting or extraordinary general meeting.

The following information was provided by Organisation E during the IRD's periodic reviews –

Year	1999 $	2006 $	2007 $
Total income (mainly donation income)	4 million	4.7 million	3.6 million
Donation expenses (供給及顧念/捐款)	833,900	979,186	967,400
- Total no. of recipients	85	79	87
- Including:			
Payments to trustee/ executive committee member(s)	20,700	21,400	22,100
No. of trustee/ executive committee member(s) involved	3	1	1
Total no. of trustees/ executives committee members of the charity	20	20	20

1999

Organisation E advised that donations, described as "顧念款", were made to the 85 recipients for two reasons:

(1) To members and officers of the organisation who took an active interest in spreading the Gospel and rendering services to the organisation, in the form of subsidy to enable them to meet travelling expenses and basic living requirements; and

(2) To members and friends of the organisation who were old, sick and needed to enable them to meet their financial difficulties.

For reason (1), there were 11 recipients and the payments ranged from $3,000 to $47,000. The IRD found that one of the recipients was a trustee of Organisation E who had received $9,000. For reason (2), there were 74 recipients with monthly payments ranged from $200 to around $14,000. Some of the recipients received ad hoc payments instead of monthly payments. The IRD found that the above-mentioned trustee received an ad hoc payment of $2,000 and two Executive Committee members of the organisation received monthly payments of $600 (totalling $7,200) and an ad hoc payment of $2,500 respectively. The IRD advised Organisation E that it had to

ensure that it made use of its income and property exclusively for charitable purposes. In reply, Organisation E provided evidence to show all the payments totalling $20,700 to the trustee and two Executive Committee members had been fully repaid to it. Having regard to all relevant facts and circumstances, the IRD considered that Organisation E was a charitable institution and continued recognising its tax exemption status.

2006 and 2007

Organisation E made donations in 2006 and 2007 to members of the organisation for reasons similar to those in 1999. The monthly allowance ranged from $500 to $6,500. For some cases, ad hoc payments were made to the recipients. For the year ended 31 March 2006, 16 and 63 recipients received donation for reasons (1) and (2) respectively. The IRD found that only one Executive Committee member, who was a retiree, was paid for reason (2). He received monthly payments of $1,700 during the year and an additional payment of $1,000 in January 2016, totalling $21,400. For the year ended 31 March 2007, 27 and 60 recipients received donation for reasons (1) and (2) respectively. Again, the IRD found that the above mentioned Executive Committee member received monthly payments of $1,700 during the year and an additional payment of $1,700 in February 2007, totalling $22,100. In both 2006 and 2007, more than 10 recipients received total payments of $20,000 or more. The IRD drew Organisation E's attention to the potential contravention of the clause relating to the remuneration of the trustees and Executive Committee members and asked it to take remedial actions. In reply, Organisation E provided evidence to show the payments of $43,500 in total received by the Executive Committee member had been fully repaid to it and undertook not to make such payments in future. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation E was a charitable institution and continued recognising its tax exemption status.

Case F

Organisation F is a company limited by guarantee established in mid 1990s to advance Christianity. It is a church conducting normal church activities such as Saturday and Sunday morning and afternoon

services, discipleship training, prayer walk and members street evangelism, etc. The Articles of Association of Organisation F provides that the Board of Elders would be the church governing body. In 2002, the IRD conducted a review on Organisation F. Upon its failure to reply to the IRD's enquiry letters issued in July 2002 and December 2002 respectively, its recognition of tax exemption status was withdrawn in 2003. In 2011, Organisation F requested to reinstate its recognition of tax exemption status. In response to the IRD's enquiry, Organisation F stated that it had never carried on any trade or business activity during the years from 2003 to 2014 (i.e. date of reply). The IRD examined Organisation F's audited financial statements for the years ended 30 June 2003 to 2013 and noticed that Organisation F's total income ranged from $355,885 to $546,127 and it paid love gifts in the range from $3,773 to $53,582 to a pastor who was also a member of the Board of Elders (see **Annex B**). During the relevant times, Organisation F had two to three members on the Board of Elders. Organisation F advised that it was its members' decision to pay love gifts to the pastor. Such payments were gift and gratuity for their respect to the pastor and not remuneration. Upon advice by the IRD of the potential contravention of the clause relating to payment of remuneration to members of the Board of Elders in Organisation F's governing instrument, the pastor returned the love gifts received in the past two years, i.e. $3,773 (for 2012) and $9,400 (for 2013) to Organisation F. According to Organisation F's financial statements, no love gifts were paid in 2014. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation F was a charitable institution and reinstated the recognition of its tax exemption status in 2015.

Case G

Organisation G is a company limited by guarantee established in early 2000s with the objects to advance Christian faith by relieving the sufferings and needs of drug abusers and marginal youth. Its Articles of Association provide that the Board of Directors shall consist of not less than three and not more than fifteen members. In 2006, the IRD issued a review questionnaire to Organisation G. Upon its failure to response to the review questionnaire, the IRD withdrew the recognition of tax exemption status. In 2012, Organisation G requested the IRD to reinstate the recognition of its tax exemption status. Information

provided by Organisation G for the years 2002 to 2012 showed that it was engaged in anti-drug projects and training of workers for drug rehabilitation and that it had 3 directors on the Board of Directors. The IRD noticed that Organisation G's audited financial statements for the years ended 31 December 2008, 2009 and 2010 recorded directors' remuneration of $30,000, $130,000 and $80,000 respectively. The IRD drew Organisation G's attention that directors should not receive remuneration. In reply, Organisation G advised that it employed 3 salaried employees, i.e. a chief executive (總幹事), a training director (培訓總監) and a ministry officer (事工主任), in 2002. The work of the former two posts included preparation of accounting and administrative records, liaison and meetings, fund-raising, printing the organisation's newsletters, preparation of training materials for anti-drugs programmes and preaching Christianity and carrying out ministry visits and training. In 2003 and 2007, the chief executive and the training director left Organisation G respectively and Organisation G did not have sufficient fund to employ replacements. The director took up their work on a voluntary basis. After four years of voluntary work and in view of the increasing workload of the director, in 2008, Organisation G agreed to pay a monthly remuneration of $10,000 to the director if it had surplus after deducting operating expenses. As such, the director did not get paid each month. For the years 2008 to 2012, the total income of Organisation G ranged from $287,571 to $759,783. The director received $30,000 in 2008, $130,000 in 2009, $80,000 in 2010, $70,000 in 2011 and $65,000 in 2012. Upon advice by the IRD of the potential contravention of the clause relating to payment of remuneration to directors in its governing instrument, Organisation G replied that its members were not aware that its directors could not receive remuneration. Having understood such prohibition, the above-mentioned director resigned from the Board of Directors in April 2013 and agreed to repay half of his remuneration for the years 2008 to 2012 to the organisation. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation G was a charitable institution and reinstated the recognition of its tax exemption status in 2015.

(ii) The IRD examines, among other things, the governing instrument of an organisation to ascertain if its objects fall within the meaning of "charitable purposes". This is an important threshold test for the IRD to deliver its role in accordance with section 88 of the IRO. In case a

charity breaches a clause of the governing instrument, it is a question of fact and degree whether such breach would fundamentally affect its charitable status.

In each of the four cases, the charity's objects in its governing instrument remain exclusively charitable and its activities were at large compatible with its stated objects. There was no evidence that the members of their governing body had blatantly sought private advantages from the charities. Whilst some of their trustees or directors had received remuneration or benefits, the available information showed that they received the remuneration or benefits in the capacity of other than director or trustee, i.e. an employee (in Cases D, F and G) or being old and needy members of the church (in Case E) and that the amount of remuneration or benefits received by them did not appear to be excessive. Having regard to all the relevant facts and circumstances including the scale and mode of operations of the charities, the IRD considered that such breaches were technical breaches and did not fundamentally change the charitable status of the charities. Hence the recognition of their tax exemption status was not withdrawn by the IRD.

If a charity blatantly breaches the provisions of its governing instrument and the IRD, after taking a holistic view, considers that such breach fundamentally changes its charitable status, it would withdraw the recognition of the tax exemption status. There are no precedent cases in this regard.

(iii) In these four cases, the IRD gave its advice to the charities concerned which did not involve prescribed form of remedial actions. The remedial actions were proposed by the charities concerned. So long as a charity's non-compliance with the clause relating to payment of remuneration to members of governing body does not fundamentally change its charitable status, the IRD does not consider that it is legally defensible to withdraw tax exemption status of the charity.

(iv) Section 88 of IRO provides general tax exemption to charities. The role of the IRD is to consider if an organisation is a charitable institution having regard to all the relevant facts and circumstances and if so, recognise the tax exemption status. The key consideration is whether the objects of the organisations are charitable in nature. If the

charity carries on a trade or business, the IRD has to ascertain if the profits derived from such trade or business has satisfied the conditions in the proviso to section 88 in order to be exempt from profits tax.

Please refer item (e)(i) and (ii) for the details of Cases D to G and the reasons for the IRD's recognition of their tax exemption status. The IRD has consistently performed its role in administering section 88 of IRO in relation to the four cases.

As explained in item (a), the IRD has taken the necessary administrative measures to perform its role as set out in section 88 of the IRO. The IRD considers that it has performed its role effectively.

(v) In Audit Report No. 29, the Director of Audit noted that, in 1987, the IRD found that an approved charity had paid remuneration to its directors. Subsequently, the IRD required charities to include a provision if they allowed payment of remuneration to directors who had special qualifications not otherwise available to the charities. The audit review revealed that seven approved charities, which were granted tax-exemption status before 1988, had a provision in their governing instruments permitting the payment of remuneration to directors in return for services actually rendered to the organisations, but the provision on the conditions for remuneration to directors had not been included. Although the seven approved charities were granted the exemption status prior to 1988 in accordance with the practice prevailing at that time, the Director of Audit considered that, as the control on remuneration to directors would help guard against misappropriation of charities' income for the private gain of individuals, it was necessary that all approved charities should be subject to this control.

For charities recognised by the IRD as tax-exempt bodies before 1988, some of them might not contain the clause for the control on remuneration to directors. In response to the Audit Report, the IRD had sought legal advice in 1997 as to whether it was legally proper to request existing charities to consider amending their governing documents in order to incorporate provision relating to the remuneration to directors. According to the legal advice at that time, such provision was not vital to the recognition of tax exemption and the IRD was not entitled to withdraw the tax exemption recognition of

those organisations which failed to accede to the request. The legal advice had been conveyed to the Director of Audit and the Public Accounts Committee.

Since 1988, all organisations applying for recognition of tax exemption status under section 88 of the IRO have been required to have the director remuneration prohibition clause in their governing instruments. Such practice has been consistently implemented. For those tax exempt charities which did not have such clause in its government instrument, when they notified the IRD that they intended to revise some other clauses (e.g. change of quorum of meeting) in their governing instruments, the IRD would request them to incorporate or update the director remuneration clause. In general, the charities took up the IRD's request seriously.

To promote the best practice, the IRD will, in future periodic reviews, invite those tax exempt charities which do not have the director remuneration clause to incorporate the same in their governing instruments.

(f) (i) Case H

Organisation H is a company limited by guarantee established in 1990s for the promotion of Buddhism and operated a monastery. The total income of Organisation H for 2010 was over $12 million, 99% of which was donation income, and it had a deficit of around $1 million. In reviewing Organisation H's audited financial statements for the year ended 31 March 2010, the IRD asked, among other things, Organisation H to furnish details of travelling expenses and reasons why such expenditure was considered as expenses in furtherance of its charitable objects. Organisation H stated that the travelling expenses of $704,519 were expenses on flight tickets of disciples in overseas who came to Hong Kong to attend the funeral services of the master of the monastery. The IRD pointed out to Organisation H that the travelling expense did not appear to be expenses in furtherance of its charitable object, and asked what remedial actions it would take if it agreed to IRD's view. Organisation H in its reply of March 2013 stated that to fulfill the public benefit requirement, it had resolved to claim back the travelling expenses from the disciples and so far $500,000 had been recovered. In April 2014, the IRD asked Organisation H whether

it had recovered the balance of travelling expenses. Organisation H stated in its reply of May 2014 that the balance would be recovered in due course. Having regard to all the relevant facts and circumstances, including that Organisation H realised that payment of the travelling expenses might not be compatible with the charitable object and that it had taken remedial actions, IRD considered that Organisation H remained as a charitable institution. IRD continued recognising the tax exemption status of Organisation H.

Case I

Organisation I is a company limited by guarantee incorporated in the early 1960s. Its principal objects are to provide relief to the poor and needy by reason of age, ill health, misfortune or infirmity and to advance education. Its activities were to make donations for its stated charitable objects. Organisation I had been subject to eight periodic reviews prior to 2008. The IRD issued a review questionnaire to Organisation I in September 2008 and received the return in September 2009, including audited financial statements for the year ended 31 May 2007 and a list of activities held during the period from June 2007 to May 2008. The IRD, having noticed from the list of activities that there was a grant for repairing the ancestral tomb and graveyard, in November 2009, asked Organisation I how such activity was compatible with its charitable objects. The IRD withdrew the recognition of its tax exemption status in 2011 when Organisation I, despite repeated reminders, did not respond to its enquiry.

In 2014, Organisation I requested the IRD to reinstate the recognition of its tax exemption status. In response to the IRD's enquiry, Organisation I stated that it had not conducted any fund raising activities since September 2009 and that its principal and only activities were making donations to the poor, needy and victims of calamity which were funded by investments managed by a bank in Hong Kong, investment income derived from overseas unlisted shares and interest income on deposits. Organisation I also provided audited financial statements for the years ended 31 May 2008 to 2013.

The IRD examined the audited financial statements and noticed that for the years 2008 to 2013, Organisation I's total income ranged from $3 to $25 million and the total donation expenses ranged from $3 to $23

million. Organisation I was requested to provide details of all the donation expenses made for the years 2008 to 2013. Having examined the information provided by Organisation I, the IRD considered two payments in the amount of $102,267 and $133,956, i.e. $236,223 in total, both made in 2008 appeared not to be expenses in furtherance of its charitable objects nor for public benefit. Organisation I explained that the two sums totalling $236,223 were made to an overseas charitable foundation whose founders were closely related to those of Organisation I. The sum of $102,267 was a donation to finance part of the construction cost of an ancestral temple while the sum of $133,956 was a donation to repair the ancestral tomb and graveyard. Organisation I contended that its founder was a philanthropist who had made donations to his ancestral village by building schools and hospitals. The reconstruction of the ancestral temple was carried out to provide a place to house the ashes of villagers who passed away and the repair of the tomb of the founder's father was carried out because many villagers regularly visited the tomb to pay respect to him. Organisation I therefore was of the view that the payments were relevant in fostering education of the Confucian doctrine of filial piety for the advancement and improvement of standards of living of humans and their social, moral and physical well-being and compatible with its charitable objects. The IRD did not share Organisation I's view and considered the link of the expenses and its charitable object was remote. Organisation I, though still maintained its views regarding the two payments, confirmed that it would not make similar donations/payments in future. Having regard to all the relevant facts and circumstances including the absence of other irregularities and the charity's undertaking of not making similar donations/payments in future, the IRD considered that Organisation I was a charitable institution and reinstated the recognition of its tax exemption in 2015.

(ii) Section 88 of the IRO was added to the IRO in 1949 by the Inland Revenue (Amendment) Ordinance 1949, which was then numbered as section 89A. When introducing the Inland Revenue (Amendment) Bill 1949, the then Attorney General stated the Objects and Reasons of the amendment as follows:

> "17. *It is not thought desirable to impose tax on institutions of a charitable, ecclesiastical or educational nature except in so far as such bodies may be engaged in trade or*

business. Under section 89 of the principal Ordinance, the Governor in Council has power to exempt any person, office or institutions from the payment of tax, but as this power refers to specific cases and does not grant general powers, it is desirable to provide general exemption by means of a new section."

The current version of section 88, which is not materially different from the then section 89A reads as follows:

> *"Notwithstanding anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:*
>
> *Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes; and are not expended substantially outside Hong Kong and either –*
>
> *(a) the trade or business is exercised in the course of the actual carrying out of the expressed object of such institution or trust; or*
>
> *(b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or turst is established." (emphasis added)*

Having regard to the objects and reasons and the structure of section 88, it is clear that a general tax exemption is provided to charitable institutions and trusts of a public character. A charity will only be liable to tax on the profits it made from trading or business activities if it fails to satisfy the conditions in the proviso to section 88, i.e. it carries on a trade or business and that profits are derived from that trade or business. However, the general tax exemption accorded to the charitable institution or trust of a public character by section 88 of the IRO is not affected.

Insofar as Organisation H and Organisation I are concerned, there is no indication that they had carried on any trade or business and even if they had, profits derived from such trade or business should be chargeable to profits tax. The IRD, for the reasons stated in item (f)(i) above, considered that withdrawal of recognition of tax exemption status is not warranted.

(iii) No. Please see item (f)(i) for details.

(g)(i),(ii) In view of the concerns of the Ombudsman and the Public Accounts Committee (PAC) regarding the control of charitable fund-raising activities, the Government explored means to strengthen the control. For this reason, the IRD sought the advice of the Department of Justice (DoJ) in September 2003. The legal advice was sought in a general policy context without the reference to any specific case.

In our reply to PAC on 4 May 2017, we provided the gist of the legal advice on this matter after consulting DoJ. The Government does not consider that it is appropriate to disclose the legal advice it has obtained which is subject to legal professional privilege.

(iii) The CDS updates the Staff Handbook from time to time. The Staff Handbook mainly sets out the work procedures of the section. Since the CDS is a small section, its staff-members are aware of the details of the legal advice in 2003, through discussion, debriefing and experience sharing.

(iv) As legal advice had been sought in 2003 to clarify the matter mentioned in item (g)(i) and (ii) above, the IRD did not seek legal advice again on this matter. The Financial Services and the Treasury Bureau was aware of the legal advice in 2003.

(v) As a tax administration, the IRD has been diligently discharging its duty in accordance with the IRO which is a piece of legislation imposing taxes on property, earnings and profits. Section 88 of the IRO exempts from tax any charitable institution or trust of a public character.

In administering section 88 of the IRO, the IRD carefully considers whether an organisation falls within the meaning of "charitable

institution" and has met the conditions for exemption set out under section 88, taking into account all the circumstances.

The legislature has specifically set out the conditions for exemption under section 88 of the IRO. Section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1) does not confer upon IRD the power to add extra conditions for exemption, or to impose the same on an institution, in addition to those conditions which are specifically set out by the legislature under section 88 of the IRO.

(h) (i) The IRD administers the IRO and is mainly responsible for the assessment and collection of taxes, including processing applications for recognition of tax exemption under section 88 of IRO. The IRD acknowledges the importance to ensure the objects of tax-exempt charities remain charitable and that their activities are compatible with their charitable objects. In fact, the IRD has been taking necessary measures to ensure that the relevant charities comply with the tax exemption conditions as stipulated under section 88 of the IRO. Having regard to the relevant facts and circumstances of the case concerned and making reference to information obtained from other channels, the IRD determines the frequency of review for individual tax-exempt charity. In general, the IRD conducts review on tax-exempt charities once every four years. The 4-year review cycle is a general practice, but the IRD will initiate actions (e.g. early review on tax-exempt charities) if available information (e.g. from media, past record of the charity, third party information, etc.) indicates that suspected non-charitable activities have been carried out. In other words, additional and sufficient attention would be given to tackle the "high risk" cases as necessary.

The IRD all along allocates its resources according to service needs, work priorities as well as the corresponding risks and impacts in carrying out its various responsibilities. To cope with the steadily-increasing number of charities applying for recognition of tax exemption as well as cases subject to review, the number of staff working in CDS increased from five to eight in April 2013.

(ii) As mentioned in item (h)(i) above, additional manpower resources have been deployed to deal with charity cases in April 2013.

The IRD issued on average 1,300 to 1,600 review questionnaires per year to tax-exempt charities from 2012 to 2015. Owing to the limitation of its computer programme, CDS cannot extract the number of reviews completed. Yet it can be seen in Table 2 and Figure 4 of Audit Report No. 68 that the average processing time to complete a review and the number of cases and correspondence pending for attention of CDS both record a substantial drop in recent years.

(iii) In its Report on Charities in 2013, the LRC recommended in Recommendation 16 that "the IRD should conduct more frequent reviews of the accounts of individual tax-exempt charities as and when necessary, to ascertain whether the activities of these charities are compatible with their charitable objects". In the periodic review, the IRD diligently examined the information provided in the review questionnaire, financial statements and list of activities to identify suspected breaches and raised enquiries with the relevant parties.

(iv) For meeting the legislative intent of section 88, the IRD considers that there is not an imminent need to review the relevant provision of the IRO. The key responsibility of the IRD, as a tax administration, is the assessment and collection of taxes.

(v) The IRD considers that the current review mechanism adequate. As indicated in item (h)(i) above, the 4-year review cycle is a general practice and the IRD will initiate special actions if available information indicates that suspected non-charitable activities have been carried out.

(vi) The IRD considers that the current manpower resources of CDS can cope with the existing workload arising from processing applications for tax exemption and conducting periodic reviews of charities. The IRD will continue to assess the operational needs and evaluate the impact on its manpower resources. The IRD will consider seeking additional manpower resources through the established mechanism, if necessary.

(i) Organisation L is a company limited by guarantee incorporated in mid 1990s with the object of advancing Christianity. In the first review conducted in 2002, Organisation L informed the IRD that no activities had been carried on since incorporation and it planned to operate a

church in 2002 or early 2003. The IRD concluded the 2002 review and decided to conduct the next review in 2004.

In response to the IRD's review questionnaire issued in 2004, the organisation provided audited financial statements for the years ended 31 March 2002, 2003 and 2004. No income was reported in the financial statements and expenses varying from $105 to $685 were reported. In response to the IRD's enquiry on its future activity plan, Organisation L stated that its members had decided to set up a Saturday fellowship and open two more home group fellowships in 2005. The IRD noted that the planned activities were compatible with the organisation's charitable object and concluded the review.

In the review questionnaire issued in 2009, Organisation L stated that it had not started any activity. The IRD informed Organisation L that its tax exemption status would be withdrawn if was dormant. In October 2009, the organisation informed the IRD that it planned to engage a pastor from overseas to help it extend its services in Hong Kong and the church would start operation in November 2009. The IRD noted that the planned activities were compatible with the organisation's charitable object and concluded the review.

In October 2014, the IRD issued a review questionnaire to Organisation L. Organisation L completed the questionnaire stating that it had not yet started operation. The IRD in July 2014 requested the Organisation L to provide a copy of audited financial statements for the last financial year and specimen of donation receipt currently issued by it. In response, Organisation L provided a donation receipt dated 13 September 2015 in the amount of $389.50 bearing the name of the organisation but without the word "Limited" in English and "有限公司" in Chinese. In reply to the IRD's enquiry that the full name of the organisation should be printed in its donation receipts, Organisation L provided a copy of audited financial statements for the year ended 31 March 2015, a donation receipt dated 31 July 2016 in the amount of $450 bearing the organisation's full name in English and Chinese and an activity pamphlet. The IRD accepted the planned activities were compatible with the organisation's charitable object and concluded the review in September 2016.

The IRD in March 2017 asked Organisation L to explain the inconsistencies between information previously provided by it and the audited financial statements for the year ended 31 March 2016. On 10 May 2017, Organisation L replied that it intended to, but had not yet carried out any church activity. The information previously submitted to the IRD were activities that it planned to carry out and the donation receipts were merely sample receipts. Organisation L stated that it did not maintain any bank account.

To follow up the question raised by the Public Accounts Committee at the hearing on 6 May 2017 and having reviewed Case L again, the IRD wishes to state that when conducting the review, which was started in 2014 and concluded in September 2016, the audited financial statements for the year ended 31 March 2016 were not available to the IRD. In fact, the auditor's report was signed off by the auditor on 30 November 2016 while the audited accounts were approved by the directors on the same date. The donation receipt dated 31 July 2016 falls outside the period covered by the audited financial statements ended 31 March 2016. As for the donation receipt dated 13 September 2015, though it falls with the period covered by the audited accounts ended 31 March 2016, there is no concrete evidence that the organisation did receive the donation in question.

As Organisation L has never carried on any activities over a long period of time, the IRD withdrew the recognition of its tax exemption status by a notice dated 15 May 2017.

(j) A copy of the entire Staff Handbook (as at March 2016) is at **Annex C**. Only the English version of the Staff Handbook is available. The Staff Handbook set out the practices and work procedures of the CDS.

Yours sincerely,

(Kelvin Lo)
for Secretary for Financial Services and the Treasury

c.c. Commissioner of Inland Revenue (Attn: Ms. Michelle Ong)

Case D
Breakdown of salaries and wages

Name		Position	Capacity employed as reported in Employer's Return	Year ended 31 March 2015	2014	2013	2012	2011	Date of retirement/resignation from executive committee
1		職員	Clerk	256,580	248,660	243,720	175,600	-	
2		副主任	Clerk	337,700	327,000	320,200	308,300	305,640	
3	*	局長	Clerk	363,510	354,280	295,240	500,920	624,960	15.1.2014
4	*	主任	Clerk	373,860	362,560	356,540	417,960	409,260	14.12.2013
5		副主任	Clerk	378,740	365,980	357,840	353,140	352,840	
6		副主任	Clerk	412,680	391,680	380,300	382,230	406,660	
7		副局長	Clerk	329,860	319,720	319,240	313,000	452,950	
8	*	局長	Clerk	391,790	408,452	425,840	419,280	469,230	15.1.2014
9		職員	Clerk	350,320	337,580	331,680	325,400	323,340	
10		副主任	Clerk	-	-	356,710	378,520	377,660	
11		副主任	Clerk	384,040	371,380	363,260	330,500	66,300	
12		副主任	Clerk	310,260	301,200	295,480	288,080	270,960	
13		副主任	Clerk	337,540	313,580	304,960	293,240	290,080	
14		主任	Clerk	393,400	395,760	396,780	383,520	380,300	
15		副主任	Clerk	-	-	-	178,930	408,600	
16		副主任	Clerk	325,940	314,220	307,360	304,470	308,580	
17		副主任	Clerk	347,320	334,820	325,960	328,280	327,460	
18		主任	Clerk	450,060	439,740	428,770	425,400	419,140	
19	*	主任	Clerk	529,500	591,974	610,320	610,000	598,920	15.1.2014
20		副主任	Clerk	-	306,965	352,940	345,400	341,800	
21		副主任	Clerk	387,340	394,920	374,640	370,390	379,180	
22		主任	Clerk	436,600	423,480	412,480	359,800	-	
23		職員	Clerk	-	-	-	34,660	164,040	
24	*	局長	Clerk	287,467	568,740	686,140	739,520	705,140	14.12.2013
25	*	事務總長	Manager	747,020	733,220	724,080	716,120	712,860	15.1.2014
26		職員	Clerk	433,980	419,800	410,800	395,720	389,960	
27		副主任	Clerk	343,460	332,780	327,640	335,600	330,280	
28		職員	Clerk	234,790	239,040	244,340	145,594	-	
29	*	副局長	Clerk	569,910	572,280	563,300	534,350	536,720	14.12.2013
30		職員	Clerk	271,900	252,150	66,200	-	-	
31		主任	Clerk	366,980	377,800	369,480	368,240	371,020	
32		職員	Clerk	200,600	156,267	-	-	-	
33	*	主任	Clerk	413,880	401,080	392,800	385,400	382,160	14.12.2013
34		職員	Clerk	225,160	217,540	210,200	141,667	-	

Name		Position	Capacity employed as reported in Employer's Return	Year ended 31 March 2015	2014	2013	2012	2011	Date of retirement/resignation from executive committee
35		職員	Clerk	198,160	191,140	184,120	173,800	150,750	
36		職員	Clerk	-	34,960	198,200	120,250	-	
37		職員	Clerk	381,580	361,470	352,700	342,080	361,460	
38		主任	Clerk	-	-	-	87,400	376,160	
39	*	局長	Sub-manager	-	617,860	339,490	422,240	447,890	24.10.2014
40			Clerk	-	-	-	-	255,690	
41			Clerk	-	-	-	-	136,150	
42	*		Manager	-	-	-	-	393,780	3.1.2014
43			Clerk	-	-	-	-	367,140	
				11,771,927	12,780,078	12,629,750	12,735,001	13,595,240	
Total remuneration of ex-committee members				-	4,610,446	4,393,750	4,745,790	5,280,920	
Percentage of total salaries & wages				-	36.1%	34.8%	37.3%	38.8%	
Total income of Organisation D				56,168,854	56,257,346	51,366,505	114,087,813	55,624,666	
Percentage of total income				-	8.2%	8.6%	4.2%	9.5%	

*Executive Committee member

Annex B

Case F
Love gifts to pastor

For year ended 30 June	Love gifts	Turnover of Organistion F
2003	$35,904	$546,127
2004	47,066	470,618
2005	53,582	443,032
2006	25,336	500,636
2007	8,066	421,257
2008	28,947	529,241
2009	33,096	363,134
2010	30,917	395,816
2011	-	355,885
2012	3,773	411,573
2013	9,400	458,881
2014	-	501,774
Total	276,087	5,397,974

Charitable Donations Section
Staff Handbook

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Part I - GENERAL ORGANIZATION

Chapter 1 - Organization and Establishment of the Section

1.1 Introduction

1.1.1 The Charitable Donations Section ("the Section") is one of the sections of the CIR Unit, directly responsible to Chief Assessor (Special Duty) ("CA(SD)"). Assessors (Donations) are responsible for the general overall supervision of the Section.

1.2 Nature and Scope of Work

1.2.1 Section 88 of the Inland Revenue Ordinance ("IRO") gives tax exemption to charitable institutions or trust of a public character. Claims under this section are processed by the Section.

1.2.2 The Section is responsible for all the works in connection with the exemption from tax under section 88 of the IRO including:

1.2.2.1 Processing claims for recognition of tax exemption entitled under section 88 of the IRO.

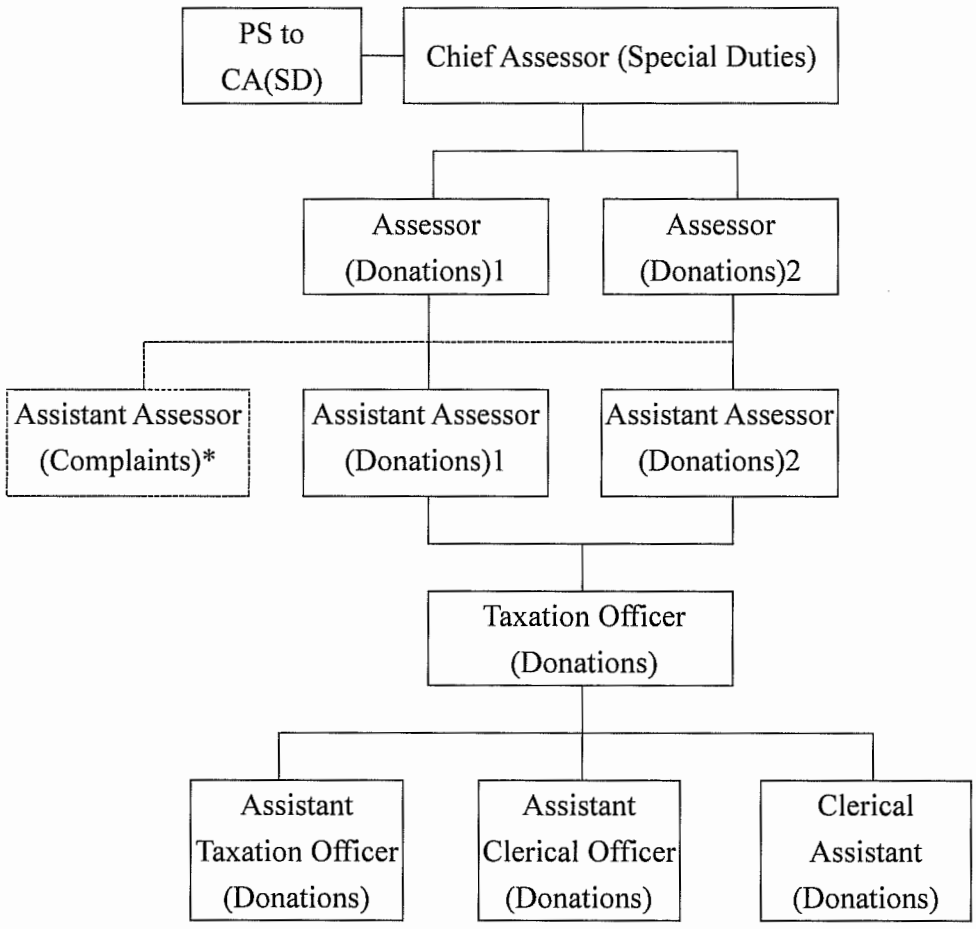
1.2.2.2 Conducting review from time to time on tax-exempt charities to ascertain if continued tax exemption should be recognized.

1.2.2.3 Maintaining the list of charitable institutions and trusts of a public character, which are exempt from tax under section 88 of the IRO and uploaded on the Department's homepage.

1.3 Establishment

1.3.1 The existing establishment of the Section is two Assessors ("Assr"), two Assistant Assessors ("AA"), one Taxation Officer ("TO"), one Assistant Taxation Officer ("ATO"), one Assistant Clerical Officer ("ACO") and one Clerical Assistant ("CA").

1.3.2 The chart showing the organization and establishment of the Section is as follows:



*Share to handle new claims and review cases

Chapter 2 - Duties and Responsibilities of Officers

2.1 Assessor – the Assessor is directly responsible to CA(SD). The main duties are:

2.1.1 To supervise the staff and the operation of the Section including:

2.1.1.1 Allotment of new claims to AAs;

2.1.1.2 Maintaining the list of tax-exempt charities which is uploaded on the Department's homepage;

2.1.1.3 Keeping all tax-exempt charities under periodic review.

2.1.2 To examine and recommend on claims re tax-exemption status under section 88 of the IRO;

2.1.3 To conduct review of tax-exempt charities cases and examine cases handled by AAs and TO;

2.1.4 To handle general correspondences, interviews and answer telephone enquiries in connection with charities including enquiries raised by press, Legislative Council members and other government departments;

2.1.5 To handle enquiry and informer's cases;

2.1.6 To examine and recommend on tax exemption claims under section 87 of the IRO; and

2.1.7 To act in other matters as assigned by CA(SD) and other senior officers.

2.2 Assistant Assessor

2.2.1 To examine and recommend on claims re tax-exemption status under section 88 of the IRO;

2.2.2 To conduct review of tax-exempt charities cases;

2.2.3 To handle general correspondences, interviews and answer telephone enquiries in connection with charities;

2.2.4 To upload the list of tax-exempt charities on the Department's homepage;

2.2.5 To supervise clerical officers and the operation of the Section including the issue of review questionnaires to tax-exempt charities for the periodic review exercises; and

2.2.6 To act in other matters as instructed by Assrs and other senior officers.

2.3 Taxation Officer

2.3.1 To supervise and control the Support Team under his/her supervision, including allocating works among the staff, maintaining efficient clerical support, undertaking various administrative duties etc.;

2.3.2 To monitor and assess staff performance, provide on-the-job training, maintaining staff discipline and ensuring standing instructions / working procedures are complied with;

2.3.3 To screen and process simple and straightforward review cases on tax-exempt charities in accordance with laid-down criteria;

2.3.4 To prepare management reports and maintain records/registers of the Section under his/her supervision;

2.3.5 To answer telephone enquiries and interview callers on matters relating to tax-exempt charities; and

2.3.6 To perform any other duties as instructed by AAs and senior officers.

2.4 Assistant Taxation Officer and Assistant Clerical Officer

2.4.1 To handle all inward and outward correspondences, make the necessary record and amendments, and carry out the subsequent follow-up actions as required;

2.4.2 To open, reopen and cancel files and to maintain such records. Also to put up files and return files to filing cabinets;

2.4.3 To keep the appropriate records to show the work-in-progress and outstanding work in the Section and prepare monthly reports on these records;

2.4.4 To carry out on-line enquiries and update ORSO monthly records from Mandatory Provident Fund Schemes Authority ("MPFSA");

[Work procedures: The computer reports (passed from the MPFSA in softcopy) contain particulars of occupational retirement schemes registered, exempted, cancelled and withdrawn. Besides, MPFSA would also provide hardcopies of termination notices from the designated persons and employers of the schemes confirming payment of the members' benefits to all members concerned (terminated schemes with payout). After conducting on-line enquiry on terminated schemes with payout, these paper reports would be passed to Unit 1 and Unit 2 for the cases with active file.]

2.4.5 To answer telephone enquiries from public and conduct interview with callers; and

2.4.6 To act in such other matters as instructed by TO and other senior officers.

2.5 Clerical Assistant

2.5.1 To perform general supporting work including collecting, delivering, sorting, filing and making photocopy of documents;

2.5.2 To monitor file movement and to issue outward correspondence;

2.5.3 To provide general typing support to office including fair draft memos, standard forms and letters, correspondences, and reports;

2.5.4 To handle telephone enquiries from public; and

2.5.5 To act in all other matters as instructed by the TO and senior officers.

Part II - CHARITABLE DONATIONS DIVISION

Chapter 3 - Scope and Duties of Work

[Revoked (see Chapter 1.2)]

Chapter 4 - Files

4.1 Cat 91/Files

4.1.1 An individual file is opened for every formal claim for exemption under section 88 of the IRO.

4.1.2 All files bear two numbers with a stroke in between, the first number is 91/ and the second number indicates the institution's individual number within that category.

4.1.3 The File Cover (I.R. 105):-

4.1.3.1 The file number, name of the institution or trust, the last known corresponding address, the name of the authorized representative (if any) are noted on the file cover. The barcode for the Barcoding File Management System ("BCFMS") is also attached.

4.1.3.2 Any change in the corresponding address must be amended immediately when it is known.

4.1.3.3 When the I.R. 105 is worn out, torn or the fold-in page is missing, the file cover should be replaced.

4.1.4 The Correspondence Jacket (Form I.R. 16B) is for filing in chronological sequence all inward and outward correspondences, submissions, notes and memos etc. (excluding those arising from review and informer's cases).

4.1.5 The Permanent Notes Jacket (I.R. 16D) is for filing documents of a permanent nature such as copies of the duly executed governing instrument (e.g. Memorandum and Articles of Association, Articles of Association, Constitution, Trust Deed and Special Resolution), copies of approval letter and certificate of exemption.

4.1.6 The Accounts Jacket is for filing the accounts of the tax-exempt charity.

4.1.7 The Review Jacket is for filing all the correspondences and

submissions in relation to a review.

4.1.8 The Draft Jacket is for filing the drafts of the governing instrument submitted.

4.1.9 The Informer's Jacket (for informer's cases only) is for filing all the correspondences and submissions in relation to an informer's case.

4.2 Headquarter File HQ 52/225/88

This file was originally kept for filing all general correspondences concerning charitable institutions or trusts. In order to facilitate easy reference to the past rulings, all general correspondences which bear no permanent value have been removed out and placed in a separate file (91/GEN). Documents were filed up to January 2007.

4.3 Headquarter File HQ 52/225/88A

This file keeps in chronological order all miscellaneous correspondences concerning the list of charitable institutions and their subsidiaries. Documents were filed up to July 2008.

4.4 Headquarter File HQ 52/225/88B

This file keeps in chronological order the correspondences concerning the publishing of the annual Gazette List of charitable institutions and their subsidiaries. In addition, the correspondences with other Units regarding the distribution of published Gazette to them are filed herein. The publication of the Gazette List has ceased since 2003. Documents were filed up to January 2003.

4.5 91/GEN

This file incorporates all general correspondences on the interpretation and practices on section 88 of the IRO between other Units and Government Departments bearing no permanent value.

4.6 91/Not Worth Review ("NWR") List

These are mainly well-established charities and regulated charities receiving

government subsidies or subventions. These charities in general have good governance and transparency with clear charitable objects. The risk that a NWR case fails to remain a charity is low. NWR cases are to be removed from the List by phases. After each periodic review exercise, NWR cases selected for issue of review questionnaires are removed from the List.

4.7 91/MISC

This is a control file for recording all general queries and preliminary claims for exemption under section 88 of the IRO. All correspondences are filed in date order and properly indexed. When a formal claim is subsequently made by the institution, the relevant correspondences previously filed herein will be detached and transferred to the individual Cat 91/file.

4.8 91/GOV/DON

This file is kept for all correspondences concerning the charitable donations made to the Government.

4.9 91/Computer

The file contains the correspondences related to computer issues, such as intranet, internet, computer inventory etc.

4.10 Charitable Donation Matching CRN Report

The file contains company registration number ("CRN") matching reports between the data stored in the EUC Program of the Section and the data received from the Companies Registry (see Chapter 6.5).

4.11 ICAC Checklist

The file contains the correspondences with the Independent Commission Against Corruption, such as assisting to distribute checklist to tax-exempt charities. Documents were filed up to March 2012.

4.12 IRD Homepage – Updated List of Tax-Exempt Charities

The file contains the monthly report for updating the list of charities and trusts of a public character, which are exempt from tax under section 88 of the IRO

in the homepage of the Department (see Chapter 6.2.1.4).

4.13 91/BSD

This file contains the correspondences concerning the proposed exemption of tax-exempt charities from Buyer's Stamp Duty and related press reports. Documents were filed up to February 2014.

4.14 91/DMS

This file contains the correspondences concerning the development of Document Management System for the Section.

4.15 91/Education

This file contains the correspondences concerning the tax-exemption of schools and incorporated management committees of schools.

4.16 91/Fundraising

This file contains correspondences concerning fundraising activities of tax-exempt charities. Documents were filed up to November 2007.

4.17 91/Statistics

This file contains statistics concerning tax-exempt charities and amount of approved charitable donations. Documents were filed up to December 2006.

4.18 91/MPF

This file keeps in chronological order the newspaper cuttings concerning the Mandatory Provident Fund Scheme.

[Note: Following the repeal of s.87A of the IRO on 19 November 1993, CIR ceased to approve retirement schemes. To reflect the changed role of the section, the Section was renamed as "Charitable Donations Section" on 1 April 2009. See Departmental Circular No. 13/2009.]

4.19 91/Newspaper Cutting

This file keeps in chronological order the newspaper cutting concerning tax-exempt charities.

4.20 91/Press

This file keeps in chronological order the press enquiries received concerning tax-exempt charities and replies issued.

4.21 91/Records Management

This file contains the correspondences concerning records management of the Section.

4.22 91/Sports

This file contains the correspondences concerning the tax-exemption of sports promoting organisations and charities. Documents were filed up to January 2007.

4.23 91/Intern

This file contains the correspondences regarding the deployment of summer interns for the Section.

4.24 91/IAS

This file contains the correspondences concerning the internal audit on the Section.

4.25 DOJ Comments

This file contains the legal opinions sought from the Department of Justice about the various topics related to charities.

Chapter 5 - Records

5.1 Charitable Donation EUC Program

5.1.1 A EUC Program was developed by the Computer Section for the use of the Section for:

- storing the data regarding details of the tax-exempt charities, their subsidiaries, sub-subsidiaries and unapproved claims / removed charities
- updating the data regarding the name, approval status, approval date and deletion date of tax-exempt charities, their subsidiaries and sub-subsidiaries stored in the FoxPro program called "Charities" at the Windows Desktop, a program enabling the officers of the Department to check those charities recognized and previously recognized as tax-exempt
- generating the Review Exercise Control Lists
- matching CRN stored in the EUC Program against the data received from the Companies Registry
- generating letters and forms commonly used by the Section
- generating the sectional reports

5.1.2 To access the program, it is required to execute the file "charity_w7.exe" stored at the directory Q:\UNIT5\Charity\Charity_EUC.

5.1.3 Details stored in the EUC Program include:

5.1.3.1 Main body

(a) File number
(b) Name of institution or trust in English and Chinese
(c) Language
(d) Code
(e) Review year
(f) Status
(g) File creation date
(h) Approval, withdrawal, reinstatement, incorporation and last amendment to constitution date
(i) Name of preceding body

(j) Postal Address
(k) Former name or alias
(l) Tax representative
(m) Informer's Case Indicator
(n) Objects
(o) Legal structure
(p) TRC indicator
(q) Company Registration Number (CRN)
(r) Society Registration Number (SRN)
(s) Remarks

5.1.3.2 Subsidiary or Sub-subsidiary

(a) Main body file no.
(b) Sub or Sub_sub no.
(c) Name of subsidiary or sub-subsidiary in English and Chinese
(d) Status
(e) Deletion date
(f) Former name or alias

5.2 Barcoding File Management System ("BCFMS")

5.2.1 Each charity file also has a record in the BCFMS which serves to record the physical file movement and B.U action. The record is kept in numerical order showing the following details:-

5.2.1.1 File No.

5.2.1.2 File Name

5.2.1.3 Barcode

5.2.1.4 Approval Status

5.2.1.5 Date of file opened

5.2.1.6 Remark (containing other relevant information)

5.2.2 The records of main bodies are kept in BCFMS.

5.3 Review Exercise Control List

This is kept to record the progress of review on tax-exempt charities included in a particular review exercise. The following data are on the list:-

5.3.1 File number

5.3.2 Date of the review questionnaire and covering letter (C.D.1A & C.D.1)

5.3.3 Date of the first reminder (C.D.2)

5.3.4 Date of the final reminder (F.R.2)

5.3.5 Receipt date of the review questionnaire

5.3.6 Date of withdrawal letter (C.D.3)

5.3.7 Date of the letter granting continued approval (C.D.5)

5.3.8 Remark

5.4 Batch Control Sheet for Cancelled Files

Copies of control sheets are filed in chronological order of the serial number of batches to record cancellation of files. The following information is recorded on each sheet:-

5.4.1 Serial number of the control sheet

5.4.2 Total number of files included in the batch

5.4.3 File numbers of the files included in the batch

5.4.4 Batch No. allotted by Tax Record Centre

5.5 File Movement Record Book

This book is divided into two sections:-

5.5.1 Transfer out record, with details of dates and file references.

5.5.2 Transfer in record, with details of dates and file references.

5.6 Work Reports

5.6.1 Charitable Institution Work Book

This is kept to record the actions taken in respect of each claim for exemption under section 88 of the IRO. The following details are recorded:-

5.6.1.1 File number

5.6.1.2 Name of the institution or trust

5.6.1.3 Date of the claim

5.6.1.4 Date of approval, provisional approval, rejection, or enquiry

5.6.1.5 Other remark

5.6.2 Monthly Report

At the end of each month, relevant information is extracted from the work book and EUC Program for the preparation of monthly reports for submission to CIR via DCIR(T), DCIR(O) and CA(SD).

Chapter 6 - Office Practices and Procedures

6.1 Opening, Cancellation and Reopening of Charitable Institution Files

6.1.1 Opening of Charitable Institution Files

When a claim for tax exemption under section 88 of the IRO is received, the procedures of opening a file are as follows:-

6.1.1.1 TO will check the EUC Program to ascertain whether there is any existing record of the institution or trust ("claimant"). If no, he/she will pass the claim to Assr for grading (i.e. for deciding the case is to be handled by Assr/AA).

6.1.1.2 Assr will determine whether the case is to be handled by Assr/AA depending on the circumstances of each case, such as the head of objects for which the claimant is established and complexity.

6.1.1.3 If information suggests that the claimant is established to take over/replace an existing tax-exempt charity (e.g. a company is incorporated to take over the assets and operations of an existing tax-exempt charity registered in the form of a society), the case is still considered as a new claim.

6.1.1.4 A Cat 91/file will be opened by allotting a file number following numerical sequence.

6.1.1.5 TO will mark down the details of the claim in the Register for New Cases and Charitable Institution Work Book.

6.1.1.6 ACO / ATO / CA will enter the record in the EUC Program.

6.1.1.7 ACO / ATO will prepare an acknowledgement letter for issue to the claimant advising that the claim for tax exemption is being considered.

6.1.1.8 ACO / ATO will enter the necessary details in the Work Book.

6.1.1.9 ACO / ATO will prepare a file cover and insert the necessary details about the claimant.

6.1.1.10 ACO / ATO will prepare a Permanent Note Jacket and put the copies of the duly executed governing instrument (e.g. Memorandum and Articles of Association, Articles of Association, Constitution, Trust Deed and special resolution) therein.

6.1.1.11 ACO / ATO will prepare a Correspondence Jacket for filing all general correspondences (except those arising from reviews and informer's case).

6.1.1.12 ACO / ATO will prepare an Accounts Jacket for filing all accounts of the claimant.

6.1.1.13 ACO / ATO will prepare a draft Jacket for filing all draft governing instruments.

6.1.1.14 ACO / ATO will record the opening of file in BCFMS and allot a barcode, and then pass the file to Assr/AA for action.

6.1.2 Cancellation of Files / Transfer of files to Tax Record Centre

6.1.2.1 A charitable institution or trust file is normally cancelled/transferred for the following reasons:-

6.1.2.1.1 The institution or trust has ceased operation (e.g. dissolved, struck-off or dormant);

6.1.2.1.2 Tax exemption is withdrawn with no response from the institution or trust in respect of any enquiry raised;

6.1.2.1.3 The institution or trust is untraceable; or

6.1.2.1.4 The claim for tax exemption recognition made by the claimant was turned down by the Department and no response was received from the claimant after the rejection.

6.1.2.2 Assr/AA will give instructions to cancel these files periodically.

6.1.2.3 The procedures of canceling / transferring a charitable institution file are as follows:-

6.1.2.3.1 When a file is to be cancelled, care must be taken to ensure that all outstanding actions have been completed.

6.1.2.3.2 ACO / ATO / CA will put up the files to be cancelled and the Batch Control Sheet to Assr for endorsement.

6.1.2.3.3 Assr will give instructions to cancel / transfer the file if there is no outstanding action.

6.1.2.3.4 The relevant details will be input in the EUC Program.

6.1.2.3.5 The file with the Batch Control Sheet will then be passed to the Tax Record Centre for storage.

6.1.2.3.6 Tax Record Centre will allot a cancelled file number to the file and write it down on the Batch Control Sheet.

6.1.2.3.7 The Batch Control sheet will then be returned to the Section to note down the cancelled file number in the EUC Program.

6.1.2.4 All cancelled files are to be kept as permanent files and no destruction of files is required.

6.1.3 Re-opening of Files

6.1.3.1 A cancelled file may be re-opened upon the instruction of Assr/AA (e.g. the claimant of a previously rejected case provides fresh information for the Department's consideration of its claim).

6.1.3.2 ACO / ATO / CA will then put up the file from the Tax Record Centre and arrange for re-opening of the cancelled file.

6.2 Approval of Tax Exemption Claims from Charitable Institution or Trust of a Public Character

6.2.1 Approval of claims for tax exemption under section 88 of the IRO

6.2.1.1 Upon receipt of tax exemption claims, Assr / AA will consider the claims and make recommendations to CA(SD) on whether tax exemptions can be given. The procedures in considering new claims are set out below:

6.2.1.1.1 The case officer will check whether the information and documents provided by the claimant are sufficient for his/her consideration of the claim.

6.2.1.1.2 In considering the claims, the case officer will make reference to the tax guide, viz. "A Tax Guide for Charitable Institutions and Trusts of a Public Character" which is published on the Department's homepage. In general, the followings are considered:

(a) whether the claimant is established for exclusively charitable purposes;
(b) whether the claimant is established for public benefit;
(c) whether the claimant is under the

jurisdiction of Hong Kong courts (if not, the claimant cannot be recognised as tax-exempt under section 88 of the IRO);

(d) whether the following crucial clauses that the governing instrument of a charity should generally contain are specified in the governing instrument of the claimant:

(i) clause stating precisely and clearly its objects;

(ii) clause limiting the application of its funds towards the attainment of its stated objects;

(iii) clause prohibiting distribution of its incomes and properties amongst its members;

(iv) clause prohibiting members of its governing body (e.g. directors, trustees, etc.) from receiving remuneration;

(v) clause specifying how the assets should be dealt with upon its dissolution (the remaining assets should normally be donated to other charities);

(vi) clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements; and

(vii) clauses about avoidance of conflict of interests of the members of the governing body;

(e) whether the claimant's activities for the past twelve months and/or activities planned for the coming twelve months are compatible with its stated charitable objects; and

(f) for claimants established for more than eighteen months, whether its accounts for

the last financial year has any irregularity.

6.2.1.1.3 The case officer may raise enquiries to obtain further information and documents in considering the tax exemption claim until he/she is satisfied that the issues in Chapter 6.2.1.1.2 are fulfilled.

6.2.1.1.4 If the case officer considers that the claimant can be recognised as tax-exempt under section 88 of the IRO, he/she should make recommendation for CA(SD)'s approval by stating briefly in the submissions the reasons therefor.

6.2.1.2 Approval to the main body – When it is satisfied that tax exemption under section 88 of the IRO can be given to a charitable institution or trust of a public character, actions in the following paragraphs will be taken:

6.2.1.2.1 CA will type the Exemption Certificate (I.R. 302) (in duplicate) and Approval Letter (in triplicate) for Assr's signature for issue to the claimant.

6.2.1.2.2 CA will also prepare a Circular Letter drawing the claimant's attention to the meaning of approved charitable donations for issue to the claimant (signature not required).

6.2.1.2.3 One copy of the Approval Letter will be passed to the Business Registration Office for their necessary action and record.

6.2.1.2.4 ACO / ATO will issue Approval Letter, Exemption Certificate (I.R. 302) (both signed by Assr), as well as Circular Letter to the claimant.

6.2.1.2.5 ACO / ATO will enter all necessary details in the following records:-

- EUC Program (including the indicator whether the charity consents to disclose its name on the List of Tax-Exempt Charities uploaded to the Department's homepage or not)
- BCFMS
- Work Book

6.2.1.3 Approval to the subsidiary body or sub-subsidiary body – When it is satisfied that a subsidiary body is part and parcel of the tax-exempt charity (i.e. under the sole ownership and control of the tax-exempt main body and does not have a separate written governing document), the tax exemption under section 88 of the IRO will be extended to the subsidiary body.

6.2.1.3.1 Assr/AA will state briefly in the file the reasons for extending exemption to the subsidiary body. Upon the charity's request, a letter recognizing the extension of its tax exemption status to the subsidiary body is to be issued.

6.2.1.3.2 ACO / ATO will update the relevant details in the EUC Program.

6.2.1.4 For those tax-exempt charities (main body and subsidiary bodies) consenting to have their names published in the List of Tax-Exempt Charities uploaded to the Department's homepage, their names will be included in the preparation of the List of Tax-Exempt Charities (see Chapter 6.7).

6.3 Withdrawal of Tax Exemption given under Section 88 of the IRO

6.3.1 The tax exemption given to the main body of a charity under section 88 of the IRO is normally withdrawn for the following reasons:-

6.3.1.1 The institution or trust was dissolved or wound up.

6.3.1.2 The institution or trust has ceased operation or is dormant.

6.3.1.3 The institution or trust is considered as untraceable despite of various efforts.

6.3.1.4 The institution or trust no longer qualifies for a status of a charitable institution or trust of a public character.

6.3.1.5 The institution or trust did not reply to the Department's enquiries.

6.3.2 Upon withdrawal of exemption under section 88, a Withdrawal Letter (C.D.3) will be issued to the institution or trust (except for untraceable cases as no valid corresponding address is available for issuing C.D.3) advising that its tax exemption status has been removed.

6.3.2.1 <u>If ceased or untraceable</u>

Pass a memo together with a copy of the Withdrawal Letter (C.D.3) (for cessation cases) to the Business Registration Office for their necessary action.

6.3.2.2 <u>If other cases</u>

B.U. 6 months for response. If nil reply is received after expiry of B.U., pass a memo together with a copy of Withdrawal Letter (C.D.3) to Business Registration Office and Unit 1 respectively for their necessary action.

6.3.3 ACO / ATO will enter the relevant details in the EUC program.

6.3.4 ACO / ATO will mark the withdrawal control list when a copy of the Withdrawal Letter (C.D.3) has been passed to other Units.

6.3.5 The tax exemption of a charity extended to its subsidiary body or sub-subsidiary body is normally withdrawn for the following reasons:

6.3.5.1 The charity informs the cessation of the subsidiary or sub-subsidiary body. In this case, ACO / ATO will have to update the relevant details in the EUC Program.

6.3.5.2 The main body of the charity's tax exemption is removed. In this case, ACO / ATO does not need to update in the EUC Program the withdrawal of tax exemption of the subsidiary or sub-subsidiary body, as the relevant details are automatically updated when the removal of the charity's tax exemption status is updated in the EUC Program.

6.3.6 The names of the charities (main body and subsidiary bodies) with tax exemption status withdrawn will be removed from the List of Tax-Exempt Charities uploaded to the Department's homepage (see Chapter 6.7).

6.4 Claim under Section 16(a) of the Business Registration Ordinance (prior to 1984)

[Revoked]

6.5 Matching of Tax-exempt Charities against Data Transmitted from the Companies Registry

6.5.1 The Companies Registry transmits the Company Registration Number ("CRN") of the companies struck off and impending striking off to the Department daily, which is stored at a designated server.

6.5.2 The EUC Program provides a function to identify corporate tax-exempt charities that are impending striking off or have already been struck off by matching the CRN of the corporations transmitted from the Company Registry and stored in the designated server with the CRN of the corporate tax-exempt charities (whether on list of tax-exempt charities published on the Department's homepage or not) ("Matching Process").

6.5.3 AA and TO are assigned to retrieve the data from the designated server to perform the Matching Process which is conducted twice each month.

6.5.4 The matching result is filed to the folder named as "Charitable Donation Matching CRN Report" for action and record purpose.

6.5.5 ACO / ATO will put up the file of the corporate charities identified in the matching result immediately and enclose therewith a copy of the matching result, and pass the file to the case officer for prompt follow-up actions.

6.5.5.1 If any corporate tax-exempt charity is identified as impending striking off/struck off:

6.5.5.1.1 The case officer will issue enquiries to the charity immediately to ascertain whether the charity is going to dissolve or cease operations, and to ask for the following information/documents:

- A copy of accounts (audited for corporate charities) for the last financial year and a copy of the accounts making up to the date of its dissolution/cessation – to see if there is any irregularity.

- To whom the charity's remaining assets have been/will be donated – to ascertain whether the provisions in the Dissolution Clause (i.e. clause prohibiting the distribution of remaining assets amongst the members but to other charities upon dissolution, see item (d)(v) of Chapter 6.2.1.1.2 above) of its governing instrument are complied with.

6.5.5.1.2 If the charity fails to give reply to the enquiry or is found untraceable, its tax exemption status will be removed. Also, its name will be removed from the list of tax-exempt charities uploaded to the Department's homepage. A copy of Withdrawal Letter (C.D.3) will be issued to the charity notifying the removal of the tax exemption status.

6.5.5.2 If any corporate tax-exempt charity identified has already been dissolved by striking off, the case officer will remove its tax exemption status immediately. A copy of Withdrawal Letter (C.D.3) will be issued to the charity notifying the removal of the tax exemption status as it has been struck off.

6.5.5.3 ACO / ATO will enter the relevant details of the charity in the EUC program. Its name will be removed from the list of tax-exempt charities uploaded to the Department's homepage after updating the relevant details in the EUC Program (see Chapters 6.3.3 and 6.3.6).

6.5.5.4 The case officer will pass a memo together with a copy of C.D.3 to the Business Registration Office for their necessary action.

6.5.5.5 ACO / ATO will mark the withdrawal control list when a copy of the Withdrawal Letter (C.D.3) has been passed to the Business Registration Office.

6.6 Reinstatement of Tax Exemption Status under Section 88 of the IRO

6.6.1 A charity whose tax exemption status is removed because it was untraceable or failed to give reply to the Department's enquiries may apply for reinstatement of tax exemption status.

6.6.2 If the file of the charity with tax exemption status removed has been transferred to the Tax Record Centre, ACO / ATO / CA will follow the procedures outlined in Chapter 11.3.2 below to retrieve the cancelled file for passing to the case officer for necessary actions.

6.6.3 In processing a tax exemption reinstatement application, the case officer will adopt an approach similar to processing new claims for tax exemption by considering the issues outlined in Chapter 6.2.1.1.2. Where necessary, the case officer may raise enquiries on the charity including the details of its past activities.

6.6.4 If the case officer considers that the charity's tax exemption status can be reinstated, he/she will make recommendation for CA(SD)'s approval by stating briefly in the submission the reasons therefor and the effective date of the tax exemption status.

6.6.5 ACO / ATO will update the details of the charity with tax exemption reinstated in the EUC Program.

6.7 Preparation of List of Tax-Exempt Charities

6.7.1 A list of Charitable Institutions or Trusts exempt from tax under section 88 of the IRO is uploaded in the Department's homepage monthly (http://www.ird.gov.hk/eng/pdf/e_s88list_emb.pdf).

6.7.2 AA will use the EUC Program to generate data and pass it to the Computer Section for uploading.

6.7.3 [Revoked]

6.8 Review of Tax-Exempt Charities

6.8.1 To protect revenue, review on the tax exemption status of charities are conducted from time to time having regard to their circumstances. Such reviews are conducted at least once every four years. In December every year, a control list comprising all the files that are due for review for the next year is prepared by AA by using a specially designed function in the EUC Program.

6.8.2 The review exercise is conducted in three to four batches depending on the number of cases scheduled for review for each year, the workload of and resources available to the Section.

6.8.2.1 After preparation of the control list, Form C.D.1s and Form C.D.1As (the review questionnaires) will be prepared for issue to the tax-exempt charities (signature not required). The Form C.D.1s and C.D.1As are sent to those tax-exempt charities selected for review for completion and review within one month. The charities are also required to file their financial statements and reports on activities they have conducted.

6.8.2.2 The following information and documents are sought for review purposes (stated in Form C.D.1A):

(a) The charity's current corresponding address;
(b) Whether the charity's governing instrument has had any changes since the last review/recognised as tax-exempt;
(c) Annual report or list of activities for the last financial year;
(d) Whether the charity carries on any trade or business;
(e) A copy of the charity's accounts for the last financial year;
(f) Whether the charity has any subsidiary body to carry out charitable work; and
(g) A copy or specimen of donation receipt currently issued by the charity to a donor.

6.8.2.3 Reminder (Forms C.D.2) will be issued in around eight weeks' time if the review questionnaire is not received by then.

6.8.2.4 Final reminder (Forms F.R.2) will be issued in around sixteen weeks' time if the review questionnaire is still not received by then.

6.8.3 Upon receipt of the review questionnaire from the tax-exempt charity (Form C.D. 1A):

6.8.3.1 ACO / ATO will enter record in the Review Exercise Control List.

6.8.3.2 TO will conduct preliminary check on the followings:

6.8.3.2.1 Whether an annual report or a list/details of activities of the last financial year are provided;

6.8.3.2.2 Whether a copy of the accounts duly signed by the responsible person/officer of the charity is provided. If the charity is a body corporate or whose governing instrument requires the

preparation of audited accounts, such accounts should be audited and contain a duly signed directors' and auditor's report; and

6.8.3.2.3 Whether a copy or specimen of donation receipt currently issued by the charity to a donor is provided, and if so, whether the charity's full official name is imprinted thereon.

6.8.3.3 If any of the information/document in Chapter 6.8.3.2 is outstanding or insufficient/incorrect, TO will instruct CA to type the appropriate enquiry letters (signed by Assr) for issue to the charity seeking the outstanding/correct information/document.

6.8.3.4 ACO / ATO will pass those C.D.1A containing the sufficient information/document sought with their respective files to the case officer to take necessary review action.

6.8.4 During the review:

6.8.4.1 The case officer will examine the charity's replies to the C.D.1A and its financial statements to ensure that the objects of the charity are still charitable and that its activities are compatible with its charitable objects, and ultimately consider whether the recognition of its tax exemption status could be continued. He/she will state briefly in the file the reasons therefor. If warranted, the case officer may raise enquiries on the charities. Failure to furnish information required by the C.D.1A may lead to the withdrawal of the tax exemption status.

6.8.4.2 If the case officer is finally satisfied that the charity's tax exemption status can be continued, he/she will summarize the findings by preparing a Form C.D.4 and inserting therein all updated information of the tax-exempt charity as well as the year for the next review, and will, depending on the circumstances of the case, prepare usual or modified C.D.5 (signed by the case officer) if continued tax exemption is warranted.

6.8.4.2.1 For cases that the charity cannot provide an annual report or a list of activities held for the last financial year for examination, if the case officer considers that the continued recognition of tax exemption is warranted based on other available information (e.g. the charity's accounts where there may reflect that expenses were incurred for activities held, the provision of a future activity plan, etc.), he/she should state so briefly in the C.D.4 and with the reasons therefor.

6.8.4.2.2 For charities that have prepared audited accounts and whose auditor expressed an adverse opinion on their accounts and the issues involved may affect their charitable status and hence their tax exemption status, the case officer may raise enquiries on the pertinent issues/concern and seek for the remedial actions. If he/she is satisfied with the remedial action proposed by the charity and is of the view that the tax exemption status can be continued, he/she should state briefly in C.D.4 the issues involved, the remedial actions proposed by the charity, and the justification of giving continued tax exemption.

6.8.4.2.3 For the copy or specimen of donation receipt provided by the charity which is issued to a donor, the case officer has to ensure that the name of the charity imprinted is the correct official name of the charity.

6.8.4.2.4 For charities that paid remuneration to members of the governing body, the case officer should check whether this is permitted in the governing instrument (i.e. the presence of the relevant overriding provisions). If so, he/she has to ascertain if such overriding provisions are duly

followed. If not, he/she has to draw the charity's attention for violating the rules prohibiting the payment of remuneration to members of the governing body in the governing instrument and seek the charity's remedial actions in that regard.

6.8.4.3 Under normal circumstances, the next review will be conducted four years after the current review is closed. However, the case officer may suggest advancing the next review and state the reasons therefor in C.D.4.

6.8.4.4 In appropriate cases, the case officer may recommend issuing modified C.D.5 to draw the charities' attention to any irregularity identified and the remedial actions taken (if any) during the review.

6.8.4.5 Cases that do not warrant the issue of C.D.5 are submitted to CA(SD) for approval.

6.8.4.6 If withdrawal from exemption is considered warranted, the case officer will prepare and issue the Withdrawal Letter (C.D.3) (signed by case officer). The procedures in Chapter 6.3.2 will also be followed.

6.8.4.7 For those cases that require approval by senior officers according to the approval limits, if the approving officer holds a view contrary to the recommendation of the case officer, he / she should state briefly in C.D.4 the reasons for the decision and may give instructions to the case officer for follow-up.

6.8.4.8 ACO / ATO will enter the details of all actions taken in the Review Exercise Control List and input the next review year in the EUC Program following the instruction of Assr/AA.

6.8.5 Whenever enquiries are raised, the case officer has to handle each reply received. The review action on a tax-exempt charity is not regarded as to be completed unless a decision to continue or withdraw the tax exemption status is made by the case officer with endorsement

sought with appropriate senior officer(s) (depending on approval limits).

6.8.6 The Review Exercise Control List is to be kept as permanent record.

6.9 Informer's Cases

6.9.1 Upon receipt of an informer's case referred from Unit 4 for review of the tax exemption status of a charity targeted by the informer, CA(SD) will assign an Assr to handle the case.

6.9.2 PS to CA(SD) will enter the details of the informer's case in the Informer's Cases Register. She will also prepare a "Working Paper Jacket" to be put in the file for containing the Informer's Case Control Sheets.

6.9.3 ACO / ATO will switch on the Informer's Case Indicator in the EUC Program. He/she will put up the file and attach a blue card at the bottom right hand corner marked "INFORMER'S CASE BACK TO ASSR", and then pass the file to the assigned case officer for necessary actions. An Informer's Case Jacket will be opened to contain all the relevant correspondences.

6.9.4 The case officer will review the informer's allegations and consider whether the allegations will have an impact on the charitable status and hence the tax exemption status of the charity entitled under section 88 of the IRO. Where necessary, the case officer may issue enquiries to the charity.

6.9.5 After examination of all the available information and documents, if the case officer is satisfied that the informer's allegations do not affect the charity's charitable status and the tax exemption can be continued, he/she should state in his/her submission the reasons therefor for CA(SD)'s approval.

6.9.6 After CA(SD)'s approval of the recommendation of continuing the tax exemption given, the case officer will then pass a copy of the closing submission together with the Working Paper Jacket to PS to CA(SD) for record. Also, the case officer will give instructions to ACO / ATO to update the relevant details of the charity in the EUC Program, and

in particular, switching off the Informer's Case Indicator and updating the next year of review.

6.9.7 Control of review of outstanding Informer's Cases

6.9.7.1 Informer's Cases aged over 9 months from date of receipt as at 30 June or 31 December will be reviewed by CA(SD). All Informer's Cases due for review will be passed to CA(SD) on or before 31 January and 31 July annually.

6.9.7.2 PS to CA(SD) will pass the relevant memos and the updated Informer's Case Control List to each case officers on 2 July and 2 January each year. The control list sets out all outstanding Informer's Cases due for review and their respective submission date to CA(SD).

6.9.7.3 The case officers are required to complete the progress report in the control list for each case and complete the submission date in the control list as and when the cases are passed to CA(SD) for review.

6.9.7.4 By 31 January and 31 July each year, the case officers should submit the completed control list together with the Informer's Case files then not yet closed to CA(SD) for review.

6.9.7.5 PS to CA(SD) will record the submission of the Informer's Cases that have been reviewed by CA(SD).

6.10 Physical Check

[Revoked]

6.11 *Conflict of Interest*

Officers should follow the guidelines set out in Departmental Circular 34/2007 AND THE Booklet on Official Secrecy; and avoid entering into a conflict of interest situation, actual or perceived. An officer must not take any part in handling the exemption claim or review of any institution or trust of which the officer or his / her spouse is a director / member of the governing body. If such circumstances arise, the handling officer must declare interest

and report to his / her supervisor by completing Part A of the form per attached. On receipt of such report, the supervisor should decide whether the matter should be handled by the case officer or another officer, complete Part B, and inform the case officer or the other officer by way of a note in the file. The note can simply be stated as "You can continue to handle the case." or "Please take over this case for processing.", as the case may be. The supervisor should then forward the completed form to CA(SD) under "Confidential" cover for information and retention. To protect the confidentiality of personal date, there is no need to keep any copy of the declaration and no surprise check on the declaration is necessary. PS to CA(SD) will keep a register for such reports which will be retained for 5 years after the relevant officer has left service. There is no need to transfer the reports to other units on the transfer of the officer concerned.

Similar arrangement would be made if any director / member of the governing body of the institution or trust is the close relative or close friend of the handling officer. The handling officer should also avoid dealing with any case where his / her spouse has been connected with the lodging of claims and the handling of review in a professional or representative capacity.

CONFIDENTIAL

Charitable Donations / Complaints Section
Report of a Conflict of Interest Situation

Part A *- To be completed by case officer*

Name and post of case officer : _____

Section : _____

Case file number : _____

Name of - taxpayer : _____

- representative : _____

Reason(s) for conflict of interest :

_____

_____

Signature of case officer : _____

Date : _____

Part B *- To be completed by Supervisor*

Arrangement made : _____

_____

_____

_____

Signature of Supervisor : _____

Name and post of Supervisor : _____

Date : _____

Part C *- Instruction by CA(SD)*

☐ PS to file this form in the register.

☐ Other : _____

_____

_____

_____

CA(SD)

Date : _____

Part III – RETIREMENT SCHEMES DIVISION

Chapter 7: Scope of Work and Duties of Retirement Schemes Division

Chapter 8: Files

Chapter 9: Records and Registers

Chapter 10: Office Procedures and Practices

[ALL Revoked (See Chapter 2.4.4)]

Part IV - MISCELLANEOUS

Chapter 11 – Information Pamphlets, Standard Forms and File Control

11.1 Information Pamphlet

11.1.1 An information Pamphlet on Charitable Institutions or Trust known as "A Tax Guide for Charitable Institutions or Trusts of a Public Character" is available on the Department's homepage (http://www.ird.gov.hk/eng/tax/ach_tgc.htm). The Pamphlet introduces the role of the Department in processing claims of charities for recognition of tax exemption under section 88 of the IRO, the meaning of "charity", what crucial clauses that the governing instrument of a charity should generally contain, the tax privileges enjoyed by a tax-exempt charity, the meaning of "donation", and how a charity may lodge a claim for recognition of tax exemption under section 88 of the IRO, etc.

11.2 Standard Forms

11.2.1 Retirement Schemes

[Revoked]

11.2.2 Charitable Donations

11.2.2.1 C.D.1 and C.D.1A – covering letter and review questionnaire on review of charities.

11.2.2.2 C.D.2 - a reminder for return of C.D.1A.

11.2.2.3 C.D.3 - the standard letter for withdrawal of exemption given under section 88 of the IRO.

11.2.2.4 C.D.4 - a processing form used by Assr / AA in connection with the review exercise.

11.2.2.5 C.D.5 - a standard letter for giving continued tax exemption under section 88 of the IRO (may be modified if circumstances warrant).

11.2.2.6 C.D.6 - outdated.

11.2.2.7 C.D.7 - outdated.

11.2.2.8 C.D.8 - outdated.

11.2.2.9 C.D.9 - outdated.

11.2.2.10 C.D.10A - passing information to the Employers' Section of the Document Processing Centre about those tax-exempt charities with salary and allowance charged in their accounts submitted exceeding $500,000.

11.2.2.11 Circular Letter - a standard letter issued to every tax-exempt charity explaining the meaning of "approved charitable donations".

11.2.2.12 F.R.1 – a final reminder for return of reply to enquiries

11.2.2.13 F.R.2 – a final reminder for return of reply to C.D.1A

11.2.3 Reprint of Forms

[Revoked]

11.3 File Control

11.3.1 In order to control the movement of files which contain information which is covered by section 4 of the IRO, files of this Section will only be issued to officers who are authorized to handle the file in the course of ordinary routine and to the officers of the rank of AA grade and above who apply for a file on Form I.R. 146.

11.3.2 When a file which belongs to another section is required, the procedure will be:-

11.3.2.1 ACO / ATO / CA is required to complete the Form I.R. 146 and submit it to the case officer for signature.

11.3.2.2 The case officer has to satisfy himself that the file is needed for the proper performance of duties in the Section before he signs the Form I.R. 146.

11.3.2.3 The signature must be full - not initials - and the name of the persons signing must be written legibly under the signature.

11.3.2.4 When the file is required immediately, this will be stated in red in Form I.R. 146 with an Urgent Slip attached to it.

11.3.2.5 ACO / ATO / CA will then pass the Form I.R. 146 to the relevant section.

11.3.2.6 ACO / ATO / CA is required to bring up the file to check receipt of the requested file. If the requested file is not received by then, prepare another set of Form I.R. 146 for the signature of Assr/AA.

11.3.2.7 Upon receipt of the requested file, ACO / ATO / CA has to mark the record in the File Requisition Register.

11.3.3 When a file of the Section is required by another Unit/Section, upon receipt of the Form I.R. 146 (the white copy and the yellow copy), the following actions will be taken within a few days:

11.3.3.1 ACO / ATO / CA has to satisfy himself that the signature and name is that of an AA or above. If not satisfied, consult his/her senior officers for instruction.

11.3.3.2 File the white copy of Form I.R. 146 in the File Requisition Register and mark movement record. Then complete the middle part (Part B) of the yellow copy of Form I.R. 146 and pass it to the requesting officer with the requested file.

11.3.3.3 If the file is not available, e.g. file cancelled or file is in action, ACO / ATO / CA will complete the middle part (Part B) of the yellow copy of Form I.R. 146 and return the same to the requesting section. If the file is in action, ACO / ATO / CA is required to make a note in the file and pass the file to

the requesting section when the action in the file is completed.

11.3.3.4 Upon receipt of the file returned by the requesting section, ACO / ATO / CA has to mark the movement record in the File Requisition Register and file the yellow copy of Form I.R. 146 in the Register for record.

11.3.3.5 The passing and returning of the requested file to and from the requesting section should be in person and not by transit.

財經事務及庫務局
香港添馬添美道二號
政府總部二十四樓

FINANCIAL SERVICES AND THE TREASURY BUREAU
24/F, Central Government Offices,
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來函檔號 Your Ref. : CB4/PAC/R68

26 May 2017

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charity

As requested in your letter of 22 May 2017, I append below the information required –

(a) It is noted from the minutes of the Sub-committee on Charities of the Law Reform Commission (LRC) that staff from the Inland Revenue Department (IRD) took every opportunity to explain and clarify the role of the IRD in administering section 88 of the Inland Revenue Ordinance (IRO) in respect of the recognition of tax exemption status to charitable organisations. The legal advice of 2003 was not provided to the LRC. In paragraph 7.15 of its Report on Charities published in December 2013, the LRC stated that *"The IRD is responsible only for the tax exemption aspects of charitable organisations. It is not responsible for registering charities or for monitoring their conduct."*

In view of the concerns of the Ombudsman and the Public Accounts Committee (PAC) regarding the control of charitable fund-raising activities, the Government explored means to strengthen the control. For this reason, the IRD sought the advice of the Department of Justice (DoJ)

in September 2003. The legal advice was sought in a general policy context without the reference to any specific case.

In our reply to PAC on 4 May 2017, we provided the gist of the legal advice on this matter after consulting DoJ. The Government does not consider that it is appropriate to disclose the legal advice it has obtained which is subject to legal professional privilege. For sake of easy reference, the gist of the legal advice is reproduced below –

Issue	**DoJ's Advice**
Whether it is legally proper for IRD to deny or withdraw a charity's tax exemption status when the charity or its trustees or directors have been convicted of any offence involving deception, fraudulent acts or misappropriation of donations received or any offences punishable under the Theft Ordinance.	It would depend on the merits of each particular case. IRD may deny or withdraw the exemption status of an institution if it is in fact not a charity but, e.g., is a vehicle used in the commission of fraud. However, an isolated incident may not be necessarily conclusive as to the true nature of the business of an institution. Further, an offence committed by an official of an institution may not necessarily be attributable to the institution.
Whether it is legally proper for IRD to overturn a charity's tax exemption status solely because the charity has not complied with any obligations or guidelines, whether statutory or not, which are not provided in the Inland Revenue Ordinance	No.

(b) Section 88 of the IRO provides general tax exemption to charities. When considering an application under section 88 of the IRO, the IRD's role is to determine whether the organisation is a charity at law having regard to all the relevant facts and circumstances and if so, recognise the tax exemption status. For this purpose, the IRD will examine, among other things, the governing instrument of the organisation. In particular, the IRD will scrutinise the object clauses, income clause and dissolution clause to ensure that all the objects of the organisation are charitable in nature and that there are adequate safeguards to prevent the channelling of funds for non-charitable purposes. This is an important threshold test for the IRD to deliver its role in accordance with section 88 of the IRO.

The IRD conducts periodic reviews on tax-exempt charities to ensure that their objects remain charitable and that their activities are compatible with their objects. In the course of the periodic review, if a charity is found to have breached a clause of its governing instrument, the IRD needs to ascertain whether such breach would fundamentally affect its charitable status. The IRD will seek clarifications from the charity about the breach and ask the charity to propose remedial actions. In determining whether the breach fundamentally changes the organisation's charitable status, the IRD will take into account all the relevant facts and circumstances, including the nature, reasons, materiality and proportionality of the breach. If a charity blatantly breaches the provisions of its governing instrument and the IRD, after taking a holistic view, considers that such breach fundamentally changes its charitable status, it would withdraw the tax exemption status.

Insofar as the breach of a key clause in the governing instrument by a charity, e.g. on prohibition of payment of remuneration to members of governing body, it is for the charities concerned to propose remedial actions for the IRD's consideration. Such remedial actions can take different forms, such as cessation of payment, refund of remuneration received by such members, resignation as members of governing body, etc. The key consideration of the IRD is whether a charity's non-compliance with the clause of its governing instrument would fundamentally change its charitable status. As noted by the LRC in paragraph 7.15 of the Report on Charities in 2013, the IRD is responsible for the tax exemption aspects of charitable organisations but not registering charities or monitoring their conduct.

(b)(i) In 2016, when the IRD was aware that 9 Executive Committee members of Charity D were paid remuneration for the years ended 31 March 2012 to 2014, the IRD asked Charity D to confirm if the practice was still in force; and provide details of the payments and remedial actions to address the breach of the relevant requirements in its governing instrument. In its reply, Charity D advised that the 9 Executive Committee members were also employees of the charity at the relevant times but they had resigned as Executive Committee members in late 2013 or early 2014. Hence, no remuneration had been paid to members of the Executive Committee since then.

The IRD considered that the cessation of the remuneration arrangement is an acceptable remedial action in relation to the breach and was satisfied that Charity D was not established for the private benefit of specific

individuals. In addition, the IRD, having regard to capacity in which the 9 Executive Members were employed, the remuneration of other employees in similar capacity and the scale of operation of Charity D, was of the view that the remunerations paid by Charity D to the 9 Executive Committee members for the years ended 31 March 2012 to 2014 (ranging from $4.3 million to $4.7 million) might be a technical breach of its governing instrument. As such, the IRD considered that the charitable status of Charity D was not affected.

(b)(ii) In the periodic review conducted on Charity E in 1999, it came to the notice of the IRD that Charity E had made payments totalling $20,700 (described as "顧念款") out of total income of $4 million to one trustee and two Executive Committee members. After clarifying with Charity E, the IRD noted that the payments were meant to meet the travelling expenses and basic living requirements of its members, including the trustee and the two Executive Committee members, who took an active interest in spreading the Gospel and rendering services to Charity E. Since Charity E had shown that the payments to the trustee and the two Executive Committee members had been fully repaid to it and had confirmed that it would strictly observe the relevant provisions in its governing instrument that no remuneration or benefit in money or money's worth would be paid to its trustees or Executive Committee members, the IRD considered that the breach did not fundamentally change Charity E's charitable status. As such, the IRD continued recognising Charity E's tax exemption status.

In the 2007 review, the case officer noticed that Charity E had again breached its governing instrument by making payments totalling $43,500 out of total income of $8.3 million for 2006 and 2007 to one Executive Committee member. The IRD drew Charity E's attention to the potential contravention of the clause relating to the remuneration of the trustees and Executive Committee members, sought explanation on the payments and asked it to take remedial actions. In reply, Charity E stated that it made payments to its members who were old, sick or in need of care, including the Executive Committee member. Taking into account that Charity E had provided evidence to show the said sum of $43,500 had been fully repaid to it and that it undertook not to make such payments in future; and that the payment was duly explained, the IRD considered that the breach did not fundamentally change Charity E's charitable status. As such, the IRD continued recognising Charity E's tax exemption status.

In both occasions, the IRD adopted a consistent approach in dealing with Charity E's breach of paying remuneration to the trustees and Executive Committee members.

As regards the remedial action proposed by Charity E, the IRD considered that Charity E's undertaking of not making such payments in future was acceptable in the circumstances of the case and there is no evidence to indicate that the breach rendered Charity E not satisfying the public benefit requirement of charities.

In concluding the 2007 review, the then case officer was of the view that given the lapse of time, the management of Charity E might have undergone changes since 1999 so that they might not be fully aware of the clause in its governing instrument for prohibiting payment of remuneration to trustees and Executive Committee members. As such, the IRD issued a warning letter to Charity E reminding it to comply with the relevant provisions in its governing instrument in future. Since the IRD has no authority to withdraw a charity's tax exemption recognition on the basis of just a breach of the governing instrument of the charity if the breach does not fundamentally change the charity's charitable status, the IRD had ceased to issue similar warning letters but instead have issued letters to charities reminding them of the need to comply with the key provisions in their governing instrument.

(b)(iii) As indicated in paragraph 6.6.3 of the Staff Handbook of the Charitable Donations Section, in processing a reinstatement application from a charity, the IRD has, all along, been adopting an approach similar to handling new applications and will be examining all the necessary submissions from the charity afresh.

In the case of Charity F, the member of the Board of Elders who received the love gifts (in the range from $3,773 to $53,582 out of total income ranged from $355,885 to $546,127 for the years ended 30 June 2003 to 2013) was a pastor. When Charity F was notified of the breach, it decided to stop making payment to the pastor and recouped the payments for the last two years, i.e. $3,773 (for 2012) and $9,400 (for 2013) from the pastor. According to Charity F's financial statements, no love gifts were paid in 2014. Having regard to all the relevant facts and circumstances, including that the objects of Charity F were still charitable and that it was not established for the private benefit of specific individuals; the nature and the amount of the love gifts; and the remedial actions taken, the IRD considered that the breach did not fundamentally change the charitable

nature of Charity F and reinstated the recognition of its tax exemption status in 2015.

In the case of Charity G, a director received $30,000 in 2008, $130,000 in 2009, $80,000 in 2010, $70,000 in 2011 and $65,000 in 2012 (out of the total income of Charity G ranged from $287,571 to $759,783 for the years 2008 to 2012) from Charity G. Upon advice by the IRD of the potential breach of the clause relating to payment of remuneration to directors in its governing instrument, Charity G explained the circumstances leading to the payments to the director and stated that its members were not aware that its directors were not permitted to receive remuneration. Having understood such prohibition, the above-mentioned director resigned from the Board of Directors in April 2013 and agreed to repay half of his remuneration for the years 2008 to 2012 to Charity G. Having regard to all the relevant facts and circumstances, including that the objects of Charity G were still exclusively charitable and that it was not established for the private benefit of specific individuals; the reasons of making the payments to the directors; the remedial actions taken, the IRD considered that the breach did not fundamentally change the charitable nature of Charity G and reinstated the recognition of Charity G's tax exemption status in 2015.

(b)(iv) For Charity F, its tax exemption recognition was withdrawn by the IRD in 2003 as it had failed to respond to the IRD's enquiries. In 2011, Charity F applied for reinstatement of the recognition, and explained that it had not informed the IRD of its new address, resulting in the non-receipt of the IRD's past enquiries.

For Charity G, its tax exemption recognition was withdrawn by the IRD in 2006 due to its failure to respond to the IRD's review questionnaire. In 2012, Charity G requested the IRD to reinstate the recognition of its tax exemption status, and explained that it had not informed the IRD of its new address, resulting in the non-receipt of the IRD's past queries.

Like handling new applications for tax exemption recognition, the IRD sought for the necessary information in order to determine whether Charity F and Charity G were charities at law. The information includes the governing instrument, past activities and accounts, as well as the outstanding information. After examining the relevant facts including their effort to rectify the breach in the past and their commitment to adhere to the provisions in the governing instruments in future, the IRD considered that both Charity F and Charity G's objects remained charitable. The payment of love gifts by Charity F and remuneration by

Charity G to members of their governing body was not material enough to fundamentally change their charitable status. As such, the IRD reinstated the tax exemption recognition of Charity F and Charity G in 2015.

Yours sincerely,



(Kelvin Lo)
for Secretary for Financial Services and the Treasury

c.c. Commissioner of Inland Revenue (Attn: Ms Judy Yip)

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Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
By Fax : 2543 9197

4 May 2017

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charities

As requested in your letter of 28 April 2017, I append below the information required –

(a) Information pamphlet entitled "A tax guide for charitable institutions and trusts of a public character" mentioned in paragraph 2.3 of the Audit Report

A copy of the information pamphlet in English and Chinese are at **Annex A** and **Annex B** respectively.

(b) Staff Handbook setting out the practices and procedures in processing new applications for tax exemption and carrying out reviews of tax-exempt charities mentioned in paragraph 2.4 of the Audit Report

An extract (paragraphs 6.2 and 6.8) of the Charitable Donation Section Staff Handbook is at **Annex C**. The Chinese translation of the extract is at **Annex D**.

Note by Clerk, PAC: Annex B and Annex D not attached.

(c) The case law ruling and legal advice obtained by the Inland Revenue Department ("IRD") in 2003 mentioned in paragraph 2.16 of the Audit Report

Please refer to **Annex E** for the case *Oldham Training and Enterprise Council v Inland Revenue Commissioner* [1995] STC (SCD) 273. The Chinese translation of the relevant paragraph of the decision (i.e. paragraph 7.1(vi)) is at **Annex F**.

We have, in consultation with the Department of Justice, set out below a gist of the legal advice obtained in 2003 for the reference of the Public Accounts Committee –

Paragraph	Issue	Advice
2.16(a)	Whether it is legally proper for IRD to deny or withdraw a charity's tax exemption status when the charity or its trustees or directors have been convicted of any offence involving deception, fraudulent acts or misappropriation of donations received or any offences punishable under the Theft Ordinance	It would depend on the merits of each particular case. IRD may deny or withdraw the exemption status of an institution if it is in fact not a charity but, e.g., is a vehicle used in the commission of fraud. However, an isolated incident may not be necessarily conclusive as to the true nature of the business of an institution. Further, an offence committed by an official of an institution may not necessarily be attributable to the institution.
2.16(b)	Whether it is legally proper for IRD to overturn a charity's tax exemption status solely because the charity has not complied with any obligations or guidelines, whether statutory or not, which are not provided in the Inland Revenue Ordinance	No.

Yours sincerely,

(YIP Wai-fun, Judy)
for Commissioner of Inland Revenue

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)

Note by Clerk, PAC: Annex F not attached.

A Tax Guide for Charitable Institutions and Trusts of a Public Character

This pamphlet is issued as a guide only. It has no binding force and does not affect a person's right of objection or appeal to the Commissioner, the Board of Review or the Courts

WHAT IS THE ROLE OF THE DEPARTMENT?

1. The Department is not responsible for the registration of charities. However, subject to certain limitations, charitable institutions or trusts of a public character are exempt from tax under section 88 of the Inland Revenue Ordinance. Charities wishing to enjoy the tax exemption may apply to the Department.

WHAT IS A CHARITY?

2. ***Charity is not equivalent to "voluntary" or "non-profit-making" organisation***

   Not all "Voluntary" or so-called "non-profit-making" organisations are charities, however worthy their causes may be. In fact, there is no provision in the Inland Revenue Ordinance which exempts a "voluntary" or "non-profit-making" organisation from tax.

3. ***Charity must be established exclusively for charitable purposes***

   Generally speaking, for an institution or a trust to be a charity, it must be established for purposes which are exclusively charitable according to law. The law defining the legal attributes of a charity is based upon case law developed through court decisions.

4. ***Charitable purposes are classified into four heads***

   For practical purposes, the judgement of Lord MacNaghten in the case of I T Special Commissioners v Pemsel (3 TC 53) is regarded as an authoritative summary of the purposes that may be accepted as charitable. These are: -

   a. relief of poverty;
   b. advancement of education;
   c. advancement of religion; and
   d. other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads.

   While the purposes under the first three heads may be in relation to activities carried on in any part of the world, those under head (d) will only be regarded as charitable if they are of benefit to the Hong Kong community.

5. ***Charity must be established for public benefit***

   A purpose is not charitable unless it is directed to the public or a sufficient section of it. An institution cannot generally be charitable if it is in principle established for the benefit of specific individuals. It is, however, not possible to lay down any

precise definition of what constitutes a sufficient section of the public. Each case must be considered on its own merit.

6. ***Examples of purposes held by the court to be charitable and non-charitable purposes are given in the lists shown at Appendix A.***

HOW IS A CHARITY SET UP?

7. ***Charity should have a governing instrument***

It is essential that a charity is established by a written governing instrument. The type of instrument adopted will depend on the particular circumstances pertaining to the charity proposed and the preference of the promoters or founders. Persons who are considering starting a charity are advised to seek legal advice about the format, content and legal sufficiency of the charity's governing instrument. Before seeking advice, persons founding a charity must be clear in their own minds as to the purposes of the charity and the manner in which they wish the charity to be administered. Briefly the most common types of structures are:-

a. a trust;
b. a society established under the Societies Ordinance (Cap 151);
c. a company incorporated under the Companies Ordinance (Cap 32); and
d. a statutory body established by the Hong Kong legislature.

In exceptional circumstances, granting tax exemption to some ad hoc committees established for charitable purposes may be possible. Though preparation of governing instrument is strictly not required for a committee of this nature, minutes of the meeting establishing such committee must be ready for inspection.

8. ***Only charities under the jurisdiction of Hong Kong courts qualify for exemption***

Following the principle applied in Camille and Henry Dreyfus Foundation Inc v CIR (36 TC 126), tax exemption will only be given to charities subject to the jurisdiction of the courts in Hong Kong, that is to say, charities established in Hong Kong or Hong Kong establishment of overseas charities such as those deemed to be established in Hong Kong under section 4 of the Societies Ordinance or registered under Part XI of the Companies Ordinance.

9. ***Clauses that the governing instrument of a charity should generally contain include:-***

a. clauses stating precisely and clearly its objects (This also applies to companies incorporated under the Companies Ordinance on and after 10 February 1997 and not required to state their objects in their Memoranda of Association);
b. clause limiting the application of its funds towards the attainment of its stated objects;
c. clause prohibiting distribution of its incomes and properties amongst its members;
d. clause prohibiting members of its governing body (e.g. directors, trustees, etc) from receiving remuneration;
e.

clause specifying how the assets should be dealt with upon its dissolution (The remaining assets should normally be donated to other charities);

f. clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements; and

g. clause excluding the powers set forth in the Seventh Schedule to the Companies Ordinance (in case the charity is a company incorporated under such Ordinance).

WHAT ARE THE TAX ADVANTAGES AVAILABLE TO CHARITIES?

10. A summary of the tax advantages accorded to charities, in so far as ordinances administered by the Commissioner of Inland Revenue are involved, is as follows:-

a. Inland Revenue Ordinance

i. Section 88 provides that charitable institutions or trusts of a public character are exempt from tax under the Inland Revenue Ordinance.

ii. Proviso to section 88 states that for the purpose of Profits Tax, if a charitable institution or trust of a public character carries on a trade or business, the profits from such trade or business are exempted only if:-

1. the profits are applied solely for charitable purposes, and
2. the profits are not expended substantially outside Hong Kong, and
3. either

(A) the trade or business is exercised in the course of the actual carrying out of the expressed objects of the institution or trust (for example, a religious body might sell religious tracts);

or

(B) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established (for example, a society for the protection of the blind might arrange for the sale of handicraft work made by the blind).

iii. For the purposes of Personal Assessment, Salaries Tax and Profits Tax and subject to certain limitations, a deduction is granted for donations of money to charitable institutions or trusts of a public character which are exempt from tax under section 88 or to the Government for charitable purposes.

b. ***Stamp Duty Ordinance***

Stamp duty under Head 1(1) or Head 2(3) shall not be chargeable on any conveyance of immovable property or any transfer of Hong Kong

stock operating as a voluntary disposition inter vivos where the beneficial interest therein passes by way of gift from the person entitled to that interest, or from the registered owner, to or on trust for a charitable institution or trust of a public character. However, the instrument in question must still be submitted to the Collector for adjudication. It is not treated as duly stamped unless it has been stamped with a particular stamp denoting either that it is not chargeable with stamp duty or that it is duly stamped.

c. ***Estate Duty Ordinance***

i. Gifts for the benefit in Hong Kong to any charitable institution or trust of a public character, or to Government for charitable purposes will not be deemed to be part of the dutiable estate.

ii. Property bequeathed for the benefit in Hong Kong to any charitable institution or trust of a public character, or to Government for charitable purposes is allowed as a deduction.

The exclusion from the dutiable estate is applicable in respect of gifts and bequests received from donors dying before 11 February 2006.

d. ***Business Registration Ordinance***

Charitable, ecclesiastical or educational institutions of a public character are normally exempt from the obligation of business registration unless a trade or business is carried on. Where such an institution carries on a trade or business, the exemption will only be granted if the conditions set out in section 16(1)(a) of the Business Registration Ordinance are satisfied. These conditions are similar to the conditions set out in the proviso to section 88 of the Inland Revenue Ordinance as explained in the sub-paragraph (a)ii. above.

WHAT IS A DONATION?

11. The word "donation", in its ordinary sense, means a gift. To constitute a gift, the property transferred must be transferred voluntarily and not as a result of a contractual obligation to transfer it and no advantage of a material character is received by the transferor by way of return [see Sanford Yung - Tao Yung v Commissioner of Inland Revenue (HKTC 1081)].

12. Persons administering charities should note that donors may be asked to produce receipts for donations in support of any claims they make for an allowance under the Inland Revenue Ordinance. It is therefore important to distinguish donations from other payments when issuing such receipts. Payments other than those which are strictly gifts, e.g. payments made for a grave space, services such as saying prayers, reservation of a space for ancestral worship, admission tickets for film shows, etc., should not be termed as donations. In borderline cases, it is suggested that the exact nature of the payment should be clearly stated on the receipt so that such transaction can be separately considered by the Department.

13. Though a tax-exempted charity may state on its receipts that donations to it may

be tax deductible, such statement must be crossed out when receipts other than donations in the true sense are acknowledged.

HOW TO CHECK WHETHER AN ORGANISATION IS A CHARITY?

14. A list of charitable institutions and trusts of a public character which are exempt from tax under section 88 of the Inland Revenue Ordinance is available on the Internet from:-

www.ird.gov.hk/eng/pdf/e_s88list_emb.pdf

HOW MAY A CHARITY OBTAIN TAX EXEMPTION STATUS?

15. Any organisation wishing to seek exemption from tax as a charitable institution or trust of a public character should submit the following documents to the Department:-

a. an application letter;

b. if the organisation has been established:

i. a copy of the relevant certificate of registration;

ii. a certified true copy of the instrument and rules governing its activities, i.e. the Memorandum and Articles of Association in the case of a corporation, the Ordinance where the body has been established by statute, the Trust Deed in the case of a trust, or the Constitution in the case of a society;

iii. a list of any activities which have been carried out in the past 12 months (or less, if appropriate), and a list of activities planned for the next 12 months;

iv. a copy of its accounts for the last financial year (if the organisation has been established for 18 months or more).

c. if the organisation has not yet been established:

i. a draft of the instrument and rules governing its activities;

ii. a list of the activities planned for the next 12 months from the date of establishment or date of application, where appropriate.

16. The application should be sent to the Commissioner of Inland Revenue, G.P.O. Box 132, Hong Kong.

IS THE TAX EXEMPTION STATUS OF A CHARITY SUBJECT TO REVIEW?

17. The Department will, from time to time, call for accounts, annual reports or other documents to review whether the institution's objects are still charitable and its activities are compatible with its objects. It is essential that a charity should maintain good management and good accounting practice. A practical guide on good governance is available on the Interent from:-

www.icac.org.hk/filemanager/en/Content_1031/fund_raising.pdf

18. Charities are required to advise the Department of any:-
    a. establishment or cessation of subsidiary organisation;
    b. alteration of its governing instrument; or
    c. change of name or correspondence address.

HOW TO OBTAIN FURTHER INFORMATION?

19. Further enquiries should be directed to the Assessor (Donations) on 2594 5300.

CHU Yam-yuen
Commissioner of Inland Revenue,
Collector of Stamp Revenue,
Estate Duty Commissioner.

September 2010
Our WEB page on the Internet: www.ird.gov.hk
Our E-mail address: taxinfo@ird.gov.hk

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Appendix A

EXAMPLES OF PURPOSES WHICH THE COURT HAD HELD TO BE CHARITABLE PURPOSES

a. Relief of poor people;
b. Relief of victims of a particular disaster;
c. Relief of sickness;
d. Relief of physically and mentally disabled;
e. Establishment or maintenance of non-profit-making schools;
f. Provision of scholarships;
g. Diffusion of knowledge of particular academic subjects;
h. Establishment or maintenance of a church;
i. Establishment of religious institutions of a public character;
j. Prevention of cruelty to animals;
k. Protection and safeguarding of the environment or countryside.

EXAMPLES OF PURPOSES WHICH THE COURTS HAD HELD TO BE NON-CHARITABLE PURPOSES

a. Attainment of a political object;
b. Promotion of the benefits of the founders or subscribers;
c. Provision of a playing field, recreation ground or scholarship fund for employees of a particular company or industry;
d. Encouragement of a particular sport such as angling or cricket.

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Last review date: 15 May 2015

6.2 Approval of Tax Exemption Claims from Charitable Institution or Trust of a Public Character

6.2.1 Approval of claims for tax exemption under section 88 of the IRO

6.2.1.1 Upon receipt of tax exemption claims, Assr / AA will consider the claims and make recommendations to CA(SD) on whether tax exemptions can be given. The procedures in considering new claims are set out below:

6.2.1.1.1 The case officer will check whether the information and documents provided by the claimant are sufficient for his/her consideration of the claim.

6.2.1.1.2 In considering the claims, the case officer will make reference to the tax guide, viz. "A Tax Guide for Charitable Institutions and Trusts of a Public Character" which is published on the Department's homepage. In general, the followings are considered:

(a) whether the claimant is established for exclusively charitable purposes;
(b) whether the claimant is established for public benefit;
(c) whether the claimant is under the jurisdiction of Hong Kong courts (if not, the claimant cannot be recognised as tax-exempt under section 88 of the IRO);
(d) whether the following crucial clauses that the governing instrument of a charity should generally contain are specified in the governing instrument of the claimant:

(i) clause stating precisely and clearly its objects;
(ii) clause limiting the application of its

funds towards the attainment of its stated objects;

(iii) clause prohibiting distribution of its incomes and properties amongst its members;

(iv) clause prohibiting members of its governing body (e.g. directors, trustees, etc.) from receiving remuneration;

(v) clause specifying how the assets should be dealt with upon its dissolution (the remaining assets should normally be donated to other charities);

(vi) clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements; and

(vii) clauses about avoidance of conflict of interests of the members of the governing body;

(e) whether the claimant's activities for the past twelve months and/or activities planned for the coming twelve months are compatible with its stated charitable objects; and

(f) for claimants established for more than eighteen months, whether its accounts for the last financial year has any irregularity.

6.2.1.1.3 The case officer may raise enquiries to obtain further information and documents in considering the tax exemption claim until he/she is satisfied that the issues in Chapter 6.2.1.1.2 are fulfilled.

6.2.1.1.4 If the case officer considers that the claimant can be recognised as tax-exempt under section 88 of the IRO, he/she should make recommendation for CA(SD)'s approval by stating briefly in the submissions the reasons therefor.

6.2.1.2 Approval to the main body – When it is satisfied that tax exemption under section 88 of the IRO can be given to a charitable institution or trust of a public character, actions in the following paragraphs will be taken:

6.2.1.2.1 CA will type the Exemption Certificate (I.R. 302) (in duplicate) and Approval Letter (in triplicate) for Assr's signature for issue to the claimant.

6.2.1.2.2 CA will also prepare a Circular Letter drawing the claimant's attention to the meaning of approved charitable donations for issue to the claimant (signature not required).

6.2.1.2.3 One copy of the Approval Letter will be passed to the Business Registration Office for their necessary action and record.

6.2.1.2.4 ACO / ATO will issue Approval Letter, Exemption Certificate (I.R. 302) (both signed by Assr), as well as Circular Letter to the claimant.

6.2.1.2.5 ACO / ATO will enter all necessary details in the following records:-

- EUC Program (including the indicator whether the charity consents to disclose its name on the List of Tax-Exempt Charities uploaded to the Department's homepage or not)
- BCFMS
- Work Book

6.2.1.3 Approval to the subsidiary body or sub-subsidiary body – When it is satisfied that a subsidiary body is part and parcel of the tax-exempt charity (i.e. under the sole ownership and control of the tax-exempt main body and does not have a separate written governing document), the tax exemption under section 88 of the IRO will be extended to the subsidiary body.

6.2.1.3.1 Assr/AA will state briefly in the file the reasons for extending exemption to the subsidiary body. Upon the charity's request, a letter recognizing the extension of its tax exemption status to the subsidiary body is to be issued.

6.2.1.3.2 ACO / ATO will update the relevant details in the EUC Program.

6.2.1.4 For those tax-exempt charities (main body and subsidiary bodies) consenting to have their names published in the List of Tax-Exempt Charities uploaded to the Department's homepage, their names will be included in the preparation of the List of Tax-Exempt Charities (see Chapter 6.7).

6.8 Review of Tax-Exempt Charities

6.8.1 To protect revenue, review on the tax exemption status of charities are conducted from time to time having regard to their circumstances. Such reviews are conducted at least once every four years. In December every year, a control list comprising all the files that are due for review for the next year is prepared by AA by using a specially designed function in the EUC Program.

6.8.2 The review exercise is conducted in three to four batches depending on the number of cases scheduled for review for each year, the workload of and resources available to the Section.

6.8.2.1 After preparation of the control list, Form C.D.1s and Form C.D.1As (the review questionnaires) will be prepared for issue to the tax-exempt charities (signature not required). The Form C.D.1s and C.D.1As are sent to those tax-exempt charities selected for review for completion and review within one month. The charities are also required to file their financial statements and reports on activities they have conducted.

6.8.2.2 The following information and documents are sought for review purposes (stated in Form C.D.1A):

(a) The charity's current corresponding address;
(b) Whether the charity's governing instrument has had any changes since the last review/recognised as tax-exempt;
(c) Annual report or list of activities for the last financial year;
(d) Whether the charity carries on any trade or business;
(e) A copy of the charity's accounts for the last financial year;
(f) Whether the charity has any subsidiary body to carry out charitable work; and
(g) A copy or specimen of donation receipt currently issued by the charity to a donor.

6.8.2.3 Reminder (Forms C.D.2) will be issued in around eight weeks' time if the review questionnaire is not received by then.

6.8.2.4 Final reminder (Forms F.R.2) will be issued in around sixteen weeks' time if the review questionnaire is still not received by then.

6.8.3 Upon receipt of the review questionnaire from the tax-exempt charity (Form C.D. 1A):

6.8.3.1 ACO / ATO will enter record in the Review Exercise Control List.

6.8.3.2 TO will conduct preliminary check on the followings:

6.8.3.2.1 Whether an annual report or a list/details of activities of the last financial year are provided;

6.8.3.2.2 Whether a copy of the accounts duly signed by the responsible person/officer of the charity is provided. If the charity is a body corporate or whose governing instrument requires the preparation of audited accounts, such accounts should be audited and contain a duly signed directors' and auditor's report; and

6.8.3.2.3 Whether a copy or specimen of donation receipt currently issued by the charity to a donor is provided, and if so, whether the charity's full official name is imprinted thereon.

6.8.3.3 If any of the information/document in Chapter 6.8.3.2 is outstanding or insufficient/incorrect, TO will instruct CA to type the appropriate enquiry letters (signed by Assr) for issue to the charity seeking the outstanding/correct information/document.

6.8.3.4 ACO / ATO will pass those C.D.1A containing the sufficient information/document sought with their respective files to the case officer to take necessary review action.

6.8.4 During the review:

6.8.4.1 The case officer will examine the charity's replies to the C.D.1A and its financial statements to ensure that the objects of the charity are still charitable and that its activities are compatible with its charitable objects, and ultimately consider whether the recognition of its tax exemption status could be continued. He/she will state briefly in the file the reasons therefor. If warranted, the case officer may raise enquiries on the charities. Failure to furnish information required by the C.D.1A may lead to the withdrawal of the tax exemption status.

6.8.4.2 If the case officer is finally satisfied that the charity's tax exemption status can be continued, he/she will summarize the findings by preparing a Form C.D.4 and inserting therein all updated information of the tax-exempt charity as well as the year for the next review, and will, depending on the circumstances of the case, prepare usual or modified C.D.5 (signed by the case officer) if continued tax exemption is warranted.

6.8.4.2.1 For cases that the charity cannot provide an annual report or a list of activities held for the last financial year for examination, if the case officer considers that the continued recognition of tax exemption is warranted based on other available information (e.g. the charity's accounts where there may reflect that expenses were incurred for activities held, the provision of a future activity plan, etc.), he/she should state so briefly in the C.D.4 and with the reasons therefor.

6.8.4.2.2 For charities that have prepared audited accounts and whose auditor expressed an adverse opinion

on their accounts and the issues involved may affect their charitable status and hence their tax exemption status, the case officer may raise enquiries on the pertinent issues/concern and seek for the remedial actions. If he/she is satisfied with the remedial action proposed by the charity and is of the view that the tax exemption status can be continued, he/she should state briefly in C.D.4 the issues involved, the remedial actions proposed by the charity, and the justification of giving continued tax exemption.

6.8.4.2.3 For the copy or specimen of donation receipt provided by the charity which is issued to a donor, the case officer has to ensure that the name of the charity imprinted is the correct official name of the charity.

6.8.4.2.4 For charities that paid remuneration to members of the governing body, the case officer should check whether this is permitted in the governing instrument (i.e. the presence of the relevant overriding provisions). If so, he/she has to ascertain if such overriding provisions are duly followed. If not, he/she has to draw the charity's attention for violating the rules prohibiting the payment of remuneration to members of the governing body in the governing instrument and seek the charity's remedial actions in that regard.

6.8.4.3 Under normal circumstances, the next review will be conducted four years after the current review is closed. However, the case officer may suggest advancing the next review and state the reasons therefor in C.D.4.

6.8.4.4 In appropriate cases, the case officer may recommend issuing modified C.D.5 to draw the charities' attention to any irregularity identified and the remedial actions taken (if any) during the review.

6.8.4.5 Cases that do not warrant the issue of C.D.5 are submitted to CA(SD) for approval.

6.8.4.6 If withdrawal from exemption is considered warranted, the case officer will prepare and issue the Withdrawal Letter (C.D.3) (signed by case officer). The procedures in Chapter 6.3.2 will also be followed.

6.8.4.7 For those cases that require approval by senior officers according to the approval limits, if the approving officer holds a view contrary to the recommendation of the case officer, he / she should state briefly in C.D.4 the reasons for the decision and may give instructions to the case officer for follow-up.

6.8.4.8 ACO / ATO will enter the details of all actions taken in the Review Exercise Control List and input the next review year in the EUC Program following the instruction of Assr/AA.

6.8.5 Whenever enquiries are raised, the case officer has to handle each reply received. The review action on a tax-exempt charity is not regarded as to be completed unless a decision to continue or withdraw the tax exemption status is made by the case officer with endorsement sought with appropriate senior officer(s) (depending on approval limits).

6.8.6 The Review Exercise Control List is to be kept as permanent record.

Oldham Training and Enterprise Council v Inland Revenue Commissioners

SPECIAL COMMISSIONERS: MR P M F HORSFIELD AND MR T H K EVERETT

24, 25 JULY, 24 AUGUST 1995

Exemption – Charities – Body of persons or trust established for charitable purposes only – Private law body set up to promote and provide vocational education to the public, to improve the skills of the workforce and to promote the development of industry, commerce and enterprise of all forms for the benefit of the community – Whether body established for charitable purposes only – Income and Corporation Taxes Act 1988, s 506(1).

The council was a private law body set up to attain the objectives proposed by a White Paper entitled *Employment for the 1990s* (Cm 540) aimed at reducing unemployment. Its activities included (as envisaged by the White Paper) enterprise services (including the supply of information and advice to businesses), business start-up services and vocational training for young people and retraining for the unemployed. The council was incorporated on 3 May 1989 and according to its memorandum of association, it was established (i) to promote and provide vocational education and training and retraining of the public, (ii) to improve the skills of the workforce, and (iii) to promote the development of industry, commerce and enterprise of all forms for the benefit of the community in and around Oldham. The council sought exemption from income tax under Case III of Sch D on yearly interest in respect of the periods 1 July 1989 to 31 March 1990 and 1 April 1991 to 31 March 1992 pursuant to the exemption from tax available to charities under s 505[a] of the Income and Corporation Taxes Act 1988. By a notice dated 20 June 1994 the Revenue determined that the council was not entitled to the exemption under s 505 on the ground that it was not a 'charity' as defined in s 506(1)[b] because it had not been established for charitable purposes only. The Revenue took the view that the inclusion of the third of the objects defined in the council's memorandum, namely the promotion of 'the development of industry, commerce and enterprise' prevented the council's objects as a whole being charitable. The council appealed contending that the promotion or advancement of industry or commerce was a charitable object, provided that the purpose was the advancement of the benefit of the public at large and not merely the promotion of the interests of those engaged in the manufacture and sale of their particular products. The Revenue contended, that the council, by its constitution and in practice, was concerned not only with public benefit but also with private advantage, in particular as regards the advice and diagnostic services given to individual businesses and to the cash allowance made to unemployed people to set up a business.

Held – While all of the objects of the council as set out in the memorandum were expressed in such terms as rendered them capable of being charitable, the absence of any express reference to 'charity' in the memorandum made it proper and necessary to look at the circumstances surrounding the foundation of the council to ascertain whether its expressed purposes were not only capable of being charitable, but were in fact charitable. The whole tenor of the White Paper, in so

[a] Section 505, so far as material, provides—'... the following exemptions shall be granted ... (c) exemption from tax under Schedule D in respect of any yearly interest where the income forms part of the income of a charity and so far as it is applied to charitable purposes only.'

[b] Section 506, so far as material, provides—'... "charity" means any body of persons or trust established for charitable purposes only...'

far as it dealt with the formation of training and enterprise councils and their proposed functions, was the promotion of national and local benefit by the reduction of unemployment, particularly among disadvantaged sections of the population and in depressed areas. That was an object which was not only beneficial to the community but was vital to its welfare. Moreover, the undoubted benefits to individual traders (in the form of advice etc) which were involved in the council's activities and contemplated by the White Paper were not inconsistent with charitable status and could fairly be described as being conferred for the purpose of carrying out the main object of developing industry, commerce and enterprise for the benefit of the community. Accordingly, the council was a charity within s 505 and as such was entitled to relief on its deposit interest. The assessments would therefore be discharged.

Notes

For charities established for other purposes beneficial to the community, see Simon's Direct Tax Service C4.512.

For exemption from corporation tax available to charities, see ibid, C4.525, 523.

For the Income and Corporation Taxes Act 1988, ss 505, 506(1), see ibid, Part G1.

Cases referred to in decision

Ashton, Re [1938] Ch 482.
A-G v Ross [1986] 1 WLR 252, [1985] 3 All ER 334.
Bray v Ford [1896] AC 44, HL.
Construction Industry Training Board v A-G [1971] 1 WLR 1303, [1971] 3 All ER 449; *affd* [1973] Ch 173, [1974] 2 All ER 1339, CA.
Crystal Palace Trustees v Minister of Town and Country Planning [1951] Ch 132, [1950] 2 All ER 857.
French Protestant Hospital, Re [1951] Ch 567, [1951] 1 All ER 938.
Incorporated Council of Law Reporting for England and Wales v A-G [1972] Ch 73, [1971] 3 All ER 1029, 47 TC 321, CA.
IRC v White (1980) 55 TC 651.
IRC v Yorkshire Agricultural Society [1928] 1 KB 611, 13 TC 58, CA.
Norfolk's (Duke of) Settlement Trusts, Re [1982] 1 Ch 61, [1981] 3 All ER 220, CA.
Sanders' Will Trusts, Re [1954] 1 Ch 667, [1954] 1 All ER 667.
Special Comrs of Income Tax v Pemsel [1891] AC 531, 3 TC 53, HL.

Richard Bramwell QC (instructed by Binder Hamlyn, chartered accountants) for the council.
Mark Merrington, of the Inland Revenue Solicitor's Office, for the Crown.

DECISION

Introduction

1.1 The appellant, Oldham Training and Enterprise Council (the council), is a company limited by guarantee. It was incorporated, under another name, on 3 May 1989. Its present name and constitution derive from special resolutions passed on 13 March 1990. Save as regards an amendment to the remuneration provisions mentioned below, the appeal proceeded on the footing that we were not concerned with the constitution of the council prior to these resolutions taking effect, that is to say that the appeal should be decided on the basis that there was no difference which was material to the appeal between the pre-1990 and the post-1990 constitutions.

1.2 Assessments to corporation tax have been raised against the council under Case III of Sch D in respect of deposit interest. These assessments are dated 5

September 1991, 23 September 1991 and 21 October 1992 and are in respect of the periods 1 July 1989 to 31 March 1990 (the first two assessments), and 1 April 1991 to 31 March 1992. There is a further assessment before us also dated 23 September 1991 under Cases I and II of Sch D. The net tax payable under this assessment is £37,992·96. However, the Crown concedes that this assessment was raised in error and should be discharged and we discharge it. Accordingly the appeal relates only to the three remaining assessments under Case III of Sch D. All of these assessments are in respect of yearly interest of the council. The Crown did not seek to argue that the council is taxable as a trader. It is only the council's deposit interest which it has sought to tax.

1.3 The council appeals against the assessments on the grounds that it is entitled to exemption under s 505 of the Income and Corporation Taxes Act 1988 (the 1988 Act) as a charity within the definition in s 506(1) of the 1988 Act (s 505 is made applicable to corporation tax by s 9(4) of the 1988 Act). The definition of charity in s 506(1) provides that charity means any body of persons or trust established for charitable purposes only. The Crown contests the appeal on the grounds that, as the Crown contends, the council is not established for charitable purposes only.

1.4 We should mention at this point that, in order to obtain exemption under s 505 of the 1988 Act in respect of any yearly interest, it is not sufficient for the relevant body or trust simply to satisfy the condition of being established exclusively for charitable purposes. It is also necessary for the interest in question to be applied to charitable purposes only. However, in the present case, the sole issue before the tribunal is whether or not the first condition of s 505 is satisfied. It is not contended by the Crown that, if the council is a s 505 charity, the relevant interest is still taxable on the basis of non-charitable application.

2. The facts

2.1 The relevant facts are set out in an agreed statement supported by an agreed bundle of documents. The facts in the agreed statement, so far as material to our decision, are as follows:

(1) In December 1988 the government issued a White Paper called *Employment for the 1990s* (Cm 540), a copy of which is in the agreed bundle. One of the proposals in the White Paper was the creation of Training and Enterprise Councils (TECs) such as the appellant.

(2) The Employment Act 1989 enacted some of the proposals in the White Paper, but did not place TECs on a statutory footing. They were to be private law bodies which contracted with the government, through the training agency to attain the objectives envisaged by the White Paper.

(3) As already mentioned, the council was incorporated on 3 May 1989 and reconstituted on 13 March 1990.

(4) At all material times the members of the council have also been directors.

(5) The council's activities fall under three main headings as follows:

(a) *Enterprise Services,* which include information and advice to businesses, diagnostic services (assessment of a business's strengths and weaknesses and opportunities for development) and business skills training (planning, financial management, identification of new markets etc).

(b) *Business start-up services,* which include a free enterprise training scheme for anyone thinking of setting up a new business (in such subjects as marketing and bookkeeping) and a cash allowance of up to £60 per week for people setting up new businesses (such allowance not to exceed £2,800 in total in the case of any one individual). To qualify for such an allowance (which is in lieu of any unemployment or social security benefits) the recipient must (i) have been unemployed for at least six weeks, (ii) be starting a business judged by the council to have potential for the employment of more people, (iii) have attended a business

training scheme and be able to produce an acceptable business plan, and (iv) have access to sufficient capital.

(c) *Training*, which includes training young people for work and retraining unemployed people.

(6) As foreshadowed in the White Paper the provision of the above services is generally made by sub-contractors—mainly private sector firms and universities and colleges. Where the services are not provided free, the cost is shared between the recipient business and the council

(7) The activities of the council are funded by government grants and are governed by operating agreements made with the relevant secretaries of state.

(8) The determination which is the subject of this appeal is contained in a notice from the Deputy Controller FICO (Trust and Charities) dated 20 June 1994 to the effect that the council is not entitled to exemption from tax under s 505 of the 1988 Act for the period 1 August 1989 to 31 March 1992.

(9) The council has not sought registration as a charity and the Charity Commissioners have expressed the view (in a letter to Mr Syd Stagg of the Revenue office making the determination) that the council is 'not established for charitable purposes exclusively'.

2.2 In addition to the documents in the agreed bundle, two further documents were produced at the hearing. One of them was a pro forma 'TEC Operating Agreement'. It was common ground that this was a mere specimen agreement and might or might not correspond with any agreement actually entered into by the council. Neither party relied on this document and the case proceeded on the footing that the activities of the council were at all material times as described in the agreed statement of facts. The second document was part of an 'Evaluation of DTI funded TEC services'. We have not derived any assistance from this second document, save to note the statement towards the end of p11 that within stated broad objectives 'each Training and Enterprise Council sets its own objectives and priorities'.

3. The council's memorandum and articles

3.1 The objects of the council are set out in para 3(1) of the 1990 memorandum of association of the council. (The agreed bundle contains only a copy draft to this memorandum dated 25 July 1989, but it is common ground that the draft represents the terms of the memorandum as adopted in 1990.) Paragraphs 1 and 2 of the memorandum refer merely to the name of the company and the situation (in England) of its registered office. We set out para 3(1) in full:

> '3(1) The company is established to promote and provide vocational education and training and re-training of the public, to improve the skills of the workforce and to promote the development of industry, commerce and enterprise of all forms for the benefit of the community in and around Oldham and in furtherance of these objects and for these purposes (but without prejudice to the generality of the foregoing) to:—(a) examine the local labour market and assess key skill needs, prospects for increasing local employment and the adequacy of existing training opportunities; (b) devise, implement and monitor local training education and work experience programmes for young people, unemployed people and adults requiring new knowledge skills and technical training; (c) develop, secure and provide training, advisory, consultation and other support services and advice to and for local businesses; (d) promote the development of existing businesses and the establishment of new businesses. And it is hereby declared that the objects of the company as specified above shall be separate and distinct objects of the company and shall not be in any way limited by reference to any other paragraph of this clause or the order in which the same occur or the name of the company.'

3.2 Before turning to the other provisions of the memorandum and articles it will be helpful if we indicate our general conclusions as to the proper construction of the objects in para 3(1) of the memorandum as follows:

(1) The opening section of para 3(1) describes three main categories of objects, the first being the provision of 'vocational education and training and re-training of the public', the second being the improvement of the 'skills of the workforce' and the third being the development of 'industry, commerce and enterprise'.

(2) It is conceded by the Crown that, if the first two of these three categories of objects stood alone, the objects of the council would be charitable as falling under the head of education. The issues between the parties arise out of the third of the three categories of object, namely the development of 'industry, commerce and enterprise'.

(3) It was initially contended by the Crown that the term 'enterprise' in the third of the three categories of objects should be construed independently of the preceding expressions 'industry' and 'commerce'. Despite the existence of the final provision in para 3(1) that the objects are 'separate and distinct objects', we are doubtful whether this is correct. However, whether this be so or not, it seems to us that the term 'enterprise' adds little, if anything, to 'industry' and 'commerce'. It was argued by the Crown that the term 'enterprise' introduces suggestions of the 'initiation' of a business, of 'entrepreneurial activity' and of 'risk taking'. This may well be so, but if and so far as the expression 'enterprise' does carry these meanings in the present context, it seems to us that its presence does no more than emphasise particular aspects of the concepts of 'industry' and 'commerce' without adding significantly to their scope. We derive support for this view from the fact that, as Mr Bramwell QC for the council pointed out, the expression appears to be used synonymously with 'industry and commerce' in passages of the White Paper, e g at para 4.8.

(4) What were referred to as the secondary objects in sub-paras (a), (b), (c) and (d) of para 3(1) are expressed to be 'in furtherance of' the three main categories of objects and 'for these purposes'. That being so, we accept the council's arguments that these subsidiary objects cannot enlarge the three principal categories of objects once those principal categories have been construed (see for example *IRC v White* (1980) 55 TC 651 at 653). However it seems to us that they are relevant to the construction of the three main objects as indications of the purposes which the pursuit of these main objects are intended to serve (see *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 99, 47 TC 321 at 345–346). We return to this point below when considering the extent to which evidence of the surrounding circumstances is admissible to construe the council's objects.

3.3 Paragraph 3(2) of the memorandum contains wide powers of the kind commonly found in company memoranda. However, these powers are expressed to be exercised 'in the furtherance of the said objects but not further or otherwise' and again cannot be said to enlarge the objects. Nor does it seem to us that they assist in the construction of the objects.

Paragraph 4 of the memorandum provides that the income and property of the company 'shall be applied solely towards the promotion of the objects of the company' as set forth in the memorandum, any distribution to the members being prohibited.

3.4 Paragraphs 5 and 6 of the memorandum limit the liability of the members to the sum of £1 per head.

3.5 Paragraph 7 provides what is to happen if there is a surplus of assets on a winding-up. This surplus is not to be distributed to the members, but 'is to be given or transferred to some other association, body or bodies (whether corporate or not) or trust having objects similar to the objects of the company, with a similar prohibition against distribution to members, 'such association body, or bodies

or trust to be determined by the Secretary of State for Employment at or before the time of winding-up or dissolution of the company'.

3.6 The articles of the council are in conventional form and nothing turns on them.

4. The issue between the parties

4.1 Against the background set out above, the question which we have to determine is a short one, namely whether the inclusion of the third of the three categories of objects defined in the council's memorandum, the promotion of 'the development of industry, commerce and enterprise' prevents the objects as a whole being charitable objects. If that is so, then it cannot be said that the council was 'established for charitable purposes only' within s 506(1) of the 1988 Act, so as to be entitled to relief under s 505. If on the other hand the third of the categories of objects in the memorandum is itself a 'charitable purpose', then it follows that the council was 'established for charitable purposes only', since the Crown accepts that the first two categories of objects, if standing alone, would be charitable.

4.2 There was some discussion at the hearing as to whether the provisions of para 7 of the memorandum, dealing with a surplus of assets on a winding-up, could authorise the secretary of state to apply such assets for non-charitable purposes, and, if so, what would be the effect of these provisions on the charitable status of the council. However, the Crown conceded that the possibility of a non-charitable application of the surplus assets on a winding-up would not prevent the council being 'established for charitable purposes only' within s 506(1).

4.3 As we have already mentioned, if the council is in truth 'established for charitable purposes only', then it follows that it is entitled to the relief it claims under s 505 as applied to corporation tax. The Crown does not contend that the council's funds have been applied inconsistently with its objects. In short, therefore, this appeal turns on the question whether the third of the categories of object in para 3(2) of the memorandum is or is not, on its true construction, charitable.

5. The council's case

5.1 Mr Bramwell QC for the council puts his case shortly, adopting the statement of the law of Fox J in *IRC v White* (at 659). At that reference the learned judge referred to three earlier cases and stated that these cases—

> '... seem to me to establish that the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interests of those engaged in the manufacture and sale of their particular products.'

The three cases on which Fox J relied for this statement of the law were *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611, 13 TC 58, *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] Ch 132 and *Construction Industry Training Board v A-G* [1971] 1 WLR 1303.

5.2 In the *Yorkshire Agricultural Society* case, the objects of the society, as set out in the judgment of Lord Hanworth MR ([1928] 1 KB 611 at 620, 13 TC 58 at 69), were 'to hold an annual meeting for the exhibition of farming stock, implements, etc., and for the general promotion of agriculture'. Certain privileges attached to membership of the society, summarised by Lord Hanworth MR as 'free admission to the shows and to parts of the grand stands at the shows, the opportunity of going to a reading and writing room on the show ground, a right to have manures and foodstuffs analysed at reduced fees, special railway facilities, and similar benefits'.

Lord Hanworth MR summarised the objects of the society as follows ([1928] 1 KB 611 at 621, 13 TC 58 at 69):

> 'As the objects of the Society now stand, I think it would be fair to describe them as being for the assistance and promotion of agriculture generally, and in particular certain objects are specified by which that general object, the improvement and promotion of agriculture, may be attained .[adding that, as regards the privileges accorded to members, the existence of these privileges] does not in any way alter the general nature and purpose of the Society as a whole.'

On this basis Lord Hanworth MR concluded as follows that the society's objects were charitable under the fourth head in *Pemsel's* case (see *Special Comrs of Income Tax v Pemsel* [1891] AC 531 at 583, 3 TC 53 at 96) ('trusts for other purposes beneficial to the community, not falling under any of the preceding heads') as follows ([1928] 1 KB 611 at 623, 13 TC 58 at 71):

> 'It seems to me that the right interpretation to be given to the object of this old Society is that the Society has been formed for the purpose of the improvement of agriculture as a whole, and not for any confined purpose of benefiting only the particular members of the Society or those resident in the locality to which its name attached it, and for a purpose which may bring advancement and improvement to the benefit of the community at large. I think that that general purpose remains in spite of the matters to which I have already referred—namely, the benefits which are catalogued in the case '

Atkin LJ gave a concurring judgment, elaborating on the question of benefits to members as follows ([1928] 1 KB 611 at 631, 13 TC 58 at 77):

> 'There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object maybe, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members, I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view to giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the Society being established for charitable purposes only. That I imagine to be this case.'

Lawrence LJ also gave a concurring judgment, summarising the question in issue as follows ([1928] 1 KB 611 at 635–636, 13 TC 58 at 80):

> 'In my judgment the crucial question in this appeal is whether the appellant Society was established for the promotion of agriculture generally or what has been conveniently called a members' society, established for the promotion of the interests of its members in their respective businesses. If the former be the case I am clearly of opinion that the Society was established for charitable purposes only within the legal acceptation of that expression. Agriculture is an industry not merely beneficial to the community but vital to its welfare. The fact that the operations of this Society may be confined to Yorkshire .is, in my opinion, immaterial, as it is well settled that the benefit in point of local area need not extend to the public at large and that the benefit of the inhabitants of a particular district will suffice '

5.3 The *Crystal Palace* case raised the question whether the Crystal Palace and its park and ground were land 'an interest in which is held on charitable trusts or for ecclesiastical or other charitable purposes of any description'. The relevant trusts were constituted by the Crystal Palace Act 1914 for purposes which included, inter alia, 'the promotion of industry commerce and art'. The charitable status of this object was one of the issues in the case. It was argued by Mr Buckley on behalf of the Minister of Town and Country Planning (at 141), inter alia, that 'the promotion of industry or commerce amounted to no more than the promotion of the interests of those engaged in the manufacture and sale of their particular products, was not in any way concerned with any benefit to the public at large, and so could not be charitable.' Danckwerts J dealt with this argument as follows (at 141–142):

> 'As regards the construction which Mr. Buckley sought to put on the words "the promotion of industry and commerce", in my view, such a construction is contrary to the whole purpose of the Act and the creation of the statutory corporation represented by the trustees. I am entitled, when the terms of the trusts are not clear, to have regard to the attendant circumstances, including the nature of the trustees: see *In re Ashton* [1938] Ch 482. I find, on reading the Crystal Palace Act, 1914, that the trustees constituted by the Act, are to a large extent, representative trustees, representing the public authorities who contributed to the moneys required for the acquisition of the property, which property was to be administered by the trustees as a concern which would not distribute any profits, and in the title and the preamble and throughout the Act, the note which is stressed is the provision of benefits to the public. In those circumstances, it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees. It appears to me that the promotion of industry or commerce in general in such circumstances is a public purpose of a charitable nature within the fourth class in the enumeration of charitable purposes contained in *Pemsel's* case.'

5.4 The last of the cases on which Fox J relied in his statement of the law in the *White* case, was the *Construction Training Board* case. However, as its name implies, this case concerned a body established for training purposes (held by Sir John Pennycuick VC to be charitable) and not for the wider purpose of promoting industry and commerce. It does not seem to us, therefore, to be much assistance.

5.5 On the basis of the authorities referred to above Mr Bramwell for the council argued: (i) that the promotion or development of 'industry and commerce' was capable of being a charitable object, if the overriding purpose was to benefit the community rather than individuals engaged in trade and commerce; (ii) that the addition of the words 'and enterprise' added nothing to 'industry and commerce' and did not therefore affect the position; (iii) that the wording of the council's memorandum made it clear that the overriding purpose of the development of 'industry, commerce and enterprise' was one of public benefit, ('the benefit of the community in and around Oldham'), not the benefit of individual traders; and (iv) that, if and so far as it was appropriate to look at the benefits which individuals received in the implementation of its objects by the council, those benefits were to be disregarded as incidental to the overriding purpose of public benefit.

6. The Crown's case

6.1 The Crown resisted the council's argument on a number of grounds. However, it would, we think, be fair to say that in substance all of these grounds were essentially directed to the same point, namely that the council was by its

constitution and in practice concerned not only with public benefit but also with private advantage.

6.2 The Crown starts from the uncontentious proposition that, if the third category of objects in the council's memorandum is to be charitable, it must be within, or at least within the spirit and intendment of, the preamble to the Elizabethan Statute 43 Eliz c.4, and be for the benefit of the community. The Crown then goes on to say that, although on the authorities the promotion of industry and commerce is capable of being charitable under these two tests, the promotion of 'industry, commerce and enterprise' is not, because of the particular nuances carried by the expression 'enterprise'. We reject this argument for reasons already given, namely that, in the present context, the addition of the word 'enterprise' does not seem to us to enlarge in any significant way the terms 'industry' and 'commerce'. However, there remains the main plank of the Crown's argument, namely that on its true construction and in its context the council's third object is not for the benefit of the community. It was round this difficult issue that the contest centred.

6.3 The Crown places reliance on the fact that the memorandum in general and the objects provision in particular contain no express reference to charity. We accept the council's contention that this fact cannot of itself prevent the objects from being charitable if, on their true construction, they fall within one or more of the recognised categories of charitable objects. However, the absence of any reference to charity does, in our view, raise sufficient uncertainty as to the scope of the very wide third category of objects 'the development of industry, commerce and enterprise', to justify looking outside the precise wording of the objects themselves, in particular to the White Paper, for evidence of the circumstances surrounding the formation of the council (see the approach of Danckwerts J in the passages from the *Crystal Palace* case cited above and *A-G v Ross* [1986] 1 WLR 252 at 263). The Crown further contends that it is permissible to look, not only at the circumstances surrounding the formation of the council, as in the *Crystal Palace* case, but also at the activities carried on by the council after its formation; on the grounds that 'in a case where the real purpose for which an organisation was formed is in doubt, it may be legitimate to take into account the nature of the activities which the organisation has since its formation carried on' (see the *Ross* case (at 263) per Scott J). The council, while at least impliedly accepting that it is permissible to look at the White Paper (large passages of which were read to us by way of 'background'), resists the contention that it is permissible in this case to look at the actual activities of the council. At the end of the day the point seems to us to be academic. The activities of the council on which the Crown relies as indicating the furtherance of individual advantage rather than benefit to the community are activities which are foreshadowed in the 'subsidiary objects' in sub-paras (a) to (d) of para 3(1) of its memorandum and in the White Paper (see in particular paras 5.7 to 5.19 of the White Paper). Accordingly, the nature of these activities falls, in our view, to be considered in any event. Further, the broad generalisations in which the description of the TECs and their intended activities are couched in the White Paper make it difficult to grasp the real nature of those activities without reference to the manner in which they are carried out in practice. That being so we accept the Crown's contention that it is appropriate to consider those activities as set out in the agreed statement of facts.

6.4 On the footing that it is permissible to look at the council's activities, the Crown points to the 'enterprise services' and 'business start-up services' referred to in the agreed statement of facts, in particular to the advice and diagnostic services given to individual businesses and to the cash allowance made to unemployed people setting up a new business. These activities in particular, the Crown contends, are essentially directed to the benefit of individual traders in the conduct or commencement of their businesses for their personal advantage and are

not directed to the public benefit. The council, on the other hand, contends that these elements of individual benefit are merely incidental to the implementation of the object of developing industry, commerce and enterprise generally' for the benefit of the public.

6.5 In addition to its main point (the elements of benefit to individual traders) the Crown relies on a number of subsidiary points as follows: (i) It is argued that para 7 of the memorandum would, on construction, authorise the secretary of state to direct the application of surplus assets on a winding-up for a non-charitable purpose and that this points to a non-charitable construction of the objects of the company. (ii) Similarly the Crown refers to the fact that para 3(2)(p) of the memorandum was amended after the foundation of the council so as to authorise the payment of 'reasonable and proper remuneration to the officers, employees and professional advisors of the company and any other person or persons for the objects of the company or any of them'. Payments to directors were previously excluded. This change, the Crown contends, could not properly have been made by a charitable corporation (see *Bray v Ford* [1896] AC 44 and *Re French Protestant Hospital* [1951] Ch 567) and indicates that the council is not in truth charitable. (iii) Finally, the Crown points to the fact that the council has not sought registration as a charity.

7. Conclusion

7.1 We have found this an exceptionally difficult case. It is quite clear to us that the council's activities as outlined in the White Paper and implemented in practice are unlike those of most conventional charities, particularly in the extent to which they involve co-operative partnership with bodies which are not or may not be, charitable (see for example para 5.11 of the White Paper which states: 'Although TECs will be new organisations with a separate legal identity, existing business organisations like chambers of commerce and the CBI will often form the nucleus of a TEC. TECs will act as the focus for a range of public and private sector initiatives in the area .Local Employer Networks might also form the nucleus of a new Council. In other areas it might be sensible for TECs to absorb their functions or to link with them in a constructive way'). Further, although it seems to us indisputable that the amelioration of the scourge of unemployment and of all the social ills which flow from it is a purpose of the most profound public benefit, we are conscious that, as a matter of law, not every socially beneficial end is legally charitable (see *Re Sanders' Will Trusts* [1954] 1 Ch 667). However, at the end of the day and after considerable vacillation, we have come to the conclusion that the council is established 'for charitable purposes only' and is accordingly a charity within s 505 of the Act. In the light of the citations of authority set out earlier in this decision, the reasons for our conclusion can be shortly stated as follows:

(i) All of the objects of the council as set out in para 3(1) of the memorandum are expressed in terms which render them capable of being charitable. In particular this is true of the third object 'to promote the development of industry, commerce and enterprise of all forms' (the word 'enterprise' adding nothing of significance to 'industry' and 'commerce') (see the *Yorkshire Agricultural Society, Crystal Palace* and *White* cases).

(ii) The absence of any express reference to 'charity' renders it proper and necessary to look at the circumstances surrounding the foundation of the council to ascertain whether its expressed purposes are, not only capable of being charitable, but are in fact charitable (see the *Crystal Palace* and *Ross* cases).

(iii) The whole tenor of the White Paper, in so far as it deals with the formation of TECs and their proposed functions, is the promotion of national and local benefit by the reduction of unemployment, particularly among disadvantaged sections of the population and in depressed areas. This, in the words of Lawrence LJ in the *Yorkshire Agricultural Society* case, is an object which, like agriculture, is

'not only beneficial to the community but vital to its welfare' (see [1928] 1 KB 611 at 635, 13 TC 58 at 80).

(iv) The undoubted benefits to individual traders (in the form of advice etc) which are involved in the council's activities and contemplated by the White Paper do not seem to us to be inconsistent with charitable status. As Mr Bramwell very fairly argued, it is difficult to envisage how 'industry, commerce and enterprise' in general could be developed without there being incidental benefits to individual businesses. As in the *Yorkshire Agricultural Society* case, the benefits conferred by the council on individual traders can, it seems to us, fairly be described as being conferred for the purpose of carrying out the main object of developing industry, commerce and enterprise for the benefit of the community. Nor does there seem to us to be any particular difficulty about the weekly payments to unemployed persons seeking to start up new businesses. The purpose of these payments is not to enrich the individuals concerned (since they take the payments in lieu of unemployment or social security benefits), but to promote employment. The new businesses in question must have 'potential for the employment of more people'. These payments do not seem to us to be different in principle from the provision of workshops at a reduced rent in the *White* case (at 657).

(v) The position does not seem to us to be affected by the provision in para 7 of the memorandum for the application of surplus assets in a winding-up. On the footing that the objects in para 3(1) are charitable, it seems to us that the 'similar' objects in para 7 may well be likewise limited to charitable objects. Even if this is not so, it does not seem to us that a provision of this sort for the application of assets on a winding-up can prejudice the construction of the objects of the council prior to a winding-up, if, as we consider, those objects should otherwise be construed as charitable.

(vi) As regards the amended provision for the payment of remuneration so as to include directors, even if the amendment was a breach of trust or fiduciary duty, as to which we feel some doubt (see *Re Duke of Norfolk's Settlement Trusts* [1982] 1 Ch 61), it does not seem to us that it can affect the construction of the council's objects. Nor, it seems to us, can the council's failure to apply for registration with the Charity Commission affect the construction of its objects.

7.2 In short we conclude that the council is a charity within s 505 of the Act entitled to relief on its deposit interest and we discharge the three assessments relating to such interest accordingly.

Susan J Murphy Barrister.

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By Fax & Email
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16 June 2017

Dear Mr. CHU,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No. 68

Government's support and monitoring of charities

Thank you for your letter of 29 May 2017. Our responses to sections (a) to (f) of your letter are set out below.

Section (a)

In connection with the land adminstration policy of granting sites for private treaty grant ("PTG") of 1959 and 1981 as set out in paragraphs 3.2 and 3.3 of the Audit Report (all paragraphs hereinafter referred to paragraph number in Chapter 1 of the Audit Report):

(i) **Please elaborate the policy intent of the 1959 and 1981 land administrative policy on PTG;**

In the absence of file records going back to the 1950s, LandsD has tried to deduce the policy intent of the 1959 Executive Council (ExCo) Memorandum by making reference to the contents of the

paper. We note that the Memorandum was presented as an information paper, one that set out in general the context under which different types of PTGs subject to nil/nominal, concessionary and full market premium respectively would be applicable and the general land administration arrangements. As such, the paper did not, and was not meant to, prescribe the standard terms and conditions for inclusion into the relevant types of PTGs.

As far as PTGs granted at nil premium for non-profit-making purposes are concerned, the principle conveyed by the 1959 Memorandum was that it would be important for the facilities/services operating from the PTG site to be run to the satisfaction of the appropriate Head of Department; and that any profit derived from the permitted facilities/services under the PTG should not be distributed, but ploughed back to facilities/services serving worthy causes on site or off site, according to the policy intention for the case in question.

As regards the 1981 ExCo Memorandum, we consider that it is mainly applicable to circumstances where the grantee of a PTG for social service purposes at nil or concessionary premia wishes to enter into partnership with a private developer to redevelop the sites, and where the private developer would be allowed to share the profit from a "commercial", income-generating element to be included in the redevelopment. The policy intent of the policy framework set out therein is to facilitate early redevelopment by allowing the partnership, and to capitalise on the commercial element to finance the redevelopment and support the maintenance and running of the social services activities.

(ii) How were the 1959 and 1981 policy directives applied to and implemented in the land leases of the 14 sites highlighted in the Audit Report (paragraph 3.7 refers)?

The land leases for the 14 sites were executed at different points in time, having regard to different circumstances as well as considerations prevailing then.

Amongst the 14 sites highlighted in the Audit Report, Cases A, B and E with lease terms commencing between 1840s to 1880s held under virtually unrestricted leases are not PTGs (the lots concerned were bought or were likely to be bought by the lessees in the market). As such, both the 1959 Memorandum and 1981 Memorandum should not be relevant. Cases C, D and K with lease terms/orginal lease term commencing between 1920s to early 1950s are subject to very broad user restriction allowing much liberty for the lessees, and no

relevant information have been located so far about the existence or otherwise of specific policy intentions governing the three cases. In the circumstances, LandsD is not in a position to deduce whether the 1959 Memorandum is relevant.

For the remaining 8 cases (Cases F, G, H, I, J, L, M and N) where the leases specifically permitted the running of hostel/dormitories, one or more of the following requirements have been stipulated in their lease conditions:-

(a) the permitted use(s) or operation should be run on a non-profit-making basis;

(b) the operation shall be conducted in all respects to the satisfaction of a certain head of department (usually the relevant monitoring department);

(c) submission of accounts;

(d) no distribution of profit.

For details, please refer to table attached at **Annex I**. LandsD considers that (a) and (d) are different formulations supporting the principle conveyed in the 1959 Memorandum, i.e. that any profit derived from the permitted facilities/services under the PTG on nil/nominal premium should not be distributed, but ploughed back to facilities/services serving worthy causes on site or off site, according to the policy intention for the case in question. (b) and (c), where included, are also consistent with the principle of ensuring adequate control by the relevant government department(s).

Since Case N involves the inclusion of the "commercial" elements of public vehicle parks and telephone exchange on full market value premium to facilitate the redevelopment of Grantee N's Headquarters, the 1981 Memorandum is relevant and was indeed mentioned in the relevant ExCo submission on the redevelopment project in Case N.

(iii) while the "no distribution of profits is allowed" was clearly stipulated in the land policy paper presented to the Executive Council ("ExCo") in 1959 (R68/1/GEN2), why was this clause not specifically spelt out in the land leases granted by way of PTG (land lease of grantee M was the only lease that contains this clause) highlighted in the Audit Report? How could the Lands Department ('LandsD") effectively monitor compliance by the non-government organizations ("NGO") in the cases of the remaining 13 leases? Please group the provisions in each land lease of these 13 sites by which LandsD could exercise effective

***Note by Clerk, PAC:** Please refer to Appendix 12 of this Report for R68/1/GEN2.*

monitoring and enforcement of the "no distribution of profits" requirement?

(iv) According to Table 5 regarding the lease conditions of 11 sites with hotels/serviced residence operation, submission of audited accounts were not required in leases C, D, K, F, G, I and L. How could the relevant supporting bureaux/departments ("B/Ds') effectively monitor the distribution of profits derived from hotel operations were used to purposes acceptable to the Government? What remedial actions could be taken to address the problems?

We believe these sections (iii) and (iv) are not applicable to Cases A, B, C, D, E and K, given the background of those cases as explained in our response to section (a)(ii) above

Although the leases for the remaining 7 cases, i.e. Case F, G, H, I, J, L and N, do not carry a specific clause on "non-distribution of profits", 4 out of the 7 cases, i.e. Cases F, G, J and L, carry a clause requiring the operation concerned to be run on a non-profit-making basis. We consider that such a clause is another formulation of the "no profit distribution" requirement. For the remaining 3 cases, Cases H and N carry a clause requiring submission of accounts while the remaining Case I carries a clause requiring the operation to be run to the satisfaction of Government; these clauses will give room for the Government to make enquiries and monitor compliance with the spirit of "no distribution of profits".

Likewise, for those leases which do not contain a "submission of audited accounts" requirement, LandsD considers that the requirement for demonstration of operation on a "non-profit-making" basis and/or the requirement for operation to be run to Government's satisfaction will give room for the Government to make enquiries regarding the financial accounts where it is considered that such enquiries would help the checking of compliance with the stated "non-profit-making" requirement and/or the "to Government's satisfaction" requirement. Meanwhile, we understand that some charitable organisations would in any case submit their accounts to the relevant policy bureaux/departments in other contexts outside the lease.

The above notwithstanding, we agree that the inclusion of specific clauses on "submission of audited account" and "no distribution of profit" into the PTGs concerned would give greater clarity about the obligations under lease and facilitate Government's compliance checking. Looking forward, for the 11 PTGs named in the Audit report (excluding the 3 virtually unrestricted leases), where the opportunities arise (such as when lease modification application and

lease renewal are received), LandsD would recommend to the concerned sponsoring bureaux/departments the imposition of "submission of audited account" and "no distribution of profit" requirements and request for justifications if the recommendation is not accepted. The same arrangement will apply to the processing of new PTGs.

Section (b)

whether guidelines/circulars have been issued to B/Ds on factors to consider when processing NGOs' applications for sites to be granted at nil or concessionary premium. If yes, copy of guidelines/circulars. If not, how would B/Ds submit the applications to ExCo so that ExCo could consider and compare the relative merits of different applications;

Given the diversified circumstances under which PTGs are considered (including, for example, variations in the policy objectives, nature of the proposed facilities/services on site and background of the grantees), it may not be practical to draw up an exhaustive set of factors applicable to all cases. The Protocol issued in 2014 set out the general guidelines for B/Ds in considering matters concerning PTGs. A copy of the Protocol has been sent to you via my letter dated 25 May 2017. We believe the Protocol, supplemented by the usual practice of researching into relevant precedents by both the sponsoring B/Ds and LandsD, would facilitate consideration of potential cases.

Section (c)

will LandsD include the "no-profit-distribution requirement" and 'submission of audited accounts requiement" in future land leases for sites granted to NGOs at nil or concessionary premium. If yes, when such practice start. If no, the reason why not;

Please refer to our response under sections (a)(iii) and (iv) above, specifically the last paragraph therein.

Section (d)

will LandsD consider specifying definitions on "hotel" and "hostel" in order to make such differentiation in future land leases for hotel operation on sites granted to NGOs at nil or concessionary premium;

Generally, for land leases granted at nil or concessionary premium, LandsD supports greater precision in setting out the uses permissible to reflect the policy intention and minimise ambiguity, and in so doing to address modern day expectations. In this regard, when processing new proposals for PTGs or lease modifications/land exchanges involving the provision of hotels or hostels in recent years, LandsD has been mindful of

the desirability of stipulating specifications such as the mode of operation, target clientele, basis of fee to be charged etc. in the relevant leases or service agreements associated with the leases. As mentioned in the opening statement made by the Director of Lands at the PAC hearing on 6 May 2017, the PTGs under Home Affairs Bureau's Youth Hostel Scheme is a typical example of how "hostel" has been elaborated under the leases concerned. Another relevant example mentioned at the PAC hearing on 27 May 2017 is the in-situ land exchange for the redevelopment of The Mariner's Club under processing, where it is Government's clear policy intention to include provisions in the lease to clearly distinguish the club portion providing accommodation for seafarers from the hotel portion to be run as a commercial hotel and for which full market value premium would be chargeable.

Section (e)

the Protocol on the delineation of responsibilities on monitoring private treaty grants among the LandsD and relevant supporting B/Ds was issued in 2014. What measures have been/will be taken to remind supporting B/Ds of their responsibities, in particular about monitoring and enforcement of lease conditions throughout lease term? Has LandsD provided assistance to supporting B/Ds to formulate guidelines or a mechanism on monitoring and enforcing the lease conditions under their respective purview? If yes, details of assistance offered byLandsD. If no, reasons why not;

The 2014 Protocol itself serves as an important reminder for bureaux/departments supporting the provision of facilities/services on PTGs. According to LandsD's prevailing practice, we would, after execution of the PTG, inform in writing all the concerned government departments/bureau including the supporting B/Ds so that they are aware of their respective monitoring role under lease.

While relevant bureaux/departments should have a good understanding of the types of facilities/services under their purview, e.g. Education Bureau overseeing education facilities, Food and Health Bureau/Department of Health overseeing medical facilities, Social Welfare Department overseeing welfare facilities, etc., it is possible that they may not have stock taken cases on the basis of the leases concerned and the specific provisions therein, particularly for leases executed years ago. To this end, LandsD will assist by taking stock of PTGs on nil or concessionary premia and key provisions therein by phases, taking into account resources available. The information will be shared with the relevant bureaux/departments. However, we would defer to the supporting B/Ds to set up their own guidelines for monitoring so as to achieve their policy intention in supporting the land grant on case by case basis. But if any established breach of lease is identified by the responsible B/Ds, LandsD

will follow up with appropriate lease enforcement action at their directive in the capacity of land agent of Government being the landlord.

Where it is revealed that the monitoring role for individual lease conditions could not be attributed to a specific bureau/department due to the existence of grey areas, e.g. the hotel/hostel as an incoming-generating facility supports community/welfare services under the purview of different bureaux, LandsD will co-ordinate internally to arrive at a consensus and take a proactive role on monitoring if necessary, as what we are doing for the hotel/hostel operation under Lease M.

Section (f)

with reference to Case 1 in paragraph 3.14 on Lease M (paragraph 3.11 to 3.13 also refer), please provide the following:

(i) a copy of Lease M;

Copy of Lease M is attached.

(ii) the operating agreement between Grantee M and the operator in relation to the development and operation of the hotel;

LandsD requested Grantee M in August 2014 to provide the operating agreement but Grantee M expressed difficulties due to confidentiality with what was said to be a private contract between Grantee M and the hotel operator. As part of our follow up action on the Audit report, we made the request again in May 2017 and have recently urged Grantee M to make its best endeavours to overcome the concern with confidentiality by measures such as seeking the consent of the other party for disclosure, disclosing the agreement with sensitive information redacted or providing a summary of the provisions. We will continue to follow up accordingly.

(iii) based on what justifications/ considerations the Adminstration approved to grant the site to Grantee M by way of contemporaneous surrender of the site by Charity M bearing in mind that Grantee M was not a charity under section 88 of the Inland Revenue Ordinance (Cap. 112). Which bureau/department gave the policy support for the grant of site to Grantee M;

As revealed from the relevant file records available so far, the surrender lots namely Inland Lot No. 2616 and Inland Lot No. 3646 were owned by Charity M for an institute for promoting the welfare of the Forces under lease. With the diminished usage of the Sailors and Soldiers Home originally built on the lots, application was received in 1979 for lease modification by way of a land exchange to facilitate redevelopment of then existing property, which already

***Note by Clerk, PAC:** Copy of Lease M not attached.*

included hostel used mainly by tourists and servicemen and various welfare and education services run by Charity M, into a new facility comprising hostel with domestic staff quarters and ancillary office, church, and social welfare uses.

The proposed lease modification was subsequently withdrawn by the Charity M and they re-applied in 1985 for lease modification for redevelopment along similar lines. LandsD approved the lease modification by way of land exchange in 1986 in view of Director of Social Welfare's support towards social welfare facilities and Director of Home Affairs' earlier no objection on similar redevelopment scheme provided that the multi-purpose centre would be running on a non-profit making basis. Upon the request of Charity M to facilitate the use of a limited liability company as an instrument for their redevelopment and having considered the fact that Grantee M is controlled by Charity M and that appropriate controls i.e. "submission of account" clause and operation shall be to the satisfaction of Government, were imposed under lease, LandsD acceded to Charity M's request to grant the site to Grantee M instead of Charity M.

(iv) LandsD had not requested Grantee M to submit accounts until August 2013 in response to a complaint received in April 2011, although the submission of accounts conditions was clearly stipulated in the land lease. Why was that so?

The complaint received in April 2011 was related to the operation of a hotel on site and the suspicion that the running of a hotel on profit-making basis would be in breach of the PTG stipulating "hostel" as a permissible use, amongst others. In order to address the complainant's concern, LandsD focused initially on the alleged lease breach of the user restriction, seeking legal advice and liaising with relevant bureaux/departments to ascertain the policy intention.

While Lease M carries a clause on the submission of accounts to LandsD, the clause specifies that the grantee should submit the annual accounts "if so required". Until recent years, LandsD had been taking the view that the decision as to whether such submissions would be required should be taken by the bureaux/departments with policy responsibilities over the facilities on site, and when that decision was taken LandsD would follow up accordingly by exercising its authority under the lease to require the accounts as the government's land agent. When following up on complaints concerning the case in recent years, LandsD has come to realise that the responsibility over that "submission of account" clause is not as clear cut as expected when the hostel as an incoming-generating facility on site supports community/welfare services both

on site and off site under the purview of different bureaux. LandsD has therefore taken a more proactive role since 2013 by requesting audited accounts for the hostel from Grantee M in accordance to Special Condition No. (13) of the lease conditions, noting also that the development was renovated in 2012 and re-opened in May 2013.

(v) LandsD only took action to review the accounts of Grantee M in August 2013, more than two years after the receipt of a complaint in April 2011. Why did it take so long for LandsD to take relevant action?

Please refer to our response to section (f)(iv) above.

(vi) Follow-up actions that have been taken by LandsD in relating to Lease M since August 2013, including papers/documents/agreement/audit accounts obtained and still pending reply from Grantee as well as actions that will be taken and the implementation timetable;

LandsD requested Grantee M to submit audited accounts for the hostel on the lot annually since 2013 and has so far received the annual audited accounts for 2013 up to 2015. LandsD has also received certifications by a Certified Public Accountant (CPA) acting as Charity M's independent auditor that the Hostel income for 2013 to 2015 has been applied by Charity M towards improvement and/or extension of charitable services provided by Charity M. (Note: The certifications for 2014 and 2015 were recently received after the last PAC hearing on 27 May 2017.) Meanwhile, Lands D is awaiting the submission of audited account for 2016 and the provision of similar certification by an independent auditor regarding the ploughing back of Hostel income to Charity M for the year 2016.

In addition, to further strengthen Government's monitoring over the ploughing back of hostel income, LandsD has recently requested Charity M and Grantee M to expand the certification by the independent auditors to include a breakdown of the hostel income ploughed back by categories of uses, e.g. education, welfare, church activities etc. Our intention is to share the information with the relevant bureaux to facilitate their monitoring of uses and relevant subventions under their purview.

(vii) $16 million of hostel/hotel operation income was earned and the same account was paid to Charity M in Grantee M's audited accounts for the year ended March 2013 (paragraph 4 of Case 1). Has LandsD ensured that the $16 million is used in compliance with the condition that there shall be no distribution of profit

derived from the facilities (paragraph 3.13(c)). If yes, details of action taken/to be taken and the updated progress. If no, which department is responsible for monitoring such compliance. Whether further actions would be taken to require Charity M to submit relevant information for the years following 2013;

Lands D had taken a proactive role and for actions taken by LandsD, please refer to our response to section (f)(vi) above.

(viii) according to the Protocol on delineation of responsibilities on PTGs issued by LandsD, which B/Ds should take up the responsibility for monitoring the submission of accounts and scrutiny and ensure non-distribution of profit (paragraph 3.6(b) refers) on the hotel facilities operated by Grantee M? If LandsD should take up such role, what measures will be taken to enhance such role in enforcing the relevant requirements in respect of the hotel operation?

We trust our responses to sections (f)(iv) and (vi) above have also addressed the questions raised under section (f)(viii).

(ix) according to paragraph 7 of Case 1, LandsD did not have the expertise or knowledge to scrutinize the accounts submitted or determine whether the profit had been used in a manner and for purposes acceptable to the Government. What measures had been taken by LandsD to address the situation? What lessons could be drawn from this case?

While LandsD does not possess the expertise or experience in scrutinising financial accounts, we hope the measures set out in the earlier sections (including the requirement for certification by independent auditors, request for the provision of breakdown, the sharing of breakdown with relevant bureaux/departments) would facilitate the monitoring of the principle of "no profit making".

For new cases of PTGs on nil or concessionary premia, LandsD will ensure that responsibilities over the scrutiny of accounts are internally agreed and grey areas are removed before the leases are finalised, in order to facilitate the monitoring for compliance of no-distribution of profit requirement.

Yours sincerely,



(Ms Sophia CHIANG)
for Director of Lands

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)
Commissioner of Inland Revenue (fax no. 2877 1082)
Secretary for Home Affairs (fax no. 2591 5536)
Director of Social Welfare (fax no. 2891 7219)
Registrar of Companies (fax no. 2868 5384)
Commissioner of Police (fax no. 2866 2579)
Secretary for Education (fax no. 2810 7235)
Director of Audit (fax no. 2583 9063)

Secretary for Development (fax no. 2147 3691)
- enclosed also the incoming letter of 29.5.2017 from the Clerk, PAC

Annex I

	Lease Condition			
Lease	**(a) The permitted use(s) or operation should be run on a non-profit-making basis**	**(b) The operation shall be conducted to the satisfaction of a certain head of department (usually the relevant monitoring department)**	**(c) Submission of accounts**	**(d) No distribution of profit**
Virtually unrestricted lease				
A	No	No	No	No
B	No	No	No	No
E	No	No	No	No
Leases with broad user restriction				
C	No	No	No	No
D	No	No	No	No
K	No	No	No	No
Leases specifically permitted the running of hostel/dormitories				
F	Yes	Yes	No	No
G	Yes	Yes	No	No
H	No	Yes	Yes	No
I	No	Yes	No	No
J	Yes	Yes	Yes	No
L	Yes	Yes	No*	No
M	Yes	Yes	Yes	Yes
N	No	No**	Yes	No

**The grantee is required to submit audited accounts for the nursery and educational facilities under the lease.*

***The grantee is required to establish a Management Committee.*

地 政 總 署
LANDS DEPARTMENT

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

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本署檔號 Our Ref: ( ) in LDC 1/4/5060/16 Pt. 3
來函檔號 Your Ref: CB4/PAC/R68

來函請註明本署檔號
Please quote our reference in your reply

By Fax & Email
(Fax No. 2543 9197)

5 May 2017

Clerk, Public Acocunts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn : Mr. Anthony CHU)

Dear Mr. CHU,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No. 68

Government's support and monitoring of charities

I refer to your letter of 28 April 2017 and enclose the following memoranda for and decisions of Executive Council (in English) (in portable document format) for reference:

(i) Land Administration Policy (XCR 343/59)

(ii) Redevelopment of Sites Granted at Nil or Concessionary Premium for Social Services Purposes (XCR(81)95)

Please note that the above documents are only available in English. Besides, soft copy of the documents (in Microsoft Word format) is not available.

Yours sincerely,



(Ms Sophia CHIANG)
for Director of Lands

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)
Commissioner of Inland Revenue (fax no. 2877 1082)
Secretary for Home Affairs (fax no. 2591 5536)
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EXECUTIVE COUNCIL MEETING OF 27.10.59

Council considered a memorandum No.X.C.R.343/59, and noted the statement of policy contained in the enclosure.

Council advised and the Officer Administering the Government ordered that:

(a) a further paper be prepared reviewing the current arrangements for granting sites for workers' housing schemes;

x x x

Sgd. W.V.Dickinson
Clerk of Councils
29th October, 1959

[redacted]/59

For discussion on
27th October, 1959.

MEMORANDUM FOR EXECUTIVE COUNCIL.

Land Administration Policy.

As a result of recent discussions in Council on aspects of certain private treaty grants, His Excellency the Officer Administering the Government directed that a comprehensive paper should be prepared setting out the present policy and practice in relation to land administration. This would have the advantage of serving as a guide to which Hon. Members could refer from time to time, and might also have the effect of reducing the number of individual cases to be considered by Council once certain general principles had been established. A paper on these lines is now attached.

2. As regards paragraph 1 (c) of this paper, Hon. Members may wish to consider the advantages of departing from the present practice whereby all private treaty grants and sales (other than of sites for local officers' housing co-operatives) are invariably referred to Council; the terms on which such lots are granted have been clearly defined over the past few years, and Hon. Members may feel that it is no longer necessary for individual cases to come to Council unless they are of an unusual nature. Routine cases could in future be left to the Colonial Secretary to approve by Command.

3. The Director of Public Works, the Superintendent of Crown Lands, the Registrar General and the Assistant Colonial Secretary (Lands) will attend for discussion of this item.

4. Hon. Members will be asked to endorse the statement of policy set out in the attached enclosure, and to advise on the proposal in paragraph 2 above.

COLONIAL SECRETARIAT.

15th October, 1959.

LAND POLICY.

DISPOSAL OF CROWN LAND.

By Letters Patent, the power to dispose of Crown land is vested in the Governor, who has also been authorised by the Secretary of State to make private treaty grants or sales in his discretion. The present arrangements for disposing of land are as follows :-

(a) Sales by Auction.

Detailed terms, including building covenant, upset price and user restrictions, are prepared in the Public Works Department or New Territories Administration for approval by the Secretariat. The normal urban lease term is 75 years, renewable for a further 75 years, while that for the New Territories (in accordance with a recent decision by Council) is 99 years from 1898.

(b) Private Treaty Sales of extension areas to existing lots.

Public Works Department or New Territories Administration recommends detailed terms for approval by the Secretariat. The extension area must not be capable of development by any other lessee (in which event the area would be auctioned) or large enough to be developed as a separate lot. Building extensions (sold at the full estimated market value) are normally restricted to about 25% of the existing lot area, but no such restriction is applied to extension areas restricted to garden purposes. For garden extension areas a flat rate of 50 cents is usually charged in the urban areas. In all cases the lease term runs concurrently with that of the parent lot.

(c) Private Treaty grants or sales of new lots.

These (except for sites for local officers' housing cooperatives) are referred to Executive Council to advise whether or not the Governor should dispose of the lot on the terms proposed. Except for recreation club grants (for which a nominal Crown rent of $10 an acre per annum is charged), the zone Crown rent (which varies between districts) is payable and the premium charged ranges from nil to full market value, in accordance with the following principles :-

(i) Nil Premium:
Non-profit-making schools, hospitals, clinics, nurseries, recreation clubs, and other welfare purposes.

In general, exceptionally valuable sites are never disposed of by free grant; they are put to auction with no restriction on user. For profit-making groups wishing to run hospitals or schools on a purely commercial basis the land in question, if not exceptionally valuable, is sold at auction with user restricted to a hospital, clinic or school as the case may be. In all free grants, staff quarters may be built into the premises provided no additional land is required for them. Very stringent powers

of control are included in the conditions under which land is granted for welfare purposes, and in each case the institution must be run to the satisfaction of the appropriate Head of Department. No distribution of profits is allowed; they must be applied to improving the welfare service provided by the grantee. The lease period is 75 years (with no right of renewal) for urban lots, and the normal New Territories lease term for New Territories lots; but for recreation clubs the term is either 10 years, or in cases where substantial buildings or development is to be undertaken, 21 years.

(ii) Half Upset (i.e., one-third of market value): Workers Housing Schemes.

Sites are granted at half upset price to reliable firms wishing to build comprehensive staff housing schemes; the total rental that may be charged in any one year may not exceed 6% of the total capital cost of the scheme, including land costs.

Low-cost Housing Schemes.

Sites are granted to the Housing Authority, the Housing Society and other approved low-cost housing agencies.

Local Government Officers Housing Co-operatives.

These are granted without reference to Council, detailed terms in each case being approved in the Secretariat.

(iii) Upset Price (i.e., two-thirds of market value): Churches.

Land is granted at full upset price (i.e., two-thirds of estimated market value); but if a school is incorporated in the same building as a church the premium is reduced by the percentage of total floor area occupied by the school (for which a free grant site might otherwise have been sought).

(iv) Full Market Value:

Public Utilities.

Land for electric sub-stations, telephone exchanges and similar utility uses is made available by private treaty sale at the full estimated market value.

In all private treaty grants or sales the policy is to ensure that the site development proposed is reasonably intensive. Where necessary, small welfare bodies are urged to combine in seeking such grants. Should any grantee fail to meet any of his obligations under the Conditions of Grant, the Crown is free to re-enter. This is, of course, an extreme sanction and would be adopted only when all other methods had failed.

2. CALCULATION OF LAND VALUES.

This is done in one of two ways :-

(a) by comparative values, whereby the basis is the level at which land in the vicinity has changed hands; due allowance is made for factors that might have affected these prices, e.g., whether or not the lot was sold with vacant possession, lease restrictions, value of buildings. The value to be determined is fixed accordingly, allowance being made for user restrictions, site formation costs, etc.,;

(b) by estimating the return from the land; by this method, the estimated return in rents is capitalised and development costs are deducted to give the land value.

In a minority of cases neither of these two methods is practicable and it is then necessary to rely on the valuer's experience and knowledge.

3. BUILDING COVENANTS.

Unless a lot is to be used for recreational or similar purposes, a building covenant (expressed in terms of $X of building work to be completed within a stated number of months) is imposed to ensure adequate development; the higher the land value the greater the Building Covenant.

4. EXCHANGES.

(a) Urban Areas.

Council has agreed (Memorandum X.C.C. 99, in December, 1957) that exchanges should be allowed on a value-for-value basis in north Kowloon and in other areas ripe for development; that is, a large area of agricultural land may be given up for a small area of building land of equivalent value. Exchanges are not normally allowed in the urban areas proper, except for minor adjustments to lot boundaries to meet street widening and similar public needs.

(b) New Territories.

This process in the New Territories is sometimes called "conversion" though this term does not accurately describe the process. Owners of Old Schedule lots, title to which was confirmed free of payment after the New Territories were leased in 1898, are generally not prepared to give up land in a value-for-value transaction and claim the right to convert their entire lot to building status on paying a

premium equal to the difference in value. This method is seldom practicable in layout areas, but even there the intention is that owners should not be required to surrender more land than is needed for public purposes. The present practice, based on policy approved by Council in April 1957, is as follows :-

(i) Conversion to building status must be in accordance with general development policy in the area and with the current layout plan, if any.

(ii) Consideration is first given to the advisability of requiring the applicant to surrender land equal or approximately equal to the difference in value between the land in agricultural and building status. Owners of Old Schedule lots outside layout areas will not be required to surrender land but may do so if they wish.

(iii) If for any reason the applicant is permitted to pay for the increase in value partly or wholly in cash, the premium paid is the full difference between the estimated agricultural and building value of the land, taking into account the value of any land surrendered.

(iv) In any areas where the need to encourage rapid development justifies it, the District Commissioner may recommend conversion on payment of a premium less than the full difference between the estimated agricultural and building values, provided that it is not less than:

(1) half such difference, nor less than

(2) a proprotionate share of the estimated cost of development works in the layout area divided equally by area between the lots benefited by such works.

(v) Single storeyed domestic houses up to a maximum height of 15 ft. and occupying not more than 700 sq. ft. are permitted by building licence without premium on Old Schedule lots subject to planning and "fung shui" considerations.

5. MODIFICATION OF LEASE TERMS.

[redacted] Existing lease terms can be modified at the lessee's [redacted]ot to allow of more intensive development. Pre-war lessees [redacted]equired to pay a modification premium equal to half the [redacted] increment resulting from the modification; development is [redacted]encouraged. Post-war lessees would be required to pay the [redacted]value difference. Council approved this arrangement in [redacted] 1953 and such modifications are approved in the Secretariat; [redacted] of lots in certain better-class residential areas.

however, stipulate that the terms may not be modified except with the Governor in Council's approval, and such cases are always referred to Council. The Attorney General has advised that the only certain way to obviate such reference would be by legislation; and it might be held to be wrong for Government to change the terms of such agreements in this way. There are only about half a dozen such cases each year, and there are therefore no strong grounds for seeking to change this practice.

6. BUILDING HEIGHTS AND SITE COVERAGE.

(a) Since 1956 the Public Works Department has sought to encourage lessees in better-class residential areas to erect high buildings over a smaller portion of the site rather than to build over the two-thirds area allowed under the Buildings Ordinance. These areas are generally as follows :-

Hong Kong Island.

(i) Happy Valley, So Kwun Po and Tai Hang areas up to Eastern Filter Beds and Stubbs Road;

(ii) Mid-levels area from Pok Fu Lam Road on the west to Tai Hang Road on the east with Bonham, Park, Conduit and Kennedy Roads as northern boundary and the City Boundary (i.e., 700-foot contour) as the southern boundary;

(iii) the rest of the Island, excluding villages, south of the City Boundary in the west, and south of a line through Mount Parker, Tytam Gap, Pottinger Gap and Little Sai Wan in the east; but buildings directly behind Repulse Bay Beach are restricted by a 1955 Executive Council decision to 2 or 3 storeys.

Kowloon

(iv) Prince Edward Road, Waterloo Road, Argyle Street, Boundary Street, Grampian Road area, northwards to the Foothills Road.

(b) This control can only be exercised fully when new lots are sold or when the lessee is obliged to seek a modification of his lease terms before redevelopment can take place, or when (as frequently happens) the lease contains a "design and disposition" clause or (to a lesser extent) a "rate and range" clause. Under this policy lessees can achieve a greater usable floor area by building higher (and so leaving a larger percentage of the lot open). The percentage relationship between height and built-over area varies as between districts, and the building height permitted would take into account the need wherever possible not to block sea-views from main roads, or in rural areas, views from nearby properties. For urban area (i) above, the formula would range from 60% site coverage for a 3-storey building to 32.5% for a 12-storey building; while for the rural areas of Hong Kong Island, i.e., area (iii), the formula ranges from 30% site coverage for a 2-storey building to 17.5% for 12-storeys. For sub-urban areas (ii) and (iv)

(c) There are in addition three residential areas in Kowloon where the leases restrict building height to either two or four storeys. These are as follows :-

(v) Kowloon Tong area, bounded by Cornwall Street, Waterloo Road, Boundary Street and the railway (2-storey limit);

(vi) Kadoorie Avenue area, bounded by Prince Edward Road, Waterloo Road, Argyle Street and the Diocesan Boys' School (2-storey limit);

(vii) Homantin Hill area, east of the railway (4-storey limit).

These restrictions are strictly enforced, to preserve the "garden-suburb" character of these areas.

8. Certain other matters relating to land have by law to be referred to Council for consideration. These are :-

(a) Foreshore and Sea Bed Ordinance, Cap. 127: approval for sales of waterfront areas for particular purposes;

(b) Public Reclamations and Works Ordinance, No. 27 of 1956: approval of schemes for the creation of new land by reclamation. These are usually large-scale schemes which produce a considerable number of objections from affected lessees, and all objections are required to be considered by Council;

(c) Crown Lands Resumption Ordinance, Cap. 124: approval of the resumption of leased lots for specified public purposes;

(d) Crown Rights Re-Entry Ordinance, Cap. 126: consideration of petitions from lessees for the cancellation of re-entry for breach of lease terms; except in cases of gross breach of lease terms, relief is normally granted by the Governor in Council, with or without a penalty depending on the circumstances of the case;

(e) Town Planning Ordinance, Cap. 131: consideration of draft Town Plans prepared by the Town Planning Board after they have been published and objections received.

COLONIAL SECRETARIAT.

15th October, 1959.



M E M O

From: Secretary for the Environment To: Distribution as below.

Ref: (147) in ENV 76/47/07 II

Tel: 5-95269

Date: 18 May 1981.

Redevelopment of Sites Granted at Nil or Concessionary Premium for Social Services Purposes

On 12 May 1981 having considered memorandum ----- XCR(81)95 (copy attached), the Executive Council advised and the Governor ordered: -

(a) that in principle lessees holding sites granted for social service purposes at nil or concessionary premia should, as an alternative to surrendering the sites to Government for redevelopment, be allowed to redevelop those sites or exchange sites to include a "commercial" element, provided the criteria set out in paragraph 10 of the memorandum are met;

(b) that the principles set out in para. 11 of the memorandum should be used in assessing individual cases; and

(c) that similar principles governing "commercial" development in support of the lessee's activities should be applied in cases where the redevelopment is undertaken by the methods set out in paragraphs 5 and 7 of the memorandum.

The Council noted that each individual proposal would be submitted to the Council for consideration, with an indication in each case as to how the proposal complied with paragraphs 10 and 11 of the memorandum, and that the Director of Social Welfare would explain, when the first proposal was put forward, how he intended to implement monitoring arrangements for it.

18 MAY 1981

D. K. Dowding

(D.K. Dowding)
for Secretary for the Environment

/Distribution .....

For discussion
on 12th May 1981

XCR(81)95
Copy No 17

MEMORANDUM FOR EXECUTIVE COUNCIL

REDEVELOPMENT OF SITES GRANTED AT NIL OR CONCESSIONARY PREMIUM FOR SOCIAL SERVICES PURPOSES

Introduction

This paper seeks to establish the principles which should be applied when considering applications for the redevelopment of sites granted for social service purposes at nil or concessionary premia.

Background

2 With appropriate branch and departmental support, Crown land may be granted by private treaty for approved community, educational, medical, recreational or welfare purposes. In pursuance of this policy, a number of sites have been granted at various times at nil or concessionary premia to allow voluntary organisations including churches to establish a variety of social service facilities. The buildings erected on the sites are often now old-fashioned and inadequate to meet present needs and in many cases seriously underutilise the site. The organisations holding the grants frequently wish to redevelop but are unable to do so due to lack of funds.

3 One of the initial steps in determining the feasibility or otherwise of a redevelopment proposal must be to ascertain whether there are any town planning objections to redevelopment. Social service grant sites are zoned for Government, institutional or community (GIC) purposes on town plans. In the case of older sites, this zoning reflects existing uses which may no longer be essential or suitably located. The planning of an area cannot be based on the assumption that all GIC sites will be developed to the maximum permitted density with GIC facilities. A town plan is drawn up on the basis that the planning area as a whole should be provided with such facilities in accordance with approved planning standards which take account of the fact that many of the facilities require sites to be developed with buildings to a lower density e.g. auditoria, indoor stadia. It follows therefore that use of part of a GIC site for non-GIC purposes does not necessarily mean that there will be local or district deficiencies. The Town Planning Board, in exercising its discretion under section 16 of the Town Planning Ordinance, to permit other than specified GIC uses, ensures that adequate reservations have been made for the needs of the district.

O.S. 84

4 Ideally, whenever an urgent need is shown for the whole of an existing grant site to be redeveloped to the optimum solely for GIC purposes then the administration should insist on this provided that funds can be found. Where it is apparent, however, that a grantee cannot itself fund the redevelopment and Government is not prepared to assist, then the question arises as to whether it is better to have less than the optimum GIC development in order that a lesser amount of improved facilities may be provided quickly.

5 Several different approaches have been tried in the past in an attempt to achieve optimum redevelopment of underdeveloped grant sites. One solution has been for Government to take a free surrender of the site and, in return, to make a grant of land elsewhere. Another has been to reprovision the facilities on another site belonging to the lessee, thus releasing the original site for disposal by Government. The former approach has been adopted in the case of the old Chinese YMCA Building at 51 Bridges Street, Hong Kong (IL No 2048) which was surrendered on 1st August 1980 in return for the grant of a site (IL No 8449) on the Wan Chai reclamation on which the YMCA is to erect a modern multi-storey social service building. The most recent example of the latter approach is the surrender, in February 1980, by the Salvation Army of its premises at 547-555 Nathan Road (KIL No 6052) which is to be sold in due course to offset the cost of construction by Government of a new multi-storey social service centre and Salvation Army Headquarters building on the site of its property at Wing Sing Lane (KIL Nos 6370 and 6052).

6 The administration has recognised that the 'traditional' approaches to the problems of redevelopment described in paragraph 5 have failed to provide sufficient encouragement to lessees to redevelop. On the one hand, if an exchange site is accepted, a lessee must undertake to develop it to the optimum within a set period which can present considerable difficulties in funding and supervision of construction of a large multi-storey building for a voluntary body which, even with professional advice, lacks the development expertise of a private sector developer or Government. On the other hand, if a lessee surrenders a site in return for reprovisioning by Government on another of its sites, this means displacing existing facilities and probably curtailment or extinguishment of some community services for several years.

7 A modified approach has been proposed to certain lessees seeking to redevelop their underutilised sites. Basically this requires a lessee's surrender of the site to Government for redevelopment to the optimum to provide new accommodation to include improved facilities for the former lessee. Where the balance of the redevelopment potential is required to be used wholly for GIC facilities then the redevelopment would normally be carried out through the Public Works Programme in the usual manner. If public funds are not available to fund the redevelopment, the amount of GIC facilities would have to be reduced to the extent that redevelopment would be

economically viable if the site was put out to open tender with an obligation on the developer to build and hand back the accommodation for the former lessee and any Government or community facilities, free of cost, offsetting construction costs against premium for utilising the remainder of the site's development potential for profit-making "commercial" (i.e. commercial or residential or mixed commercial/residential) purposes. No development on this basis has been implemented so far, one of the problems being that Government has been unable to find acceptable alternative premises so that the lessee could continue to operate during the period of redevelopment. Consideration is being given to overcoming this problem by inviting a tenderer to provide suitable temporary accommodation for the former lessee pending completion of redevelopment though to do so would restrict eligibility to tender and further reduce the tendered premium.

8 There have recently been requests from lessees holding under-developed sites that they should be allowed to redevelop them so as to reprovide new and improved social service facilities and then to use up the remaining plot ratio for profit-making "commercial" development. The aim of maximising the commercial element would be to pay for the redevelopment, provide future income for the maintenance and running of the social service facilities and provide funds for the further expansion of the lessee's activities. Present policy on sites granted for social service purposes restricts any "commercial" non-industrial development to purposes ancillary to the main purposes of the building which, being limited in nature, would normally contribute only to the cost of running the social service facilities in the building e.g. the shops and restaurants in the Arts Centre. The new proposals would go beyond this and could provide a substantial capital sum and recurrent income. They would also mean the lessee entering into partnership with a private developer to redevelop the site. If such proposals were approved there would be a demand for an increased commercial element in other redevelopments which may be achieved through one of the methods outlined in paragraphs 5 and 7 above. It would be difficult to distinguish between these cases and whatever is considered appropriate for one would have to be accepted for all.

Justification for a Change of Policy

9 So far as land use is concerned, it is desirable that underdeveloped GIC sites should be redeveloped to their optimum potential. From a social viewpoint, it is desirable that modern, well run social service facilities should be provided on GIC sites. Present policy can achieve these two aims only if the lessee is prepared to surrender its site and Government can find an acceptable alternative site or arrange for suitable in-situ redevelopment. It is becoming increasingly difficult to find new sites which would be acceptable to the organisations concerned and Government is normally unable to provide temporary accommodation to allow in-situ redevelopment except through private sector leasing. For these reasons, lessees are often unwilling to surrender their sites and Government cannot achieve the desired redevelopment. The alternative of resumption would be difficult to justify in most cases especially if a grant to some other organisation was to be made.

10 A direct subsidy to assist redevelopment may be a suitable solution in some cases, particularly if it would result in provision of accommodation in addition to that required by the grantee for Government's own use or for allocation to other subvented voluntary agencies. Failing this, and if none of the alternative approaches described above is workable, a decision has to be made whether it is better to defer redevelopment and maintain the existing facilities and the existing redevelopment potential of the site for later redevelopment for GIC purposes or to aim for earlier redevelopment to produce an improvement of social service facilities, accepting that this will necessitate the inclusion of "commercial" development within the scheme. In most cases this decision will be made by the Town Planning Board in responding to applications under section 16 of the Town Planning Ordinance but prior to considering a modification, Government would also have to ascertain that:

(i) to carry out such a redevelopment is within the terms of its Memorandum and Articles of Association or in the case of organisations incorporated by statute within the terms of the incorporation ordinance;

(ii) that the organisation could be made accountable for income derived from its share in the development;

(iii) that this income was applied to purposes acceptable to Government; and

(iv) the project would benefit the public purse, e.g. by decreasing the need or potential need for direct subventions.

11 Such applications would have to be assessed on their individual merits but the following general principles seem appropriate:

(a) the modification should aim to provide the maximum possible benefit in terms of provision of GIC facilities compatible with the overall commercial viability of the project and inclusion of a "commercial" element must not be detrimental to the GIC facilities to be provided;

(b) Government should be enabled to seek accommodation for itself for quarters or offices or other public purposes e.g. accommodation for other voluntary agencies, if appropriate in the new development;

(c) joint venture partners should be chosen on a competitive basis by a procedure acceptable to Government;

(d) premium should be charged at full market value for the "commercial" element in the development;

(e) all such modifications should be submitted to this Council for approval.

12 Similar considerations would have to be applied mutatis mutandis to redevelopments carried out under any of the alternative approaches described in paragraphs 5 and 7 above. It is emphasised that the proposal to allow modifications for in-situ redevelopment through a private sector joint-venture is only one option and the existing approaches of surrender to Government to carry out the redevelopment or tender it out remain in each case to be considered on their merits.

Financial Implications

13 The financial implications will vary in each case and will have to be considered on an individual basis when submissions are being prepared for this Council.

Public Reaction

14 This is not presently a matter of public concern and the principles on which it is proposed to permit redevelopment are not in themselves expected to attract much interest. However, individual redevelopment schemes are likely to attract considerable public interest, as many of the buildings likely to be redeveloped are well-known land-marks, and the involvement (which is likely) of prominent developers is always widely reported.

Publicity

15 It is not thought that publicity need be given to any agreement in principle to the proposals in this paper but that this should be left until a specific case is approved. Organisations which have expressed an interest in such an approach to redevelopment would be informed of the decision.

Advice Sought

16 Members are asked to advise:

(a) whether in principle, lessees holding sites granted for social service purposes at nil or concessionary premia should, as an alternative to surrendering the sites to Government for redevelopment, be allowed

to redevelop those sites or exchange sites to include a "commercial" element provided the criteria set out in paragraph 10 of this memorandum are met;

(b) whether the principles set out in paragraph 11 of this memorandum should be used in assessing individual cases; and

(c) whether similar principles governing "commercial" development in support of the lessee's activities should be applied in cases where the redevelopment is undertaken by the methods set out in paragraphs 5 and 7 above.

(The Director of Social Welfare (Mr S.E. ALLEYNE) and the Deputy Secretary for the Environment (Mr J.R. TODD) will attend before the Council for the discussion of this item).

30th April 1981
(ENV 76/47/07 II)

COUNCIL CHAMBER

社會福利署
Social Welfare Department

本署檔號 OUR REF. : SWD 6/720/2016 Pt.5
來函檔號 YOUR REF. : CB4/PAC/R68
電 話 TEL NO. : 2116 3580
圖文傳真 FAXLINE : 2575 7518

11 July 2017

By Fax (2543 9197) and email

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charities

Thank you for your letter dated 28 June 2017. Our reply to the issues raised therein is as follows –

The possible non-compliance of Lease G

Lease G stipulates that the lot concerned should be used only "for the purposes of a nursery, training centre, dormitories, such staff quarters as the Director of Social Welfare (DSW) may approve in writing". As regards whether there is non-compliance with the land lease requirements relating to the stipulated use of dormitories on the subject lot, we set out our reply below after examining the records available and liaising with the grantee of the subject lot.

According to the records held by the organisation, after the execution of the land lease concerned in 1966, the building on the subject lot was issued an occupation permit on 18 May 1968, in which it was set out that the dormitories were situated on the 9th to 12th floors. The organisation indicated that at the time, the dormitories were mainly to provide residential

accommodation for students or young workers. The 1986/87 Annual Report of the organisation also shows that the dormitories had also offered accommodation to young people who needed to live away from home because of distance from work and where there were over-crowded home conditions, young workers who for one reason or another needed a protective environment, and problem youths who had been referred by social workers.

The organisation further indicated that in view of the upturn of the economy of Hong Kong in the 1980s followed by relocation of factories to the Mainland, the demand for dormitories shrank. After reviewing the service need arising from such change, the organisation set up the lodge service on the lot of Lease G with a view to providing on-the-job training for students of the adult education courses on hospitality services organised by the organisation, and to equipping these students with adequate working experience to prepare for employment. The change is also covered in the organisation's 1988/89 Annual Report.

We agree that the use of the facilities concerned to provide lodge service is not appropriate. In June 2014, the Lands Department (LandsD) wrote to Grantee M requesting the latter to cease the operation of the lodge on the subject lot. The Social Welfare Department (SWD) had kept monitoring of the development of the matter and the follow-up actions taken by the organisation. In June 2016, the organisation advised LandsD that the operation of the lodge on the subject lot had ceased in May 2016. Currently, the major service targets of the dormitories are the students of the adjacent universities and tertiary institutions with residential needs, including referrals made by the universities or institutes concerned. After discussion with SWD, apart from providing dormitories for these students, the organisation plans to make use of the dormitories to meet the welfare needs of the society. The service targets under consideration are those who require short-term residential needs for various reasons, e.g. those with family, marital or financial problems. SWD will continue following up with the organisation in ensuring that the use of the dormitories is compliant with the permitted uses under the land lease conditions and meanwhile help complement the contemporary welfare needs of the society.

There is no requirement for submission of audited accounts or the use of the surplus derived from the dormitories under the land lease concerned. Nevertheless, the Annual Reports of the organisation have been covering the income and expenditure as well as the financial position of the hospitality services under its purview (including the dormitories on the subject lot). The information is also available on the internet. As far as we understand, the organisation will transfer the surplus derived from the dormitories to a General

Fund to support the operation of the non-subvented social, educational and medical services or the daily operation of the organisation as well as its service/project development, or to meet the operating deficits of other service units. Part of the surplus will also be transferred to a Maintenance Reserve Fund to meet the expenditure on maintenance items as required by law and/or due to the obsolescence of the facilities.

Apart from dormitories, the Grantee operated SWD-subvented welfare facilities on the subject lot, e.g. school social work, community centre and family services (including clinical psychological service). SWD will monitor the operation of these services in accordance with the established mechanism, including requiring the organisation to submit audited accounts on these subvented services.

The possible non-compliance of Lease H

Lease H stipulates that the lot concerned should be used for "providing accommodation for a welfare centre including a Hostel (which centre is hereinafter referred to as 'the said centre'), together with staff quarters as may be approved by DSW". Besides, the organisation is required under the land lease conditions to submit to DSW annually a complete statement of the audited accounts of the said centre.

According to the organisation, the service targets of the hostel currently include its co-operating partners, organisations and groups of the church body, students, visitors from overseas for conference purposes and tourists. As there is no explicit restriction about the users of the hostel facilities in the land lease, we consider that there is no non-compliant use of the hostel.

Apart from the hostel facilities, the lot of Lease H is also used for the operation of a hostel for moderately mentally handicapped persons and a sheltered workshop under SWD's subvention, as well as a community college providing day-time and night-time vocational training courses on a self-financing basis. Such uses are compliant with the land lease requirements and have met the needs of the society for such services.

On the requirement to submit audited accounts, although Grantee H has not submitted the audited statements of accounts for the said centre according to the land lease requirement, SWD has exercised its monitoring of the SWD-subvented welfare facilities on the subject lot in accordance with the Funding and Services Agreement (FSA) as executed with the organisation. The organisation has also, pursuant to the requirements under the FSA, submitted the requisite financial reports to SWD for vetting. After the issue of

the Director of Audit's Report, LandsD wrote to the organisation requesting the latter to submit, as required under the land lease, the audited accounts covering the said centre to DSW by 1 June 2017. The organisation responded earlier to LandsD, indicating that as they needed time to prepare for the audited accounts, they would like to apply for extension of the deadline for submission of the accounts until 30 July 2017. SWD will scrutinise the audited accounts to be received from the organisation and will, where necessary, further follow up with the organisation how the surplus derived from the facilities operated on the subject lot should be used.

Income generated from the operation of dormitories/hostels and the arrangements for reduction of subvention

In respect of the sites with the provision of dormitories/hostels as included in Table 5 of the Director of Audit's Report, except for Lease N, the other land leases are not subject to the requirement for reduction of subvention based on the surplus derived from the income-generating facilities (including dormitories/hostels) operated on the sites concerned. Therefore, for the land leases in Table 5 which are under SWD's monitoring (i.e. Leases F, G, H, I, J, K and L), SWD has no plan to consider reducing the subventions provided to these organisations for their operation of welfare facilities on the basis of the surplus generated from the dormitories/hostels which they are operating on the sites concerned, unless there is such requirement in the land leases concerned in future.

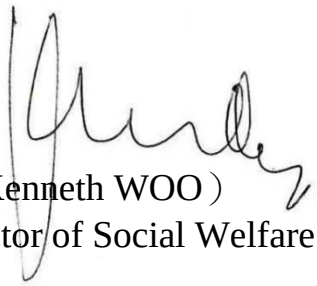
Nevertheless, SWD is aware that the organisations concerned would use the surplus derived from the dormitories/hostels towards supporting other charitable services in accordance with the non-profit-making principle, for example, supporting the non-subvented social, educational, medical services, etc., or meeting the operating deficits of other service units or the expenditure on repair and maintenance of facilities under their purview. In fact, these organisations will publish their audited statements (covering those relating to dormitories/hostels) in their annual reports or on their own websites.

As what we have indicated at the hearing of the Public Accounts Committee earlier, there might have been unclear distribution of work among departments on the monitoring of dormitories/hostels operated by the organisations concerned in the past. However, after the issue of the Director of Audit's Report, SWD has already liaised with the organisations concerned with a view to understanding the operation and surplus arrangements of the facilities concerned, and understood that the surplus derived from the dormitories/hostels has been used for non-profit-making purposes and would not be used for distribution of profits. The land leases under SWD's

monitoring (i.e. Leases F to L) are not subject to the requirement of submission of audited accounts, except for Leases H and J. On this, SWD will strictly enforce the land lease requirements for Grantees H and J to submit audited accounts. As for other leases, we will continue our liaison with the organisations concerned and will, where considered necessary, ask them to submit audited accounts for the dormitories/hostels to ensure that the use of the surplus derived is non-profit-making in nature.

If you have any enquiries, please feel free to contact the undersigned.

Your sincerely,



（Kenneth WOO）
for Director of Social Welfare

c.c.
Secretary for Labour and Welfare (fax no.: 2524 7635)
Secretary for Financial Services and the Treasury (fax no.: 2537 3210)
Commissioner of Inland Revenue (fax no.: 2877 1082)
Secretary for Home Affairs (fax no.: 2591 5536)
Director of Lands (fax no.: 2525 4960)
Registrar of Companies (fax no.: 2868 5384)
Commissioner of Police (fax no.: 2866 2579)
Secretary for Education (fax no.: 2810 7235)
Director of Audit (fax no.: 2583 9063)

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來函檔號 Your Ref: CB4/PAC/R68

來函請註明本署檔號
Please quote our reference in your reply

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Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn : Mr. Anthony CHU)

By Fax & Email
(Fax No. 2543 9197)

27 July 2017

Dear Mr. CHU,

Public Accounts Committee (PAC)

Consideration of Chapter 1 of the Director of Audit's Report No. 68

Government's support and monitoring of charities

Thank you for your letter of 28 June 2017. Our responses to sections (a) to (c) of your letter are set out below.

Section (a)

Referring to Table 5 of the Audit Report, please provide the following information for each of the sites.

(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?

(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of the social service facilities on or off site, whether there was any

policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?

There are eleven cases in Table 5 i.e. Cases C, D and F to N. The current leases for Cases C, D and K commenced in 1927, 1932 and 1951 respectively and contain very broad user restriction which allow much liberty for the respective Grantees with their respective lease term/original lease terms. So far we could not locate relevant information on available file records concerning the policy intention for these cases especially on allowing commercial elements in these cases. Regarding the other Cases, we have tried to ascertain the policy intention for the concerned leases as far as possible from available file records and set them out at **Appendix I**.

(iii) Whether the Lands Department has asked the grantees (apart from Grantee N) to submit accounts and/or relevant information relating to the hostel/hotel operation for its scrutiny to ensure that they comply with the lease conditions? If yes, please provide details and the progress. If no, why not.

As we have explained in our previous reply dated 16 June 2017 to PAC, it is not known whether the 1959 and 1981 policy directives were supposed to be applicable to Cases C, D and K. Without knowing the policy intention for the three cases and the applicability of the policy directives, we consider that it might not be reasonable to demand the Grantees of the three cases to submit accounts and/or relevant information relating to the hostel/hotel operation.

Apart from Case N, for the remaining 7 cases (Cases F, G, H, I, J, L and M) which specifically allow hostel/dormitories use under lease, Submission of Account Clause is incorporated in Leases H, J and M. For Leases H and J, the respective Grantees are required to submit annual audit accounts to the Director of Social Welfare. Lands D was recently informed by SWD that the Grantees have not submitted audited statements of accounts which were considered in contravention of "submission of accounts clause" included in the land grant document. Lands D has written letters to the respective Grantees on 5 May 2017 asking them to submit to SWD the audited accounts of the operation on site including the hostel portion to SWD on or

before 1 June 2017. Both Grantees have requested for more time to prepare the required statement and asked for extension of time up to 31 July 2017. SWD has no objection to the Grantees' extension request. If SWD considers their operation is not to their satisfaction or they request further information to facilitate their consideration, Lands D as the administrator of the lease will assist within the power conferred to the Government under lease.

For Case M where the monitoring role and responsibility within the Government is not clear, Lands D has taken a proactive role and has demanded submission of audited accounts and relevant information from the Grantees and will continue to monitor the operation of the hostels. As reported in our reply dated 16 June 2017 to PAC, Grantee M has submitted audited annual accounts of the hostel for the year 2013 up to the year 2015 and certifications from independent accountants regarding the ploughing back of Hostel income to Charity M for the year 2013 up to the year 2015. We have recently issued another letter to Grantee M urging for the early submission of the audited account for the year 2016 with certification together with breakdowns of the hostel income ploughed back by categories of uses for all the audited accounts submitted or to be submitted. We will keep monitoring the progress.

Similar to Case M, the department within Government responsible for monitoring Case L is not clear. Hence, Lands D has also taken a proactive role and issued a letter to Grantee L on 22 December 2014 asking them to keep documentary proof to demonstrate compliance of lease conditions, particularly the "non-profit making hostel". On 25 May 2017, Lands D issued another letter to Grantee L demanding statement of accounts prepared by an independent auditor demonstrating that the profits derived from the hostel, if any, have not been distributed. Grantee L on 6 June 2017 provided an audited account for year 2016 and stated that the surplus derived from the hostel had not been distributed. Lands D will issue a further letter to Grantee L requesting a certification from an independent auditor for their above statement including a breakdown of the hostel income ploughed back by categories of uses, e.g. education, welfare, etc.

For the remaining Cases F, G, and I, as provided under lease their operation shall be to the satisfaction of Director of Social Welfare. Lands D has been liaising with SWD in regard to the

compliance of the relevant conditions in the leases. Lands D so far has not yet been approached by SWD for assistance to take lease enforcement actions nor any request for demanding the Grantees of these three cases for submission of accounts and other relevant information in order to facilitate SWD's consideration/monitoring of whether their operations of hostel are to their satisfaction. We will closely liaise with SWD for any necessary action to be taken under the leases.

Section (b)

For Grantees M and N, please provide in chronological order the relevant information relating to the granting of PTG for the redevelopment projects, including the background, negotiation process, parties involved, agreement reached between the grantees and relevant government bureaux and departments, and policy intention of the land leases.

The sequence of events of the relevant information relating to Leases M and N are attached at **Appendices II** and **III** respectively.

Section (c)

At the public hearing on 27 June 2017, it was revealed that Grantee N had previously occupied a site at Cox's Road as headquarters under a short-term tenancy agreement. The site was sold after Grantee N's headquarters were relocated. Please provide the land premium paid for the site.

The site (having a site area of 2,284 m^2) at Cox's Road previously occupied by Grantee N under a Short Term Tenancy was sold together with the adjoining Government land of 4,126m^2 in 1995 (now known as Kowloon Inland Lot No. 11064). KIL 11064 was sold at a premium of $1,020,000,000.

Yours sincerely,

p.p. (Ms Sophia CHIANG)
for Director of Lands

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)
Commissioner of Inland Revenue (fax no. 2877 1082)
Secretary for Home Affairs (fax no. 2591 5536)
Director of Social Welfare (fax no. 2891 7219)
Registrar of Companies (fax no. 2868 5384)
Commissioner of Police (fax no. 2866 2579)
Secretary for Education (fax no. 2810 7235)
Director of Audit (fax no. 2583 9063)

Secretary for Development (fax no. 2147 3691)
- enclosed also the incoming letter of 28.6.2017 from the Clerk, PAC

Appendix I

Lease	(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?	(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of social services facilities on or off site, whether there was any policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?
C	The lot was granted by way of private treaty in 1927 at **nil** premium. No information on the policy intention of the land grant can be traced in LandsD's relevant file record.	No information on the policy intention of the grant can be traced in LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
D	The lot was held under government lease granted in 1932. No information on the premium charged, if any, nor policy intention of the land grant can be traced in LandsD's relevant file record.	No information on the policy intention of the grant can be traced in LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
F	The lot was granted by private treaty in 1974 at **concessionary** premium of $491,771. As far as can be ascertained from LandsD's relevant file record, the policy intention of the land grant is to permit the grantee to erect a building for provision of the permitted facilities.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
G	The lot was granted by in-situ surrender and regrant in 1966 at **nil** premium and the surrender lot being a portion of the mother lot was acquired by the Grantee G by public auction. As far as can be ascertained from	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.

Lease	(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?	(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of social services facilities on or off site, whether there was any policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?
	LandsD's relevant file record, the policy intention for the in-situ surrender and regrant is to permit the grantee to erect a building for provision of the permitted facilities within the regrant lot.	
H	The lot was granted by private treaty in 1971 at **concessionary** premium of $115,641. As far as can be ascertained from LandsD's relevant file record, the policy intention of the land grant is to permit the grantee to erect a welfare Centre consisting the permitted facilities within the lot.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
I	The lot was granted by non in-situ surrender and regrant in 1980 at **nil** premium and the two surrendered lots which were owned by the Grantee I since 1913. The history of the grant of the surrendered lot cannot be traced. As far as can be ascertained from LandsD's file record, the policy intention of the non in-situ surrender and regrant may be for the grantee to redevelop their existing building for provision of the permitted facilities.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.

Lease	(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?	(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of social services facilities on or off site, whether there was any policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?
J	The lot was granted by in-situ surrender and regrant in 1981 at **nil** premium and the two surrendered lots were granted to the Grantee J by private treaty at nominal/nil premium in 1953/1954. The Government at the time of considering the surrender and regrant recognized that both surrender lots were under-developed and Government could gain financially from the sale of one of the surrendered lots.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
K	The lot was granted by way of surrender and regrant in 1987 at **nominal** premium of $1,000 and the surrendered lot was granted to the Grantee K in 1951 by way of private treaty for the object of the Grantee at nil premium. The main intention of the surrender and regrant in 1987 is for adjustment of lot boundary for the Government's benefit of implementation of road widening.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
L	The lot was regranted to the Grantee M in 1987 at **nominal** premium of $1,000 upon lease expiry of the original land grant which was granted by private treaty	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record.

Lease	(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?	(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of social services facilities on or off site, whether there was any policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?
	in 1956 at nil premium. **Concessionary** premium was paid for the subsequent lease modification which permits, inter alia, non-profit-making hostel for female persons whilst **nil** premium was paid for the further lease modification which delete the restriction for female persons. The policy intention of the lease modification is not clear and certain as far as it can be ascertained from LandsD's relevant file record.	There is no provision in the subject land lease regarding subvention.
M	The lot was granted by private treaty at **nominal** premium of $1,000 in 1988 with surrender of two lots at the subject location. The surrender lots were granted at **nil** premium in 1926 for an institute for promoting the welfare of the Forces. As far as can be ascertained from LandsD's relevant file record, the policy intention of the land grant is for the Grantee to provide a multi-purpose centre on a non-profit making basis.	No policy intention to decrease the need or potential need for subvention can be ascertained from LandsD's relevant file record. There is no provision in the subject land lease regarding subvention.
N	The lot was granted to Grantee N by private treaty in 1990 where full market premium was paid in respect of the	One of the policy intentions as can be ascertained from LandsD's relevant file record is to reduce

Lease	(i) Whether the private treaty grant ("PTG") was granted at nil, concessionary or full premium, reasons for and policy intention of such grant?	(ii) For PTG granted at nil or concessionary premium with commercial element for maintaining and running of social services facilities on or off site, whether there was any policy intention and/or provisions in the land lease of decreasing the need or potential need for direct subvention from the Administration?
	portions covering the public carpark and the telephone exchange; whereas a **nil** premium was charged for the remaining portion for the Headquarters of the Grantee. As far as can be ascertained from LandsD's relevant file record, the policy intention of the land grant is for taking the opportunity to combine coach park, telephone exchange and public car parks with the Headquarters of the Grantee at the locality; return of the Grantee's ex-headquarters at Cox's Road (held under a short term tenancy) for disposal; and reduction and eventual elimination of Government's annual subvention of the Grantee's activities.	Government's annual subvention of the Grantee's activities. There is no provision to decrease the need or potential need for subvention in the land lease, but it is intended that by the vehicle of the Management Committee the reduction of subvention is monitored.

Sequence of events relating to the granting of Lease M

Date	Events
2.6.1960	In an enquiry letter for sub-letting proposal, Grantee M owning two lots for the purpose of a Sailors and Soldiers Home mentioned that the income of the then existing premises arose from 4 sources, namely, local donations, donations from various overseas sources, chaplaincy fees, and profits from catering and accommodation. Catering and accommodation had always provided the greatest contribution.
14.11.1979	Grantee M wrote mentioning its intention to consider the eventual redevelopment of the property, but in the interim proposed to operate in the building then erected on the two existing lots a multi-purpose centre comprising various activities, amongst others, an international hostel and all these activities would be operated on a strictly non-profit-making basis. Grantee M asked whether the Government would be prepared to grant a modification or waiver of the user condition for a leave centre for the Gurkha troops, a local social service centre, a recreational and fitness centre, an international hostel and small areas to be sub-let to charitable organisation to permit the activities to take place on the premises by way of contemporaneous exchange.
7.12.1979	The then Director of Buildings and Lands wrote to Director of Home Affairs ("DHA") and Director of Social Welfare ("DSW") to seek comment / support (at nil premium and nil administrative fee) on the Grantee M's proposals which aimed at better utilization of the facilities then existing on site.
9.1.1980	DHA responded that she was prepared to lend support to the application for modification and, provided that the centre would be run on a non-profit-making basis, she saw no objection to the modification being granted at nil premium and nil administrative fee.
13.12.1982	LandsD circulated the redevelopment proposal to Planning Department, DSW and Director of Education for comment. Grantee M subsequently withdrew the application due to downturn of the market.

2.9.1985	Grantee M submitted a redevelopment proposal to the LandsD comprising proposed uses as: (a) Children and youth service (b) Continuing education and adult service (c) Elderly service (d) Christian bookroom (e) Hostel type accommodation with supporting services (f) Methodist church headquarters and office for the Samaritan Service (g) Elderly centre It also mentioned that it would utilize income from the hostel section to subsidize and finance the social welfare and educational programmes of the Centre (i.e.the multi-purpose centre)
3.12.1985	LandsD circulated the redevelopment proposal and lease modification proposal.
7.1.1986	DSW responded that he had no objection for the Church to provide and run the facilities (i.e. nursery and combined children and youth centre) to DSW's satisfaction.
4.11.1986	District Lands Conference of LandsD approved the proposed lease modification (by contemporaneous exchange) at nil premium and nil administrative fee with the proposed user as "Non-profit making hostel, church, social and welfare purposes together with ancillary offices".
21.7.1987	Secretary, Land Commission Steering Group distributed to the relevant government departments, the Land Commission (LC) Paper No. 12/87 "Sailors and Soldiers Home". The LC Paper stated: ● The existing five-storey building includes a 30-room hostel which is used mainly by tourists and servicemen, a canteen, a laundry, ….. and various welfare and educational services run by the Charity M ● The redevelopment plan includes a hostel…. The hostel would be run on a non-profit making basis and the income would be used to finance the running of the welfare facilities…. The Hong Kong Government have agreed in principle to the proposed redevelopment.

4.11.1987	According to the agreed Minute No.13 of the Land Commission, the then existing leases in respect of the two then existing lots held by Grantee M might, if the lessee so wished, be surrendered in exchange for a new lease with a term up to the year 2047.
11.11.1987	The Grantee confirmed its intention for a lease term up to the year 2047.
17.11.1987	Binding Basic Term Offer ("BBTO") issued to Grantee M on 17.11.1987.
13.1.1988	BBTO accepted by Grantee M on 13.1.1988.
2.12.1988	Conditions of Grant was executed.

Note: References to the departments concerned as quoted above also refer to their predecessors at the relevant time as appropriate.

Sequence of events relating to the granting of Lease N

Date	Events
4.1.1984	In the letter dated 4.1.1984 from Grantee N to LandsD, Grantee N referred to the original 21-year lease at Cox's Road where the Association Headquarters building then situated. Grantee N claimed that under the original lease, he possessed the right to redevelop the lot to its fullest extent without having to pay any premium. There were delays in proceeding with Grantee's application to redevelop "in situ" since the Government could not make up its mind on the use of the neighboring site at Cox's Path. Because of this uncertainty, the original 21-year lease was held over by private treaty grant of a 5-year recreation lease which was later changed to a temporary basis pending full investigations on the development potential of the two adjoining sites. This sequence of changes by Government had put Grantee N in a very unfavorable position especially if the Grantee was then required to pay premium for the site at Austin Road. Grantee N stated that he could have redeveloped in situ at nil premium, inclusive of additional headquarters space and accommodation for other ancillary activities whether revenue-producing or not. They were unable to do so simply because Government wished to re-possess the Cox's Road site in exchange for another site.
4.11.1986	LandsD asked Secretary for Administrative Services and Information/Quartering (i) if they were prepared to relinquish the site (the existing Scout Headquarters and the adjoining Government quarters) entirely for quarters; (ii) if they required quarters in this area approximately what size of site they required and when; (iii) if the answer to (ii) was positive whether their policy on provisioning was joint venture or self-build.
20.7.1987	It is noted that Secretary for Administrative Services and Information/Quartering replied that they did not propose to redevelop the site. Therefore, LandsD noted the site (the then existing Scout Headquarters and the adjoining Government quarters) could be placed in the sale programme if Grantee N proceeded with the land grant of the Austin Road site.

Date	**Events**
22.9.1987	A meeting was held between LandsD and Grantee N to discuss the development proposal. Referring to the letter dated 12.10.1987 from Grantee N to LandsD, the points raised in the meeting included:- (i) The inclusion of a telephone exchange and a transport terminal within the building as required by Government appeared feasible and Grantee N had accordingly included in the revised sketch plan subject to detailed investigation and refinement; (ii) The project should be regarded as a Community Complex for use by various organizations. All the facilities in the building were for "community and institutional" uses, i.e. none of these should be regarded as "commercial"; (iii) Since Grantee N was forced to vacate their then existing Headquarters building in Cox's Road to the Government, Grantee N believed the Government should allow for the reprovisioning of all the former and the then existing facilities which Grantee N had or were still enjoying at Cox' Road; (iv) The inclusion of a scout hall, scout canteen, gymnasium, scout shop, scout dormitories and management staff quarters in the sketch plan was only part of the reprovisioning arrangement, i.e. they were not new facilities.
12.10.1987	Grantee N submitted sketch design drawings for LandsD's consideration and circulation to relevant Government departments including Secretary for District Administration ("S for DA"), Department of Social Welfare ("DSW"), Secretary for Health & Welfare ("SHW"), Commissioner for Transport ("C for T"), Chief Town Planner/Statutory ("PlanD") and Chief Highway Engineer/Kowloon ("HyD").
13.10.1987	Circulation memo attaching Grantee N's sketch design drawings to seek Departments'(i.e. S for DA, DSW, SHW, C for T, PlanD and HyD) comments on whether the proposal was acceptable in principle.
10.11.1987	Letter from DSW to Grantee N: - DSW agreed to consider providing Grantee N with financial support to meet the capital and recurrent expenses only for those facilities which were subventible. For those areas which were not subventible, DSW agreed that they would have no objection to their being included in the building provided that their use would be related to scouting purposes and without DSW's funding support.

Date	**Events**
19.11.1987	S for DA expressed no objection to LandsD's circulation memo dated 13.10.1987.
21.12.1987	Letter from Grantee N to DSW: - Submitted a revised schedule of accommodation drawn up based on the following design criteria: (i) Full utilization of the site; (ii) Provisioning of all the former and the then existing facilities which the Grantee N had or was still enjoying at its site in Cox's Road; (iii) The need for allowing additional facilities to meet the present day requirements of Grantee N; (iv) The need for allowing future expansion of Grantee N's activities; (v) The inclusion of possible income generating ancillary facilities to defray the costs of maintenance and upkeeping of the building complex and the repayment of building loan (plus interest) over a period of time; and (vi) All the requirements were uses related to scouting purposes and within the ambit of the Scout Association of Hong Kong Ordinance, Chapter 1005, of the Laws of Hong Kong, in providing for recreational, educational and welfare purposes in order to qualify for a nil premium grant. - The revised schedule included possible income generating ancillary facilities (i.e. Scout Hall, Scout Shop, Scout Canteen, Car Parks, etc) and Grantee N claimed that all were relating to scouting purposes.
6.1.1988	Circulation Memo from LandsD attaching draft grant conditions and preliminary drawings prepared by Grantee N.

Date	**Events**
5.2.1988 & 16.6.1988	DSW confirmed to LandsD that DSW supported the grant of the site to Grantee N and considered that the Scout HQ Accommodation of 8,394sq.m. was subventible and recommended that area to be granted at nil premium. DSW also supported in principle the grant of the remaining Scout HQ accommodation of 15,062sq.m. including a canteen, a youth hostel and other facilities which was not subventible. DSW had no objection to Grantee N retaining and managing a multi-storey vehicle park as a source of income, being non-subvented. DSW also recommended to LandsD to add in the draft conditions of grant the requirement of establishment of a Management Committee comprising representative(s) of the Grantee N & government representatives, the then S for DA and DSW to ensure the proper and efficient running of the income generating facilities (including the vehicle park and international youth hostel).
10.3.1988	With DSW's support for the Scout HQ and Commissioner for Transport's support for inclusion of a transport terminus and multi-storey vehicle park, District Lands Conference of LandsD approved the Private Treaty Grant to Grantee N subject to ExCo approval and policy support from Secretary for Transport for inclusion of a transport terminus and multi-storey vehicle park on site.
7.4.1988	The then S for DA confirmed to Deputy Financial Secretary ("DFS") its full support for the provision of the Scout's HQ at a nominal premium of $1,000, subject to DSW's confirmation that the arrangement for Grantee N to manage the multi-storey car park for the purpose of raising fund would not result in the Government providing more than necessary subvention.
8.4.1988	DSW confirmed to DFS its support for the grant of the Grantee N accommodation for subventible activities at nil premium and of the remaining accommodation which was not subventible. DSW also supported that Grantee N should pay a premium for the multi-storey carpark based on full market value. (Note: As revealed from the available file record, the telephone exchange within the lot was also granted at full market value premium paid by Hong Kong Telephone Company Limited.)

Date	**Events**
8.4.1988	LandsD consulted DSW on (i) whether DSW would wish to vet the finances for the vehicle park in addition to the HQ accommodation, and (ii) DSW's confirmation on parties to be included in the Management Committee.
22.4.1988	DSW replied LandsD that DSW required financial information of Grantee N by the requirement of submission of financial statement in the conditions of grant and that the then S for DA and MSB (Secretary for Municipal Services) should be included in the Management Committee under the draft Conditions of Grant.
9.6.1988	In the course of commenting the draft ExCo Memorandum, the then S for DA agreed that it was intended to permit Grantee N to underlet or otherwise contract out areas within the HQ building, subject of course to the approval and monitoring of the Management Committee who would ensure that the income generated was used for approved purposes. This intention accorded with the policy resulting from ExCo Memorandum XCR (81)95 para. 10. This arrangement would enable Grantee N for example to contract out management of the canteen and the hostel and to hire out the Scout Hall.
16.6.1988	In the course of commenting the draft ExCo Memorandum, DSW also agreed that the income generating facilities (i.e. hostel, scout shop, scout canteen, scout hall, etc.) were permitted to be underlet by Grantee N subject to written consent from DSW.
28.2.1989	ExCo approved the PTG.
11.4.1989	Subsequent to ExCo's approval, LandsD sought DSW's comment on the draft Special Conditions, in particular relating to "submission of accounts", "management committee". - DSW on 21.4.1989 replied that as the subventing department, it required right of access to the Scout's HQ. It also confirmed the necessity of its presence on the Management Committee of Grantee N.
6.10.1989	Binding Basic Terms Offer ("BBTO") issued by LandsD to Grantee N.
21.11.1989	BBTO accepted by Grantee N.

Date	**Events**
9.1.1990	Conditions of Grant was executed.

Note: References to the departments concerned as quoted above also refer to their predecessors at the relevant time as appropriate.

地 政 總 署
LANDS DEPARTMENT

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

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來函檔號 Your Ref: CB4/PAC/R68

來函請註明本署檔號
Please quote our reference in your reply

By Fax & Email
(Fax No. 2543 9197)

25 May 2017

Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn : Mr. Anthony CHU)

Dear Mr. CHU,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No. 68

Government's support and monitoring of charities

I refer to your letter of 24 May 2017 and enclose the requested protocol delineating sharing of responsibilities between Lands Department and Bureaux/departments which support various types of private treaty grants, as promulgated by LandsD in July 2014 for reference.

Please note that the above document is only available in English. Besides, soft copy of the document (in Microsoft Word format) is not available.

Yours sincerely,



(Ms Sophia CHIANG)
for Director of Lands

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)
Commissioner of Inland Revenue (fax no. 2877 1082)
Secretary for Home Affairs (fax no. 2591 5536)
Director of Social Welfare (fax no. 2891 7219)
Registrar of Companies (fax no. 2868 5384)
Commissioner of Police (fax no. 2866 2579)
Secretary for Education (fax no. 2810 7235)
Director of Audit (fax no. 2583 9063)

Secretary for Development (fax no. 2147 3691)
- enclosed also the incoming letter of 24.5.2017 from the Clerk, PAC

Protocol on Responsibility-sharing in Private Treaty Grants

	Key Steps	Responsible party *	Remarks
(A)	**Application for a site:**		
1	Policy support for the direct grant of land to applicant or consideration of competitive bids where made for the same site, taking into account the applicant's financial capability to complete the development	Policy bureau overseeing the proposed operations / services to be provided by the applicant at the proposed PTG site (Supporting policy bureau)	• Where there is existing policy for LandsD to make direct grant for the PTG under application, the supporting policy bureau to consider whether to give policy support to the applicant or not and consider any competing bid (if received) for a site. Where different policy bureaux give support to different applicants, the Development Bureau as the housekeeping bureau of LandsD will be requested to sort out with the bureaux on the way forward or to escalate the competing bids to higher authorities, if appropriate. • Where there is no existing policy for LandsD to make direct grant for the PTG (or on the terms proposed), the supporting policy bureau to take up Key Step 7. • Where all aspects of an application are considered acceptable but an applicant needs time to secure sufficient funding to prove his financial capability, LandsD may allow reservation of the site in favour of the applicant for a limited period (e.g.

	Key Steps	Responsible party *	Remarks
			of not more than 3 years in the case of PTGs for religious purposes) with the support of the supporting policy bureau.
2	Identifying sites, securing approval under the planning regime and local consultation	Supporting policy bureau, its executive department, in conjunction with the project proponent or prospective grantee and assisted by PlanD if necessary.	Where sites have not been identified for the proposal, the project proponent or applicant and policy bureau may request Planning Department to conduct a site search pursuant to HPLB General Circular no. 1/2004. Plan D would help identify the site and work with the supporting policy bureau, its executive department and prospective grantee in pursuing optimum utilization of the site and go through the planning process as required.
3	Considering the premium for the PTG – whether nominal, concessionary or full market premium should be charged	Supporting policy bureau	The general policy is to adopt full market premium, except where there is a policy for nominal or concessionary premium as endorsed by ExCo (individual cases may be approved by LandsD under authority delegated by ExCo). If not and the supporting bureau or its executive department recommends nominal or concessionary premium, the supporting bureau should make a submission to ExCo to get policy approval for applying such a policy to a particular type of PTGs or such an arrangement to a particular case of PTG in question.
4	Preparation of draft lease	LandsD	

	Key Steps	Responsible party *	Remarks
	conditions for circulation, if the site is suitable and accords with the town planning intention. Thereafter, liaison among relevant parties with a view to consolidating lease conditions for making a recommendation to the District Lands Conference.		
5	Advising on the lease conditions relevant to the proposed use and development from the policy angle and ascertaining that the policy objectives pursuant to ExCo decision/prevalent policies (where applicable) in granting the specific kind of PTG are implemented through the land lease/other forms of agreement to be entered into between the supporting policy bureau (or its executive department) and the	Supporting policy bureau and its executive department	In particular, supporting policy bureau and its executive department should advise on lease conditions specific to the operation/services to be provided, e.g. types and scope of essential services/facilities to be provided, permissible ancillary facilities, the commence-to-operate period etc. Generally, supporting policy bureau and its executive department would have to attend District Lands Conference for discussion on the proposed PTG, save for straight-forward cases where written support and comments have been provided. The supporting policy bureau and its executive department to prepare separate agreement(s) outside of the PTG as appropriate

	Key Steps	Responsible party *	Remarks
	applicant/grantee as appropriate		to govern aspects of the services/operation which should more appropriately be regulated outside the context of the land lease.
6	Approval of PTG and the lease conditions, if the authority to approve PTG of that nature has been delegated to a bureau/department	LandsD or the bureau/department to which the authority has been delegated.	Where the authority to approve PTG has been delegated to another authority other than the LandsD, LandsD would approach the relevant authority for approval on the extent/scope of the support after the draft lease conditions have been endorsed by LandsD.
7	Drafting and submission to ExCo, if required	Supporting policy bureau and its executive department	Required where the authority to approve the PTG in question has not been delegated (e.g. to LandsD). The ExCo submission will include key basic terms of the proposed PTG as endorsed by DLC but with recommendation that LandsD be delegated authority to amend the terms that will not be inconsistent with the spirit of the PTG as approved by ExCo. Where delegated authority exists for other government officials/Director of Lands to approve the PTG, the supporting policy bureau should advise the source of the delegated authority, i.e. the relevant ExCo paper/decision under which the authority has been delegated.

	Key Steps	Responsible party *	Remarks
8	Offer, acceptance of terms including land premium and completion of land grants	LandsD	Lands D will issue a letter to the grantee advising him of the relevant authority for receiving submission and granting of approval under respective lease conditions.
9	Completion of other agreement(s) with the applicant, e.g. service agreement, funding agreement, loan agreement if appropriate	Relevant B/D in conjunction with DoJ	The other agreement(s) may be coterminous with the land lease
(B)	**<u>Development phase</u> (after execution of the land grant):**		
10	Consideration of development proposals	LandsD in consultation with relevant departments	LandsD will circulate to relevant B/D as necessary and give approval under the lease taking into account B/Ds' advice/comments
		Supporting policy bureau and/or its executive department	Comment on the development proposals where required
11	Checking completion of development and commencement of operation to the satisfaction of	LandsD seeking advice from the supporting policy bureau or its	The relevant authority to confirm with LandsD that the development has fulfilled the "commence-to-operate" clause under the lease. Where it has not been fulfilled, LandsD to

	Key Steps	Responsible party *	Remarks
	the relevant authority	executive department.	consider, in consultation with the relevant authority, if the date should be extended or lease enforcement actions should be taken.
(C)	**Monitoring and enforcement of lease conditions throughout lease term**		
12	Consideration of application/proposal from grantee regarding operations/services requiring Government's approval under lease conditions	Normally LandsD as specified under the lease, acting on the advice of the supporting policy bureau or its executive department. Where the authority has been delegated by LandsD to the B/D concerned, the B/D will approve while keeping LandsD informed.	• Examples include ancillary users to the main use requiring approval under the lease. • As a good practice, the supporting policy bureau or its executive department should draw up guidelines on operations/services that may/may not be approved under lease for the same type of PTGs.
13	Consideration of application/proposal from grantee	LandsD on the advice of the supporting	

	Key Steps	Responsible party *	Remarks
	regarding departure from the alienation restriction under the lease	policy bureau	
14	Monitoring or control over operations/services to the satisfaction of Government	The relevant authority, generally the supporting policy bureau or its executive department.	Examples include : ● User ● Type of building ● Standard of conduct ● Continuous operation to a scale to the satisfaction of Government after commencement of operation ● Submission of accounts and scrutiny ● Non-distribution of profits LandsD to provide advice on interpretation of lease conditions.
15	Monitoring of other development conditions and engineering conditions	LandsD, in consultation with relevant expert departments	Examples include green area formation, development conditions, preservation of trees, landscaping, parking requirements, vehicular access, green-hatched black area, set back, cutting away, spoil or debris, no rock-crushing, anchor maintenance, damage to services, constructing drains and sewers etc.

	Key Steps	Responsible party *	Remarks
16	Enforcement against breaches of lease conditions	LandsD, in consultation with the supporting policy bureau or its executive department over clauses regarding operation/service aspects under their purview LandsD in conjunction with other expert departments over other clauses	• For breaches involving operation/services aspects for which the supporting bureau or its executive department is the leading monitoring party, the monitoring party to investigate, liaise with the grantee with a view to purging of breach or rectification or seeking redress from the grantee. Formal warning letters and legal enforcement actions including taking legal proceedings will be issued by LandsD upon agreeing the courses of actions with the monitoring party. • LandsD will provide advice on lease conditions and take the lead in exploring with the relevant supporting policy bureau/departments appropriate remedies such as damages or re-entry action (only as a last resort in extreme cases). The relevant authority (the policy B/D or other appointed by the B/D) to prepare for taking over the site upon re-entry if such is to be instigated.
17	Consideration of lease modification/land exchange/waiver application	LandsD in consultation with the supporting policy bureau and its executive department	• Similar sharing of responsibilities as per (A) in preparing lease conditions, providing policy support, submission to ExCo if necessary. • LandsD will consult Development Bureau on general land

	Key Steps	Responsible party *	Remarks
			policy issues if necessary. ● For a proposed change of user of a PTG, the original supporting policy bureau has to consider release of the site for other uses. LandsD may approve the modification under delegated authority, if applicable. Otherwise, ExCo submission under the lead of the supporting policy bureau for the new user will be required.
(D)	**<u>Monitoring and enforcement of conditions in other forms of agreement than the land lease</u>**		
18	Conditions in other agreement, e.g. service agreement, funding agreement, loan agreement, deed of undertaking	Relevant B/D under the agreement	● Legal advice on the Agreement to be sought from DoJ ● The relevant B/D under the agreement to consult LandsD as necessary (e.g. on any premium implication) and alert LandsD if the agreement is to be terminated and there being a coterminous provision with the land lease.

<u>Note</u> :* "Responsible party" here means the leading party. Where the B/D is the leading party, Lands D will advise the leading party on general practices having regard to arrangements for other PTGs and practices in land administration.

Appendix

Common Types of PTGs and the corresponding Supporting Bureau/Department:

Type of PTGs	Supporting Bureau	Supporting Department
Subsidized primary school Subsidized secondary school Non-profit making private school Non-profit making kindergarten (N.T. only) Tertiary educational institutions Other educational institutions, industrial operative training (including VTC, Construction Industry Training Authority)	EDB	EDB
Clothing Industry Training Authority	LWB	
Social welfare facilities (including those commercial facilities run on a non-profit making basis) Home for the aged	LWB	SWD
Community centre/ hall Kaifong premises	HAB	HAD
Churches/chapels	HAB	-
Temples	HAB	HAD
Places of worship (to be incorporated with social service facilities) Priest's/supervisor's accommodation service building	HAB LWB	HAD SWD
Private recreational lease	HAB	HAD DAFC (where country parks are involved)
Hospital / clinic	FHB	Dept of Health

Type of PTGs	Supporting Bureau	Supporting Department
Public housing Home Ownership Scheme Hong Kong Housing Society's (HKHS's) Rental Housing Estates HKHS's Senior Citizen Scheme HKHS's Flat-for-sale Scheme/other subsidized sale flats HKHS's Sandwich Class Housing Scheme HKHS's Small Rural Public Housing Estates	THB	Housing Dept
PTGs granted to URA for purposes other than redevelopment	DevB	-
Society for the Prevention of Cruelty to Animals	FHB	DAFC
Gas installations under the Gas Safety Ordinance	ENB	DEMS
Selected industries	CEDB	
Telecommunications installations Radio paging system	SB	OFCA
Bus station/terminus	THB	TD
Railway-related land grants without granting property development rights to rail operators	THB	TD + HyD
Railway projects land grants with property development rights granted to rail operators under Railway plus property model	THB	TD + HyD
Container terminals and river trade terminals	THB	-

社會福利署
Social Welfare Department

本署檔號 OUR REF. : SWD 6/720/2016 Pt.5
來函檔號 YOUR REF. : CB4/PAC/R68
電 話 TEL NO. : 2116 3580
圖文傳真 FAXLINE : 2575 7518

16 June 2017

By Fax (2543 9197) and email

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charities

Thank you for your letter dated 29 May 2017. Our reply to the issues raised therein is as follows –

(I) Lease M

Surplus derived from the facilities and subvention for subvented services [Response to question at para. 3(a)]

Grantee M is required under the land lease to conduct the facilities in accordance with the relevant Ordinances and Regulations in all respects to the satisfaction of the then Director of Buildings and Lands. As mentioned at paragraph 3.13 of Report No. 68 of the Director of Audit, pursuant to a letter of June 1989 issued by the then Director of Buildings and Lands, approval was given to allow surplus derived from the facilities operated by Grantee M to be used towards the improvement and/or extension of all charitable services provided by Charity M. The land grant condition does not require the surplus derived from the facilities to be used for adjustment of the amount of subvention granted to Charity M by the Social Welfare Department (SWD) for the operation of the subvented services.

(II) Lease N

Statements of accounts of income-generating facilities [Response to question at para. 4(a)]

After 1997-98, SWD obtained the statements of accounts of Grantee N's income-generating facilities for the following years –

Year	Date of receipt
1998-1999	22 July 1999
1999-2000	4 July 2000
2000-2001	9 July 2001
2001-2002	8 June 2002
2002-2003	10 April 2003

Management Committee [Response to question at para. 4(b)]

Please refer to **Annexes 1 to 3** for the scope, terms of reference and membership of the Management Committee.

According to the record of minutes of the meetings of the Management Committee, Grantee N held five meetings from 1993 to 1998, as follows –

- 1st meeting: 29 September 1993
- 2nd meeting: 14 September 1995
- 3rd meeting: 17 September 1996
- 4th meeting: 30 September 1997
- 5th meeting: 1 December 1998

According to our records, SWD held a meeting with Grantee N in September 1999 to discuss the subvention reduction arrangement and confirmed with Grantee N to withold part of the reimbursement of the government rent and rates amounting to $1.47 million each year for 1997-98, 1998-99 and 1999-2000, i.e. totalling $4.41 million, to Grantee N.

The Home Affairs Bureau took over from SWD the management of Grantee N in 2000. SWD has not been involved in the related management work since then.

Subvention reduction [Response to question at para. 4(c)]

As mentioned in paragraph 3.15(d) of Report No. 68 of the Director of Audit, after repayment of the development costs by Grantee N, continued subvention of Grantee N's activities by SWD would have regard to the level of income from the project. The facilities in the development commenced operation in 1994. In 1997, after considering a number of factors, including Grantee N's income, expenditure and budget, loan repayment situation, cashflow and the financial situation of the income-generating facilities, SWD negotiated with Grantee N and withheld part of the government rent and rates subsidy in respect of the welfare facilities operated on the site, totalling $1.1 million, for 1994-95, 1995-96 and 1996-97 from its reimbursement of government rent and rates to Grantee N, as an interim arrangement for initial reduction of recurrent subvention.

In 1999, after examining Grantee N's financial situation from 1995-96 to 1997-98, SWD found that Grantee N had operating surpluses. On this basis, SWD envisaged that there was room for further reduction in its subvention to Grantee N. After discussion with Grantee N, SWD withheld part of the reimbursement of the government rent and rates amounting to $1.47 million each year for 1997-98, 1998-99 and 1999-2000, i.e. totalling $4.41 million, to Grantee N.

Canteen, western restaurant and lounge [Response to question at para. 4(d) and (e)]

The operation of hostel and canteen on the site by Grantee N is permitted under the land grant condition of Lease N. According to the information provided by Grantee N, the restaurant at the basement of the headquarters commenced operation in July 1994. According to Lease N, the headquarters portion should include an assembly hall, gymnasium, offices, shop of Grantee N, hostel, dormitory, canteen, staff quarters and such other ancillary accommodation and facilities as approved by the Director of Social Welfare. As for the western restaurant and the lounge on the mezzanine floor, they have commenced operation since October 1993 and August 1995 respectively and, as part of the hostel, can be open to the public.

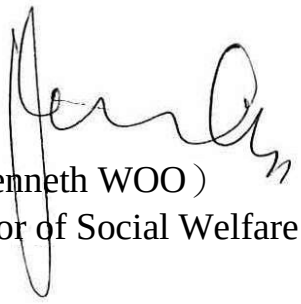
SWD does not have file record showing that Grantee N had consulted SWD on the application for the General Restaurant License for the restaurant. There is also no record in the minutes of the meetings of the Management Committee about the discussion on the operation of the restaurant, western restaurant and lounge.

Monitoring mechanism [Response to question at para. 4(f)]

For Lease N, in accordance with the land lease condition concerned, SWD appointed a representative to attend the meetings of the Management Committee from 1993 to 1998. Besides, there is also record showing that a meeting was held between SWD and Grantee N in September 1999 to continue discussing the subvention reduction arrangement. Before HAB took over from SWD the management and subvention of uniformed groups in 2000, SWD monitored the uniformed group services provided by the grantee according to the prevailing Guide to Social Welfare Subventions, including review of service data information, service assessment visits and subvention inspection, etc.

If you have any enquiries, please feel free to contact the undersigned.

Your sincerely,



（Kenneth WOO）
for Director of Social Welfare

c.c.
Secretary for Labour and Welfare (fax no.: 2524 7635)
Secretary for Financial Services and the Treasury (fax no.: 2537 3210)
Commissioner of Inland Revenue (fax no.: 2877 1082)
Secretary for Home Affairs (fax no.: 2591 5536)
Director of Lands (fax no.: 2525 4960)
Registrar of Companies (fax no.: 2868 5384)
Commissioner of Police (fax no.: 2866 2579)
Secretary for Education (fax no.: 2810 7235)
Director of Audit (fax no.: 2583 9063)

[redacted]

21 June 1993

Director of Social Welfare
Social Welfare Department
7/F-9/F, Wu Chung House
197-221 Queen's Road East
Wanchai
Hong Kong

Dear Sir

[redacted]

Section (11)(c) of the Special Conditions of Grant for the above mentioned Lot states that

> "The Grantee shall establish a Management Committee comprising representatives of the [redacted], the Director of Social Welfare or his representatives and the Secretary for District Administration or his representatives to ensure the proper and efficient operation of the income generating facilities of the [redacted]"

In view of the occupation permit will be issued by the Authority shortly. I would be grateful if you could nominate the appropriate officers to sit in the Management Committee. A list of proposed committee members is attached for your reference.

Once I receive your nomination, a meeting will be arranged in the near future.

Yours faithfully

[redacted]

RECEIVED
23 JUN 1993
HEAD

[redacted]

Encl

DRAFT

[redacted]

Management Committee
of
[redacted]

Chairman	[redacted] (from Grantee N)
Members	Director of Social Welfare or his representative(s)
	Secretary for Home Affairs or his representative(s)
	[redacted]
	[redacted]
	(Representatives of Grantee N)
Minutes Secretary	[redacted] (from Grantee N)

(ENHQ7:MGTC_NM)

Management Committee of [redacted]

Terms of Reference

The Committee is established to ensure the proper and efficient operation of the income generating facilities of [redacted]

(ENHQ8:1MC_AGD)

Management Committee
of
[redacted]
Membership List for 1993/94

Chairman	[redacted]
Members	[redacted]
	Representative of Director of Social Welfare
	[redacted]
	Representative of Secretary for Home Affairs
	[redacted]
	[redacted]
Minutes Secretary	[redacted]

(ENHQ8:1MC_AGD)

政 府 總 部
民 政 事 務 局
香港添馬添美道二號
政府總部西翼十二樓

GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU
12TH FLOOR, WEST WING,
CENTRAL GOVERNMENT OFFICES,
2 TIM MEI AVENUE,
TAMAR,
HONG KONG.

本局檔號	OUR REF.	:	S/F(1) to HAB/CR 1/20/170
來函檔號	YOUR REF.	:	CB4/PAC/R68
電　話	TEL NO.	:	3509 8118
圖文傳真	FAXLINE	:	2591 6002

22 June 2017

Mr Anthony CHU
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

Dear Mr Chu,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No. 68 (the Audit Report)

Government's support and monitoring of charities

As requested in your letter dated 29 May 2017, I append the requested information below.

(a) & (b)

—— A copy of Lease N is at **Annex 1**.

According to clause (6)(i) of the Special Conditions of Lease N, the Grantee "*shall not erect or maintain on the lot any building or buildings other than a building or buildings comprising a headquarters including assembly hall, gymnasium, offices, shop, hostel, dormitory, canteen, staff quarters and such other ancillary accommodation and facilities as shall be approved by the Director of Social Welfare (now the Secretary for Home Affairs)*". According to the Lands Department ("LandsD"), the terms "hostel" and "hotel" are generally interchangeable in the interpretation of land leases and both allow

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

lodging under lease. In granting Lease N, the Executive Council ("ExCo") has taken into account that revenue would be generated from Grantee N's income-generating facilities, hence allowing for reduction and eventual elimination of the Government's annual subvention for Grantee N. In this connection, it was the intention of the ExCo to allow the hostel to provide service to the general public so as to generate income for Grantee N.

As regards the catering facilities, the canteen should be open to members of Grantee N only. In June 2015, the Home Affairs Bureau ("HAB") was alerted by FEHD that the canteen, which was open to the public, should comply with the relevant lease conditions. Upon the request of HAB, Grantee N took action subsequently to obtain planning permission from the Town Planning Board and a temporary waiver from LandsD to permit the use of the canteen for restaurant purpose.

At present, Grantee N's hostel also consists of a Western restaurant and a lounge. Since these catering facilities are ancillary to the hostel, they could serve the general public. In light of the recommendations in the Director of Audit's Report, we are ascertaining with LandsD and the Planning Department ("PlanD") that the operation of the Western restaurant and lounge comply with the relevant land administration and planning requirements.

(c) Grantee N paid a lump sum premium of $30,200,000, which has covered all the income-generating facilities.

(d) Grantee N wrote to the Director of Social Welfare in June 1985, indicating that *"it is anticipated that the income generated will be employed to repay the loan…Thereafter, it would be possible for an appropriate reduction to be made to the Government's annual subvention"*. This has given effect to ExCo's understanding that income generated from the income generating facilities at Grantee N's headquarters would enable Grantee N to gradually cease to be reliant on the Government's subvention. A copy of the letter is at **Annex 2**.

(e) In determining the level of subvention reduction, HAB would have regard to Grantee N's contribution to youth development in Hong Kong, its financial position and resources needed in the future. Before 2000, in addition to the above factors, the Social Welfare Department ("SWD") also took into account the construction cost for the headquarters and loan repayment progress of Grantee N. As Grantee N had repaid its construction loan before 2000, the construction cost and repayment of construction loan are not part of HAB's consideration in determining the level of subvention reduction.

—— (f) The level of subvention to Grantee N since 2000 is set out in **Annex 3**.

(g) Since 2000, Grantee N has not submitted independent statement of accounts of the income-generating facilities of its headquarters and the vehicle park to HAB. However, the relevant accounts have been incorporated in Grantee N's annual financial reports, which are submitted to HAB annually. In light of the recommendations of the Director of Audit's Report, HAB asked Grantee N to reactivate the Management Committee in May 2017 and to submit independent statement of accounts of the income-generating facilities of its headquarters and the vehicle park.

(h) Meetings of the Management Committee had not been convened since 1998. When Grantee N reactivated the Management Committee in May 2017 upon HAB's request, there was no change to the Management Committee's scope and terms of reference. There were slight updates to the membership to reflect the change of supporting bureau from SWD to HAB.

While HAB had not requested Grantee N to convene meetings of the Management Committee before early 2017, after HAB assumed the role of supporting bureau for Grantee N in 2000, the representative of HAB has been attending Grantee N's Executive Committee meetings, which discuss Grantee N's financial matters as a standing item, as an observer.

(i) According to the Constitution of Grantee N, in between meetings of the Council of Grantee N, the Executive Committee shall be the authority of Grantee N in respect of major policy decisions, coordination with the Chief Commissioner, control of funds and resources and financial
—— support. The current membership is set out in **Annex 4**.

A total of 105 meetings of the Executive Committee were held from January 2000 to May 2017. A schedule of the meetings is set out in
—— **Annex 5**. At all the meetings, the Executive Committee made regular report on the operation of the income-generating facilities of the headquarters and vehicle park. The income and expenditure of the income-generating facilities were also discussed together with the annual budget of Grantee N.

(j) In 2004-05 and 2005-06, HAB reduced the subvention for most subvented youth uniformed groups, including reducing the subvention for Grantee N by $0.54 million and $0.67 million respectively. Apart from the general reduction in these two years, we agree that HAB had not initiated negotiations with Grantee N to discuss

additional subvention reduction specific to Grantee N during the period from 2000-01 to 2009-10, so we generally agree with the statement in the report.

(k) The ExCo's decision did not specify a timeline for achieving the objective of eventual elimination of Grantee N's subvention. In light of the recommendations of the Director of Audit's Report, HAB has resumed the negotiation with Grantee N with a view to agreeing on the level and timetable of further reducing Grantee N's subvention. In this process, HAB would take into account Grantee N's contribution to youth development in Hong Kong, its financial position and resources needed in the future. If HAB determines that the ExCo's understanding of eventual elimination of subvention could not be achieved, HAB would seek ExCo's endorsement for variation.

(l) The canteen commenced operation in July 1994 and obtained a General Restaurant Licence in February 1996. The Western restaurant and lounge commenced operation in October 1993 and August 1995 respectively. Such uses are prescribed in clause (6)(i) of the Special Conditions of Lease N mentioned in (a) above.

For the canteen, HAB was alerted by FEHD in June 2015 that the canteen, which was open to the public, should comply with the relevant lease conditions. In July and December 2015, HAB informed FEHD and LandsD respectively that the restaurant could not be regarded as an ancillary facility to Grantee N's headquarters, and hence did not comply with the relevant lease condition. Upon HAB's request, Grantee N took action subsequently to apply for a planning permission from the Town Planning Board and a temporary waiver from LandsD to permit the use of the canteen space for restaurant purpose. In January 2016, HAB informed LandsD that it supported Grantee N's waiver application subject to the imposition of full administrative fee and waiver fee. The planning permission and temporary waiver were granted in December 2016 and March 2017 respectively.

For the Western restaurant and lounge, since they are ancillary facilities to the hostel, they could serve the general public. In response to the recommendations in the Director of Audit's Report, we are ascertaining with LandsD and PlanD that the operation of the two catering facilities complies with the relevant land administration and planning requirements.

(m) At present, HAB processes land applications and monitors and enforces lease conditions in accordance with the protocol issued by LandsD in 2014. In light of the recommendations in the Director of Audit's Report, we shall consider the need of formulating further

guidelines to assist HAB staff in monitoring and enforcing lease conditions.

Yours sincerely,



(Vincent FUNG)
for Secretary for Home Affairs

c.c. Secretary for Financial Services and the Treasury
Commissioner of Inland Revenue
Director of Lands
Director of Social Welfare
Registrar of Companies
Commissioner of Police
Secretary for Education
Director of Audit

Annex 2

Annex III (1)

[redacted]

Hong Kong 1985 International Youth Year 一九八五年國際青年年

13th June, 1985.

Director of Social Welfare,
Social Welfare Department,
World Trade Centre, 19/F.,
280, Gloucester Road,
Causeway Bay,
Hong Kong.

(Attn.: Mr. Stephen Law Chi-kin)

Dear Mr. Law,

Proposed Grant of Site in [redacted]
to the [redacted]

Thank you for your letter ref. SWD 14/5124/48 dated 23rd May, 1985 addressed to the Chief Commissioner, Mr. C.S. Chau. He is at present away from Hong Kong on annual leave but before he left, I was given instruction to reply on his behalf.

We are glad to hear that you may be able to recommend a higher level of support for [redacted] facilities at our new [redacted] Headquarters. I now submit to you an assessment of the possible income generating facilities from the [redacted] as proposed in our schedule of accommodation and the Sketch Design June 1983 prepared by our Architect.

It is anticipated that the income generated will be employed to repay the loan (plus interest) from the Jockey Club or other financial institutions over a period of years. Thereafter, it would be possible for an appropriate reduction to be made to the Government's annual subvention to the Association.

We do appreciate that application to the Lotteries Fund for a capital grant to cover 100% of the cost of constructing, fitting-out and equipping the supported [redacted] facilities may be unrealistic but we are hopeful to receive more sympathetic consideration since we are forced to vacate our existing Headquarters building to the Government. We believe it is only fair for the Government to reprovisioning and to reinstating all the former and existing facilities which we are now enjoying at [redacted].

You now may wish to reconsider the whole project and inform the Director of Lands in order that the total premium may be re-assessed and a formal submission to Executive Council prepared without further delay. I am taking the liberty to copy this letter to him for his early information.

Yours sincerely,

Jerome Y.T. Yeung
[redacted]

c.c. Director of Lands

ASSOCIATION HEADQUARTERS: [redacted]

PLEASE ADDRESS ALL CORRESPONDENCE TO [redacted]

Level of Subvention for Grantee N

Year	Level of subvention
2000-01	$16,550,000
2001-02	$16,649,000
2002-03	$17,424,200
2003-04	$17,665,000
2004-05	$17,128,000
2005-06	$16,457,000
2006-07	$16,457,000
2007-08	$16,457,000
2008-09	$17,280,000
2009-10	$17,280,000
2010-11	$17,280,000
2011-12	$17,280,000
2012-13	$17,280,000
2013-14	$15,206,000
2014-15	$26,114,000
2015-16	$23,890,000
2016-17	$23,890,000

Membership of Executive Committee

Ex officio Members

Chief Commissioner
Mr NG Ah-ming

Chairman
Mr David YIP Wing-shing BBS MH JP

Deputy Chairmen
Mr Michael CHEUNG Kai-wan
Ms Lina YAN Hau-yee MH JP

Deputy Chief Commissioner (Operations)
Mr Ricky LAW Wai-kin

Deputy Chief Commissioner (Management)
Mr YUNG Kin-man

Deputy Chief Commissioner (Programme & Training)
Mr Jason NG Ka-leung

Assistant Chief Commissioner (Training)
Dr MAK Wai-ming

Assistant Chief Commissioner (Hong Kong Island Region)
Mr KWAN Kee

Assistant Chief Commissioner (Support)
Mr Philip WONG Ho-sum

Assistant Chief Commissioner (New Territories Region)
Mr Wilson LAI Wai-sang

Assistant Chief Commissioner (Public Relations)
Ms Nancy HO Lan-sang

Assistant Chief Commissioner (Development & Adult Resources)
Dr Jimmy LAU Fu-shing

Assistant Chief Commissioner (New Territories East Region)
Mr Antony WONG Yiu-wing PMSM

Assistant Chief Commissioner (Kowloon Region)
Mr TAM Kwok-kuen

Assistant Chief Commissioner ([redacted]*)*
Dr NGAN Ming-yan

Assistant Chief Commissioner (Mainland Affairs)
Mr James TSUI Siu-lung

Assistant Chief Commissioner (East Kowloon Region)
Mr LO Pui-lam
Assistant Chief Commissioner (International)
Mr Hubert HO Yan-man
Assistant Chief Commissioner (Estate)
Mr Terence LO Kin-yip
Assistant Chief Commissioner (Programme)
Mr AU YEUNG Chor-yuen
Secretary
Mr Augustine CHOI Chi-wa BBS
Treasurer
Mr William LEE Ka-chung JP
Chairman, Finance Committee
Mr Terence CHAN Chun-wing
Chief Executive
Ms Evita LEE

Elected Members
Mr LAI Sze-nuen BBS MBE JP
Prof TAM Man-kwan BBS BH JP
Mr Peter H C TONG
Mr Augustine WONG Ho-ming JP
Prof William WONG Kam-fai MH
Mr Paul HO Wai-chi
Mr LEE Fung-tai
Mr LAM Chiu-ying SBS
Mr LAM Kwong-yu MH
Dr Kevin LAU Kin-wah JP
Mr Arthur LI Kit-chee
Mr Charles NGAN Chi-hung
Mr Frankie WAI Kar-yan
Mr Aaron NG Hoi-shan
Dr Dominic CHU Chun-ho

Observers
Mr KAN Ho-chow MH
Mr WONG Kau-on BBS
Mr SHUM Man-kwong

Mr Edward SO Kai-ming
Mr John C Y HUI BBS CPM
Chairman, [redacted] Council
Miss FUNG Hiu-lam
Chairman, [redacted] Council
Miss TSUI Ka-lam
Representative of the Home Affairs Bureau
Mr Michael LI Chun-yu
Representative of the Education Bureau
Mr CHAN Wing-kee
Representative of Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region
Ms MO Min-ying

Schedule of Meetings
of the Executive Committee of Grantee N
(from January 2000 to May 2017)

Meeting	Date
139th	13 January 2000
140th	9 March 2000
141st	18 May 2000
142nd	13 July 2000
143rd	14 September2000
144th	9 November 2000
145th	11 January 2001
146th	8 March 2001
147th	10 May 2001
148th	5 July 2001
149th	13 September 2001
150th	8 November 2001
151st	10 January 2002
152nd	14 March 2002
153rd	9 May 2002
154th	11 July 2002
155th	12 September 2002
156th	14 November 2002
157th	9 January 2003
158th	13 March 2003
159th	15 May 2003
160th	10 July 2003
161st	18 September 2003
162nd	13 November 2003
163rd	8 January 2004
164th	11 March 2004
165th	13 May 2004
166th	8 July 2004
167th	9 September 2004
168th	11 November 2004
169th	13 January 2005
170th	10 March 2005
171st	12 May 2005
172nd	14 July 2005

Meeting	Date
173rd	22 September 2005
174th	10 November 2005
175th	12 January 2006
176th	9 March 2006
177th	11 May 2006
178th	6 July 2006
179th	14 September 2006
180th	9 November 2006
181st	11 January 2007
182nd	8 March 2007
183rd	10 May 2007
184th	12 July 2007
185th	13 September 2007
186th	8 November 2007
187th	10 January 2008
188th	13 March 2008
189th	8 May 2008
190th	10 July 2008
191st	11 September 2008
192nd	13 November 2008
193rd	8 January 2009
194th	12 March 2009
195th	14 May 2009
196th	9 July 2009
197th	10 September 2009
198th	12 November 2009
199th	14 January 2010
200th	11 March 2010
201st	13 May 2010
202nd	8 July 2010
203rd	9 September 2010
204th	16 November 2010
205th	28 January 2011
206th	10 March 2011
207th	12 May 2011
208th	14 July 2011
209th	8 September 2011
210th	10 November 2011

Meeting	Date
211th	12 January 2012
212th	8 March 2012
213th	10 May 2012
214th	12 July 2012
215th	13 September 2012
216th	8 November 2012
217th	10 January 2013
218th	14 March 2013
219th	9 May 2013
220th	11 July 2013
221st	12 September 2013
222nd	14 November 2013
223rd	9 January 2014
224th	13 March 2014
225th	8 May 2014
226th	10 July 2014
227th	11 September 2014
228th	13 November 2014
229th	8 January 2015
230th	12 March 2015
231st	14 May 2015
232nd	16 July 2015
233rd	10 September 2015
234th	12 November 2015
235th	14 January 2016
236th	10 March 2016
237th	12 May 2016
238th	14 July 2016
239th	8 September 2016
240th	10 November 2016
241st	12 January 2017
242nd	9 March 2017
243rd	25 May 2017

政 府 總 部
民 政 事 務 局
香港添馬添美道二號
政府總部西翼十二樓

GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU
12TH FLOOR, WEST WING,
CENTRAL GOVERNMENT OFFICES,
2 TIM MEI AVENUE,
TAMAR,
HONG KONG.

本局檔號	OUR REF.	:	S/F(1) to HAB/CR 1/20/170
來函檔號	YOUR REF.	:	CB4/PAC/R68
電　話	TEL NO.	:	3509 8118
圖文傳真	FAXLINE	:	2591 6002

18 July 2017

Mr Anthony CHU
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

Dear Mr Chu,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No. 68 (the Audit Report)

Government's support and monitoring of charities

As requested in your letter dated 28 June 2017, I append the requested information below.

(a) & (b)

According to Grantee N's record, the canteen was not open to the public when it commenced operation in July 1994. Since it obtained a General Restaurant Licence in February 1996, the canteen has been operated as a restaurant open to the public.

In general, the Planning Department ("PlanD") and Lands Department ("LandsD") are responsible for advising whether the provision of the catering facilities within the concerned development complies with the Outline Zoning Plan and land lease respectively, while the Home Affairs Bureau ("HAB") is responsible for considering proposals from Grantee N regarding operations requiring HAB's approval under the

lease.

Under Clause 6(i) of the Special Conditions of Lease N, the Director of Social Welfare (now the Secretary for Home Affairs) shall decide on whether a use could be regarded as "ancillary accommodation and facilities". In doing so, HAB would take into account the nature of the use and whether it is incidental to and directly related to the use permitted under lease. According to Lease N, the canteen should be open to members of Grantee N only. Since Grantee N's canteen is not operated as part of the hostel and its current operation as a restaurant could not be regarded as an ancillary facility to Grantee N's headquarters, planning permission and a waiver application are needed for the canteen to be operated as a restaurant. On the other hand, the Western restaurant and lounge are operated as part of the hostel and are therefore regarded as ancillary facilities to the hostel. In response to the recommendations in the Director of Audit's Report, we have been reviewing with PlanD and LandsD the compliance of the Western restaurant and lounge with the relevant requirements.

(c) The income and expenditure of Grantee N's income-generating facilities at its headquarters and Grantee N's operation as a whole for the past three years are set out in **Annex 1**.

(d) The subvention amount for and the number of membership of uniformed groups in Hong Kong for the past five years are set out in **Annex 2**. In setting the subvention level, HAB has reduced the subvention for relevant uniformed groups with regard to the income generated from their income-generating facilities.

(e) Currently, there are 45 temples that are managed by the Chinese Temples Committee ("CTC"), of which 25 are under direct administration (the "directly-administered temples"), while the administration of 20 temples is delegated to eight organisations for management (the "delegated temples") by means of signing of agreement.

Under the existing arrangements, the financial information of all directly-administered temples and 9 delegated temples of CTC is included in the annual financial statement of the Chinese Temples Fund, which is audited by the Audit Commission and submitted to the Legislative Council every year for information. The financial statement of the Chinese Temples Fund is also uploaded to the website of CTC for public inspection.

In order to further enhance transparency, CTC plans to upload the relevant financial information of each directly-administered temple to

the website of CTC by the end of this year. As for the delegated temples, CTC plans to include the new requirement of disclosing relevant financial information of the delegated temples upon renewal of the delegated agreements with the managing organisations. In the interim, the Secretariat of CTC will also discuss with the managing organisations and encourage them to disclose the relevant financial information of the temples as soon as practicable.

Separately, CTC will also encourage registered temples which receive donations from the public to make reference to the Reference Guide on Best Practices for Charitable Fund-raising Activities (the Reference Guide) promulgated by the Social Welfare Department with a view to enhancing the transparency of the operation of temples. CTC has distributed the Reference Guide to registered temples and will provide the Reference Guide to all new registered temples in future.

Yours sincerely,



pp. (Vincent FUNG)
for Secretary for Home Affairs

c.c. Secretary for Financial Services and the Treasury
Commissioner of Inland Revenue
Director of Lands
Director of Social Welfare
Registrar of Companies
Commissioner of Police
Secretary for Education
Director of Audit

Annex 1

Income and Expenditure of the Income-generating Facilities of Grantee N's Headquarters

	2013-14	2014-15	2015-16
Income ($)			
Hostel[1]	258,505,000	256,893,000	221,481,000
Canteen[2]	5,040,000	4,620,000	9,200,000
Vehicle park	21,294,000	24,571,000	26,301,000
Headquarters offices	3,402,000	3,911,000	4,231,000
Shop	11,238,000	11,090,000	10,004,000
Total income	***299,479,000***	***301,085,000***	***271,217,000***
Expenditure ($)			
Hostel	154,918,000	158,202,000	159,915,000
Vehicle park	3,841,000	4,176,000	4,146,000
Headquarters offices	64,487,000	61,165,000	63,380,000
Shop	10,712,000	10,651,000	9,728,000
Total expenditure	***233,985,000***	***234,194,000***	***237,169,000***
Surplus[3]	**65,521,000**	**66,891,000**	**34,048,000**

Income and Expenditure of Grantee N's Operation as a Whole

	2013-14	2014-15	2015-16
Income and expenditure ($)			
Turnover	333,887,000	345,909,000	312,020,000
Costs of sale	(99,998,000)	(102,518,000)	(97,143,000)
Other revenue and net income	24,382,000	31,422,000	34,274,000
Departmental and programme expenses	(13,172,000)	(20,090,000)	(16,386,000)
General and administrative expenses	(144,672,000)	(143,956,000)	(156,014,000)
Surplus[4]	**100,427,000**	**110,767,000**	**76,751,000**

[1] Including the Western restaurant and lounge.
[2] License fee received from the canteen operator.
[3] The waiver premium of $886,810 and $10,633,160 for operating the canteen space for restaurant purpose for 2014-15 and 2015-16 respectively have not been deducted from the total surplus.
[4] The surplus has not accounted for capital expenditures, furniture, fixtures and equipment spent and the waiver premium for operating the canteen space for restaurant purpose.

Annex 2

Subvention and Youth Membership of Uniformed Groups

The amount of subvention for the 11 subvented uniformed groups from 2012-13 to 2016-17 is as follows –

Uniformed groups	Amount of subvention ($) ^				
	2012-13	2013-14	2014-15	2015-16	2016-17
1. Scout Association of Hong Kong	17,280,000	15,206,000	26,114,000	23,890,000	23,890,000
2. The Hong Kong Girl Guides Association	11,000,000	11,000,000	21,830,000	21,830,000	21,830,000
3. Hong Kong Red Cross (Uniformed Group)	8,160,000	8,160,000	16,150,000	16,150,000	16,150,000
4. The Boys' Brigade, Hong Kong	2,320,000	2,320,000	4,790,000	4,790,000	4,790,000
5. Hong Kong St. John Ambulance Brigade (Youth Command)	1,490,000	1,490,000	3,260,000	3,260,000	3,260,000
6. Hong Kong Sea Cadet Corps	1,370,000	1,370,000	2,990,000	2,990,000	2,990,000
7. Hong Kong Air Cadet Corps	1,200,000	1,200,000	2,650,000	2,650,000	2,650,000
8. Hong Kong Adventure Corps	1,160,000	1,160,000	2,520,000	2,520,000	2,520,000
9. Hong Kong Road Safety Association	1,200,000	1,200,000	2,480,000	2,480,000	2,480,000
10. The Girls' Brigade Hong Kong	1,090,000	1,090,000	2,420,000	2,420,000	2,420,000
11. Association of Hong Kong Flag-guards	650,000	650,000	1,800,000	1,800,000	1,800,000
Total:	**46,920,000**	**44,846,000**	**87,004,000**	**84,780,000**	**84,780,000**

^ The above figures include the baseline subvention and the provisions for the Assistance Scheme for Needy Students. They do not include funding provided

under other policy areas or provided in response to applications by the uniformed groups under other funding schemes.

The youth membership of the 11 subvented uniformed groups from 2012-13 to 2016-17 is as follows –

Uniformed groups	Youth membership # (as at 31 March of the financial year)				
	2012-13	**2013-14**	**2014-15**	**2015-16**	**2016-17***
1. Scout Association of Hong Kong	43 867	43 721	42 455	42 875	42 980
2. The Hong Kong Girl Guides Association	42 851	24 139	23 167	18 980	20 008
3. Hong Kong Red Cross (Uniformed Group)	16 055	12 332	12 551	12 133	11 664
4. The Boys' Brigade, Hong Kong	7 295	7 208	9 064	9 719	9 765
5. Hong Kong Road Safety Association	5 198	5 356	5 983	5 965	6 309
6. Hong Kong Air Cadet Corps	3 794	3 881	3 930	3 883	4 947
7. Hong Kong Adventure Corps	3 799	4 328	4 865	4 462	4 385
8. Association of Hong Kong Flag-guards	1 754	4 128	4 249	4 461	4 275
9. Hong Kong St. John Ambulance Brigade (Youth Command)	2 838	3 444	3 457	3 815	3 993
10. Hong Kong Sea Cadet Corps	2 779	2 942	2 942	2 811	2 861
11. The Girls' Brigade Hong Kong	1 640	1 015	894	945	1 152
Total:	**131 870**	**112 494**	**113 557**	**110 049**	**112 339**

\# The youth membership includes young people aged between 8 and 26. These figures are provided by the uniformed groups.

* Youth membership figure as at 31 December 2016

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COMPANIES REGISTRY

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In reply please quote this Ref. : CR HQ/1-55/14/2
來函檔號 YOUR REF. : CB4/PAC/R68
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29 May 2017

BY FAX

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit Report No. 68
Government's support and monitoring of charities

As requested in your letter of 22 May 2017, I append below the information required –

(a) (i) When defaulting cases are identified during compliance checks carried out by the Companies Registry ("CR"), the CR will issue notices-to-file to the companies concerned requesting rectification of the default within a specified period. If the non-compliance continues, we will consider instituting prosecution and / or strike-off actions against the company concerned. In general, from our experience, most of the guarantee companies which are in default of filing obligations claim that they do not have sufficient resources and/or manpower to prepare their annual financial statements on a timely basis, which in turn leads to delays in the filing of annual returns to the CR.

Actions taken against the 21 cases mentioned in paragraph 4.9 of the Audit Report and the latest progress are as follows –

Actions taken by CR	**Number of cases**
Already struck off from the Companies Register	2
Prosecuted and strike-off actions in progress	12
Strike-off actions in progress	5
Prosecution action in progress	1
Follow-up actions pending results of legal proceedings involving the Company	1
	21

(ii) The CR conducts compliance checks, including annual checks and weekly checks, to identify companies limited by guarantee which do not comply with the filing requirements of annual returns.

As referred to in paragraph 4.9(a) of the Audit Report, we are enhancing the system for conducting compliance checks. As the requirement for the filing of annual returns by companies limited by guarantee has been streamlined under the present Companies Ordinance (Cap 622) (details in item (c) below), this enables the CR to enhance its system by tracking the due date for the delivery of annual return by individual companies so as to take more timely follow-up actions.

(iii) Notices-to-file have been issued to the two companies in April 2017. As the annual returns remain outstanding, CR has reviewed the position and would commence strike-off actions against the two companies.

As explained in item (a)(ii) above, CR is enhancing its system for conducting compliance checks, under which similar incidents would not occur again. Meanwhile, we have also reviewed our internal process to ensure proper identification of non-compliance cases.

(b) All the 126 companies mentioned in paragraph 4.10 and Table 6 of the Audit Report had delivered the outstanding annual returns for registration, among which 38 companies delivered the outstanding annual returns after the CR had issued compliance notices; while 16 companies complied with the filing requirements after the CR had instituted prosecution actions against them (including the case where the annual return was filed late for 229 days). Another 72 companies had delivered annual returns for registration after the due date for submission without

being prompted by a notice-to-file, so the CR considered that no further action was required.

(c) The new measures and requirements on companies limited by guarantee under the present Companies Ordinance are:

(i) A company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration. The requirement to deliver certified copies of financial statements applies to all guarantee companies and was introduced to enhance transparency of company information.

(ii) The requirements for filing annual returns have been streamlined. A company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration within 42 days after the company's return date. The return date is 9 months after the end of the company's accounting reference period. Thus, the due date for the delivery of an annual return is determined with reference to a company's accounting reference date, which is more predictable when compared with the case under the old Companies Ordinance. Under the Old Companies Ordinance, the due date for the delivery of an annual return is determined with reference to the date of annual general meeting of the company concerned which may vary every year. This enables the CR to enhance our monitoring on compliance.

(iii) An escalating scale of annual registration fees in the case of late filing of annual returns was introduced under the present Companies Ordinance to encourage timely compliance.

To promote compliance with the filing requirements under the Companies Ordinance, the CR will continue with our educational and promotional efforts. These include maintaining a thematic section on "Compliance" on our website which provides information on the obligation of a company and its officers, publication of posters, information pamphlets and circular letters, etc.

Last but not least, we would like to reiterate that our enforcement policy is premised on all of the companies on the Companies Register. Bearing in mind that the Companies Ordinance does not have a separate category of companies which are charities, it is important to strike a reasonable balance between enforcement actions taken against charities which are incorporated as companies and other companies on the Companies Register.

Thank you for your attention.

Yours sincerely,



(Ms Angelina MOK)
for Registrar of Companies

cc. Secretary for Financial Services and the Treasury (Fax no. 2537 3210)
Commissioner of Inland Revenue (Fax no. 2877 1082)
Director of Lands (Fax no. 2525 4960)
Secretary for Home Affairs (Fax no. 2591 5536)
Director of Social Welfare (Fax no. 2891 7219)
Commissioner of Police (Fax no. 2866 2579)
Secretary for Education (Fax no. 2810 7235)
Director of Audit (Fax no. 2583 9063)

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26 May 2017

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charity

As requested in your letter of 22 May 2017, I append below the information required:-

(a) The Societies Ordinance contains no definition of "charity" or "charity purposes". Should a society seek in the application form for society registration or exemption from registration that its establishment is solely or partly for charity purposes, the society would be categorised as charitable organisation or charity-related organisation.

(b) Under section 5A(2) of the Societies Ordinance, a local society shall apply to the Societies Officer for exemption for registration if the society is established "solely" for religious, charitable, social or recreational purposes or as a rural committee or a federation or other

association of rural committee. If the Societies Officer exempts a society for registration, he will issue a certificate of exemption from registration.

Where a local society is established for purposes other than those set out in section 5A(2) of the Societies Ordinance, it shall register with the Societies Officer under section 5A(1) of the Societies Ordinance.

There is no difference in terms of the duties and powers of the Societies Officer vis-à-vis a registered society and an exempted society under the Societies Ordinance. Similarly, there is also no difference in terms of legal liabilities and other statutory requirements of a registered society and an exempted society under the Societies Ordinance. By way of example, both a registered society and an exempted society are required to inform the Societies Officer in writing any changes of the society's name, objects, office-bearers or principal place of business.

(c) As required by section 14 of the Societies Ordinance, if a registered or an exempted society has subsequently dissolved itself, the office-bearers have the responsibilities to notify the Societies Officer of such dissolution in writing, not later than the expiration of one month after the dissolution takes effect. HKPF has reminded the office-bearers of this requirement in the acknowledgement letter issued to the office-bearers upon completion of society registration. A reminder message is also posted on the Police Public Page.

The Societies Office has issued internal orders to formalize the present practice of conducting regular reviews to identify inactive societies. The computer registration system of the Police Licensing Office will be upgraded by Q4 of 2018 whereby the identification of inactive societies and the management of the registered and exempted societies list will be further enhanced.

In addition, the Societies Office will modify the application form for societies registration or exemption for registration to offer an option to the society to provide an email address for electronic communication.

The HKPF will also study the feasibility of establishing an internal notification system to notify the Societies Office if a local society organizes any activity that requires an application to the HKPF, e.g. public order events; lion dances; etc., so that the Societies Office knows that the society is still active.

(d) Paragraphs 4.17 (b) and (c) stated that the HKPF conducted no reviews of inactive societies in 2015 and 2016. Therefore, the HKPF had not requested 53 registered/exempted societies (which had not contacted the HKPF for 10 years or more at the time of the 2014 review) to furnish proof of their existence. That no review of inactive societies had been conducted in 2015 and 2016 was due to the fact that the Societies Office was fully occupied by other pressing operational priorities in those two years.

Paragraph 4.17 (d) stated that the registered/exempted societies list was not updated as 19 societies that had been marked cancelled were still included in the society list posted on the HKPF's website. The oversight was due to error in data migration during system upgrade and manual mistake during data input. The error was immediately rectified in January 2017 and the 19 societies were deleted from the registered/exempted societies list accordingly.

For improvement measures, please refer to part (c) above.

(e) The Societies Office handles a yearly average of around 9,000 to 10,000 applications, including 2,000 new applications for societies registration/exemption for registration. It further receives a yearly average of around 100 notifications of dissolution of societies; a legal obligation which is placed on the office bearers pursuant to section 14 of the Societies Ordinance. For removal of societies from the registered/exempted societies list due to cessation of existence, the number of societies removed varies each year (ranged from 100 to 1,000).

In view of the increased workload, in 2011, one additional disciplined post was added to the Societies Office. The current manpower of 6 staff in the Societies Office is considered sufficient at this stage. The computer registration system of the Police Licensing Office will be upgraded by Q4 of 2018 whereby the efficiency and effectiveness of the Societies Office will be further enhanced.

Yours sincerely,



(P.D.G. Hodson)
for Commissioner of Police

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)
Commissioner of Inland Revenue (fax no. 2877 1082)
Director of Lands (fax no. 2525 4960)
Secretary of Home Affairs (fax no. 2591 5536)
Director of Social Welfare (fax no. 2891 7219)
Registrar of Companies (fax no. 2868 5384)
Secretary of Education (fax no. 2810 7235)
Director of Audit (fax no. 2583 9063)

香港特別行政區政府
保安局

香港添馬添美道 2 號

The Government of the
Hong Kong Special Administrative Region
Security Bureau

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By Fax : 2543 9197
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29 May 2017

Mr Anthony Chu
Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Chu,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring charities

Thank you for your letter to the Secretary for Security dated 22 May 2017.

Section 15 of the Societies Ordinance (Cap 151) states that the Societies Officer may, at any time, by notice in writing served on any society require the society to furnish him in writing with such information as he may reasonably require for the performance of his functions under the Ordinance. Such information required may include the income, the source of the income and the expenditure of the society or its branch. According to Section 16, if any society fails to comply with the whole or part of any such notice, or if any information supplied to the Societies Officer in compliance with such notice is false, incorrect, or incomplete in any material particular, the person concerned shall be liable on summary conviction to a fine of $20,000. The Societies Ordinance therefore does empower the Societies Officer to request a society to provide information on the income, source of income and expenditure of the society or its branch.

The HKSAR Government from time to time reviews the Societies Ordinance. Over the past ten years, the Ordinance has been amended twice, namely, in 2008 and 2012.

In 2008, the Societies Ordinance was amended via the Statute Law (Miscellaneous Provisions) Ordinance 2008 to give effect to the Hong Kong Court of Final Appeal's judgment in *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* which held that 'public order (in the law and order sense)' should be severed from 'public order (*ordre public*)' in sections 14(1), 14(5) and 15(2) of the Public Order Ordinance (Cap 245). There were similar provisions in the Societies Ordinance which needed to be amended as a result of that decision. Details of the amendments to the Societies Ordinance can be found on the 12th page of the following link and the relevant page is attached at Annex I for reference: http://www.legco.gov.hk/yr07-08/english/ord/ord010-08-e.pdf

In 2012, the Societies Ordinance was amended as a result of consequential and related amendments to the Companies Ordinance. Details of the amendments to the Societies Ordinance can be found on the 1 138th page of the following link and the relevant page is attached at Annex II for reference: http://www.legco.gov.hk/yr11-12/english/ord/ord028-12-e.pdf

Yours sincerely,

(Andrew Tsang)
for Secretary for Security

c.c.
Hong Kong Police Force
(Attn: Assistant Commissioner (Support)) Fax : 2200 4328

PART 2

AMENDMENTS TO REFERENCES TO "ORDRE PUBLIC" IN THE SOCIETIES ORDINANCE AND THE PUBLIC ORDER ORDINANCE

Societies Ordinance

3. Interpretation

Section 2(4) of the Societies Ordinance (Cap. 151) is amended by repealing ", "public order (*ordre public*)" ".

4. Registration and exemption from registration

Section 5A(3)(*a*) is amended, in the English text, by repealing "(*ordre public*)".

5. Cancellation of registration or exemption from registration

Section 5D(1)(*a*) is amended, in the English text, by repealing "(*ordre public*)".

6. Prohibition of operation of societies

Section 8(1)(*a*) is amended, in the English text, by repealing "(*ordre public*)".

7. Power of entry in special cases

Section 32 is amended, in the English text, by repealing "(*ordre public*)".

Public Order Ordinance

8. Interpretation

Section 2(2) of the Public Order Ordinance (Cap. 245) is amended by repealing ", "public order (*ordre public*)" ".

Part 37

Amendments to Societies Ordinance (Cap. 151)

111. Schedule amended (Persons to which the Ordinance does not apply)

(1) The Schedule, item (1)—

Repeal

"(Cap. 32)"

Substitute

"(28 of 2012)".

(2) The Schedule, after item (1)—

Add

"(1A) Any company registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (28 of 2012).".

Part 38

Amendments to Banking Ordinance (Cap. 155)

112. Section 2 amended (Interpretation)

(1) Section 2(1), definition of ***authorized institution incorporated in Hong Kong***—

Repeal

"(Cap. 32)"

Substitute

"(28 of 2012), a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (28 of 2012)".

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

本局檔號 Our Ref.: CB4/PAC/R68
來函檔號 Your Ref.:

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29 May 2017

Legislative Council Complex
1 Legislative Council Road
Central, H.K.
Public Accounts Committee
(Attn. : Mr Anthony CHU)

Dear Mr Chu,

Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charities

To facilitate the consideration of the Public Accounts Committee of Chapter 1 of the Director of Audit's Report No. 68, I provide at the attached the required information in both English and Chinese. Softcopy of the required information will be sent to you separately.

Your sincerely,

(Ms Angelina Cheung)
for Secretary for Education

網址：http://www.edb.gov.hk 電子郵件：edbinfo@edb.gov.hk
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EDB 10

Information requested by Public Accounts Committee
in seriatim of questions raised in its letter of 22 May 2017 regarding
Chapter 1 of the Director of Audit's Report No. 68
Government's support and monitoring of charities

(a)(i) EDB has put in place proper mechanism to follow up with IMC schools that failed to submit their annual audited financial statements by the deadline. According to the established mechanism, EDB will liaise with the schools concerned to understand the reasons for the late submission and offer assistance where appropriate. The late submission by schools were mainly due to reasons beyond their control, such as high turnover of accounting staff, inexperienced staff, change in auditors and late submission of audited financial statements by auditors. Some schools however failed to accord due priority to ensure timely completion and submission of the audited financial statements

(a)(ii) For those IMC schools that failed to submit the annual audited financial statements by the submission deadline, EDB will issue reminders to the schools concerned within two months after the deadline and the responsible EDB regional officer will closely follow up with the schools. Bi-monthly emails will be issued to escalate the outstanding cases to senior EDB officers for taking follow-up action with the schools. If the outstanding audited financial statements have been overdue for more than ten months, EDB will approach the sponsoring body of the school to request immediate submission. Nevertheless, it should be noted that late submission beyond three months after deadline for the school years from 2010/11 to 2014/15 was on average of 5%. There are no outstanding annual audited financial statements for the said school years. We consider the established mechanism has been working effectively.

(b) To enhance transparency, aided IMC schools are advised to give a financial summary in their annual school reports which have to be uploaded onto school websites. Schools may also consider uploading their audited accounts onto their websites. Whilst some schools concur with EDB that the uploading of financial statistics onto their websites will enhance transparency, some do not consider it necessary. EDB will encourage more schools to adopt the good practice of uploading their financial

summaries/annual audited accounts onto their websites by updating relevant guidelines before the commencement of the 2017/18 school year and promulgate these messages in related seminars and briefings for IMC schools in January 2018.

(c) According to Section 40BB of the Education Ordinance, IMC schools are required to submit annual audited financial statements to the Permanent Secretary for Education at such time and in such manner as the Permanent Secretary may specify. The annual audited financial statements shall include an income and expenditure account and balance sheet, be authenticated by the signatures of the supervisor of the school and one other manger authorized by the IMC of the school to act for that purpose. In this connection, EDB issues circular memoranda annually to call for submission of annual audited financial statements by IMC schools within six / seven months after the close of the relevant school year. EDB will specify in the circular the detailed reporting requirements, specifically providing templates for IMC schools to report the financial position of each individual grant they received from EDB during the school year. EDB maintains contacts with the Hong Kong Institute of Certified Public Accountants which has issued a circular (to be updated from time to time) on reporting on the audit of schools, providing guidance to auditors in relation to audits of financial statements of aided and Direct Subsidy Scheme schools.

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26 May 2017

Mr Anthony CHU
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

Dear Mr Chu,

Public Accounts Committee

Consideration of Chapter 1 of the Director of Audit's Report No.68 (the Audit Report)

Government's support and monitoring of charities

As requested in your letters dated 22 May and 23 May 2017, I append the requested information below.

Letter dated 22 May 2017

(a), (b) & (d)

The Chinese Temples Ordinance (Cap. 153) (the Ordinance) was enacted in 1928 in view of the mismanagement of some Chinese temples and abuses of donated funds prevailing at that time. Taking account of the changes in social conditions over time, it may not be consistent with the current social conditions if Chinese temples are not allowed to operate unless they are registered under the Ordinance.

Home Affairs Bureau (HAB) and Chinese Temples Committee (CTC) have started reviewing the Ordinance to update the regulatory regime for Chinese temples in order to meet the present social conditions and needs while striking an appropriate balance between respecting

religious freedom and safeguarding public interests. Upon the initial review, we put forward a number of proposed amendments to the provisions of the Ordinance in 2015. These include replacing the mandatory registration requirement with a voluntary registration scheme and adding to the Ordinance a provision to provide the Secretary for Home Affairs (SHA) with power to participate in legal proceedings against mismanagement of Chinese temples and abuses of temples' funds. During March to May 2015, we conducted a public consultation on the proposed amendments. The public consultation document on the review on the Chinese Temples Ordinance is at **Annex 1**.

The results of the public consultation indicated that there was no clear consensus in the community on the major proposed amendments. In August 2016, CTC set up the Chinese Temples Ordinance Review Task Force to study the suggestions and directions of the proposed legislative amendments. The task force conducted its first meeting in November 2016. HAB and CTC will continue to take into account the views collected during the public consultation and explore the establishment of a reasonable and up-to-date regulatory regime for Chinese temples. We will report the result of consultation and further recommendations to the Panel on Home Affairs in due course.

Although further review of the Ordinance is needed, there are various ordinances in place to safeguard the citizens and public interests against abuses of funds or mismanagement of Chinese temples. If any temple contravenes the requirements of the relevant ordinances, the government departments concerned will follow up in accordance with the ordinance(s). For example, the Theft Ordinance (Cap. 210) covers offences of fraudulent or deceitful solicitation of money. If a case concerns contention over a temple involving charitable interests or significant public interests, the Secretary for Justice may, in accordance with the Trustee Ordinance (Cap. 29), perform his roles as the protector of public charities to safeguard public interests. Meanwhile, the permitted uses of the land on which Chinese temples are situated are subject to the requirements in the relevant land leases.

(c) CTC has established the Chinese Temples Fund and the General Chinese Charities Fund in accordance with the provisions in section 8(1) and section 9 of the Ordinance. Every year, CTC submits its annual reports on the administration of the Chinese Temples Fund and the General Chinese Charities Fund audited by the Director of Audit to the Legislative Council. The reports of the two funds for the year 2015-2016 (as at 31 March 2016) are at **Annex 2**.

There are five working groups under CTC, namely the Finance and Management Working Group, the Works Working Group, the Community Services Working Group, the Culture and Promotion Working Group and the Chinese Temples Ordinance Review Task Force. The matters discussed and decided by the working groups will be submitted to the general meeting of CTC, which is held three times a year and chaired by SHA, for approval or information. The terms of reference of the working groups are at **Annex 3**.

(e) According to the record of CTC, CTC delegated Organisation A to manage a temple in 1964. A delegation agreement between CTC and Organisation A was officially signed in 1996 for managing the temple in accordance with the provisions set by CTC. Upon the expiry of the delegation agreement in July 2006, the two parties could not reach a consensus on the terms of the agreement and CTC agreed to extend the original agreement for a period of three months to October 2006 pursuant to the contractual terms in the original agreement. The Secretariat of CTC subsequently issued four letters to Organisation A in September and December 2006, and June and October 2007 respectively, requesting organisation A to sign the agreement (the correspondence between the Secretariat and Organisation A are at **Annexes 4 to 10**), but received no reply from Organisation A. As the two parties could not reach a consensus on the terms of the agreement, the CTC Secretariat has been suspending the signing of the agreement.

CTC agreed that the existing arrangement is undesirable. Therefore, the Finance and Management Working Group of CTC took up the follow-up of the case of Organisation A again in August 2016. At the general meeting held in November 2016 and chaired by SHA, it was agreed that the case would be followed up by HAB and CTC Secretariat (the minutes of the meeting is at **Annex 11**). In January 2017, a meeting was held among HAB, CTC Secretariat and the District Office in whose district Organisation A is based. The three parties agreed that the District Office could first discuss with Organisation A the arrangement for signing a new agreement with CTC. In February 2017, the District Office made a request to Organisation A to sign a new agreement with CTC. The District Office reported the situation of meeting with Organisation A to the Secretariat through email in March 2017 (the email record is at **Annex 12**).

Although both the Finance and Management Working Group and CTC revisited the case of Organisation A in August and November 2016 respectively and contacted Organisation A through the District Office in early 2017, the CTC Secretariat did not contact Organisation A direct in the course of the above follow-up and discussion. The CTC Secretariat issued a letter on 18 May 2017 to Organisation A and

requested Organisation A to sign a new agreement with CTC as soon as possible, and stating that the Secretariat would consider other appropriate actions should there be no response received. Meanwhile, we are seeking legal advice on CTC's rights and possible actions under the Ordinance or other ordinances to work out follow-up plans. We will report progress to the Public Accounts Committee on the follow-up actions for the case within one year.

(f) The CTC Secretariat has been negotiating with Organisation B since November 2015 about signing a new delegation agreement. A copy of the new delegation agreement has been provided to Organisation B in April 2017 to explain the requirements of the terms. The CTC Secretariat will expedite negotiation with Organisation B to sign the agreement and handle the additional storeroom built by Organisation B in compliance with the laws and the requirements of the agreement.

(g) According to the annual statement of accounts for the year ended December 2015 submitted by Organisation D, the staff cost of Organisation D in 2015 was $301,361. According to the supplementary information provided by Organisation D, there were one full-time post and two part-time posts. The full-time staff is responsible for the administrative and accounting duties of Organisation D and the five temples it manages. The two part-time staff are responsible for cleansing Organisation D's office and the five temples, as well as providing some temple services.

In addition, as stated in the Audited Report, the staff messing expenditure of about $380,000 in the annual statement of accounts for the year ended December 2015 of Organisation D is higher than the amount of $137,000 incurred in 2014. Organisation D explained to the CTC Secretariat that the auditor had mistakenly included expenditure items unrelated to staff messing, such as cleansing expenses, offerings to deities, and repairs and maintenance expenses, in the "staff messing expenditure". In March 2017, Organisation D submitted the re-audited annual statement of accounts for the year ended December 2015 to the Secretariat.

In fact, only about $154,484 out of the expenditure item of $380,000 should be counted as "staff messing expenditure", which is 13% higher than the expenditure of $137,143 as shown in the 2014 audited accounts and is considered acceptable. The staff messing expenditure is actually meal and transport allowance provided to voluntary workers. The recipients of the allowance are not the employees of Organisation D mentioned above but voluntary workers who render services to the temples. Depending on the nature and duration of service provided by the voluntary workers, Organisation D would provide them with

meal and transport allowances. Three voluntary workers were providing long-term assistance to the temples; the services they provided included introducing the history of the temples to worshippers, providing fortune-telling service, selling joss sticks and cleansing the temples. Every year, Organisation D organises activities during traditional festivals, and around 40 to 50 temporary voluntary workers will be recruited on each occasion and be provided with meal and transport allowances.

A breakdown of the re-audited expenditure item of about $380,000 is tabulated below:

Item	**HK($)**
Staff messing expenses (i.e. meal and transport allowances for voluntary workers)	154,484.00
Cleansing expenses	138,188.70
Entertainment expenses	25,882.50
Expenses for temples supplies	19,180.70
Sundry expenses	12,442.50
Fruits, flowers and offerings	11,302.00
Printing and stationery	8,802.70
Repairs and maintenance	7,910.20
Total:	**378,193.30**

The Secretariat will examine more proactively the audited accounts of delegated temples in future. If necessary, the Secretariat would request the delegated organisations to submit supplementary information so as to strengthen the monitoring.

(h, i)

The recommendations by the Law Reform Commission (LRC) in its Report on Charities involve the duties of a number of Government bureaux and departments. Since many recommendations in the LRC Report carry significant implications on charities in Hong Kong in terms of their definition and operation, the Government needs to consider the recommendations thoroughly and carefully. HAB has been assigned to co-ordinate inputs from the relevant bureaux and departments in formulating responses to LRC's recommendations for the Government's overall consideration. Such co-ordination efforts have not been confined to collecting views of relevant bureaux and departments at meetings. HAB has also, through various communication channels, co-ordinated bureaux and departments to study the recommendations and explore possible way forward.

Upon release of the LRC Report in December 2013, HAB wrote to relevant bureaux and departments on 20 January 2014 inviting their consideration of LRC's recommendations. The recommendations of LRC involve the duties of at least 9 bureaux and 9 executive departments. These bureaux and departments, apart from HAB, include -

(1) 8 bureaux (i.e. Constitutional and Mainland Affairs Bureau, Education Bureau, Environment Bureau, Financial Services and the Treasury Bureau (FSTB), Food and Health Bureau, Labour and Welfare Bureau (LWB), Development Bureau and Security Bureau) and one department (i.e. Efficiency Unit) which HAB consulted in writing in January 2014 (i.e. the 9 bureaux/departments mentioned in para. 6.8(a) of Chapter 2 in the Audit Report);

(2) another 7 executive departments (i.e. Agriculture, Fisheries and Conservation Department; Companies Registry; Food and Environmental Hygiene Department (FEHD); Home Affairs Department (HAD); Hong Kong Police Force (HKPF); Inland Revenue Department (IRD) and Social Welfare Department (SWD)) which also provided comments to HAB; and

(3) Office of the Government Chief Information Officer (OGCIO) which is responsible for the operation of the "GovHK" website.

Upon receiving comments from the relevant bureaux and departments, HAB sought clarification on the replies from some of the bureaux and departments. On the basis of the responses from the relevant bureaux and departments, HAB made an initial assessment and considered that

the challenges in implementing LRC's recommendations would come mainly from the LRC's three major recommendations, namely providing a statutory definition of "charitable organisations"; establishing and maintaining a register of charitable organisations by a single Government bureau or department; and delegating the same bureau or department to be responsible for co-ordinating the work of regulating charitable organisations and charitable fund-raising activities which are currently under the purview of different bureaux and departments. The major challenges are summarised below:

(1) Challenges in providing a statutory definition of "charitable organisations" or "charitable purposes"

One of the major recommendations of LRC is that a statutory definition should be provided for "charitable organisations" or "charitable purposes" and such a definition should be extended to cover 14 heads. The Government should also establish a registration system for charitable organisations according to the definition proposed by the LRC.

However, clear objectives and purposes (such as for assessing whether an organisation has met the requirements for tax exemption and for regulating charitable fund-raising activities) are required for providing a statutory definition of "charitable organisations" or "charitable purposes" and for establishing a registration system. In general, it is difficult for the Government to introduce a new piece of legislation to provide merely a definition of "charitable purposes" or require charitable organisation to register, without formulating a clear regulatory framework or enforcement arrangements. Owing to the diversity of these regulatory purposes, it is not easy to provide a definition of "charitable organisations" or "charitable purposes" which is applicable to various regulatory purposes and frameworks. As a matter of fact, it was also found by LRC during its public consultation exercise that no consensus in the community had been reached on whether some of the purposes (e.g. promoting human rights, resolving conflicts or settling disputes) should be considered as charitable purposes. Therefore, the Government has to make a comprehensive assessment on different views expressed in the community when considering a statutory definition for charitable organisations.

(2) No consensus in the community on establishing and maintaining a register of charitable organisations by a single regulatory authority

Furthermore, as pointed out by LRC in its Report, the findings of the public consultation revealed that no consensus in the community has been reached on the establishment of a single authority (for example, to set up an independent charity commission) and the proposal of making an authority responsible for establishing a registration system, as well as co-ordinating the regulation of charitable organisations. Many charitable organisations even objected the proposal as they worried that the charity commission would be given too much power without proper check-and-balance. They also considered that the administration cost of the commission might be shifted to charitable organisations, thus increasing their financial burden. For the religious sector, they even worried that the registration system would involve scrutiny of religious organisations' charitable work, which might lead to interference with religious doctrines and activities and undermine the freedom of religion as enshrined in the Basic Law.

In view of the public views, LRC suggested that an independent charity commission should not be set up at this stage, while a register of charitable organisations be established and maintained by a single government department. However, the implementation of the registration system of charitable organisations without setting up a new independent regulatory authority is a highly complicated issue. We need to consider further whether the worries of charitable organisations over financial burden and religious autonomy can be removed if the registration and regulation matters are handled by a government department or an organisation instead of an independent charity commission. The Government needs to take into consideration the views and feedback of the public and various stakeholders, including various types of charitable organisations.

(3) A single bureau or department to co-ordinate the current work of bureaux and departments on the regulation of charitable organisations and charitable fund-raising activities

Under the existing Inland Revenue Ordinance (Cap. 112), there have been provisions providing tax exemption for charitable organisations. Moreover, various types of fund-raising activities organised in public places are regulated through a number of permits or licensing systems. LRC recommended that the current work of different bureaux and departments involving the regulation of charitable organisations and charitable fund-raising activities should be delegated to one bureau or department. As a matter of fact, the current

legislation, licensing and land allocation work relating to charitable organisations and fund-raising activities, as well as coverage of charitable purposes recommended by the LRC, involve the duties of at least 9 Government bureaux and 9 executive departments[1]. Substantial integration work on, among other things, policy co-ordination, resources allocation and even re-organisation will be required for the bureaux and departments to consolidate all the relevant legislation and powers before a single policy bureau or department could be designated to administer and carry out the work.

On 11 August 2015, the HAB convened an inter-departmental meeting with eight other bureaux and departments (including FSTB, LWB, EU, FEHD, HAD, HKPF, IRD and SWD), whose scopes of work under the current legislation and statute involve the monitoring of charitable organisations or charitable fund-raising activities, to discuss the approach to and the framework for regulation as proposed in the LRC Report. Given the complexity of the issue, the bureaux and departments concerned agreed that the Government should consider carefully the feasibility and implications of those recommendations from policy and practical implementation perspectives, as well as responses from relevant stakeholders.

Apart from the above, the relevant bureaux and departments noted that one of the key rationales behind the recommendations made by the LRC was to enhance the transparency of charitable organisations, especially those raising funds from the public, so as to protect the interests of donors. At present, the Government's regulation on some charitable fund-raising activities is incidental to the legislation that controls nuisances committed in public places, gambling and hawking. Therefore, the relevant bureaux and departments agreed that departments currently responsible for issuance of permits or licenses relating to charitable fund-raising activities, i.e. FEHD, HAD and SWD, could consider how to enhance the regulation of charitable fund-raising activities under the existing regime.

After conducting further data collection and research on, among others, the background leading to the introduction of the legislation relating to issuance of permits or licences of charitable fund-raising activities and the present regulatory

[1] Relevant bureaux and executive departments include Constitutional and Mainland Affairs Bureau; Education Bureau; Environment Bureau; FSTB; Food and Health Bureau; HAB; LWB; Development Bureau; Security Bureau; Agriculture, Fisheries and Conservation Department; Companies Registry; EU; FEHD; IRD; HAD; HKPF; OGCIO and SWD.

arrangements for the licensing system, HAB convened another cross-departmental meeting on 4 October 2016 to study with FEHD, HAD and SWD the formulation of short-term viable administrative measures, with a view to enhancing the transparency of charitable fund-raising activities. Our consideration mainly follows the three broad directions below:

(1) The basic direction for implementing these measures is to enhance the transparency of charitable organisations and charitable fund-raising activities. For example, we are exploring the feasibility of upgrading the functions of the one-stop finder for charitable fund-raising activities currently set up in "GovHK" and enhancing the service of the existing 1823 Government Hotline to facilitate the search by the public for information on approved charitable fund-raising activities.

(2) To enhance the accountability of charitable fund-raising activities, we will consider measures on safeguarding the right to know of the public, such as to explore the feasibility of uploading financial reports or income statement relating to approved fund-raising activities, or providing relevant hyperlink, upon completion of those activities onto "GovHK" or departmental website for public scrutiny.

(3) The existing legislation related to charitable fund-raising activities mainly regulates the collection of donation or fund-raising activities involving on-street selling in public places, and fundraising activities through conduction of lottery. Though there is no legislation regulating other form of fund-raising activities, the Reference Guide on Best Practices for Charitable Fund-raising Activities (the Reference Guide) issued by the SWD provides guidance in respect of donors' right, best practices of fund-raising activities and financial accountability of charitable organisations. This general guidance is applicable to various types of fund-raising activities. We are reviewing the Reference Guide and assess if the Guide can be made applicable to more different types of fund-raising activities, including the three types of activities that licences and permits are required, as well as other new modes of fund-raising, such as. face-to-face solicitation of regular donations. If the assessment shows that the set of guidance can be applicable, or revised so as to be applicable, to more different types of fund-raising activities, we will encourage charitable organisations to organise activities with reference to the guide while the public may refer to the best practices for fund-raising activities as specified in the guide to assess more easily the

performance of charitable organisations in those activities and to have a better understanding of the rights and interests of donors.

The relevant bureaux and departments are exploring along the above three broad directions, including the relevant administrative considerations such as allocation of resources, co-ordination of licensing requirements and legal considerations relating to the disclosure of more information on fund-raising activities. As for enhancing the one-stop finder and the 1823 Government Hotline, EU and OGCIO initially consider that the proposals should be technically feasible. We will convene another co-ordination meeting in June/July to finalise the feasibility of the above measures and the scope of information to be disclosed as well as to further study the technical considerations involved and the detailed operational arrangements.

Letter dated 23 May 2017

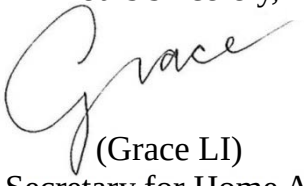
(a) The paper on issues concerning the land of Chinese temples (cases noted by the Secretariat as at 31 July 2016) (Ref. No.: Enclosure 6 to FMWG/25.8.2016) is at **Annex 13**.

(b) The draft delegation agreement between the CTC and Organisation A (Ref. No.: (46) in CTC 5/631/51 III) is at **Annex 14**.

(c) The letter issued by the CTC to Organisation A on 29 October 2007 (Ref. No.: (68) in CTC 5/631/51 III) is at **Annex 9**.

The Annexes are available in Chinese only.

Yours sincerely,



(Grace LI)
for Secretary for Home Affairs

c.c. Secretary for Financial Services and the Treasury
Commissioner of Inland Revenue
Director of Lands
Director of Social Welfare
Registrar of Companies
Commissioner of Police
Secretary for Education
Director of Audit

檢討《華人廟宇條例》
公眾諮詢文件

目的

本文件簡介民政事務局及華人廟宇委員會(委員會)就《華人廟宇條例》(《條例》)(第 153 章)進行檢討的結果及修訂建議。

背景

2. 《條例》於 1928 年訂立，《條例》背景資料載於**附件一**。當年鑑於偽冒宗教組織肆行詐騙的歪風熾熱，政府遂制訂《條例》以遏止並預防華人廟宇管理失當及濫用款項。《條例》部分條文在現今社會看來已不合時宜(見下文第 4 段)。政府亦考慮到現時已有多項法例就涉及廟宇的詐騙或濫用款項提供保障和補救措施，因此，政府和委員會經全面檢討《條例》後，提出多項修訂，以期讓《條例》能更適切現今社會的情況和需要。

建議

3. 經全面檢討，我們建議對《條例》作下列修訂：

(a) 剔除《條例》中對華人廟宇不合時宜的限制，包括有關所有華人廟宇必須註冊、讓委員會全權控制所有華人廟宇的收入和財產、要求管有或控制任何華人廟宇財產的人士將該等財產轉予民政事務局局長法團(局長法團)的條文；

(b) 為華人廟宇設立一個更合理的規管制度，包括：
(i) 以自願註冊計劃取代強制註冊規定；以及
(ii) 賦予民政事務局局長權力參與任何涉及華人廟宇管理及濫用廟宇基金的法律訴訟，以保障公眾利益；

(c) 將委員會成立為法人團體，並在法例中訂明其權力和職能，及優化其運作程序；以及

(d) 把現時的華人廟宇基金和華人慈善基金合併為單一的華人廟宇慈善基金，由委員會繼續管理，並擴大其資助範圍，以滿足社會對有關服務的需要。

理據

剔除對華人廟宇不合時宜的限制

4. 現時《條例》規定所有華人廟宇均須設於非用作其他用途的自成一體及獨立建築物內（第 4 條）；《條例》亦要求所有華人廟宇均須按《條例》向民政事務局局長註冊（第 5 條），任何人不得參與不合法華人廟宇的設立（第 6 條）。《條例》又規定「所有華人廟宇的收入、基金、投資及財產須受到委員會全權控制」（第 7(1)條）；委員會有權要求管有或控制任何華人廟宇財產的人士把該等財產移轉予局長法團（第 7(6)條）；委員會有權關閉廢棄不用的廟宇（第 12 條）；以及民政事務局局長可授權任何人士進入和搜查任何可能已違反《條例》的華人廟宇（第 14 條）。任何人士倘違反上述的《條例》條文，一經循簡易程序定罪，可被罰款 1,000 元。詳情請參閱附件一。

5. 與上世紀二十年代的社會發展情況相比，現今市民對虛假宗教場所有關風險的認知較當年為高。同時，現時已有多項法例，就涉及機構的詐騙、不當行為和濫用款項，以及可能引致的環境及安全問題，提供保障和補救措施[1]，而這些條文對各華人廟宇以至其他宗教團體的運作同樣適用。

6. 過往有不少例子，當就華人廟宇的產權和收入存有爭議

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[1] 例如《盜竊罪條例》（第 210 章）已有條文針對以欺詐或欺騙手段索取金錢。倘屬廟宇爭訟案並涉及慈善利益或重大的公眾利益，律政司司長可履行其作為公共慈善事務守護人和「法庭之友」的職責，以維護公眾利益。另一方面，營辦華人廟宇所造成的環境污染及結構安全問題，亦受多項污染管制及樓宇／防火安全的法例監管；至於核准土地用途則受政府土地契約規管。有關華人廟宇提供的骨灰龕設施，亦會在《私營骨灰安置所條例草案》在立法會通過成為法例後受到規管。

時，相關團體或人士均選擇以法律程序處理有關爭議(如按附註 1 所列的條例進行訴訟)，並尊重法庭的判決。若委員會以上文第 4 段現時《條例》賦予的權力處理或跟進有關爭議(如要求華人廟宇將財產轉移予局長法團)，則可能會引起市民對保障產權的關注。在現時已有其他法例及法律程序保障的情況下，若試圖執行《條例》中必須由政府委任的委員會全權控制各華人廟宇財產的相關條文(見上文第 4 段) ，將缺乏合理理據支持，有關條文變得不合時宜。

7. 有鑑於此，我們建議剔除上文第 4 段所述的條文(即《條例》第 4，5，6，7(1)，7(6)-(11)，12 及 14 條)，並着眼如何透過其他措施，及協助市民循現行其他法例(見附註 1)以保障個人及公眾利益。

以自願註冊計劃取代強制註冊規定

8. 在建議取消《條例》中強制華人廟宇必須向民政事務局局長註冊的規定的同時，委員會將推行華人廟宇自願註冊制度，申請團體須向委員會提交廟宇成立目的、供奉神祇、主要活動、擁有人及管理人，以及由公眾募捐所得的資產及捐款的用途等資料。所有獲委員會註冊的廟宇將會上載於委員會網站，而註冊廟宇在上述幾方面的主要資料亦會予以公開，讓市民查閱及監察。如提交的資料往後有重大更改，已註冊的廟宇須向委員會通報。委員會亦會要求註冊廟宇定期更新資料，以維持其註冊資格。此外，委員會會對註冊廟宇申報的資料作抽樣稽查。若發現有虛報或隱瞞資料的情況，可考慮撤銷註冊資格。

9. 我們認為上述做法有以下的優點:

(a) **對公眾而言**: 這些資料可供公眾在考慮向華人廟宇捐款時提供有用的參考；同時，倘公眾懷疑廟宇濫用涉及公眾利益的財產(特別是公眾捐款)，這些資料有助市民、警方和民政事務局局長(見下文第 11 段)按法律途徑處理有關問題。提高透明度亦可配合現行其他法律保障，讓公眾及政府透過現行的法律訴訟程序處理產權爭議，保障個人及公眾的權益。

b) **對華人廟宇而言：**擬議註冊制度屬自願性質，着眼於協助提升廟宇管理的透明度，包括對公眾捐款的運用，這不會對宗教自由構成影響。鑑於近年社會對提升慈善籌款透明度的關注，華人廟宇可透過註冊計劃提升市民的信心。此外，委員會每年一直有透過下文第 14 段提及的基金作出捐款，供華人廟宇申請，就廟宇建築及文物進行維修或傳統儀式。委員會處理申請時會作出全面考慮，包括廟宇的歷史價值、舉辦相關活動的經驗、管理公眾捐款方面是否有良好紀錄等等。華人廟宇因參與擬議自願註冊計劃提交並定期更新有關資料，可令委員會更了解廟宇上述各方面的情況，有助委員會按現行機制考慮其撥款申請。

我們會與相關的宗教聯會聯繫並講解自願註冊制度的優點及安排，以爭取他們的支持及鼓勵與其會員廟宇參與計劃，透過計劃提升廟宇管理透明度。

賦予民政事務局局長權力參與任何涉及華人廟宇管理及濫用公眾資產的法律訴訟

10. 根據現行的法律制度，濫用或盜用廟宇基金可能構成刑事罪行。如經警方調查後取得充分證據，律政司可提出檢控。此外，受影響一方亦可從民事訴訟處理有關爭議。

11. 為加強保障公眾利益，我們建議在《條例》加入條文，賦予民政事務局局長權力，在有需要及有足夠理據時可在華人廟宇相關訴訟中成為與訟一方，以維護廣大公眾的利益。例如若個別人士就廟宇控制的財產或可能有人不當使用公眾資產有爭議時，在關乎公眾利益且具充分理據和合理證據時，民政事務局局長可選擇成為有關民事訴訟中與訟的一方，以保護相關公眾利益。我們相信，賦予民政事務局局長權力，使其可在有需要和具充分理據時採取行動以維護公眾利益，將能在上文提及的現有法例及律政司司長作為公共慈善事務守護人的角色外，提供額外一重保障。此舉與自願註冊制度一樣，應可加強現時保障公眾利益的制度。

使委員會成為法人團體，並在《條例》訂明其權力及職能，優化其運作程序

12. 在上述建議下，委員會除推行擬議的自願註冊制度外，亦會繼續行使其他現有的職能。我們建議透過《條例》使委員會成為法人團體，並在《條例》訂明法定權力及其職能，包括管理由局長法團擁有或作為受託人身分持有的華人廟宇(現時共有 63 間)及其基金、就加強華人廟宇的管理提供意見與支援(包括管理任何華人廟宇的註冊制度)、管理擬議設立的華人廟宇慈善基金等。此外，我們亦建議修訂《條例》把行政長官委任的委員數目，由現時六人增至十人，以及其他修訂以優化其運作(詳情見附件二)。

把華人廟宇基金和華人慈善基金合併為華人廟宇慈善基金，並擴大其資助範圍，以滿足社會的服務需要

13. 為使管理更有效率，我們建議把華人廟宇基金和華人慈善基金合併為單一基金(兩個基金的詳情見附件二)，即華人廟宇慈善基金，以增加使用基金的彈性，合併後的基金將由委員會繼續管理。現時有關帳目及帳目報表必須經核數師審計後提交立法會的規定會予保留，以確保基金的運作得到適當監管和具透明度。

14. 上述《條例》第 9(1)(b)訂明，華人慈善基金可用於「香港的華人慈善活動」。成立華人慈善基金的一個主要目的是支持香港的慈善工作，而為了配合促進社會共融和機會平等的主張，我們認為應移除有關基金只用於「華人慈善活動」的限制，使委員會可支持非只有華人受惠的慈善活動。因此，我們建議合併後的華人廟宇慈善基金可用於任何香港的慈善活動，即不論是華人或非華人慈善活動，均可受惠。此外，為使委員會善用擬設立的華人廟宇慈善基金，我們建議擴大基金的職能，由現時「進行傳統儀式」(《條例》第 8(1)條)，擴大至「為華人廟宇進行和推廣傳統儀式及文化」，以配合委員會將加強支援學校和其他機構推廣傳統文化的工作。

徵詢意見

15. 民政事務局及華人廟宇委員會就上文提及的擬議修訂進行為期兩個月的公眾諮詢，諮詢期將於 5 月 12 日完結。民政事務局及華人廟宇委員會在考慮公眾提交的意見後，會草擬詳細建議及跟進相關法律草擬工作，以期在下屆立法會會期內向立法會提交《條例》修訂草案。

16. 現誠邀公眾就本諮詢文件所載述事宜和建議發表意見，以及就如何改進《條例》的其他條文提出其他建議。有關意見可於 2015 年 5 月 12 日或之前透過以下其中一項途徑向民政事務局和華人廟宇委員會提交書面意見：

郵寄地址： 香港灣仔皇后大道東 213 號
胡忠大廈 34 樓
華人廟宇委員會
傳真號碼： 3718 6800
電郵地址： consultation_cto@ctc.org.hk
網址 ： http://www.ctc.org.hk/consultation

民政事務局
華人廟宇委員會
2015 年 3 月

Note by Clerk, PAC:** **Chinese version only.

華人廟宇條例簡介

現有《條例》的主要條文

有關規管廟宇條文

根據《條例》的定義，「華人廟宇」包括但不限於「所有廟、寺、庵、觀及道院」（第 2 條）[1]。有關規管華人廟宇的條文，包括：任何華人廟宇均須設於自成一體及獨立的建築物內，而建築物須是只為該廟宇的目的而興建和使用（第 4(1)條），但委員會可豁免有關規限（第 4(2)條）。

2. 所有華人廟宇必須向民政事務局局長註冊（第 5 條），任何人不得參與設立或維持在違反《條例》的條文下設立或維持的華人廟宇（第 6 條）。「所有華人廟宇的收入、基金、投資及財產」須受委員會「全權控制」（第 7(1)條）。為達致有效控制，委員會可要求管有或控制任何華人廟宇財產的人，「將該等財產移轉或轉讓予局長法團」（第 7(6)條）。委員會亦可在完成聽取意見和發出通知書的既定程序後，關閉廢棄不用的廟宇（第 12 條）。任何人違反《條例》，一經循簡易程序定罪，可處罰款港幣 1,000 元。

3. 此外，根據《條例》，任何獲民政事務局局長書面授權的人士如有理由懷疑有人違反《條例》條文而曾經設立或正在設立或維持位於某地方或在某地方內的廟宇，或有理由懷疑有人正在或曾經於某註冊廟宇內或就某註冊廟宇違反《條例》條文，可進入和搜查該地方或該廟宇並可檢取任何簿冊或文件以及任何看似是違反《條例》的證據的物品（第 14 條）。

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[1] 根據《條例》，「華人廟宇」的定義大致是指：

(a) 所有廟、寺、庵、觀及道院；及

(b) 有以下活動進行的所有地方：

(i) 依照廟、寺、觀、道院或庵所信奉的宗教原則供奉神明、與靈界溝通或占卜，或擬進行該等活動；及

(ii) 為供奉神明、與靈界溝通、占卜或類似目的，或作為提供香燭的回報，或因其他理由，而向任何公眾人士收取費用、付款或任何種類的報酬或接受任何公眾人士所付的費用、付款或任何種類報酬。

有關委員會及其管轄基金的條文

4. 根據《條例》第 7(1)及(2)條成立的委員會，由民政事務局局長出任主席，並由東華三院董事局的當屆主席（或獲提名的一名董事）和六名由行政長官委任的非官方委員組成。現時，委員會的主要職責是管理局長法團擁有的廟宇（即任何設於歸屬局長法團並以局長法團為擁有人的土地之上的廟宇）及這些廟宇所得的收入。

5. 現時香港約有 600 間華人廟宇，當中約 350 間已根據《條例》向委員會註冊。已註冊的廟宇大致可分為以下三類：

(a) 由委員會直接管理的廟宇

現時由委員會直接管理的廟宇共有 25 間（例如沙田車公廟、大坑蓮花宮、九龍聯合道侯王廟等），這些廟宇的財產歸屬局長法團名下，而收入則撥歸華人廟宇基金。委員會不時將華人廟宇基金的部分累積盈餘（即支付傳統儀式和維修廟宇建築物費用後的餘款）轉撥至華人慈善基金。

(b) 由委員會委託不同機構管理的廟宇

委員會行使《條例》第 11 條賦予的權力，轉授不同機構管理 19 間廟宇（所有廟宇均設於局長法團持有的土地之上）。有關機構包括東華三院、嗇色園（管理黃大仙廟的慈善機構）及一些街坊福利會。委託機構可根據相關授權協議／合約訂明的方式，保管和運用有關廟宇的收入。

(c) 其他註冊廟宇

其餘的註冊廟宇（約 300 間）由其他機構或個別人士如宗教團體（例如寶蓮寺）和廟宇的司祝管理。這些廟宇大部分由個別機構擁有，但當中 19 間廟宇屬局長法團的物業。這些廟宇的收入由各廟宇自行管理。

***Note by Clerk, PAC:** Chinese version only.*

附件二

修訂《條例》的其他建議

委員會成為法人團體，並在《條例》訂明其權力及職能

為給予委員會更多運作自主權和更大權力管理有關基金和投資，我們建議透過《條例》使委員會成為法人團體，並向其授予所需的權力和職能，包括：

(a) 管理由局長法團擁有或作為受託人身分持有的華人廟宇，包括廟宇的基金。委員會一直根據局長法團所授權力管理（或委託代理人管理）這些廟宇。我們建議在《條例》賦予委員會有關的法定權力，並訂明相關職能。具體而言，委員會（或獲授權人士）會代表局長法團就其擁有的廟宇收取收入並存入委員會的基金內、支付委員會的營運費用、維修轄下的廟宇和進行適當投資等；

(b) 在有需要和具充分理據的情況下，獲取土地及物業、進行投資活動、建造建築物或物業等；

(c) 就加強華人廟宇的管理提供意見與支援，包括管理任何華人廟宇的註冊制度；並就民政事務局局長是否有需要為維護公眾利益而行使其權力以參與對付濫用廟宇基金及／或管理華人廟宇不善的行動，提供意見；以及

(d) 管理擬議設立的華人廟宇慈善基金。

一般而言，委員會將具有法律實體身分，可參與任何符合《條例》所指明職能的行動。

2. 此外，我們建議更新有關委員會組成、工作程序及相關事宜的條文規定。現時根據《條例》，委員會只能在會議上作出決定，以致在緊急情況下（例如市場狀況轉變而須即

時買賣股票等），委員會難以及時作出決定。因此，我們建議容許委員會：(i)利用傳閱文件的方式作出決定；(ii)把權力轉授轄下小組；以及(iii)制訂會議常規，以規管其會議程序或其他指明事宜。

3. 我們建議把行政長官委任的委員數目，由現時六人增至十人（第 7(2)(d)條），以確保委員會能夠有比例均衡的專業人士和宗教代表加入。為了在執行委員會的職能時更為靈活，我們建議如民政事務局局長因任何理由未能親自主持會議，局長可授權其代表擔當主席一職。

<u>把華人廟宇基金和華人慈善基金合併為單一的華人廟宇慈善基金，並擴大其資助範圍，以滿足社會的服務需要</u>

4. 我們建議將華人廟宇基金[1]和華人慈善基金[2]合併，即華人廟宇慈善基金，使管理更有效率及增加使用基金的彈性，合併後的基金將由委員會管理。現時有關帳目及帳目報表必須經核數師審計後提交立法會的規定會予保留，以確保基金的運作得到適當監管和具透明度。

5. 我們認為應移除有關基金用於「華人慈善活動」的限制，使委員會可支持非華人受惠的慈善活動。因此，我們建議合併後的華人廟宇慈善基金可用於任何香港的慈善活動，即不論是華人或非華人慈善活動，均可受惠。此外，為使委員會善用合併後的華人廟宇慈善基金，我們建議擴大基金的資助範圍，由現時「進行傳統儀式」(《條例》第 8(1)條），擴大至「為華人廟宇進行和推廣傳統儀式及文化」，以配合委員會將加強支援學校及其他機構推廣傳統文化的工作。

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[1] 華人廟宇基金是根據《條例》下的附屬法例《華人廟宇基金規例》設立的。基金由所有華人廟宇（不包括《條例》附表指明的華人廟宇）的收入和捐贈予該等華人廟宇的捐款及自願捐助組成。根據《條例》第 8 條，所有華人廟宇的收入須首先運用於進行傳統儀式，以及廟宇建築物及其財產的維修；盈餘則可撥入《條例》第 9 條提述的華人慈善基金。

[2] 華人慈善基金是根據《華人慈善基金指示》（屬於《條例》下的附屬法例）設立的，可用於支付委員會聘用所需員工的薪酬，以及委員會根據《條例》行使權力和在香港進行華人慈善活動而招致的其他開支。

<u>Note by Clerk, PAC</u>:** **Chinese version only.

華人廟宇委員會

華人廟宇基金
截至二零一六年三月三十一日年度內管理報告

華人廟宇基金(基金)是華人廟宇委員會(委員會)按照《華人廟宇條例》(第 153 章)第 8(1)條的規定而設立，設立基金的目的在於使廟宇的傳統儀式得以妥為遵行，以及使廟宇建築物和財產得到完善的保養。按照同一條例第 8(2)條的規定，委員會有酌情權把基金的盈餘撥入華人慈善基金，供本港華人慈善活動之用。

二. 基金由委員會負責管理。應屆委員名單見附錄一。基金的秘書處服務及帳務工作由信託基金及廟宇聯合秘書處負責，而審計署署長則負責審核基金的帳目。

三. 在報告期內，直轄及託管廟宇共帶來 3,839 萬港元的盈餘，較二零一四至一五年度的收入盈餘 3,680 萬港元增加 159 萬港元。

四. 在報告期內，基金用於直轄及託管廟宇的維修費用為 2,143 萬元。自二零一五年七月展開的大澳楊侯古廟及長洲天后廟維修工程，已於二零一六年一月完成。

五. 截至二零一六年三月三十一日止的經審核的財務報表載於附錄二。

劉江華
民政事務局局長
華人廟宇委員會主席
二零一六年十二月十三日

***Note by Clerk, PAC:** Chinese version only.*

華人廟宇委員會成員名單
(二零一五年四月一日至二零一六年三月三十一日)

1.	民政事務局局長	(主席)
	曾德成先生, GBS, JP	(任期至 2015 年 7 月 20 日止)
	劉江華先生, JP	(任期由 2015 年 7 月 21 日起)
2.	東華三院主席 何超蕸女士	
3.	湯棋漪女士	
4.	郭岳忠先生	
5.	葉長清先生	
6.	盧維幹先生	
7.	馬清煜先生, SBS, JP	(任期至 2015 年 7 月 31 日止)
	王聯章先生, MH	(任期由 2015 年 8 月 1 日起)
8.	楊春棠先生	(任期至 2015 年 11 月 19 日止)
	李家祥博士	(任期由 2015 年 12 月 7 日起)

***Note by Clerk, PAC:** Chinese version only.*

附錄二

華人廟宇基金

截至 2016 年 3 月 31 日止年度的財務報表

審計署署長報告

香港特別行政區政府
審 計 署

獨立審計報告

致立法會

茲證明我已審計列載於第3至15頁華人廟宇基金的財務報表，該等財務報表包括於2016年3月31日的資產負債表與截至該日止年度的收支帳目、全面收益表、權益變動表和現金流量表，以及主要會計政策概要及其他附註解釋資料。

民政事務局局長就財務報表須承擔的責任

民政事務局局長須負責按照《華人廟宇基金規例》(第153章，附屬法例A)第10(1)條及《香港財務報告準則》擬備真實而公平的財務報表，及落實其認為必要的內部控制，以使財務報表不存有由於欺詐或錯誤而導致的重大錯誤陳述。

審計師的責任

我的責任是根據我的審計對該等財務報表作出意見。我已按照《華人廟宇基金規例》第10(2)條及審計署的審計準則進行審計。這些準則要求我遵守道德規範，並規劃及執行審計，以合理確定財務報表是否不存有任何重大錯誤陳述。

審計涉及執行程序以獲取有關財務報表所載金額及披露資料的審計憑證。所選定的程序取決於審計師的判斷，包括評估由於欺詐或錯誤而導致財務報表存有重大錯誤陳述的風險。在評估該等風險時，審計師考慮與該基金擬備真實而公平地列報財務報表有關的內部控制，以設計適當的審計程序，但並非為對基金的內部控制的效能發表意見。審計亦包括評價民政事務局局長所採用的會計政策的合適性及所作出的會計估計的合理性，以及評價財務

報表的整體列報方式。

我相信，我所獲得的審計憑證是充足和適當地為我的審計意見提供基礎。

意見

我認為，該等財務報表已按照《香港財務報告準則》真實而公平地反映華人廟宇基金於2016年3月31日的財務狀況及截至該日止年度的財務表現及現金流量，並已按照《華人廟宇基金規例》第10(1)條妥為擬備。

審計署署長
(審計署首席審計師張永安代行)

2016年12月13日

審計署
香港灣仔
告士打道7號
入境事務大樓26樓

華人廟宇基金
二零一六年三月三十一日資產負債表

	附註	2016 港元	2015 港元
非流動資產			
可供出售金融資產	3	473,751,253	556,868,762
流動資產			
公用事業按金		208,300	208,300
參神用品存貨		20,261	11,022
應收帳項	4	888,780	1,101,941
預支款項		41,010	-
現金及等同現金項目	5	304,345,239	290,277,978
		305,503,590	291,599,241
流動負債			
承建商保留款項		(1,761,295)	(1,299,025)
廟宇司祝按金及其他按金		(4,572,071)	(5,617,779)
預收款項		(9,530,788)	(7,176,912)
應付帳項	6	(7,338,110)	(7,740,761)
律師費撥備		(1,485,298)	(1,485,298)
		(24,687,562)	(23,319,775)
流動資產淨額		280,816,028	268,279,466
		754,567,281	825,148,228
累積基金		518,037,951	488,954,309
維修域多利道道慈佛社儲備		1,321,867	1,321,867
維修廟宇儲備		190,960,350	207,507,430
投資價值重估儲備		44,247,113	127,364,622
		754,567,281	825,148,228

隨附附註 1 至16為本財務報表的一部分。

劉江華
民政事務局局長
華人廟宇委員會主席
二零一六年十二月十三日

華人廟宇基金

截至二零一六年三月三十一日止年度收支帳目

	附註	2016 港元	2015 港元
收入			
直轄及託管廟宇年度盈餘	7	37,729,207	36,158,146
東華三院管轄廟宇盈餘	8	5,132,098	3,729,442
出售參神用品收入	9	662,669	644,335
捐款		30,590	9,061
股息		18,777,664	18,431,171
利息	10	2,743,878	3,809,382
出售可供出售金融資產的收益		-	200,424
兌換收益		-	4,349
其他收入		3,600	58,283
		65,079,706	63,044,593
支出			
直轄及託管廟宇維修費用		(21,431,527)	(32,122,209)
資助賀誕及維修廟宇		(1,542,783)	(549,421)
廟會虧損	11	(54,865)	(2,545,517)
轉往華人慈善基金款項		(25,132,098)	(23,729,442)
發放履約獎賞款項		(2,455,670)	(5,286)
律師費用		(50,000)	(50,000)
雜項		(1,005,114)	(520,783)
兌換虧損		(871,087)	-
		(52,543,144)	(59,522,658)
年度盈餘		12,536,562	3,521,935

隨附附註 1 至16為本財務報表的一部分。

華人廟宇基金

截至二零一六年三月三十一日止年度全面收益表

	2016 港元	2015 港元
年度盈餘	12,536,562	3,521,935
其他全面收益		
將來或會重新分類為盈餘或虧損的項目：		
可供出售金融資產		
重估公平值變動	(83,117,509)	96,350,128
年度全面(虧損)/收益總額	(70,580,947)	99,872,063

隨附附註 1 至16為本財務報表的一部分。

華人廟宇基金

截至二零一六年三月三十一日止年度權益變動表

	累積基金 港元	維修域多利道 道慈佛社儲備 港元	維修廟宇 儲備 港元	投資價值 重估儲備 港元	總額 港元
2014 年 4 月 1 日結餘	480,138,915	1,321,867	212,800,889	31,014,494	725,276,165
由維修廟宇儲備轉入	5,293,459	-	(5,293,459)	-	-
2014-15 年全面收益總額	3,521,935	-	-	96,350,128	99,872,063
2015 年 3 月 31 日結餘	488,954,309	1,321,867	207,507,430	127,364,622	825,148,228
由維修廟宇儲備轉入	16,547,080	-	(16,547,080)	-	-
2015-16 年全面虧損總額	12,536,562	-	-	(83,117,509)	(70,580,947)
2016 年 3 月 31 日結餘	518,037,951	1,321,867	190,960,350	44,247,113	754,567,281

隨附附註 1 至16為本財務報表的一部分。

華人廟宇基金
截至二零一六年三月三十一日止年度現金流量表

	附註	2016 港元	2015 港元
營運活動現金流量			
年度盈餘		12,536,562	3,521,935
調整：			
股息		(18,777,664)	(18,431,171)
利息		(2,743,878)	(3,809,382)
由東華三院管轄廟宇轉來的盈餘		(5,132,098)	(3,729,442)
轉往華人慈善基金款項		5,132,098	3,729,442
兌換虧損/(收益)		871,087	(4,349)
出售可供出售金融資產的收益		-	(200,424)
公用事業按金增加		-	(2,000)
參神用品存貨(增加)/減少		(9,239)	18,338
應收帳項減少		201,586	178,348
預支款項增加		(41,010)	-
承建商保留款項增加/(減少)		462,270	(465,606)
廟宇司祝按金及其他按金減少		(1,045,708)	(1,226,670)
預收款項增加/(減少)		2,353,876	(1,466,821)
應付帳項(減少)/增加		(402,651)	1,359,607
營運活動所用現金淨額		(6,594,769)	(20,528,195)
投資活動現金流量			
出售可供出售金融資產所收款項		-	200,424
已收銀行利息		2,763,352	3,879,285
已收股息		18,769,683	18,736,479
投資活動所得現金淨額		21,533,035	22,816,188
現金及等同現金項目增加淨額		14,938,266	2,287,993
年初現金及等同現金項目的結餘		290,277,978	287,985,548
匯率變動對現金及等同現金項目的影響		(871,005)	4,437
年終現金及等同現金項目的結餘	5	304,345,239	290,277,978

隨附附註 1 至16為本財務報表的一部分。

華人廟宇基金

財務報表附註

1. 概況

華人廟宇基金(基金)是根據《華人廟宇條例》(第 153 章)第 8(1)條的規定，沿襲廟宇傳統的儀式，並妥善維修廟宇建築物及其財產。根據《華人廟宇條例》第 8(2)條的規定，華人廟宇委員會(委員會)有權把盈餘撥入華人慈善基金，供本港華人慈善活動之用。

基金主要業務地址為香港灣仔皇后大道東 213 號胡忠大廈 34 樓。

2. 主要會計政策

(a) 符合準則聲明

財務報表根據《華人廟宇基金規例》(第 153 章，附屬法例 A)第 10(1)條及香港會計師公會頒佈之《香港財務報告準則》的所有適用規定擬備。

(b) 擬備基準

財務報表是按應計記帳方式及歷史成本法擬備，惟可供出售金融資產則除外，如下文所載之會計政策附註 2(d)所解釋，可供出售金融資產按公平值計量。

擬備符合《香港財務報告準則》的財務報表需要管理層作出判斷、估計及假設，而有關判斷、估計及假設會影響會計政策的採納及資產、負債、收入及支出的呈報總額。此等估計及相關的假設是根據以往經驗及其他在有關情況下認為合適的因素而制定。在欠缺其他現成數據的情況下，則採用此等估計及假設作為判斷有關資產及負債的帳面值的基礎，估計結果與實際價值或有不同。

此等估計及相關假設會被不斷檢討修訂。如修訂只影響本會計期，會在作出修訂的期內確認，但如影響本期及未來的會計期，有關修訂便會在該期及未來期間內確認。

基金在採納會計政策方面並不涉及任何關鍵的會計判斷。無論現時對未來作出的假設，或在結算日估計過程中所存在的不明朗因素，皆不足以構成重大風險，導致資產和負債的帳面金額在來年大幅修訂。

(c) 採納新訂/經修訂《香港財務報告準則》

基金已採納新訂/經修訂的香港財務報告準則，該等準則適用於本基金並於本會計期生效。

基金並沒有提早採用於本財政年度未生效之修訂、新準則及詮釋。基金正就該等修訂、新準則及詮釋在首次採用期間預期會產生的影響進行評估。直至目前為止，基金得出的結論為採納該等修訂、新準則及詮釋不大可能會對基金的運作及財務狀況構成重大影響。

(d) 可供出售金融資產

除非委員會有意在結算日後 12 個月內出售投資，否則可供出售金融資產歸類為非流動資產。

投資的購入及出售在交易日確認，交易日指基金所承諾該資產交易之日。可供出售金融資產初始按公平值加交易成本確認。在每個結算日，因重新計算公平值而產生的未實現盈虧已在其他全面收益內確認並另自累計於投資價值重估儲備內。

出售可供出售金融資產的損益包括出售所得款項淨額與帳面值的差額，及從投資價值重估儲備撥入收支帳目內的累計公平值調整數額。

有報價投資的公平值按照當時的買盤價計算。

基金在每個結算日評估是否有客觀證據證明某項金融資產經已減值。累計虧損－按購入成本與當時公平值的差額，減金融資產之前已在收支帳目確認的減值虧損計算－自投資價值重估儲備中剔除並在收支帳目記帳。倘該等已確認的減值虧損在日後公平值有所增加，而這增加與減值虧損確認後所產生的事項有客觀上的聯繫，則撥回減值虧損。債務證券的減值虧損回撥在收支帳目記帳。股本證券的減值虧損回撥則直接在其他全面收益內確認。

(e) 外幣折算

港元是基金的主要經濟營運環境的貨幣。年內的外幣交易按交易日的匯率折算為港元。而以外幣為計值單位的貨幣資產和負債金額則按結算日的匯率折算為港元。所有兌換收益及虧損均在收支帳目內入帳。

(f) 收入確認

利息收入採用實際利率法確認並以應計記帳方式入帳。實際利率法是計算金融資產的攤銷成本值，以及攤分在有關期間的利息收入的方法。實際利率是指將金融資產在預計有效期間(或適用的較短期間)內的預計現金收入，折現成該金融資產的帳面淨值所適用的貼現率。

股息收入於基金收取該股息之權利確立後入帳。

捐款於收到現金後入帳。

(g) 存貨估值

售出存貨的成本以先入先出的方式計算。年結時存貨的價值按成本與可變現淨值兩者中較低者計算。可變現淨值是估計在正常情況下的售價減去估計售賣開支得出。

(h) 現金及等同現金項目

現金及等同現金項目包括現金、活期存款及其他短期高度流動的投資。短期高度流動投資是指可隨時轉換為已知金額的現金，而所涉及的價值改變風險不大，並於購入時於三個月內到期的投資。

(i) 撥備及或有負債

如須就已發生的事件承擔法律或推定責任，而履行該責任預期會導致經濟效益外流，並可作出可靠的估計，將會就該時間或數額不定的負債作出撥備。如貨幣的時間價值重大，則按預計履行責任所需開支的現值作出撥備。

如經濟效益外流的可能性較低，或是無法對有關數額作出可靠的估計，便會將該責任披露為或有負債，但如經濟效益外流的可能性極低者則除外。須視乎某宗或多宗未來事件是否發生才能確定存在與否的潛在責任，亦會披露為或有負債，但如經濟效益外流的可能性極低者則除外。

3. 可供出售金融資產

	2016 港元	2015 港元
股本證券年終公平值		
在香港上市	473,751,253	556,868,762

4. 應收帳項

	2016 港元	2015 港元
銀行存款利息	307,306	326,764
股息	165,745	157,862
直轄及託管廟宇收入	236,468	474,815
其他	179,261	142,500
	888,780	1,101,941

5. 現金及等同現金項目

	2016 港元	2015 港元
原於三個月內到期的定期存款	259,945,873	248,045,826
存庫務署署長款項	11,876,093	10,915,783
銀行存款	30,618,199	31,027,856
現金	1,905,074	288,513
	304,345,239	290,277,978

6. 應付帳項

	2016 港元	2015 港元
維修廟宇	6,369,640	6,242,149
司祝按金	36,950	36,950
直轄及託管廟宇支出	439,438	472,470
其他	492,082	989,192
	7,338,110	7,740,761

7. 直轄及託管廟宇年度盈餘

	2016 港元	2015 港元
年度收入	40,359,517	38,549,770
減：年度支出	(2,630,310)	(2,391,624)
	37,729,207	36,158,146

8. 東華三院管轄廟宇盈餘

	2016 港元	2015 港元
年度收入	10,795,804	10,850,436
減：年度支出	(5,663,706)	(7,120,994)
	5,132,098	3,729,442

9. 出售參神用品收入

	2016 港元	2015 港元
出售參神用品	874,580	863,530
減：參神用品成本	(211,911)	(219,195)
	662,669	644,335

10. 利息

	2016 港元	2015 港元
銀行存款利息	2,743,878	3,809,382

11. 廟會虧損

	2016 港元	2015 港元
年度收入	-	85,283
減：年度支出	(54,865)	(2,630,800)
	(54,865)	(2,545,517)

12. 財務風險管理

(a) 基金之主要金融工具，包括可供出售金融資產、應收帳項及銀行存款。下文所載為此等金融工具有關之主要風險。

(I) 信貸風險

信貸風險是指金融工具的一方持有者會因未能履行責任而引致另一方蒙受財務損失的風險。

基金金融資產之信貸風險上限為資產負債表所列於結算日該等資產的帳面金額。為減低來自銀行存款的信貸風險，所有銀行存款均存放在有聲譽的香港持牌銀行。至於存於庫務署署長之款項，信貸風險則極低。至於其他於結算日之應收帳項，基金認為如有需要，已為預期不可收回之款額作充足的撥備。

(II) 市場風險

基金承受市場風險，這些風險是由於市況的變動，例如股票價格、利率及匯率的波動。

(i) 股票價格風險

基金保持一個分散的投資組合。為管理股票價格風險，委員會監察基金的表現及定期檢討基金的投資策略。假如有關的股本證券較市價高/低 10% (2015 年：10%)，則基金於結算日的投資價值重估儲備便增加/減少約 47,375,000 港元(2015 年: 55,687,000 港元)。 這項敏感性分析是根據基金於結算日持有的股本證券的帳面金額，並假設其他各項變數保持不變所得結果。

(ii) 利率風險

利率風險指因市場利率變動而引致虧損的風險。利率風險可進一步分為公平值利率風險及現金流量利率風險。

公平值利率風險指金融工具的公平值會因市場利率變動而波動的風險。由於基金的銀行存款均按固定利率計息，當市場利率上升，這些存款的公平值便會下跌。由於這些存款均按攤銷成本值列示，市場利率變動不會影響其帳面值及基金的盈餘和權益。

現金流量利率風險指金融工具的未來現金流量會因市場利率變動而波動的風險。基金無須面對重大的現金流量利率風險，因為除了儲蓄戶口的結餘外，其持有的主要金融工具並不是浮息金融工具。

(iii) 外匯風險

(a) 貨幣風險

基金於結算日持有以美元及人民幣計價的淨金融工具，總額分別為35,295美元(2015年:27,121美元)及17,896,730圓人民幣(2015年：17,055,780圓人民幣)。由於港元與美元於窄幅掛鈎，外匯風險並不顯著。由於基金並未持有外幣匯率對沖基金，人民幣金融工具的帳面值已為基金所持人民幣的最大外匯風險值。

(b) 敏感性分析

若於二零一六年三月三十一日，人民幣相對港元增強/減弱 5% (2015 年: 5%)，而其他因素不變，基金盈餘會增加/減少約1,073,000港元(2015年: 1,065,000港元)。

(III) 流動資金風險

為管理流動資金風險，基金維持足夠現金及等同現金項目作營運資金及減低現金流量波動對基金之影響。

(b) 金融工具的公平值架構

下表呈列於結算日以公平值定期計量的金融工具的帳面值，並按《香港財務報告準則》第13號公平值的計量所訂定的三個公平值等級分類。

	2016		2015	
	第一級 港元	總額 港元	第一級 港元	總額 港元
可供出售金融資產				
股本證券				
- 上市	473,751,253	473,751,253	556,868,762	556,868,762

沒有金融工具歸類為第二級及第三級。

這三個公平值等級是：

第一級：公平值僅採用相同金融工具於計量日期在活躍市場之未經調整報價計量；

第二級：公平值採用不符合第一級之可觀察參數，而並無採用重大不可觀察參數計量。不可觀察參數為並無可用市場數據之參數；及

第三級：公平值採用重大不可觀察之參數計量。

13. 資本管理

基金之資本結構包括累積基金、維修域多利道道慈佛社儲備、維修廟宇儲備及投資價值重估儲備。基金管理資本的目標為：

(a) 符合《華人廟宇條例》的規定；及

(b) 保持穩健的資本根基以達成上文附註 1 所列基金的目的。

基金管理其資本的金額水平，以確保在顧及預算現金流量的需要及將來財務的承擔之餘，亦有足夠資金提供資助及應付開支。

14. 承擔款項

在 2016 年 3 月 31 日，基金的財務承擔款項如下：

(a) 直轄及託管廟宇維修費用 34,253,266 港元(2015 年：25,776,156 港元)；

(b) 非直轄廟宇維修工程 3,600,000 港元(2015 年：3,863,994 港元)；

(c) 合約期滿時發放之履約獎賞予廟宇司祝 3,031,470 港元(2015 年：2,495,460 港元)；及

(d) 賀誕資助金 1,481,615 港元(2015 年：571,063 港元)。

15. 金融資產和負債的公平值

所有金融資產和負債均以公平值與其相差不大的金額列於資產負債表上。

16. 或有負債

於 2016 年 3 月 31 日，基金有一未判決訴訟案件金額達 3,400,000 港元(2015 年：3,400,000 港元)，該案件的法律程序尚未完成。由於此案件的結果未能確定，故沒有作出撥備。

***Note by Clerk, PAC:** Chinese version only.*

華人廟宇委員會

華人慈善基金
截至二零一六年三月三十一日年度內管理報告

華人慈善基金(基金)是華人廟宇委員會(委員會)按照《華人廟宇條例》(第 153 章)第 9 條的規定而設立。委員會有酌情權決定基金運用於下列用途－

(a) 支付需要聘用的員工的薪酬及委員會按照《華人廟宇條例》行使其權力而招致的其他行政管理開支；及

(b) 香港的華人慈善活動。

二. 基金由委員會負責管理。應屆委員名單見附錄一。基金的秘書處服務及帳務工作由信託基金及廟宇聯合秘書處負責，而審計署署長則負責審核基金的帳目。

三. 二零一五至一六年度，基金的投資收入為 553 萬港元，而總支出為 2,281 萬港元，主要包括支付職員薪酬及行政管理開支的費用為 1,761 萬港元，其餘則用作慈善撥款之用。

四. 委員會在報告年度內共撥款 14 萬港元作慈善用途及經民政事務專員撥予需要援助的家庭/人士。

五. 截至二零一六年三月三十一日止的經審核的財務報表，現載於附錄二。

劉江華
民政事務局局長
華人廟宇委員會主席
二零一六年十二月十三日

Note by Clerk, PAC:** **Chinese version only.

華人廟宇委員會成員名單
(二零一五年四月一日至二零一六年三月三十一日)

1.	民政事務局局長	(主席)
	曾德成先生, GBS, JP	(任期至 2015 年 7 月 20 日止)
	劉江華先生, JP	(任期由 2015 年 7 月 21 日起)
2.	東華三院主席 何超蹟女士	
3.	湯棋淯女士	
4.	郭岳忠先生	
5.	葉長清先生	
6.	盧維幹先生	
7.	馬清煜先生, SBS, JP	(任期至 2015 年 7 月 31 日止)
	王聯章先生, MH	(任期由 2015 年 8 月 1 日起)
8.	楊春棠先生	(任期至 2015 年 11 月 19 日止)
	李家祥博士	(任期由 2015 年 12 月 7 日起)

***Note by Clerk, PAC:** Chinese version only.*

華人慈善基金

二零一六年三月三十一日資產負債表

	附註	2016 港元	2015 港元
非流動資產			
可供出售金融資產	3	111,208,382	133,210,887
流動資產			
應收帳項	4	1,055,121	846,165
預支款項		8,459	5,136
現金及等同現金項目	5	36,021,801	28,224,492
		37,085,381	29,075,793
流動負債			
職員約滿酬金撥備	6	(1,198,962)	(872,389)
未放取假期撥備		(196,451)	(140,361)
應付帳項及應計費用	7	(729,606)	(994,981)
		(2,125,019)	(2,007,731)
流動資產淨額		34,960,362	27,068,062
		146,168,744	160,278,949
累積基金			
累積盈餘		131,598,380	123,706,080
投資價值重估儲備		14,570,364	36,572,869
		146,168,744	160,278,949

隨附附註 1 至 12 為本財務報表的一部分。

劉江華
民政事務局局長
華人廟宇委員會主席
二零一六年十二月十三日

華人慈善基金

截至二零一六年三月三十一日止年度收支帳目

	附註	2016 港元	2015 港元
收入			
股息		5,381,287	5,284,529
利息		150,699	237,092
華人廟宇基金轉來款項		25,132,098	23,729,442
華人永遠墳場管理委員會轉來款項		38,200	-
取消往年度資助金		-	235,800
其他收入		420	1,992
		30,702,704	29,488,855
支出			
轉往東華三院款項		(5,132,098)	(3,729,442)
慈善項目支出	8	(69,161)	(195,518)
職員薪酬		(14,538,633)	(12,117,753)
租金及有關費用		(2,109,199)	(2,092,904)
其他營運開支		(960,787)	(1,082,418)
兌換虧損		(526)	(508)
		(22,810,404)	(19,218,543)
年度盈餘		7,892,300	10,270,312

隨附附註 1 至 12 為本財務報表的一部分。

華人慈善基金

截至二零一六年三月三十一日止年度全面收益表

	2016 港元	2015 港元
年度盈餘	7,892,300	10,270,312
其他全面收益		
將來或會重新分類為盈餘或虧損的項目：		
可供出售金融資產		
重估公平值變動	(22,002,505)	10,783,907
年度全面(虧損)/收益	(14,110,205)	21,054,219

隨附附註 1 至 12 為本財務報表的一部分。

華人慈善基金

截至二零一六年三月三十一日止年度權益變動表

	累積盈餘 港元	投資價值 重估儲備 港元	總額 港元
2014 年 4 月 1 日結餘	113,435,768	25,788,962	139,224,730
2014-15 年全面收益總額	10,270,312	10,783,907	21,054,219
2015 年 3 月 31 日結餘	123,706,080	36,572,869	160,278,949
2015-16 年全面虧損總額	7,892,300	(22,002,505)	(14,110,205)
2016 年 3 月 31 日結餘	131,598,380	14,570,364	146,168,744

隨附附註 1 至 12 為本財務報表的一部分。

華人慈善基金

截至二零一六年三月三十一日止年度現金流量表

	附註	2016 港元	2015 港元
營運活動現金流量			
年度盈餘		7,892,300	10,270,312
調整：			
股息		(5,381,287)	(5,284,529)
利息		(150,699)	(237,092)
兌換損失		526	508
華人廟宇基金轉來款項		(5,132,098)	(3,729,442)
轉往東華三院款項		5,132,098	3,729,442
應收帳項(增加)/減少		(161,983)	309,929
預支款項(增加)/減少		(3,323)	8,369
職員約滿酬金撥備增加/(減少)		326,573	(1,689,856)
未放取假期撥備增加/(減少)		56,090	(161,294)
應付帳項及應計費用減少		(265,375)	(1,527,804)
營運活動所得現金淨額		2,312,822	1,688,543
投資活動現金流量			
已收股息		5,338,890	5,242,375
已收利息		145,597	239,758
投資活動所得現金淨額		5,484,487	5,482,133
現金及等同現金項目增加淨額		7,797,309	7,170,676
年初現金及等同現金項目的結餘		28,224,492	21,053,816
年終現金及等同現金項目的結餘	5	36,021,801	28,224,492

隨附附註 1 至 12 為本財務報表的一部分。

華人慈善基金

財務報表附註

1. 概況

華人慈善基金(基金)是根據《華人廟宇條例》(第 153 章)第 8 條設立。華人廟宇委員會(委員會)根據《華人廟宇條例》第 9(1)條，可酌情決定基金運用於：

(a) 支付需要聘用的員工的薪酬及委員會根據該條例行使其權力而招致的其他開支；及

(b) 香港的華人慈善活動。

基金主要業務地址為香港灣仔皇后大道東 213 號胡忠大廈 34 樓。

2. 主要會計政策

(a) 符合準則聲明

財務報表是根據《華人慈善基金指示》(第 153 章，附屬法例 B)第 9(1)條及香港會計師公會頒佈之《香港財務報告準則》的所有適用規定擬備。

(b) 擬備基準

財務報表是按應計記帳方式及歷史成本法擬備，惟可供出售金融資產則除外，如下文所載之會計政策附註 2(d)所解釋，可供出售金融資產按公平值計量。

擬備符合《香港財務報告準則》的財務報表需要管理層作出判斷、估計及假設，而有關判斷、估計及假設會影響會計政策的採納及資產、負債、收入及支出的呈報總額。此等估計及相關的假設是根據以往經驗及其他在有關情況下認為合適的因素而制定。在欠缺其他現成數據的情況下，則採用此等估計及假設作為判斷有關資產及負債的帳面值的基礎，估計結果與實際價值或有不同。

此等估計及相關假設會被不斷檢討修訂。如修訂只影響本會計期，會在作出修訂的期內確認，但如影響本期及未來的會計期，有關修訂便會在該期及未來期間內確認。

基金在採納會計政策方面並不涉及任何關鍵的會計判斷。無論現時對未來作出的假設，或在結算日估計過程中所存在的不明朗因素，皆不足以構成重大風險，導致資產和負債的帳面金額在來年大幅修訂。

(c) 採納新訂/經修訂《香港財務報告準則》

基金已採納新訂/經修訂的香港財務報告準則，該等準則適用於本基金並於本會計期生效。

基金並沒有提早採用於本財政年度未生效之修訂、新準則及詮釋。基金正就該等修訂、新準則及詮釋在首次採用期間預期會產生的影響進行評估。直至目前為止，基金得出的結論為採納該等修訂、新準則及詮釋不大可能會對基金的運作及財務狀況構成重大影響。

(d) 可供出售金融資產

除非委員會有意在結算日後 12 個月內出售投資，否則可供出售金融資產歸類為非流動資產。

投資的購入及出售在交易日確認，交易日指基金所承諾該資產交易之日。可供出售金融資產初始按公平值加交易成本確認。在每個結算日，因重新計算公平值而產生的未實現盈虧已在其他全面收益內確認並另自累計於投資價值重估儲備內。

出售可供出售金融資產的損益包括出售所得款項與帳面值的差額，及從投資價值重估儲備撥入收支帳目內的累計公平值調整數額。

有報價投資的公平值按照當時的買盤價計算。

基金在每個結算日評估是否有客觀證據證明某項金融資產經已減值。累計虧損－按購入成本與當時公平值的差額，減金融資產之前已在收支帳目確認的減值虧損計算－自投資價值重估儲備中剔除並在收支帳目記帳。倘該等已確認的減值虧損在日後公平值有所增加，而這增加與減值虧損確認後所產生的事項有客觀上的聯繫，則撥回減值虧損。債務證券的減值虧損回撥在收支帳目記帳。股本證券的減值虧損回撥則直接在其他全面收益內確認。

(e) 外幣折算

港元是基金的主要經濟營運環境的貨幣。年內的外幣交易按交易日的匯率折算港元。而以外幣為計值單位的貨幣資產和負債金額則按結算日的匯率折算為港元。所有兌換收益及虧損均在收支帳目內入帳。

(f) 收入確認

利息收入採用實際利率法確認並以應計記帳方式入帳。實際利率法是計算金融資產的攤銷成本值，以及攤分在有關期間的利息收入的方法。實際利率是指將金融資產在預計有效期間(或適用的較短期間)內的預計現金收入，折現成該金融資產的帳面淨值所適用的貼現率。

股息收入於基金收取該股息之權利確立後入帳。

(g) 現金及等同現金項目

現金及等同現金項目包括現金、活期存款及其他短期高度流動的投資。短期高度流動投資是指可隨時轉換為已知金額的現金，而所涉及的價值改變風險不大，並於購入時於三個月內到期的投資。

3. 可供出售金融資產

	2016 港元	2015 港元
股本證券年終公平值		
在香港上市	111,208,382	133,210,887

4. 應收帳項

	2016 港元	2015 港元
利息	10,811	5,710
股息	880,447	838,575
其他	163,863	1,880
	1,055,121	846,165

5. 現金及等同現金項目

	2016 港元	2015 港元
原於三個月內到期的定期存款	25,816,549	17,671,611
存政府部門款項	3,526,760	4,096,725
銀行存款	6,678,492	6,451,156
現金	-	5,000
	36,021,801	28,224,492

6. 職員約滿酬金撥備

	2016 港元	2015 港元
年初結餘	872,389	2,562,245
年度撥備	876,402	170,036
年度付款	(549,829)	(1,859,892)
年終結餘	1,198,962	872,389

7. 應付帳項及應計費用

	2016 港元	2015 港元
職員薪酬	81,165	92,123
應計租金及有關費用	23,884	22,988
資助金	534,168	790,859
其他營運開支	90,389	89,011
	729,606	994,981

8. 慈善項目支出

	2016 港元	2015 港元
經常性資助金	142,000	236,700
慈善計劃(包括撥備撥回)	(72,839)	(41,182)
	69,161	195,518

9. 財務風險管理

(a) 基金之主要金融工具，包括可供出售金融資產、應收帳項及銀行存款。下文所載為此等金融工具有關之主要風險。

(i) 信貸風險

信貸風險是指金融工具的一方持有者會因未能履行責任而引致另一方蒙受財務損失的風險。基金各類金融資產的最高信貸風險為資產負債表所列有關金融資產於結算日的帳面金額。

為減低來自銀行存款的信貸風險，所有銀行存款均存放在有聲譽的香港持牌銀行。至於其他於結算日之應收帳項，基金認為如有需要，已為預期不可收回之款額作充足的撥備。

(ii) 市場風險

(1) 股票價格風險

為了管理股票價格波動引致的風險，委員會定期檢討基金的投資組合和投資指引，以監察基金的投資活動。若於結算日，有關的股本證券較市價高/低 14% (2015 年：14%)，則基金的投資價值重估儲備便增加/減少約 16,000,000 港元 (2015 年：19,000,000 港元)。這項敏感性分析是根據基金於結算日持有的股本證券的帳面金額，並假設其他各項變數保持不變所得結果。

(2) 利率風險

利率風險指因市場利率變動而引致虧損的風險。利率風險可進一步分為公平值利率風險及現金流量利率風險。

公平值利率風險指金融工具的公平值會因市場利率變動而波動的風險。由於基金的銀行存款均按固定利率計息，當市場利率上升，這些存款的公平值便會下跌。不過由於這些存款均按攤銷成本值列示，市場利率變動不會影響其帳面值及基金的盈餘和權益。

現金流量利率風險指金融工具的未來現金流量會因市場利率變動而波動的風險。基金無須面對重大的現金流量利率風險，因為其利息收入來自浮息金融工具並不顯著。

(iii) 流動資金風險

為管理流動資金風險，基金維持足夠現金及等同現金項目作營運資金及減低現金流量波動對基金之影響。

(b) 金融工具的公平值架構

下表呈列於結算日以公平值定期計量的金融工具的帳面值，並按《香港財務報告準則》第 13 號公平值的計量所訂定的三個公平值等級分類。

	2016		2015	
	第一級 港元	總額 港元	第一級 港元	總額 港元
資產				
可供出售 股本證券				
- 上市	111,208,382	111,208,382	133,210,887	133,210,887

沒有金融工具歸類為第二級及第三級。

這三個公平值等級是：

第一級：公平值僅採用相同金融工具於計量日期在活躍市場之未經調整報價計量；

第二級：公平值採用不符合第一級之可觀察參數，而並無採用重大不可觀察參數計量。不可觀察參數為並無可用市場數據之參數；及

第三級：公平值採用重大不可觀察之參數計量。

10. 資本管理

基金之資本結構包括累積盈餘及投資價值重估儲備。基金管理資本的目標為：

(a) 符合《華人廟宇條例》第 9 條(1)的規定；及

(b) 保持穩健的資本根基以達成基金運用於香港的華人慈善活動的目的。

基金管理其資本時，會監察資本的水平，以確保在顧及預算現金流量的需要及將來財務的承擔之餘，亦有足夠資金應付日後支出。

11. 承擔款項

(a) 財務承擔

在 2016 年 3 月 31 日，基金的財務承擔是資助各項慈善計劃為 2,204,593 港元 (2015 年：477,301 港元)。

(b) 租務承擔

在 2016 年 3 月 31 日，根據不可撤銷經營租務的未來總最低租務付款額為：

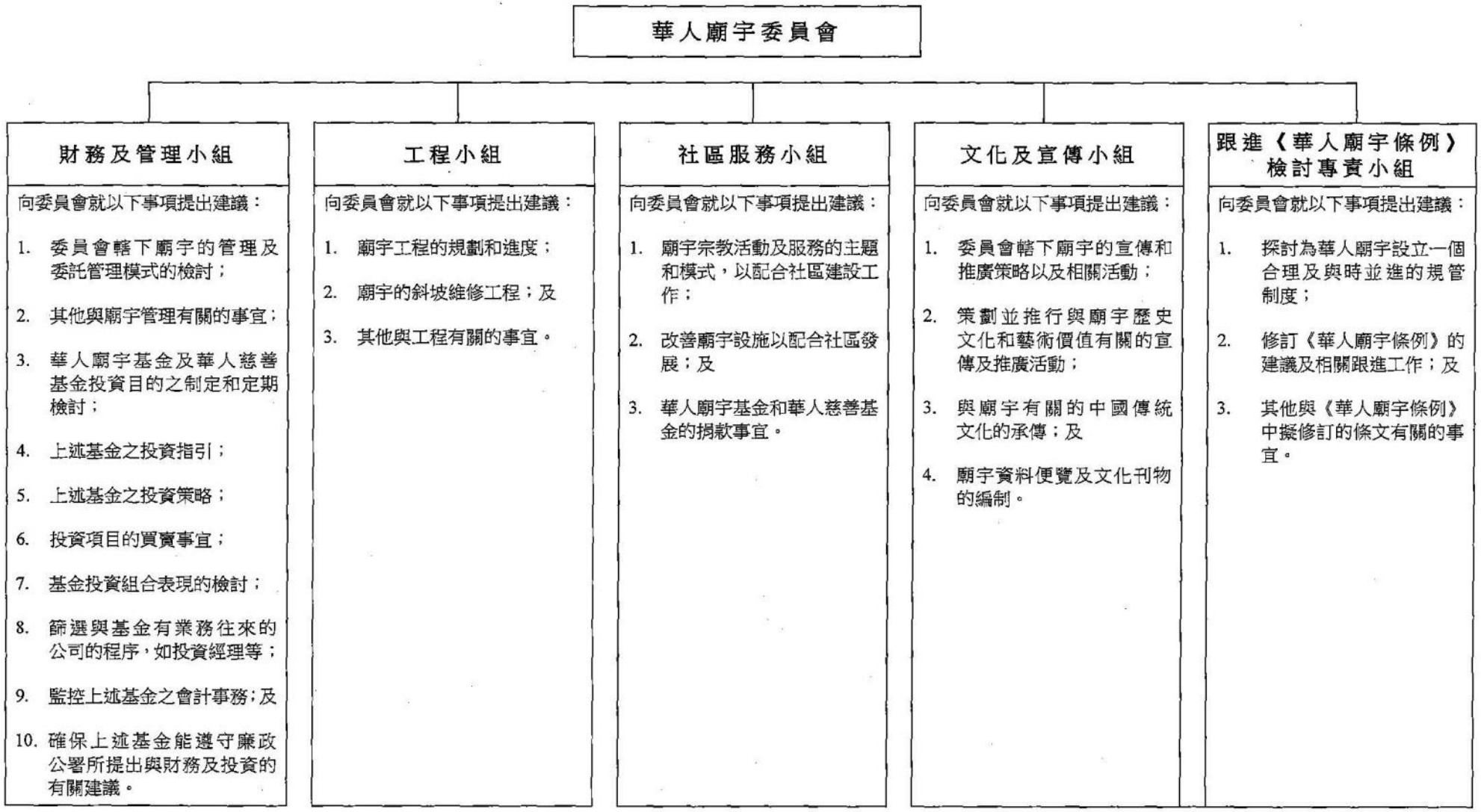
	2016 港元	2015 港元
1 年或以下	1,157,978	1,985,107
在第 2 年至第 5 年內	-	1,157,978
	1,157,978	3,143,085

12. 金融資產和負債的公平值

所有金融資產和負債均以公平值或與其相差不大的金額列於資產負債表上。

***Note by Clerk, PAC:** Chinese version only.*

*Note by Clerk, PAC: Chinese version only.



(47)

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈廿二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (47) in CTC 5/631/51
來函檔號 Your Ref.
電　話 Tel. 2891 5859
圖文傳真 Fax 2586 1945

[redacted]

[redacted]

延長[redacted]委託管理合約

本委員會與[redacted]於二零零一年十二月十四日所簽訂的[redacted]委託管理合約將於二零零六年七月十四日屆滿。

由於委員會及 貴[redacted]就續約事宜仍需時間進行磋商，委員會現同意按照雙方於二零零一年十二月十四日所簽訂的合約文本延長有關委託管理合約至二零零六年十月三十一日。

請於本函回條簽署蓋章後交回本委員會(地址：香港灣仔皇后大道東二一三號胡忠大廈廿二樓二二零二室) 以確認 貴[redacted]接受上文所示之延長委託管理合約的條款。

華人廟宇委員會秘書

(譚寶珠小姐代行)

二零零六年七月十四日

回條

致： 華人廟宇委員會秘書處
譚寶珠小姐

傳真號碼： 2586 1945

本人/我等_____， 香港身份證號碼：_____xxx(x)
爲[redacted]授權代表，同意按照華人廟宇委員會二零零六年七月十四日函件所載的條款，延長[redacted]的委託管理合約至二零零六年十月三十一日。

授權人簽名及蓋章 ： _____

日期 ： _____

Note by Clerk, PAC:** **Chinese version only.

(5A)

回條

致： 華人廟宇委員會秘書處
譚寶珠小姐

傳真號碼： 2586 1945

本人/我等 [redacted]，香港身份證號碼 [redacted]

爲 [redacted] 受權代表，同意按照華人廟宇委員會二零零六年七月十四日函件所載的條款，延長 [redacted] 的委託管理合約至二零零六年十月三十一日。

授權人簽名及蓋章 ： [redacted]

日期 ： 26-7-06

***Note by Clerk, PAC:** Chinese version only.*

附件六

(57)

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (57) in CTC 5/631/51 III

來函檔號 Your Ref.

電　話 Tel. 2891 5854

圖文傳真 Fax: 2586 1945

傳真文件

(傳真號碼：[redacted])

[redacted]

[redacted]

授權管理[redacted]

本委員會於二零零六年八月三日將上述授權管理合約的草擬本傳真予 貴會考慮。茲因處理合約事宜需時，請 貴會於**二零零六年九月二十二日**前回覆 貴會是否接受合約草擬本上的條款。

如 貴會對本函件或合約草擬本有任何疑問，請致電 2519 9133 與助理經理，梁慧賢女士聯絡。

華人廟宇委員會秘書

(區麗芬小姐 麗芬 代行)

二零零六年九月十三日

ST/OA/CL

(55)

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

草稿 DRAFT

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (46) in CTC 5/631/51 III

來函檔號 Your Ref.

電 話 Tel. 2519 9119

圖文傳真 Fax: 2586 1945

[redacted]

[redacted]

[redacted]:

授權管理[redacted]事

華人廟宇委員會(以下簡稱"**委員會**")現同意根據香港法例第一五三章《華人廟宇條例》第十一條所賦予的權力，授權[redacted]會管理[redacted](以下簡稱"**廟宇**")，爲期三年，由二零零六年七月十六日起至二零零九年七月十五日止("**管理期**")。此項授權，受到下列條件的規限：－

管理支出

1. [redacted]在管理期內須妥善管理廟宇，以達到委員會滿意的程度爲準，並承擔廟宇的所有開支及支出(包括但不限於政府差餉、地租、物業稅及水、電、電話及其他公用事業的費用及按金)。

授權規限

2. [redacted]可向委員會推薦承辦商或司祝、由委員會委任其爲司祝並由[redacted]會聘用之以管理廟宇，惟委員會對該聘用之同意並不解除[redacted]在本信函中所須負之任何責任，而[redacted]須就遵守及遵從本信函所列之條款向委員會負上責任。有關聘用條件須規定委員會有全權免任該司祝的權力。

用途

3. 除獲委員會的事先書面批准外，廟宇所處之地段內("該地

段")的所有建築物、架設物及土地及廟宇本身不得被用作廟宇以外之任何其他用途。

維修責任

4. (1) [redacted]須成立保養維修基金，並按委員會發出的指令自費翻新該廟宇，包括在管理期內修葺及維修廟宇、該地段及廟內和地段內的財產、裝置及財物，以及土地擁有人在該地段之政府租契中須負責修葺或維修之任何其他地方，保持其狀況良好及清潔整齊(以達至委員會滿意的程度爲準)。

(2) 在無損前文一般性的原則下，[redacted]應按所需而定經常自費翻新*廟宇及該地段(但不少於每兩年一次或委員會按廟宇的實際狀況而酌情批准延長的期限)，及根據有關電力公司及香港法例及法規的規定，修理及維修廟宇的所有電器裝置。

維修通知

5. (1) 委員會及其授權代表有權在管理期內不時進入及查看廟宇及該地段。在無損本信函第 10 (2)段的原則下，委員會或其授權代表可向[redacted]發出書面維修通知，列明[redacted]按本信函之條款而需負責執行的維修工作。

(2) [redacted]須在委員會於前述書面通知指明的時間內施行及完成該等維修工作(以達至委員會滿意的程度爲準)，否則委員會及其授權代表有權進入廟宇及/或該地段，代爲執行有關工程及維修工作，所有有關費用須由[redacted]支付。

收入及其運用

6. (1) [redacted]可接受進香人士或其他人士或團體在管理期內向廟宇作出的任何自願捐獻，惟不得對進香人士或訪客徵收或收取或要求任何進廟參觀或參拜的費用。

(2) 任何人士對廟宇的自願捐獻及廟宇的全部其他收入，包括[redacted]

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* "翻新"指及包括但不限於查看、檢查、修理、清潔、佈置及粉飾廟宇及該地段及當中所有固定附著物及裝置，包括地板、天花、室內批盪或雞壁之其他精修材料或底灰、門、電器裝置、水渠、管道及園景，以及更換該等固定附著物及裝置之所有損壞部份。

[redacted]在管理期內收到有關廟宇營運的收入(例如因聘用承辦商或司祝管理廟宇而收到的款項),必須首先運用於進行廟宇的傳統儀式,以及廟宇、該地段及廟內和地段內的財產、裝置及財物的維修。如有盈餘,則須用於支付管理廟宇的員工的薪酬及[redacted]因遵守本信函之條款而引致之開支,以及用於香港的華人慈善用途。

保險

7. (1) 委員會已爲廟宇就因火災、颱風、暴風、雷電電擊、爆炸、水災、水淹、地震、山泥傾瀉及地陷等自然災害而可能造成之損毀購買財產保險,保額爲港幣一佰萬元。[redacted]同意承擔管理期內有關的投保費用,由二零零六年五月一日至二零零七年四月三十日(共十二個月)的投保費用爲每年港幣四百六十元。二零零七年五月一日起之保費或有變動,[redacted]不得異議。

(2) 此外,委員會亦已爲廟宇購買一億元的公眾責任保險,並以委員會及[redacted]爲共同受保人,[redacted]同意承擔每年港幣一千五百元的保費,不足之數由委員會支付。

(3) 除第7.(1)及(2)項所述的保險外,[redacted]須自費在管理期內向一間有信譽的保險公司購買足夠的僱員補償保險以及其他合適的保險。

晚間管理員

8. [redacted]須備存一份列有所有晚間負責看管廟宇之管理員的名冊,並須應委員會的要求交予委員會查看。除准許名冊上之管理員執行職務外(包括巡察廟宇以確保廟宇及廟內財產的安全)[redacted]不得容許或批准任何人士於晚間逗留在廟宇之任何部份。

財政及行政報告

9. (1) [redacted]須在管理期內的每個財政年度擬備廟宇財政報告,並交由認可核數師審計。該等經認可核數師審核妥當的財政報告必須在相關財政年度完結後的三個月內呈交給委員會。

(2) 此外，[redacted]亦須向委員會遞交廟宇的年度行政報告，列明由委員會規定之相關財政年度期間與廟宇管理有關的事項，包括但不限於：-

(i) 在廟宇日常管理中遇到的難題；
(ii) 在廟宇舉辦的活動；及
(iii) 所收到與廟宇及其管理有關的投訴之數字及詳細內容。該行政報告須由[redacted]主席核實和簽署作實，並在管理期內之每個財政年度完結後一個月內呈交予委員會。

遵守法律、法規等

10. [redacted]須嚴格遵守：-

(1) 所有適用於廟宇、該地段及廟宇管理及廟內舉行之活動的法例、法規及有關部門及機關之規則。
(2) 該地段之政府租契中的所有契諾及條款，在未得委員會的事先書面同意下，不得批准或容許任何與委員會及/或有關政府部門批核之廟宇平面圖及其他有關的文件有偏差的工程或對廟宇作出任何增建或結構性改動。

告示

11. [redacted]須於廟宇內當眼處張貼及展示由委員會以中文及英文發出的告示，向進香人士及訪客說明廟宇已由委員會授權[redacted]管理。

彌償責任

12. (1) [redacted]須在管理期內就:-因其本身或其僱員、代理人、承辦商及訪客之任何作為、疏忽或失責，或
(2) 在廟宇中進行的業務及活動，或
(3) 違反或未能履行本信函之任何條款，

而直接或間接造成與任何人士之身故或人身傷害或任何土地財產或非土地財產之損失或損壞有關之任何賠償、開支、責任、損失、索款要求、申索或法律程序而負責及對委員會作出全面彌償。

違約通知

13. 如[redacted]違反本信函之任何條款，委員會可以書面通知即時終止本信函之授權而無損委員會就本信函之任何先前違反對[redacted]作出申索之權利。

交回廟宇及財產

14. (1) 在本信函之授權屆滿或提前終止時，[redacted]須清理廟宇內所有不屬於委員會的財產、裝置及財物，並把廟宇及該地段的空置管有權及廟內及地段內屬於委員會的財產、裝置及財物一併交回委員會。

(2) 如[redacted]未有按本條第(1)項的條文搬走所有不屬於委員會的財產、裝置及財物，該等財產、裝置及財物將被視爲遭物主遺棄，委員會有權以其認爲合適的方法處置及/或棄置遺下的任何財產、裝置及財物，而無須就[redacted]或任何其他人士因而蒙受的損失或損壞承擔任何法律責任[redacted]須支付委員會所有處置或棄置該等財產、裝置及財物的費用和有關行政費用、及就前述任何其他人士的任何索償對委員會作出全面彌償。

委員會終止授權通知

15. 委員會可在管理期內隨時以一個月書面通知終止本信函之授權，而不須具有任何理由，亦無損委員會就本信函之任何先前違反對[redacted]作出申索之權利。[redacted]無權就該終止而索取任何補償。

廟宇管理權交還通知

16. [redacted]可向委員會發出最少三個月事先書面通知，將本信函授予之廟宇管理權交還委員會，惟該管理權之交還將無損委員會就本信函之任何先前違反對[redacted]作出申索之權利。

更改條款權

17. 委員會可在管理期內隨時按其需要修改本信函中之任何授權條款及守則。如情況適當，[redacted]會就任何擬作之修改獲得諮詢。

無租賃關係

18. 委員會在本信函中僅授權[redacted]根據本函之條款管理廟宇。本信函之任何條款不應構成或被解釋爲向[redacted]出租廟宇或該地段或授予廟宇或該地段的管有權。

爭議最終決定權

19. 委員會及[redacted]之間就本信函及本函內之授權的所有爭議，應由委員會作出最終決定，有關決定對[redacted]具有約束力。

委員會請貴會在本信函之副本上簽署，並將簽妥之信函副本交還委員會，以確認貴會接受按上述條款之授權。

華人廟宇委員會秘書

(羅永甜先生)

二零零六年　月　　日

[redacted]確認同意接受上述授權及會嚴格遵守本信函所列的全部條款。

[redacted]印章）

簽名：_____

[redacted]

日期：_____

草稿
DRAFT

吾[redacted]確認我為[redacted]第　　屆執行委員會的署理主席。我本人並代表[redacted]同意上述授權之所有條款，並在此向華人廟宇委員會承諾我及[redacted]：－

(i)　確保[redacted]嚴格遵守上列條款；及

(ii)　就[redacted]在上述管理期內因其本身或其僱員、代理人、承辦商及訪客之任何作為、疏忽或失責，或在[redacted]中進行的業務及活動，或違反或不履行本信函之任何條款，而直接或間接造成與任何人士之身故或人身傷害或任何土地財產或非土地財產之損失或損壞有關之任何賠償、開支、責任、損失、索款要求、申索或法律程序而負責及對華人廟宇委員會作出全面彌償。

主席：[redacted]　　日期

*Note by Clerk, PAC: Chinese version only.

附件七

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (61) in CTC 5/631/51 III

來函檔號 Your Ref.

電　話 Tel. 2891 5859

圖文傳真 Fax: 2586 1945

傳真文件

[redacted]

[redacted]

[redacted]

延長[redacted]委託管理合約

由於本委員會與 貴會就續約事宜仍需時間進行磋商，委員會現建議按照雙方於二零零一年十二月十四日所簽訂的委託管理合約文本續延合約期至二零零七年四月三十日。就 貴會與本委員會於本年九月二十九日的會議上就土地擁有權提出的質詢，本委員會已將有關事宜轉介民政事務局以作跟進。

請於附上的回條簽署及蓋章後寄交本委員會以作存檔紀錄。

如有任何疑問，請致電 2519 9133 與助理經理，梁慧賢女士聯絡。

華人廟宇委員會秘書

(譚寶珠小姐 代行)

二零零六年十二月八日

附件：回條
TT/CA/CL

回條

致　　：　華人廟宇委員會秘書處
　　譚寶珠小姐

由　　：　[redacted]

本人 / 我等 _____，香港身份證號碼：_____ XXX (X) 爲[redacted]授權代表，同意按照華人廟宇委員會於二零零六年十二月八日的函件所載的條款，延長[redacted]的委託管理合約至二零零七年四月三十日。

授權人簽署及蓋章　：　_____

授權人姓名　　：　_____

日期　　：　_____

Note by Clerk, PAC: ***Chinese version only.***

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (64) in CTC 5/631/51 III

來函檔號 Your Ref.

電　話 Tel 2891 5859

圖文傳真 Fax: 2586 1945

郵遞及傳真

[redacted]

[redacted]

[redacted]：

延長[redacted]委託管理合約

由於本委員會與 貴會就[redacted]之續約事宜仍需時間進行磋商，委員會通過按照雙方於二零零一年十二月十四日所簽訂的委託管理合約文本延續合約至二零零九年四月三十日。

請於附上的回條簽署及蓋章後寄交本委員會，以作存檔紀錄。

如有任何疑問，請致電 2519 9133 與助理經理，梁慧賢女士聯絡。

華人廟宇委員會秘書

(譚寶珠小姐 [signature] 代行)

二零零七年六月十三日

附件：回條
TT/CA/CL

回條

致　　：　華人廟宇委員會秘書處
　　譚寶珠小姐

由　　：　[redacted]

本人 / 我等 _____，香港身份證號碼：_____ XXX (X) 爲[redacted]授權代表，同意按照華人廟宇委員會於二零零七年六月十三日的函件所載的條款，延長[redacted]的委託管理合約，直至雙方就新修訂的合約條款達成協議。

授權人簽署及蓋章　：　_____

授權人姓名　　：　_____

日期　　：　_____

Note by Clerk, PAC: ***Chinese version only.***

(68)

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (68) in CTC 5/631/51 III
來函檔號 Your Ref.
電 話 Tel. 2891 5854
圖文傳真 Fax: 2586 1945

[redacted]

[redacted]

授權管理[redacted]

華人廟宇委員會(以下簡稱"**委員會**")現根據香港法例第一五三章《華人廟宇條例》第十一條所賦予的權力，並按照[redacted])與委員會於二零零一年十二月十四日所簽訂的委託管理合約文本延續授權 貴[redacted]管理[redacted] (以下簡稱"**該廟宇**")至二零零九年四月三十日，此項授權的條款如下：

1. [redacted]須僱用或委派一名司祝，負責看管該廟宇，有關司祝之姓名，須向委員會登記在案；

2. [redacted]須負責有關廟宇之小規模修補工作，惟在未得委員會之同意前，不得更改有關廟宇之間格；

3. 除得到委員會之批准外，不得將有關廟宇之任何部份作爲廟宇以外之用途；

4. 該廟宇應保持環境清潔，並以符合委員會之要求爲準；

5. 不得向進香者或遊客收任何費用，但可接受他們自願之捐款；

6. 委員會保留因實際環境需要而隨時撤回上述委託之權利；

7. 如有需要，委員會可修訂上述條件。

請 貴[redacted]在本信函之副本上簽署，並將簽妥之信函副本交還委員會，以確認 貴[redacted]接受按上述條款之授權。

華人廟宇委員會秘書



（黃衛民）

二零零七年十月二十九日

[redacted]確認同意接受上述授權及會嚴格遵守本信函所列的全部條款。

[redacted]印章）

簽名：_____

[redacted]

日期：_____

***Note by Clerk, PAC:** Chinese version only.*

TT/CA/CL

附件十

華人廟宇委員會
CHINESE TEMPLES COMMITTEE

香港灣仔皇后大道東二一三號胡忠大廈三十四樓
34th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong
電話 Tel_ 3718 6888 傳真 Fax_ 3718 6800
www.ctc.org.hk

本處檔號 Our Ref. (9) in CTC 5/631/51 IV
來函檔號 Your Ref.

華人廟宇委員會
Chinese Temples Committee

（傳真及掛號郵件）

[redacted]

[redacted]

有關委託[redacted]管理
[redacted]事宜

[redacted]（該土地）以及位於該地段的[redacted]均屬民政事務局局長法團（法團）所擁有。法團授權華人廟宇委員會（委員會）按《華人廟宇條例》第 11 條委託 貴會管理該廟。

根據委員會記錄，在 2006 年 10 月 31 日的委託協議屆滿後，委員會與 貴會就新的委託協議進行商討。由於雙方未達共識，所以在未有簽定正式協議前，委員會一直以暫緩安排處理，容許 貴會於過去十年多仍然繼續營運該廟，但這安排並不理想。

為確保[redacted]得到妥善管理，並受委員會監管，前述委託安排必須受有效的委託合約約束。就此，現要求 貴會於 **2017 年 6 月 19 日或之前**以書面回覆是否同意按委員會訂立的條款（見**附件**）重新簽訂委託協議。若在到期日仍未收到 貴會回覆，法團/本委員會將考慮採取適當行動以維護法團在該土地及廟宇的利益。

我們保留法團的所有權利。

華人廟宇委員會秘書
趙幗儀
（趙幗儀）

2017年5月18日

[redacted] [redacted]

[redacted]

授權管理[redacted]

華人廟宇委員會(以下簡稱「**委員會**」)現根據香港法例第 153 章《華人廟宇條例》第 11 條所賦予的權力，授權[redacted]以下簡稱[redacted])管理位[redacted](以下簡稱[redacted])，為期 3 年，由 2017 年　月　日起至 2020 年　月　日止(以下簡稱「**管理期**」)。此項授權，受到下列條件的規限：－

委託管理

1. 上述[redacted]的擁有人為民政事務局局長法團(以下簡稱「**局長法團**」)，而委員會則代表局長法團[redacted]的管理權委託[redacted]。[redacted]同意在管理期內妥善管理[redacted]及[redacted]內屬於局長法團的一切財產，以達至委員會滿意的程度為準。

管理支出

2. [redacted]須承擔[redacted]的所有開支及支出(包括但不限於政府差餉、地租、物業稅及水、電、電話及其他公共事業的費用及按金等)。

授權規限

3. [redacted]可向委員會推薦承辦商或個人、由委員會委任其為司祝並由[redacted]聘用以管理[redacted]，惟委員會對該聘用之同意並不解除[redacted]在本信函中所須負之任何責任，而[redacted]須就遵守及遵從本信函所列之條款向委員會及局長法團負上一切責任。有關聘用條件須包括委員會有全權罷免該司祝的權力。

[redacted]

用途

4. (1) 除非獲委員會的事先書面批准及所屬地段之政府地契所容許的土地用途，否則[redacted]所處之地段內(以下簡稱「**該地段**」)的所有建築物、架設物、土地[redacted]本身不得被用作與參神/與靈界溝通無關之任何其他用途，包括不得擺放骨灰。

(2) 不得在未獲委員會同意下將[redacted](不論是全部或部份位置)及該地段內的土地作其他非指定或預設的營運，有關營運不論是[redacted]自行或交由他人負責。

(3) [redacted]的僱員或保安員不得[redacted]內居住或留宿，或[redacted]內擺放供居住或留宿的設備。

(4) 不可容許任何人士[redacted]範圍內聚賭、作出猥褻行為或誨淫舉止、或容許任何人士非法用作貯存危險物品、或利[redacted]及[redacted]範圍作出違反香港特別行政區法律之事情。

(5) 不可將委託管理合約中的權益轉讓給他人，或與任何人分享，或委托他人代理或與人合作經營。

(6) [redacted]範圍內不得張貼/懸掛/擺放任何[redacted]無關的宣傳物品，例如海報及橫額等。

維修責任

5. (1) [redacted]須成立維修保養基金用作適時及/或按委員會發出的指令自費翻新[redacted]，包括在管理期內修葺及維修[redacted]、該地段及[redacted]內和地段內的財產、裝置及財物，以及土地擁有人根據該地段之政府租契所須負責修葺或維修之任何其他地方，並保持其狀況良好及清潔整齊，以達至委員會滿意的程度為準。

(2) 在無損前文一般性的原則下[redacted]應按所需而不時/自費翻新[redacted]及該地段(但不少於每 3 年一次或委員會按[redacted]的實際狀況而酌情批准延長的期限)，及根據有關電力公司、香港法例及法規的規定，修理及維修[redacted]的所有電力裝置。

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* 「翻新」的釋義是包括但不限於查看、檢查、修理、清潔、佈置及粉飾[redacted]及該地段和當中所有固定附著物及裝置，如地板、天花、室內批盪或牆壁之其他裝修材料、或底灰、門、電力裝置、水渠、管道及圍板等，以及更換該等固定附著物及裝置之所有損壞部份。

[redacted]

維修通知

6. (1) 委員會及其授權代表有權在管理期內不時進入及查看[redacted]及該地段。在無損本信函第 12(2)段的原則下，委員會或其授權代表可向[redacted]發出書面維修通知，列明[redacted]按本信函之條款而需負責執行的維修工作。

(2) [redacted]須於上文第 6(1)段所述的書面通知的指定時間內施行及完成該等維修工作以達至委員會滿意的程度為準，否則委員會及其授權代表有權進入[redacted]及/或該地段，代為執行有關工程及維修工作，所有有關費用須由[redacted]支付。

收入及其運用

7. (1) [redacted]可於[redacted]內售賣參神物品及提供參神服務，惟善信可自由選擇採用與否；[redacted]亦可接受進香人士或其他人士或團體的任何自願捐獻，惟不得對進香人士或訪客徵收或收取或要求任何進[redacted]參觀或參拜的費用。

(2) 任何人士對[redacted]的自願捐獻及[redacted]的全部其他收入，包括[redacted]在管理期內收到[redacted]營運的收入(例如因聘用承辦商或司祝管理[redacted]而收到的款項)，必須首先運用於與[redacted]有關的傳統儀式，[redacted]和該地段內的財產、裝置及財物的維修。如有盈餘，於支付管理[redacted]的員工的薪酬[redacted]因遵守本信函之條款所衍生之開支後才可用作其他慈善用途。

保險

8. (1) 委員會已[redacted]就火災、颱風、暴風、雷電電擊、爆炸、水災、水淹、地震、山泥傾瀉及地陷等自然災害而可能造成之損毀購買財產保險。[redacted]同意承擔管理期內有關的投保費用，每年的保費將按委員會通過招標或報價委託承保的保險公司所收取的費用而有所變動，[redacted]不得異議。 ***年 月 日至 年 月 日的總保額為港幣 元，分別[redacted]的預計重建成本港幣 元及[redacted]內裝置的重置費用港幣 元，投保費用約為港幣 元。***

[redacted]

(2) 此外，委員會亦已為[redacted]購買***港幣 100,000,000 元的公眾責任保險***，並以委員會及[redacted]為共同受保人。[redacted]同意承擔每年港幣 1,500 元的保費，不足之數由委員會支付。委員會有權按需要而調整該收費，[redacted]不得異議。 ***年 月 日至 年 月 日的投保費用約為港幣 元。***

(3) 除第 8 (1)及(2)項所述的保險外，[redacted]須自費在管理期內向有信譽的保險公司投保足夠的僱員補償保險及其他合適的保險。

晚間管理員

9. [redacted]須備存一份載列所有晚間負責看管[redacted]之管理員的名冊，並須應委員會的要求交予委員會查看。除准許名冊上之管理員執行職務外(包括巡[redacted]以確保[redacted]及[redacted]內財產的安全) [redacted]不得容許或批准任何人士[redacted]之任何部份留宿。

財政及行政報告

10. (1) [redacted]須在管理期內的每個財政年度擬備[redacted]的財政報告，並交由認可核數師審核。該等經認可核數師審核妥當的財政報告必須在相關的財政年度完結後的 3 個月內呈交給委員會。

(2) 此外[redacted]亦須向委員會遞交[redacted]的年度行政報告，列明在管理期內的每個財政年度[redacted]管理有關的事項，包括但不限於：-

(i) 在[redacted]日常管理中遇到的問題；
(ii) [redacted]舉辦的活動；及
(iii) 所收到與[redacted]及其管理有關的投訴之數字及詳細內容。該行政報告須由[redacted]或其授權人核實和簽署作實，並在管理期內的每個財政年度完結後 3 個月內呈交予委員會。

投訴處理

11. [redacted]於接獲有關[redacted]的投訴後，必須作出調查及跟進，並於完成調查及跟進後提交跟進記錄副本予委員會。如投訴涉及公眾安全、刑事成份或嚴重事故，[redacted]必須**即時**通知委員會。

[redacted]

遵守法律、法規等

12. [redacted]須嚴格遵守：-

(1) 所有適用於[redacted]、該地段、[redacted]管理及[redacted]內舉行之活動的法例、法規及有關部門及機關之規則。

(2) 該地段之政府租契的所有契諾及條款。此外，[redacted]需遵守該地段的地契條款包括但不限於在該地段內不得擺放骨灰。在未得委員會及/或地政署的事先書面同意下，不得批准或容許任何與委員會及/或有關政府部門批核之[redacted]平面圖及其他有關的文件有偏差的工程或對[redacted]作出任何增建或結構性改動。

告示

13. [redacted]須於[redacted]內當眼處張貼及展示由委員會以中文及英文發出的告示，向進香人士及訪客說明[redacted]是由委員會授權[redacted]管理。

彌償責任

14. [redacted]須在管理期內就：-

(1) 因其本身或其僱員、代理人、承辦商及訪客之任何作為、疏忽或失責；或

(2) 在[redacted]中進行的業務及活動；或

(3) 違反或未能履行本信函之任何條款，直接或間接造成與任何人士之身故或人身傷害或任何土地財產或非土地財產之損失或損壞有關之任何賠償、開支、責任、損失、索款要求、申索或法律程序而負責及對委員會作出全面彌償。

違約通知

15. 如[redacted]違反本信函之任何條款，委員會可以書面通知即時終止此授權協議而無損委員會就[redacted]任何先前的違反作出申索之權利。

交回[redacted]及財產

16. (1) 在本信函之授權屆滿或提前終止時，[redacted]須清理[redacted]內所有不屬於委員會的財產、裝置及財物（另有協議除外），並把[redacted]及該地段的空置管有權及[redacted]內及該地段內屬於委員會的財產、裝置及財物一併交回委員會。

[redacted]

(2) 如[redacted]未有按本條第 16(1)項的條文搬走所有不屬於委員會的財產、裝置及財物，該等財產、裝置及財物將被視為遭物主遺棄，委員會有權以其認為合適的方法處置及/或棄置遺下的任何財產、裝置及財物，而無須就[redacted]任何其他人士因而蒙受的損失或損壞承擔任何法律責任。此外，[redacted]須支付委員會就處置或棄置該等財產、裝置及財物的費用和有關行政費用、及就前述任何其他人士的任何索償對委員會作出全面彌償。

委員會終止授權通知

17. 委員會可在管理期內隨時以 3 個月書面通知終止本信函之授權，而不須具有任何理由，亦無損委員會就[redacted]於該書面通知發出日之前及通知期間所作出之違規對[redacted]出申索之權利。[redacted]無權就該終止而索取任何補償。

[redacted]管理權交還通知

18. [redacted]可向委員會發出最少 3 個月事先書面通知，將本信函授予[redacted]管理權交還委員會，惟該管理權之交還將無損委員會就[redacted]於該書面通知發出日之前及通知期間所作出之違規對[redacted]作出申索之權利。

誠信條款

19. (1) *資料保密*

除為達至此合約的要求外，[redacted]及其代理人(包括但不限於公司董事、成員、其聘請的員工及代表等)不可泄露本委託管理合約的條文予第三者。如有違者，[redacted]須就其直接或間接造成的損害、開支、責任、損失、索款要求、申索或法律程序等而負責及對委員會作出全面彌償。

(2) *防止賄賂條例*

[redacted]及其代理人(包括但不限於公司董事、成員、其聘請的員工及代表等)在未得委員會或其代理人允許嚴禁向任何與[redacted]或委員會有業務往來的人士或機構索取或收受任何利益、酬金、獎賞、折扣或任何形式的借貸；與此同時，[redacted]及其代理人(包括但不限於公司董事、成員、其聘請的員工及代表等)嚴禁向委員會或任何機構的成員或其聘請的員工提供任何形式之利益、酬金、獎賞、折扣或任何形式的借貸以圖影響該等人士或機構與[redacted]的業務往來。

[redacted]

(3) *利益申報*

[redacted]的員工及其代理人需以書面向[redacted]申報其個人於履行本合約時是否存在任何利益衝突或潛在利益衝突。[redacted]應避免其存在任何利益衝突或潛在利益衝突的員工及代理人參與有關工作。

更改條款權

20. 委員會可在管理期內隨時按其需要修改本信函中之任何授權條款及守則。如情況適當，[redacted]會就任何擬作之修改獲得諮詢。

無租賃關係

21. 委員會在本信函中僅授權[redacted]根據本函之條款管理[redacted]。本信函之任何條款不應構成或被解釋為[redacted]出租[redacted]或該地段或授予[redacted]或該地段的管有權。

爭議最終決定權

22. 委員會及[redacted]之間就本信函及本函內之授權的所有爭議，應由委員會作出最終決定，有關決定對[redacted]具有約束力。

《合約(第三者權利)條例》

23. 《合約(第三者權利)條例》(第 623 章) 並不適用於本合約，華人廟宇委員會不會就本合約賦予任何第三者(即並非合約一方的人士)權力或權益。任何第三者均不可援引《合約(第三者權利)條例》(第 623 章)向本合約的任何一方作出申索。

收集個人資料聲明

1. [redacted]/資料當時人於本授權管理合約提供的個人資料只用作處理有關授權管理[redacted]的事宜。除此之外，委員會只會在法例要求或容許的情況下才向第三者披露資料當時人的個人資料。

2. [redacted]授權簽署本合約的人士必須於下頁提供其身份證號碼首 4 位英文/數字，否則本委員會未能處理授權管理[redacted]的事宜。

3. 根據《個人資料(私隱)條例》的規定，資料當時人有權查閱及改正本合約內的個人資料。如其希望查閱或改正有關資料，請與委員會秘書處聯絡，電話號碼：3718 6871 (梁小姐)。

[redacted]

請 [redacted] 在本信函（一式兩份）上簽署確認接受按上述條款之授權，並將其中一份簽妥之信函交回委員會以作存檔。

華人廟宇委員會秘書

（趙幗儀）

2017 年　月　日

[redacted] 確認同意接受上述授權的安排及會嚴格遵守本信函所列的全部條款。

簽名及機構印章：_____

[redacted]

日期：_____

[redacted]

*本人[redacted]，香港身份證號碼：_____ XXX (X)，為[redacted](下稱[redacted])的主席，謹此確認本人獲[redacted]授權*代表[redacted]同意華人廟宇委員會於 2017 年　月　日發出有關「授權管理[redacted]」之所有條款，並在此向華人廟宇委員會承諾本人及[redacted] －*

(i)　確保[redacted]嚴格遵守上列條款；及

(ii)　[redacted]在上述授權管理期內因其本身或其僱員、代理人、承辦商及訪客之任何作為、疏忽或失責，或在[redacted]進行的業務及活動，或違反或不履行本信函之任何條款，而直接或間接造成與任何人士之身故或人身傷害或任何土地財產或非土地財產之損失或損壞有關之任何賠償、開支、責任、損失、索款要求、申索或法律程序而負責及對華人廟宇委員會及民政事務局局長法團作出全面彌償。

主席簽署及機構蓋印：_____ [redacted]　_____ 日期

見證人簽名：_____　_____ 日期

見證人姓名：_____

見證人職位：_____

* 請提供獲[redacted]授權的證明文件

***Note by Clerk, PAC:** Chinese version only.*

[redacted]

華人廟宇委員會

2016 年 11 月 24 日（星期四）下午 3 時 10 分
於胡忠大廈 34 樓會議室
舉行的華人廟宇委員會周年大會會議紀錄

出席者 ： 劉江華先生，JP （主席）
民政事務局局長

湯棋淯女士

郭岳忠先生

盧維幹先生

王聯章先生，MH

李家祥博士

趙幗儀女士 （秘書）

列席者 ： 羅志康先生，JP
民政事務局副秘書長

盧潔瑋女士
民政事務局首席助理秘書長（公民事務）3

鄭青雲先生
民政事務局局長政務助理

梁子康先生
民政事務局助理秘書長(3)2

譚寶珠女士
信託基金及廟宇聯合秘書處
行政經理

呂健華先生
信託基金及廟宇聯合秘書處
署任財務經理

黃明遠先生
信託基金及廟宇聯合秘書處
項目經理

謝志祥先生
信託基金及廟宇聯合秘書處
副項目經理

梁慧賢女士
信託基金及廟宇聯合秘書處
助理經理（廟宇）1

楊成輝先生
信託基金及廟宇聯合秘書處
助理經理（廟宇）3

因事缺席：　東華三院主席
馬陳家歡女士

葉長清先生

[redacted]

(4) **華人廟宇委員會轄下工作小組主席報告**
(CT 38/2016 號文件)

「財務及管理小組」

五. 盧維幹先生向委員簡介小組報告內容，事項包括修訂廟宇管理合約條文。會眾備悉有關報告。

[redacted]

（跟進：秘書）

[redacted]

***Note by Clerk, PAC:** Chinese version only.*

附件一

華人廟宇委員會

財務及管理小組

小組主席報告

（2016 年 8 月 2 日至 11 月 23 日）

主席	：	盧維幹先生
委員	：	湯棋濟女士 王聯章先生，MH 李家祥博士
增補委員	：	陳東博士，GBS，JP 羅詠詩女士 馬清煜先生，SBS，JP
秘書	：	趙幗儀女士

[redacted]

商討及跟進事項

二. 在報告期內，小組商討及跟進的主要項目包括：

(i) [redacted]
(ii) [redacted]
(iii) [redacted]
(iv) [redacted]及
(v) 跟進廟宇土地的問題個案。

[redacted]

[redacted]

[redacted]

[redacted]

——— 有關項目的詳情參見**附錄**的會議記錄。

[redacted]

三. [redacted]

[redacted]

[redacted]

***Note by Clerk, PAC:** Chinese version only.*

附錄

華人廟宇委員會

財務及管理小組

會議記錄

日期 ： 2016 年 8 月 25 日

時間 ： 下午 2 時 30 分

地點 ： 信託基金及廟宇聯合秘書處

出席者 ： 盧維幹先生 （主席）
湯棋淯女士
羅詠詩女士
趙幗儀女士 （秘書）

列席者 ： 梁子康先生
民政事務局助理秘書長(3)2

譚寶珠女士
信託基金及廟宇聯合秘書處
行政經理

陳華健先生
信託基金及廟宇聯合秘書處
財務經理

呂健華先生
信託基金及廟宇聯合秘書處
副經理（財務）

梁慧賢女士
信託基金及廟宇聯合秘書處
助理經理（廟宇）1

因事缺席： 王聯章先生，MH
李家祥博士

陳東博士，GBS，JP
馬清煜先生，SBS，JP

[redacted]

[redacted]

二、 [redacted]

[redacted]

[redacted]

[

[redacted]

[redacted]

[redacted]

[redacted]

廟宇土地的問題個案 (附件六)

十四. 行政經理簡介文件內容。有關廟宇範圍內的土地遭第三者佔用的個案，主席建議秘書處諮詢委員會法律顧問的意見後方決定如何處理。由於有關個案的土地業權屬於民政事務局局長法團，部份會眾認為民政事務局可同步跟進向律政司查詢。

（跟進：民政事務局）

[redacted]

[redacted]

十六. 沒有其他事項，會議於下午 4 時結束。

通過會議記錄

（主席）

***Note by Clerk, PAC:** Chinese version only.*

附件六
(FMWG/25.8.2016)

廟宇土地的問題個案
(截至 2016 年 7 月 31 日秘書處知悉的個案)

廟宇及 其所在地	廟宇性質	背景及佔用情況	跟進行動
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

Note by Clerk, PAC: Chinese version only.

廟宇及其所在地	廟宇性質	背景及佔用情況	跟進行動
[redacted]	[redacted]	[redacted]	[redacted]
3. [redacted]	委託廟宇 (但自 2006 年起拒絕簽約)	委員會自 1964 年開始委託[redacted]管理該廟，一直以來沿用的委託合約較簡單。直至 2006 年 7 月委託合約屆滿時，秘書處擬採用新修訂的委託合約，因涉及[redacted]需自行承擔維修責任及多項新增條款，最終未能與[redacted]達成協議。秘書處遂於 2006 年 9 月與[redacted]會面磋商。除管理合約條款外[redacted]表示廟宇所在及附屬土地幅員廣大，於早年殖民地管治時期在不合理情況下被轉歸當年的華民政務司所擁有。當時的[redacted]更於 2006 年 10[redacted]上作出反映，要求委託廟宇管理合約條款需經詳細諮詢，並得大部份[redacted]同意才可作實，並要求清晰土地業權後方考慮商討新合約的細節。 自 2006 年 9 月與[redacted]面見後，秘書處沒有再作洽商。	有關問題由於涉及土地業權，**建議**由民政事務局作出跟進。

Helen Yuen

寄件者: Clara Leung <claraleung@ctc.org.hk>
寄件日期: 2017年3月31日星期五 18:50
收件者: bthleung@hab.gov.hk; tmkyam@hab.gov.hk; Chiu Lisa; Tammie Tam
副本: Helen Yuen
主旨: FW: Meeting on 18.1.2017 regarding the management contracts of [redacted]

Dear all,

The preceding email from [redacted] clarifying his observation during a lunch meeting with [redacted] in Feb 2017 subsequent to the subject meeting for your record, please.

Regards,
Clara LEUNG
Assistant Manager
Chinese Temples Committee
T: 3718 6871
F: 3718 6800
email: claraleung@ctc.org.hk

From: [redacted]@had.gov.hk [mailto:[redacted]@had.gov.hk]
Sent: Friday, March 31, 2017 5:39 PM
To: Clara Leung
Cc: [redacted]@had.gov.hk; [redacted]@had.gov.hk
Subject: RE: Meeting on 18.1.2017 regarding the management contracts of [redacted]

Dear Clara,

Slight amended in RED colour as the following:

==========

1. Chairman and some~~All the~~ members of [redacted] participating in the lunch meeting~~function~~ insisted that the ownership of [redacted] (including [redacted]) belong to the [redacted] villagers, and they were very angry that the land was transferred to SHAI a few decades ago for unknown reason;
2. They claimed that as the land of [redacted] belongs to the villagers, they would not enter any delegation management contract with SHAI;
3. They felt insulted and angry that they were required to seek HAB / CTC's consent to erect temporary structures in front of [redacted] to celebrate [redacted] every year;
4. They did not have interest in applying maintenance fund of CTC as the maintenance works of [redacted] has finished;
5. They did not have interest in applying funding for organizing ritual ceremonies from CTC, e.g. [redacted] though the annual expenditure for organizing [redacted] is around $1.8 million;

[redacted]

==========

For your reference, please.

Best Regards

[redacted]

From: "Clara Leung" <claraleung@ctc.org.hk>
To: <[redacted]@had.gov.hk>
Date: 21/02/2017 04:23 PM
Subject: RE: Meeting on 18.1.2017 regarding the management contracts of [redacted]

Dear [redacted]

I refer to our telephone conversation on 16.2.2017 regarding your discussion with [redacted] on the management contract of [redacted] during a Chinese New Year function last week. I would like to recap below your observations during the discussion:

1. All the members of [redacted] participating in the function insisted that the ownership of [redacted] belong to the [redacted] villagers, and they were very angry that the land was transferred to SHAI a few decades ago for unknown reason;
2. They claimed that as the land of [redacted] belongs to the villagers, they would not enter any delegation management contract with SHAI;
3. They felt insulted and angry that they were required to seek HAB / CTC's consent to erect temporary structures in front of [redacted] to celebrate [redacted] every year;
4. They did not have interest in applying maintenance fund of CTC as the maintenance works of [redacted] has finished;
5. They did not have interest in applying funding for organizing ritual ceremonies from CTC, e.g. [redacted] though the annual expenditure for organizing [redacted] is around $1.8 million;

[redacted]

Grateful for your verifications if the above is correct. Thank you very much.

Regards,
Clara LEUNG
Assistant Manager
Chinese Temples Committee
T: 3718 6871
F: 3718 6800
email: claraleung@ctc.org.hk

[redacted]

From: "Clara Leung" <claraleung@ctc.org.hk>
To: <[redacted]@had.gov.hk>
Date: 15/02/2017 12:11 PM
Subject: FW: Meeting on 18.1.2017 regarding the management contracts of [redacted]

Dear [redacted]

Could you please update me if there is any progress on the issue below?

Regards,
Clara LEUNG
Assistant Manager
Chinese Temples Committee
T: 3718 6871
F: 3718 6800
email: claraleung@ctc.org.hk

From: Clara Leung [mailto:claraleung@ctc.org.hk]
Sent: Friday, January 20, 2017 5:34 PM
To: [redacted]@had.gov.hk
Cc: [redacted]@had.gov.hk'; [redacted]@had.gov.hk'; bthleung@hab.gov.hk; tmkyam@hab.gov.hk; 'es@hab.gov.hk' (es@hab.gov.hk); Tammie Tam
Subject: RE: Meeting on 18.1.2017 regarding the management contracts of Tin Hau Temple and Hau Wong Temple in Tung Chung

Dear [redacted],

As per our discussion in our meeting on 18.1.2017 on the subject issue, please find below some main points for your initial lobbying with [redacted]

Temple Maintenance Fund

1. Maximum amount of grant of Temple Maintenance Fund from CTC for general temples is $1 million.

(The fund is now open for application, please visit http://www.ctc.org.hk/b5/news_details.asp?id=265 for details of the funding applications) Please note that the applicants need to comply with the funding guidelines, such as tendering procedures of the appointment of consultant and contractor.

2. To facilitate CTC's assessment on the funding application, the organization needs to submit funding application together with the renovation proposal at least 9 months before the renovation works commence.

[redacted]

For maintenance funding applications of delegated temples, CTC may consider to increase the funding amount according to the conditions of the temple and the financial conditions of the organization. However, same funding guidelines apply to CTC's delegated temples. In case [redacted] needs further clarification or has difficulty to meet the deadline of the funding exercise, we are happy to discuss with them in details.

[redacted]

Should you have any queries, please feel free to contact me. Thank you very much for your assistance.

Regards,
Clara LEUNG
Assistant Manager
Chinese Temples Committee
T: 3718 6871
F: 3718 6800
email: claraleung@ctc.org.hk

From: Clara Leung [mailto:claraleung@ctc.org.hk]
Sent: Tuesday, January 17, 2017 10:00 AM
To: [redacted]@had.gov.hk
Cc: bthleung@hab.gov.hk; tmkyam@hab.gov.hk; 'es@hab.gov.hk' (es@hab.gov.hk); Tammie Tam
Subject: RE: Meeting on 18.1.2017 regarding the management contracts of [redacted]

Dear Edward,

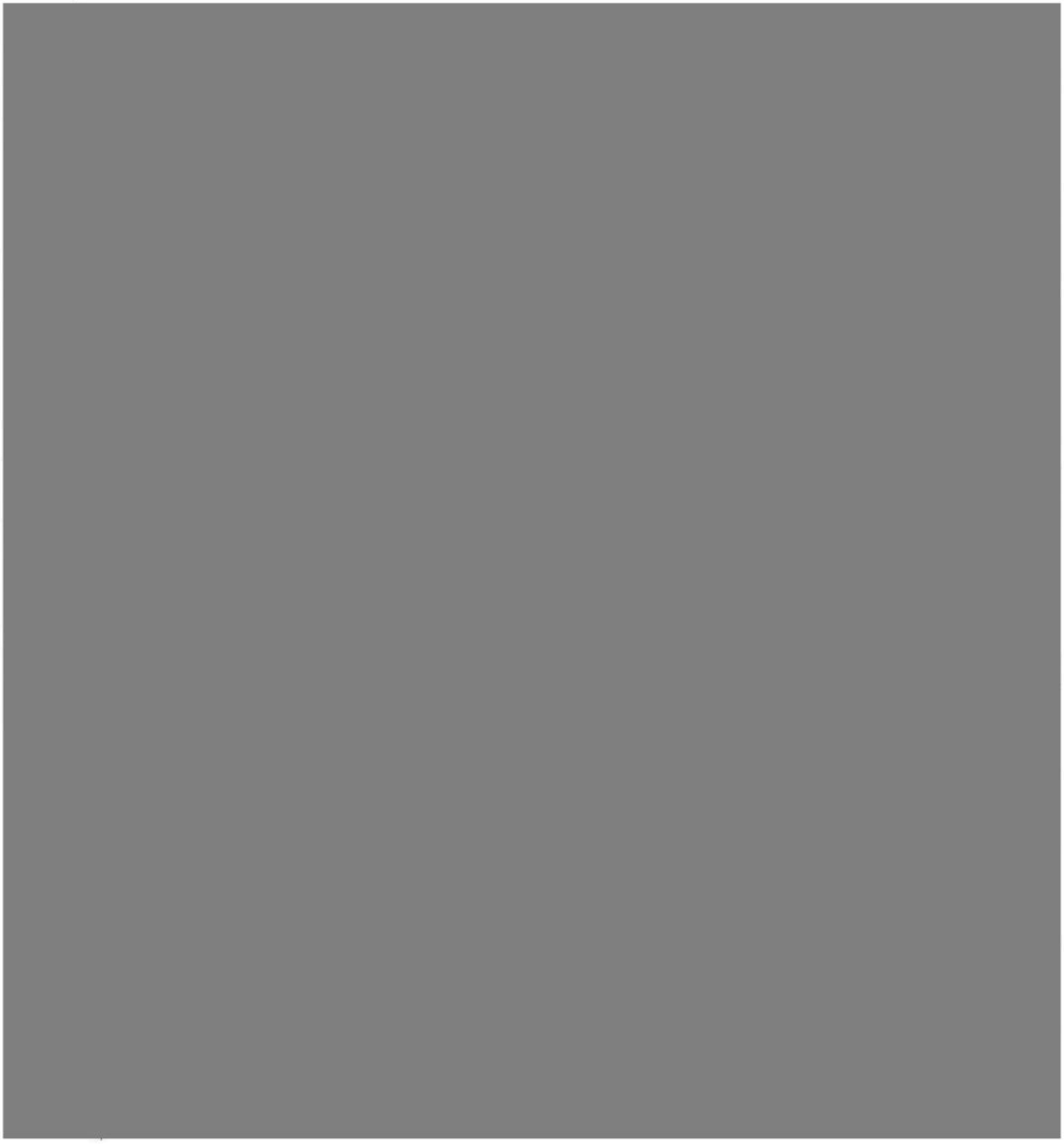
We spoke. Please find below the names of attendants and details of the meeting tomorrow:

Date & Time: 18.1.2017 (10:30am)
Venue: [redacted]
Address: [redacted]

Name of attendants	Title
Mr Billy Leung	AS (3)2, HAB

Ms Tina Yam	SEO(3)1, HAB
Ms Lisa Chiu	Executive Secretary, CTC
Ms Tammie Tam	Administration Manager, CTC
Ms Clara Leung	Assistant Manager, CTC

Regards,
Clara LEUNG
Assistant Manager
Chinese Temples Committee
T: 3718 6871
F: 3718 6800
email: claraleung@ctc.org.hk



華人廟宇委員會

財務及管理小組

2016 年 8 月 25 日
下午 2 時 30 分

會議議程

一. 通過 2016 年 6 月 20 日會議記錄

二. 續議事項

三. [redacted]

四. [redacted]

五. [redacted]

六. 其他事項

(i) [redacted]
(ii) [redacted]
(iii) [redacted]
(iv) 廟宇土地的問題個案（附件六）

***Note by Clerk, PAC:** Chinese version only.*

附件六
(FMWG/25.8.2016)

廟宇土地的問題個案
(截至 2016 年 7 月 31 日秘書處知悉的個案)

廟宇及 其所在地	廟宇性質	背景及佔用情況	跟進行動
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

*Note by Clerk, PAC: Chinese version only.

廟宇及其所在地	廟宇性質	背景及佔用情況	跟進行動
[redacted]	[redacted]	[redacted]	[redacted]
3. [redacted]	委託廟宇 (但自 2006 年起拒絕簽約)	委員會自 1964 年開始委託[redacted]管理該廟，一直以來沿用的委託合約較簡單。直至 2006 年 7 月委託合約屆滿時，秘書處擬採用新修訂的委託合約，因涉及[redacted]需自行承擔維修責任及多項新增條款，最終未能與[redacted]達成協議。秘書處遂於 2006 年 9 月與[redacted]會面磋商。除管理合約條款外，[redacted]表示廟宇所在及附屬土地幅員廣大，於早年殖民地管治時期在不合理情況下被轉歸當年的華民政務司所擁有。當時的[redacted]更於 2006 年 10 月[redacted]上作出反映，要求委託廟宇管理合約條款需經詳細諮詢，並得大部份[redacted]同意才可作實，並要求清晰土地業權後方考慮商討新合約的細節。 自 2006 年 9 月與[redacted]面見後，秘書處沒有再作洽商。	有關問題由於涉及土地業權，**建議**由民政事務局作出跟進。

1432

附件二

CHINESE TEMPLES COMMITTEE
華人廟宇委員會

香港灣仔皇后大道東二一三號
胡忠大廈二十二樓
二二零二室

Room 2202, 22nd Floor,
Wu Chung House,
213 Queen's Road East,
Wanchai,
Hong Kong.

本處檔號 Our Ref. (46) in CTC 5/631/51 III

來函檔號 Your Ref.

電 話 Tel. 2519 9119

圖文傳真 Fax: 2586 1945

[redacted]

[redacted]

草擬

授權管理[redacted]事

華人廟宇委員會(以下簡稱"**委員會**")現同意根據香港法例第一五三章《華人廟宇條例》第十一條所賦予的權力，授權[redacted]管理[redacted](以下簡稱"**廟宇**")，爲期三年，由二零零六年七月十六日起至二零零九年七月十五日止("**管理期**")。此項授權，受到下列條件的規限：—

管理支出

1. [redacted]在管理期內須妥善管理廟宇，以達到委員會滿意的程度爲準，並承擔廟宇的所有開支及支出(包括但不限於政府差餉、地租、物業稅及水、電、電話及其他公用事業的費用及按金)。

授權規限

2. [redacted]可向委員會推薦承辦商或司祝、由委員會委任其爲司祝並由[redacted]聘用之以管理廟宇，惟委員會對該聘用之同意並不解除[redacted]在本信函中所須負之任何責任，而[redacted]須就遵守及遵從本信函所列之條款向委員會負上責任。有關聘用條件須規定委員會有全權免任該司祝的權力。

用途

Source: CTC 5/631/51 IV

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3. 除獲委員會的事先書面批准外，廟宇所處之地段內("**該地段**")的所有建築物、架設物及土地及廟宇本身不得被用作廟宇以外之任何其他用途。

維修責任

4. (1) [redacted]須成立保養維修基金，並按委員會發出的指令自費翻新該廟宇，包括在管理期內修葺及維修廟宇、該地段及廟內和地段內的財產、裝置及財物，以及土地擁有人在該地段之政府租契中須負責修葺或維修之任何其他地方，保持其狀況良好及清潔整齊(以達至委員會滿意的程度爲準)。

(2) 在無損前文一般性的原則下，[redacted]應按所需而定經常自費翻新*廟宇及該地段(但不少於每兩年一次或委員會按廟宇的實際狀況而酌情批准延長的期限)，及根據有關電力公司及香港法例及法規的規定，修理及維修廟宇的所有電器裝置。

維修通知

5. (1) 委員會及其授權代表有權在管理期內不時進入及查看廟宇及該地段。在無損本信函第 10 (2)段的原則下，委員會或其授權代表可向[redacted]發出書面維修通知，列明[redacted]按本信函之條款而需負責執行的維修工作。

(2) [redacted]須在委員會於前述書面通知指明的時間內施行及完成該等維修工作(以達至委員會滿意的程度爲準)，否則委員會及其授權代表有權進入廟宇及/或該地段，代爲執行有關工程及維修工作，所有有關費用須由[redacted]支付。

收入及其運用

6. (1) [redacted]可接受進香人士或其他人士或團體在管理期內向廟宇作出的任何自願損獻，惟不得對進香人士或訪客徵收或收取或要求任何進廟參觀或參拜的費用。

(2) 任何人士對廟宇的自願損獻及廟宇的全部其他收入，包括[redacted]

---

* "翻新"指及包括但不限於查看、檢查、修理、清潔、佈置及粉飾廟宇及該地段及當中所有固定附著物及裝置，包括地板、天花、室內批盪或牆壁之其他精修材料或底灰、門、電器裝置、水渠、管道及園景，以及更換該等固定附著物及裝置之所有損壞部份。

Source: CIC 17631/17 B

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[redacted]在管理期內收到有關廟宇營運的收入(例如因聘用承辦商或司祝管理廟宇而收到的款項)，必須首先運用於進行廟宇的傳統儀式，以及廟宇、該地段及廟內和地段內的財產、裝置及財物的維修。如有盈餘，則須用於支付管理廟宇的員工的薪酬及[redacted]因遵守本信函之條款而引致之開支，以及用於香港的華人慈善用途。

保險

7. (1) 委員會已爲廟宇就因火災、颱風、暴風、雷電電擊、爆炸、水災、水淹、地震、山泥傾瀉及地陷等自然災害而可能造成之損毀購買財產保險，保額爲港幣一佰萬元。[redacted]司意承擔管理期內有關的投保費用，由二零零六年五月一日至二零零七年四月三十日（共十二個月）的投保費用爲每年港幣四百六十元。二零零七年五月一日起之保費或有變動，[redacted]不得異議。

(2) 此外，委員會亦已爲廟宇購買一億元的公眾責任保險，並以委員會及[redacted]爲共同受保人[redacted]司意承擔每年港幣一千五百元的保費，不足之數由委員會支付。

(3) 除第 7.(1)及(2)項所述的保險外，[redacted]須自費在管理期內向一間有信譽的保險公司購買足夠的僱員補償保險以及其他合適的保險。

晚間管理員

8. [redacted]須備存一份列有所有晚間負責看管廟宇之管理員的名冊，並須應委員會的要求交予委員會查看。除准許名冊上之管理員執行職務外(包括巡察廟宇以確保廟宇及廟內財產的安全)，[redacted]不得容許或批准任何人士於晚間逗留在廟宇之任何部份。

財政及行政報告 i.e. Requiring the delegated organisation to submit audited accounts and administration report

9. (1) [redacted]須在管理期內的每個財政年度擬備廟宇財政報告，並交由認可核數師審計。該等經認可核數師審核妥當的財政報告必須在相關財政年度完結後的三個月內呈交給委員會。

(2) 此外，[redacted]亦須向委員會遞交廟宇的年度行政報

Source: CIC 3/631/31 II

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142.9

告，列明由委員會規定之相關財政年度期間與廟宇管理有關的事項，包括但不限於：-

(i) 在廟宇日常管理中遇到的難題；
(ii) 在廟宇舉辦的活動；及
(iii) 所收到與廟宇及其管理有關的投訴之數字及詳細內容。該行政報告須由[redacted]主席核實和簽署作實，並在管理期內之每個財政年度完結後一個月內呈交予委員會。

遵守法律、法規等

10. [redacted]須嚴格遵守：-

(1) 所有適用於廟宇、該地段及廟宇管理及廟內舉行之活動的法例、法規及有關部門及機關之規則。
(2) 該地段之政府租契中的所有契諾及條款，在未得委員會的事先書面同意下，不得批准或容許任何與委員會及/或有關政府部門批核之廟宇平面圖及其他有關的文件有偏差的工程或對廟宇作出任何增建或結構性改動。

告示

11. [redacted]須於廟宇內當眼處張貼及展示由委員會以中文及英文發出的告示，向進香人士及訪客說明廟宇已由委員會授權東涌鄉事委員會管理。

彌償責任

12. (1) [redacted]須在管理期內就:-因其本身或其僱員、代理人、承辦商及訪客之任何作爲、疏忽或失責，或
(2) 在廟宇中進行的業務及活動，或
(3) 違反或未能履行本信函之任何條款，

而直接或間接造成與任何人士之身故或人身傷害或任何土地財產或非土地財產之損失或損壞有關之任何賠償、開支、責任、損失、索款要求、申索或法律程序而負責及對委員會作出全面彌償。

違約通知

13. 如[redacted]違反本信函之任何條款，委員會可以書面通知即時終止本信函之授權而無損委員會就本信函之任何

Same: 6TC 2/031/11 II

83D

先前違反對東涌鄉事委員會作出申索之權利。

交回廟宇及財產

14. (1) 在本信函之授權屆滿或提前終止時，[redacted]須清理廟宇內所有不屬於委員會的財產、裝置及財物，並把廟宇及該地段的空置管有權及廟內及地段內屬於委員會的財產、裝置及財物一併交回委員會。

(2) 如[redacted]未有按本條第(1)項的條文搬走所有不屬於委員會的財產、裝置及財物，該等財產、裝置及財物將被視爲遭物主遺棄，委員會有權以其認爲合適的方法處置及/或棄置遺下的任何財產、裝置及財物，而無須就[redacted]或任何其他人士因而蒙受的損失或損壞承擔任何法律責任。[redacted]須支付委員會所有處置或棄置該等財產、裝置及財物的費用和有關行政費用、及就前述任何其他人士的任何索償對委員會作出全面彌償。

委員會終止授權通知

15. 委員會可在管理期內隨時以一個月書面通知終止本信函之授權，而不須具有任何理由，亦無損委員會就本信函之任何先前違反對[redacted]作出申索之權利。[redacted]無權就該終止而索取任何補償。

廟宇管理權交還通知

16. [redacted]可向委員會發出最少三個月事先書面通知，將本信函授予之廟宇管理權交還委員會，惟該管理權之交還將無損委員會就本信函之任何先前違反對[redacted]作出申索之權利。

更改條款權

17. 委員會可在管理期內隨時按其需要修改本信函中之任何授權條款及守則。如情況適當[redacted]會就任何擬作之修改獲得諮詢。

無租賃關係

18. 委員會在本信函中僅授權[redacted]根據本函之條款管理廟宇。本信函之任何條款不應構成或被解釋爲向[redacted]出租廟宇或該地段或授予廟宇或該地段的管有權。

Source: DC 3/6/21/37 II'

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爭議最終決定權

19. 委員會及[redacted]之間就本信函及本函內之授權的所有爭議，應由委員會作出最終決定，有關決定對[redacted]具有約束力。

委員會請[redacted]在本信函之副本上簽署，並將簽妥之信函副本交還委員會，以確認[redacted]接受按上述條款之授權。

華人廟宇委員會秘書

(羅永甜先生)

二零零六年十月三日

[redacted]確認同意接受上述授權及會嚴格遵守本信函所列的全部條款。

([redacted]印章)

簽名：[redacted]

日期：

Note by Clerk, PAC:** **Chinese version only.

Encl. to EC 4/60/31 (2)

83F

康樂及文化事務署
Leisure and Cultural Services Department

電 話 TEL: 2601 8807
圖文傳真 FAX NO: 2602 1480
本署檔號 OUR REF: LCSD/4-35/27C Pt. 2
來函檔號 YOUR REF:

31 May 2017

Legislative Council
Public Accounts Committee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn.: Mr Anthony CHU, Clerk)
(Fax No. 2543 9197)

Dear Mr Chu,

Follow-up to Public Accounts Committee Report No. 68
Provision of district council funds for community involvement projects

Thank you for your letter of 18 May 2017 concerning the captioned subject. Please find attached Leisure and Cultural Services Department's response for the information requested. For enquiry, please contact the undersigned at telephone number 2601 8807.

Yours sincerely,

Charlson Chiu

(Charlson CHIU)
for Director of Leisure and Cultural Services

c.c. Secretary for Financial Services and the Treasury (Fax No.: 2147 5239)
Director of Audit (Fax No. : 2583 9063)
Director of Home Affairs (Attn.: Mr Howard YAM) (Fax No.: 2834 5466)

Public Accounts Committee
Consideration of Chapter 4 of the Director of Audit's Report No. 68
Provision of district council funds for community involvement projects
Reply to Q1 and Q2

Q1. According to paragraph 2.9, the number of CI projects (comprising DC projects and LCSD projects) and the number of participants in CI projects are the two key performance indicators shown in HAD's Controlling Officer's Report. According to paragraph 2.14, in March 2017, HAD and LCSD were verifying the accuracy of the CI project statistics (i.e. the number of CI projects and the number of participants in CI projects). Why was it necessary to verify the CI project statistics which had already been reported in the HAD's Controlling Officer's Reports? Had the statistics not been properly verified before they were published in the Controlling Officer's Reports? What was the procedure in place in compiling and verifying the statistics to ensure their accuracy? According to paragraphs 2.29 to 2.31, Director of Leisure and Cultural Services has agreed to complete the verification of the CI project statistics as soon as possible and take measures to ensure the accuracy of the project statistics. Has the verification been completed? Has the verification revealed any inaccuracies in the project statistics reported in the HAD's Controlling Officer's Reports? What measures will be taken to ensure the accuracy of the project statistics in future?

A1. In light of the Audit's analysis of the project figures, both HAD and LCSD agreed that there was the need to verify the figures again. Upon verification, HAD and LCSD found that the figures on DC-funded CI projects undertaken by LCSD were collated at district level based on information from various sources. Some discrepancies had arisen due to different categorisation and timeframe of the statistics. HAD and LCSD have enhanced coordination at the Headquarters and district levels, and agreed to adopt measures to ensure the uniformity and accuracy of the project statistics. Specifically, a template will be made available for district staff to ensure the figures are provided on the same basis among the 18 districts. The relevant figures will be verified by the LCSD Headquarters and compiled by the HAD Headquarters using a coordinated mechanism and consistent approach.

Q2. According to paragraph 4.18, Audit examined 38 projects held in 2015-2016 at LCSD venues and found that in 30 (79%) projects, the audience size disclosed in the final report was higher than that recorded by LCSD venue management (with variances ranging from 3% to 323% and averaging 71%).

a) What is the method used by LCSD venue management in recording the audience size and whether it is different from the method adopted by DCs?
b) Whether HAD has noted the situation and what follow-up actions have been taken to address the problem?

A2. The records kept by LCSD venue management are based on ticket sales report or ticket stubs collected or manual counting during admission. LCSD understands from HAD that figures set out in the final reports submitted to the District Councils were provided by the implementing parties. LCSD also understands that HAD has asked its District Offices to request the implementing parties to obtain the relevant figures from the LCSD venue management in completing the final reports so as to ensure the accuracy of the number of participants/audience in the final reports.

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(By e-mail only)

6 June 2017

Mr Anthony CHU
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Dear Mr Chu,

Public Accounts Committee
Consideration of Chapter 4 of the Director of Audit's Report No. 68
Provision of district council funds for community involvement projects

Thank you for your letter of 18 May 2017. We are pleased to provide the information requested as per attached at Appendix.

Yours sincerely,

(Howard YAM)
for Director of Home Affairs

c.c. (By fax only)
Director of Leisure and Cultural Services (fax no. 2691 4661)
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Public Accounts Committee
Consideration of Chapter 4 of the Director of Audit's Report No. 68
Provision of district council funds for community involvement projects

Replies to written questions

For the Home Affairs Department

Part 2: Allocation and use of district council funds for community involvement projects

Q1 According to paragraph 1.5, the Home Affairs Department ("HAD") provides funds to District Councils ("DCs") for implementing community involvement ("CI") projects in districts annually (the funds are referred to as DC-CIP funds). According to paragraph 2.2(b), a portion of the DC-CIP funds was allocated to individual DCs taking into account a number of factors (e.g. population and socio-economic factors). However, according to paragraph 2.5, HAD had not taken into account changes in the factors in allocating the DC-CIP funds. For example, for the allocation of DC-CIP funds in 2015-2016, an amount of $256.11 million was allocated based on old data (e.g. district population) of 2008-2009, 2012-2013 and 2013-2014. Why was this so? According to paragraphs 2.6 and 2.7, Director of Home Affairs agreed to conduct a review of the allocation of DC-CIP funds. Has the review been conducted? What measures will be taken to ensure that the funds are allocated in the most appropriate manner? When will the measures be taken?

A1 To maintain a reasonable degree of certainty and continuity in funding, a baseline allocation was calculated for each district and the baseline allocation would be maintained unless there was increase in overall funding for District Council ("DC") funds. Between 2008-09 and 2016-17, there were three increases in overall funding for DC funds respectively in 2012-13, 2013-14 and 2015-16. When there was increase in the total provision of DC funds, the allocation for the DCs in the past year would be allocated as baseline allocation. As for the additional provision, a portion of which would be allocated on an equal basis to the DCs and the remaining portion would be allocated according to the relevant factors (e.g. population and land area) by using the latest data.

Considering the above allocation mechanism has been in place for years and in view of Audit's recommendation, HAD has duly reviewed and adopted a new allocation arrangement. Starting from 2017-18, less than half of the total provision would be allocated based on individual DC's allocation in the past year, and the major portion of the total provision would be allocated according to the latest data of the relevant factors (e.g. population and socio-economic factors). We plan to adopt this arrangement to recalculate the allocation at the beginning of a new DC term, or when there is further increase in the total provision in future. This would ensure any changes to the relevant factors could be duly and timely reflected in the allocation.

Q2 According to paragraph 2.9, for the period 2011 to 2015, the number of CI projects decreased by 3.3% (from 39 127 to 37 827), and the number of participants decreased by 13.3% (from 21.49 million to 18.63 million). According to paragraph 2.10, in the same period, the expenditure of CI projects increased by 17% (from $272.35 million to $319.52 million). Please provide explanation for:

a) reasons for the increase in the expenditure of CI projects despite the decrease in the number of participants. Given that the Consumer Price Index and the Consumer Price Index (A) has risen 17% and 19% respectively during the same period, was the increase in expenditure attributable to factors such as inflation and/or programme content improvement; and
b) many participating organizations reflected that a loss would normally be incurred for organizing CI projects. Has HAD ascertained with participating organizations regarding the situation and reasons for incurring a loss?
c) According to paragraphs 2.28(a) and 2.30, Director of Home Affairs has agreed to keep under review the number of CI projects and participants in the projects vis-à-vis the expenditure of the projects and take improvement measures as appropriate. What is the current position regarding the number of CI projects and participants as well as the expenditure? Is there a need to take improvement measures? If yes, what improvement measures will be taken?

A2(a) DCs may identify and initiate projects for implementation to meet the needs of their districts. Depending on the scale and nature of projects carried out by the 18 DCs, the number of projects and participants may vary from year to year. In fact, the Government has not set any target for DCs on the number of CI projects to be carried out or the number of participants of these projects.

The implementation of CI projects involves the procurement of goods and services as well as the engagement of project staff. The increase in price level and staff cost over the years would have a bearing on the number and nature of projects organised/sponsored. For example, the Composite Consumer Price Index increased by 16.8% for the period 2011 to 2015 (and by 7.6% from 2013 to 2015). Furthermore, both DCs and other implementation parties like the Leisure and Cultural Service Department (LCSD) have been striving to enhance the quality and variety of CI projects. Therefore, higher operational costs for implementing CI projects had been observed.

A2(b) The CI projects are not implemented on a profit or loss basis and HAD has not received reports from the participating organisations that a loss would normally be incurred for organising CI projects.

The participating organisations are required to carry out CI projects in accordance with the provisions contained in the funding guidelines and the approved plans and budgets. There might be occasions that the proposed budgets of these organisations were not fully approved after DCs' vetting and scrutiny. In that case and if the organisations considered it necessary to proceed with the unfunded items, they would need to finance the shortfalls by coming up with alternative sources of funding.

A2(c) We have compared the latest figures for 2016 against those set out in the Audit report up to 2015 and found that the expenditure per participant is comparable – it was $17.2 in 2015 and $17.8 in 2016. We would continue to keep under review the number of CI projects and participants in the projects vis-à-vis the expenditure of the projects. In case there are any abnormal trends, we would take follow-up action.

Q3 In paragraphs 2.17 to 2.18, the Audit Commission ("Audit") analyzed the use of funds by DCs in 2015-2016 and revealed that

of the $205.63 million of funds spent on the 15 project categories, $146.27 million (71%) were spent on the three categories of arts and cultural activities, recreational and sports activities, and festival celebrations and district festivals. The funds spent on some project categories were small. For example, each of civic education ($2.42 million) and building management ($1.7 million) incurred a spending of less than 2% of the sum spent on the 15 project categories. In addition, Audit analyzed the 2015-2016 DC projects and found that for some projects targeting specific groups of people, the number of projects and participants was low (paragraph 2.21).

a) Will HAD consider providing incentives or implementing strategies to encourage DCs to initiate projects of other categories and targeting specific groups of people?
b) Director of Home Affairs has agreed the Audit's recommendations highlighted in paragraphs 2.28(b) and (c). When will HAD implement the recommendations and what is the expenditure and manpower involved?

A3(a)(b) As DC members are conversant with the needs of their respective districts/constituencies, they are in a better position to initiate projects that meet the needs of their districts. Starting from 2017-18, we would, as recommended in para. 2.28(b) and (c) of the Audit report, provide DCs with an analysis of the approved projects by categories for DCs' reference. DCs can make reference to the analysis in considering allocation of DC funds to the various project categories.

Q4 According to paragraph 2.27, Audit examined the use of funds by DCs for arts and cultural activities in 2015-2016 and found that 10 of the 18 DCs had used funds designated for these activities on other activities, involving amounts ranging from $220,000 to $1.09 million. Audit considers that HAD needs to take measures to ensure that the funds for arts and cultural activities are spent as designated.

a) Has HAD ascertained the reasons why the funds designated for arts and cultural activities were used on other activities?
b) How would HAD monitor the use of funds after they have been approved?

c) If the DCs concerned have not fully used up the approved funds on the activities, how would the residual funds be handled?
d) What measures will be taken to ensure that funds allocated for arts and cultural activities were solely used for that purpose? When will these measures be implemented?

A4(a)(c) Since the provision of designated funds to arts and cultural activities (designated funds) for the first time in 2013-14, HAD has required DCs to ensure that they will spend in each of the following years an amount no less than the amount spent by them on arts and cultural activities in 2012-13 (i.e. the amount they spent before the designated fund was first provided in 2013-14) and that the two additional designated funds will be spent solely on such activities.

We understand that DCs would endeavour to approve the required amount for implementing different arts and cultural activities in their respective districts. However, there would be cases where the actual expenditure incurred by these activities is less than the approved budget/amount or some projects were cancelled due to inclement weather or other unforeseen circumstances.

All unspent DC funds, including those designated for arts and cultural activities, will lapse at the end of the financial year, i.e. DCs cannot carry forward the unspent balance in a year to the following year. In order to fully utilize the district allocation for the benefit of the community, DCs may decide to use the unspent balance of the designated funds to settle payments for approved CI projects in other categories. This is possible because, as a budgetary strategy, DCs may approve over-commitments of up to 25% of their respective district allocations such that the funds available can be fully utilized even when there is underspending or delay in the implementation of some CI projects.

A4(b)(d) HAD regularly reminds District Officers (DOs) that the designated funds should be fully spent on arts and cultural activities. HAD has included this specific reminder when notifying DOs of the annual district allocation at the start of the financial year. It has also encouraged DC secretariats from time to time to speed up payments to ensure full utilisation of the designated funds.

To ensure DCs can fully use the designated funds, we have asked DC secretariats to enhance budgetary control and management of the funds, e.g. by suitably considering over-committing on arts and culture projects, so that the funds can be spent as far as possible by the close of the financial year.

Q5 According to paragraphs 2.24 and 4.15, Audit noted cases where inaccurate and incomplete information had been input by district offices into the District Council Funds Information System ("DCFIS"), such as lack of prompt update of the number of participants and improper classification of projects and incorrect input of project names. Also, the evaluation results as contained in the project evaluation forms had not been input into DCFIS by the DC secretariat concerned.

a) What is the procedure in place for HAD/DC secretariat to process information in DCFIS, and the manpower and expenditure involved in this regard?
b) Who will be responsible for verifying the input of information to ensure their accuracy? Why have the above mistakes not been identified?

A5(a)(b) DC secretariat inputs project data into the DCFIS upon the approval of CI projects and after key milestones have been reached, e.g. approval for releasing advance payment, receipt of final reports and evaluation forms, reimbursement for a CI project, etc. User procedures manual and guidelines on the classification of CI projects have been provided to assist the secretariat staff in inputting data into the system.

The DC secretary is responsible for ensuring the accurate recording of DC projects in DCFIS. HAD has reminded DC secretariats to keep the data in the DCFIS accurate, updated and complete.

Q6 According to paragraph 2.9, the number of CI projects (comprising DC projects and the Leisure and Cultural Services Department ("LCSD") projects) and the number of participants in CI projects are the two key performance indicators shown in HAD's Controlling Officer's Report. According to paragraph 2.14, in March 2017, HAD and LCSD were verifying the accuracy

of the CI project statistics (i.e. the number of CI projects and the number of participants in CI projects). Why was it necessary to verify the CI project statistics which had already been reported in the HAD's Controlling Officer's Reports? Had the statistics not been properly verified before they were published in the Controlling Officer's Reports? What was the procedure in place in compiling and verifying the statistics to ensure their accuracy? According to paragraphs 2.29 to 2.31, Director of Home Affairs has agreed to complete the verification of the CI project statistics as soon as possible and take measures to ensure the accuracy of the project statistics. Has the verification been completed? Has the verification revealed any inaccuracies in the project statistics reported in the HAD's Controlling Officer's Reports? What measures will be taken to ensure the accuracy of the project statistics in future?

A6 In light of the Audit's analysis of the project figures, both HAD and LCSD agreed that there was the need to verify the figures again. Upon verification, HAD and LCSD found that the figures on DC-funded CI projects undertaken by LCSD were collated at district level based on information from various sources. Some discrepancies had arisen due to different categorisation and timeframe of the statistics. HAD and LCSD have enhanced coordination at the Headquarters and district levels, and agreed to adopt measures to ensure the uniformity and accuracy of the project statistics. Specifically, a template will be made available for district staff to ensure the figures are provided on the same basis among the 18 districts. The relevant figures will be verified by the LCSD Headquarters and compiled by the HAD Headquarters using a coordinated mechanism and consistent approach.

Part 3: Management of conflicts of interest in community involvement projects

Q7 According to paragraphs 3.9(a) and 3.10, Director of Home Affairs has agreed to provide guidelines with broad principles of what constitute "other declarable interests" to DC/committee members as appropriate to facilitate the reporting of such interests. Have the guidelines been prepared? What are the guidelines? Under the new guidelines, do "other declarable interests" include key decision making or influential positions (e.g. president or

chairperson) held by DC/committee members in implementation parties? If no, why not?

A7 HAD has consulted ICAC for its advice on preparation of the guidelines and action is in train. We aim to provide broad principles of what constitute "other declarable interests" and along the line that key decision-making or influential positions in implementation parties held by DC/committee members should be considered as "other declarable interests" under the guidelines.

Q8 According to paragraph 3.8(a), at the beginning of every financial year, DCs might earmark funding for implementation parties for budgetary purpose. Audit noted that 34 DC/committee members might have overlooked the need to declare connections with implementation parties when attending meetings to consider the earmarking of funding. According to paragraphs 3.9(b) and 3.10, Director of Home Affairs has agreed to take more measures to ensure that DC/committee members declare their interests before earmarking funding for implementation parties. What measures have been taken so far? What further measures will be taken?

A8 It is worthwhile to explain that earmarking of funding is for budgetary and planning purposes only. Despite that funding has been earmarked, all funding applications from implementation parties are subject to DCs' vetting, scrutiny and separate approval. We have already requested DOs to remind DC/committee members to declare interest before earmarking of funding and the rulings made should be recorded in the minutes of meetings.

Q9 According to paragraph 3.3, under the District Council Ordinance (Cap. 547), a DC may make standing orders for regulating its procedures and those of its committees, including procedures for managing conflicts of interest in CI projects. HAD has provided a model text of standing orders for DCs' reference. DCs have generally adopted the model text, with variations to suit their individual needs. Audit discovered that some practices of DCs have deviated from the District Council Ordinance, such as allowing working groups to endorse CI project applications without seeking their DCs' further endorsement, and some DCs did not require their members to declare interests when handling matters through circulation of papers.

Has HAD reviewed the standing orders, procedures and forms used by each DC to make declaration of interests to ensure that they are appropriate and in compliance with the provisions of the District Council Ordinance? If yes, the details; if no, timetable for review and provision of suitable guidelines for DCs to follow.

A9 Section 68 of the DC Ordinance (Cap 547) provides that DCs may make standing orders for regulating its procedures and that of its committees. We have already requested DOs to review the standing orders of their respective DC to ensure that the principles and procedures laid out therein comply with the provisions of the DC Ordinance as well as the model text of standing orders. We have also specifically impressed upon DC secretariats of the need to seek DCs or their committees' endorsement of CI project applications recommended by working groups.

Q10 According to paragraph 3.13, of the 129 cases of declaration of interests examined by Audit, in 73 (57%) cases, rulings had not been made and recorded on the interests declared, and the DC/committee members who had declared the interests continued their attendance in the meetings.

a) What are the guidelines and procedures in place for DC members to declare interests?
b) For situations where DC members have declared interests, are there any guidelines in place to facilitate DC Chairmen to make rulings on those members' attendance, withdrawal, making a speech and voting at the meetings?
c) Reasons why rulings had not been made and recorded on the interests as contrary to the standing order requirement and the follow-up actions taken by HAD on those cases?
d) What are the assistance offered to DCs on the handling of interests declared and rulings made by DC Chairmen? What are the manpower and expenditure involved in this regard?
e) Implementation plan on Audit's recommendations highlighted in paragraph 3.14?

A10(a)(b)(d) The DC standing orders provides that any DC member who has pecuniary or other interests in any matter under consideration by the DC concerned or has connections with the beneficiaries or potential beneficiaries, including those on tender, quotation and

DC Funds, must, as soon as practicable after being aware of it, declare such to the DC concerned prior to the discussion of the relevant item. Based on the interest declared, the DC/Committee Chairman shall decide whether the member may speak or vote on that matter, or should withdraw from the meeting.

The Manual on the Use of DC Funds (HAD Manual) also provides that DC members (including co-opted members) should make a declaration on any conflict of interest which may be actual, potential or perceived. DC members should refrain from having business dealings with any party associated with projects financed by DC funds, which may bring the DC into disrepute. If such cannot be avoided (e.g. the member's company is the sole supplier), the DC member should declare the transaction and withdraw from the relevant DC proceedings.

HAD will work with DC secretariats with a view to drawing up a set of good practices on the handling of interests declared and rulings made by DC Chairmen at meetings. These good practices would be circulated to all DCs for reference.

A10(c) Although for some cases rulings were not explicitly recorded in the minutes concerned, it has been the general understanding and practice that members with pecuniary interests in the funding applications would not vote on the specific funding application(s) in question. The DC secretariats concerned have already stepped up the arrangement by reminding the Chairmen to make explicit rulings and ensure that such rulings are properly recorded in the minutes of meetings.

A10(e) We have already requested all DC secretariats that as a standard practice they should remind DC/committee members to declare interest at the relevant meetings or upon circulation of papers, and record the rulings made by the chairmen in the minutes of meetings. The minutes of meetings are posted on DC websites for public scrutiny.

Q11 According to Case 2 in paragraph 3.13, DC committee members attending the meeting included those who were holding offices as a chairperson, vice-chairperson or executive of a non-governmental organisation ("NGO") whose application for a CI project was being considered in the meeting. Before Audit's

review, was the Director of Home Affairs aware of cases similar to Case 2? If no, why not? If yes, what measures had been taken to address the issue?

A11 The Director of Home Affairs is not aware of any cases similar to Case 2. The procedures and principles in handling declaration of interests have been stipulated in the DC standing orders and HAD Manual for compliance when handling funding applications.

Q12 According to paragraph 3.17, some working groups had been assigned the duties of considering applications for CI projects. Of the nine DCs examined by Audit, there were three working groups (under three DCs) that endorsed applications for CI projects on behalf of DCs/committees. However, according to paragraph 3.19, the procedures for managing conflicts of interest as stipulated in DC standing orders are not applicable to working group meetings, and there are no laid-down procedures for handling conflicts of interest in working groups. Why is this so? Has the matter been overlooked? What are the procedures for the working groups to approve CI projects? According to paragraphs 3.21(a) and 3.22, Director of Home Affairs has agreed to ensure that the stipulated procedures for handling conflicts of interest applicable to DC/committee meetings also apply to working group meetings. What has been done in this regard?

A12 The principle of requiring DC members to declare interests as appropriate applies to Council, Committee, and Working Group meetings. Whilst Working Group is not explicitly mentioned in the Standing Order in addition to the reference to "Council" and "Committee", the HAD Manual has provided that DC members and co-opted members should make a declaration of interest before the relevant item is discussed. As Working Group members are either DC members or co-opted members, this would have governed the declarations of interest by members of Working Group and DC/Committees when handling CI projects. This notwithstanding, we will add the express reference to "working group" in the DC standing order to put the matter beyond doubt.

Q13 According to paragraph 3.20, Audit noted three working groups which had been delegated by their respective DCs with the authority to endorse a project application not exceeding $24,500,

$100,000 and $200,000 respectively. However, according to the same paragraph, a DC may only delegate its functions to a committee under the District Councils Ordinance (Cap. 547). Does it mean that the working groups cannot approve CI projects even if DC's endorsement has been obtained? What follow-up actions have been taken by HAD on the problems as revealed in paragraphs 3.16 to 3.20? What remedial action will be taken? What are the implementation plan, manpower and expenditure involved in implementing Audit's recommendations highlighted in paragraph 3.21?

A13 Working groups may make recommendations on CI project applications to DC or its committee for approval but working groups (not within the meaning of committee under section 71 of DC Ordinance (Cap 547)) should not approve applications on their own. The DC secretariats have been requested to ensure that DC's or the relevant committee's further endorsement on the working groups' recommendations are obtained, where working groups are involved in vetting CI project applications.

Part 4 : Implementation of community involvement projects

Q14 According to paragraph 4.6, one DC had reviewed the arrangement of designated NGOs more than 10 years ago. Audit recommended to provide DCs with suitable guidelines to facilitate their reviewing of designated NGOs and incorporate the guidelines into the HAD Manual.

a) What are the existing procedures for reviewing DCs' lists of designated NGOs?
b) What are the reasons for the DC not to review its list of designated NGOs on a regular basis?
c) Any actions currently taken by HAD to assist DC to review their list of designated NGOs, and the manpower and expenditure involved in this regard?
d) Implementation plan for Audit's recommendation highlighted in paragraph 4.10(a)?

A14(a)(b) Designated NGOs are generally well-established local or district-based organisations with long-term working partnership with DCs/District Offices. They have the proven capability and good track record in organising various CI activities, including

large scale or theme-specific ones, for the local community and the people who live, work or study in the districts. For this reason, DCs will, for budget planning purposes, earmark a suitable portion of the DC funds for these NGOs at the beginning of the year. That said, proposals for earmarking of funding for the designated NGOs would still need to be submitted to the respective DC/Committees for consideration, and the individual funding applications will be subject to the usual application, vetting and disbursement procedures as set out in the HAD Manual. In other words, applications from the designated NGOs are subject to the same level of scrutiny by the respective DCs or DC committees as with those submitted by other organisations.

A14(c)(d) HAD agrees with Audit that there is merit for DCs to regularly review their lists of designated NGOs to ensure that only NGOs with good performance and track records are included in the list. We will provide DCs with guidelines for this purpose within 2017 to facilitate the review.

Q15 According to paragraph 4.8, it is a usual practice that partner NGOs are selected with the assistance of DC secretariats through open or restricted invitations. According to paragraph 4.9, of the four DCs examined by Audit, for one DC, partner NGOs are selected through nominations by the DC members in charge of the CI projects concerned. Why does the DC deviate from the usual practice and adopt a less open and transparent practice in selecting partner NGOs? Whether the usual practice is stipulated in any regulations and guidelines? If yes, the details. Is such deviation considered acceptable by HAD? Referring to Case 3, was the practice acceptable and in compliance with stipulated regulations and guidelines? According to paragraphs 4.10(b) and 4.11, Director of Home Affairs has agreed to provide DCs with good practice guidelines on the selection of partner NGOs as adopted by most DCs. Have the guidelines been formulated and issued? Is compliance with the guidelines mandatory? If no, why not?

A15 DCs are entrusted by the public to make decision on the use of DC funds in their respective districts. In particular, DCs are responsible for –

(a) project identification and planning;

(b) determining whether projects are within the ambit of DC funds and should be implemented;
(c) determining the scale of projects;
(d) determining the priority of projects;
(e) determining the timetable of projects for implementation; and
(f) monitoring the progress of implementation and the overall effectiveness of projects.

In line with the role of DCs, HAD has not stipulated the exact mechanism on the selection of NGO partners but has provided guidelines on public accountability and management of conflict of interest in the HAD Manual. We are now gathering comments from the 18 DCs on their practices in selecting partner NGOs with a view to drawing up a set of best practices with emphasis on openness, transparency and accountability for reference by all DCs. As DCs need some flexibility in undertaking CI projects to meet the diverse needs of their districts, it would not be practical to turn the best practices or guidelines into mandatory requirements for strict compliance by DCs. That said, in processing and considering applications, including the selection of partner NGOs, DCs are advised to follow the guidelines set out in the HAD Manual.

For the DC mentioned in paragraph 4.9 of the Audit report, while there is a practice of assigning a DC member to be the “member in charge" to take charge of the organisation of certain CI projects (e.g. where appropriate, suggesting an NGO(s) to be an organiser/co-organiser), all decisions regarding the appointment of the NGO(s) are made by the relevant Committees/Working Groups (C/WGs) rather than the individual DC member. In other words, the role of the "member in charge" is to make recommendations for C/WGs’ consideration and approval. In selecting a partner NGO, the C/WG will take into account such factors as the experience and track record of the NGO, and record its deliberations/considerations in the minutes. All C/WG meetings are open to public and their minutes are available on the DC website.

HAD and the DO concerned welcome Audit's observations and will explore with the DC possible enhancements to the mechanism for selecting NGOs taking into account the practice adopted by other DCs.

Q16 According to paragraph 4.13, one DC examined by Audit had discontinued the use of any evaluation systems in the period 2011-2012 to 2016-2017. According to paragraph 4.14, another DC examined by Audit had not set any criteria for selecting CI projects for evaluation.

a) According to the HAD Manual, a DC should have an evaluation system in place to monitor the effectiveness of CI projects. What are the reasons for some DCs not having an evaluation system in place? Whether this is a mandatory requirement in the HAD Manual?
b) Some DCs have not evaluated some of the projects or only evaluated projects that have been attended by DC members. Whether HAD was aware of such problems and what actions have been taken to address the problems?
c) Whether HAD has offered assistance for the DC mentioned in paragraph 4.14(c) to improve their evaluation system?
d) According to paragraphs 4.20(a) and (b) and 4.21, Director of Home Affairs has agreed to ensure that DCs set up a system for evaluating CI projects and set proper criteria for selecting CI projects for evaluation. Have DCs set up the system and set proper criteria now? What measures have been taken in this regard?

A16(a) The HAD Manual provides that an evaluation system should be put in place by all DCs to monitor the effectiveness of CI projects. For the DC mentioned in paragraph 4.13 of the Audit report, project completion reports were obtained from organisers and considered by the DC secretariat. In November 2016, the DC concerned decided on an evaluation system and that DC members should be involved in the evaluation work to ensure the effectiveness of CI projects. Proper record of DC members' involvement in the evaluation system has been made since this financial year.

A16(b)(d) As stipulated in the HAD Manual, an evaluation system should be put in place to monitor the effectiveness of CI projects. DCs are given the flexibility to devise their own evaluation system but generally it is expected that DC members, co-opted members or District Office staff who are not involved in the administration of the project concerned and who do not have an interest in the

applicant organisation and/or the project under evaluation should conduct visits or attend the activities on a random basis.

HAD has already reminded DOs that a proper evaluation system should be put in place to monitor the effectiveness of CI projects and all projects meeting the criteria set should be evaluated.

A16(c) The DC concerned is reviewing the evaluation system with reference to other districts' good practices. HAD will monitor the progress of the review and offer assistance whenever required.

Q17 According to paragraph 4.16, of the 464 projects of the three DCs (203 + 81 + 180, see paragraph 4.15), in five projects, while the actual number of participants was below 50% of the expected number of participants, the rating was "Very Satisfactory". In one project of one DC, while the actual number of participants was only 33% of the expected number, the rating was "Very Satisfactory". In two projects of another DC, while the actual number of participants was 100% of the expected number in one project and 123% in the other, the rating was only "Acceptable". Are there any laid-down guidelines to facilitate a common understanding of the evaluation system so that those doing the evaluation could accurately reflect the actual situation in completing the review? If yes, the details, if not, whether to consider providing such guidelines?

A17 There are different types and scale of CI projects. While evaluators (usually DC members without a direct interest in the project) can count the number of participants for events of a smaller scale (e.g. with a small number of participants), it is understandable that they may have difficulties in counting the same for large scale events such as carnivals.

As there would be practical difficulties in devising guidelines that could ensure accuracy in evaluators' counting of the number of participants in certain types of events (e.g. carnival type events), we will remind DC secretariats to follow up with the evaluators in cases the ratings given are not in line with the actual outturn rates, e.g. to obtain the evaluator's explanation or observations regarding the discrepancy.

Q18 According to paragraph 4.18, Audit examined 38 projects held in 2015-2016 at LCSD venues and found that in 30 (79%) projects, the audience size disclosed in the final report was higher than that recorded by LCSD venue management (with variances ranging from 3% to 323% and averaging 71%).

a) What is the method used by LCSD venue management in recording the audience size and whether it is different from the method adopted by DCs?
b) Whether HAD has noted the situation and what follow-up actions have been taken to address the problem?

A18(a)(b) The records kept by LCSD venue management are based on ticket sales report, ticket stubs collected or manual counting during admission, whereas figures set out in the final reports submitted to DCs were provided by the implementing parties. To ensure accuracy of the number of participants/audience in the final reports, we have recommended District Offices to request the implementing parties to obtain the relevant attendance figures from the LCSD venue management in completing the final reports.

Overall response in respect of the manpower and expenditure involved in implementing the various improvement measures

In implementing the various improvement measures, HAD will try to absorb the additional manpower and expenditure involved within existing resources and where necessary, seek and justify any unmet resources required in accordance with the established mechanism.

Other Issues

19. As there is no legal adviser present at DC meetings to provide legal advice, whether assistance will be provided by DC secretariat in situations where legal advice are necessary for the DC Chairman to make appropriate rulings at the meetings?

20. What assistance has been offered by DC secretariats to DCs to deal with legal issues in their daily operation?

21. Regarding (a) and (b) above, the manpower and expenditure involved in providing the legal advice?

A19, 20, 21 Currently, DCs in general can rely on the existing guidelines and HAD Manual to handle their daily business and discharge the DC functions. If it is deemed necessary, DOs will seek legal advice having regard to the circumstances of individual cases. In light of the legal advice obtained, the DO will render overall advice to the DC concerned. As there have been very few cases where DOs had sought legal advice, we do not have records of the manpower and expenditure involved in providing legal advice to DOs.

A brief account of Chapter 4 of Report 68
"Provision of district council funds for community involvement projects"
by the Director of Audit
at the Public Hearing of the Public Accounts Committee
of the Legislative Council on Tuesday, 17 October 2017

Chairman,

Thank you for inviting me here to give a brief account of Chapter 4 of Report No. 68 of the Director of Audit, entitled "Provision of district council funds for community involvement projects".

This Report comprises four parts.

Part 1 of the Report, namely "Introduction", describes the background of the audit.

As an important vehicle for community building, community involvement projects (CI projects) comprise District Council projects (DC projects) and Leisure and Cultural Services Department projects (LCSD projects). CI projects aim at enhancing community spirit and social cohesion and promoting well-being of the people in the 18 districts of Hong Kong. The Home Affairs Department (HAD) provides funds to District Councils (DCs) for implementing CI projects in districts annually (DC-CIP funds). In 2015-16, the provision of DC-CIP funds amounted to $360 million, and the annual provision will be increased to $460 million in 2017-18. Both government departments and non-governmental organisations (NGOs) can apply to DCs for DC-CIP funds to carry out CI projects. The number of CI projects implemented in 2015 was 38,000, which had a total of 19 million participants.

Part 2 of the Report examines the allocation and use of DC-CIP funds.

According to the prevailing mechanism, HAD allocates a portion of DC-CIP funds to individual DCs as basic allocation on a historical or equal basis, and the remaining portion is allocated to individual DCs taking into account a number of factors, including population, socio-economic factors, etc. We found that the HAD had not taken into account changes in the factors in recent years in allocating DC-CIP funds. Therefore, we have recommended that HAD should conduct a review of the allocation of the funds to ensure that they are allocated in the most appropriate manner.

Our analysis of the funds spent on DC projects indicated that a large portion of the funds was spent on three categories, namely arts and cultural activities, recreational and sports activities, and festival celebrations and district festivals, whereas the funds spent on some other categories (e.g. civic education) were small. In addition, for some DC projects targeting specific groups of people, such as people with special needs, the number of

projects and participants was low. We have recommended that the HAD should produce analyses for individual DCs to facilitate them to review whether their existing spending patterns best meet the needs of their districts.

Part 3 of the Report examines the management of conflicts of interest.

It is not unusual for members of DCs to be associated with implementation parties of CI projects. DC standing orders concerning management of conflicts of interest require members to make a first-tier declaration of interests by reporting their registrable interests, such as remunerated directorships and "other declarable interests" at the commencement of each DC term or upon changes in the interests. Members shall also make a second-tier declaration of interests before dealing with matters on DC-CIP funds at meetings.

We noted that as "other declarable interests" had not been clearly defined in DC standing orders, in 122 of the 129 second-tier declarations made by members at meetings, interests (e.g. being the president of implementation party) had not been disclosed in the first-tier declaration. We have recommended that the HAD should provide guidelines to DC members to facilitate the reporting of "other declarable interests".

We have also noted that in 73 of the 129 declarations made at meetings, rulings (e.g. a member may remain as an observer or withdraw from the meetings) had not been made by the relevant DCs in accordance with the DC standing orders. We have recommended that the HAD should remind DCs that rulings should be made and recorded on interests declared by members at meetings.

DCs and their committees have appointed working groups to help carry out specified functions. We noted that while DC standing orders have stipulated the procedures for managing conflicts of interest, the procedures are not applicable to working group meetings. We have recommended that the HAD should ensure that the stipulated procedures for handling conflicts of interest also apply to working group meetings.

Part 4 of the Report examines the implementation of CI projects.

It is a usual practice that partner NGOs are selected for implementing CI projects in partnership with DCs through invitation. However, for one DC, partner NGOs are nominated by DC members in charge of CI projects. There is scope for enhancing the openness and transparency of this selection process. We have recommended that the HAD should provide, for DCs' reference, guidelines on the selection of partner NGOs.

According to the HAD Manual, a DC should have an evaluation system in place to monitor the effectiveness of CI projects. Audit noted that certain DCs had not implemented any evaluation systems, nor had they set any criteria for selecting projects for evaluation purpose. We have recommended that the HAD should take measures to ensure

that DCs set up an evaluation system as well as proper criteria for selecting CI projects for evaluation.

Our views and recommendations were agreed by relevant departments. I would like to take this opportunity to acknowledge with gratitude their full cooperation, assistance and positive response during the course of the audit review.

Thank you, Chairman.

Meeting of the Legislative Council Public Accounts Committee on 17 October 2017

Report No. 68 of the Director of Audit (Audit Report)
Chapter 4: Provision of district council funds for community involvement projects

Opening remarks by the Secretary for Home Affairs

Mr Chairman,

We thank the Audit Commission for the value for money audit on community involvement (CI) projects and its recommendations covering various aspects. We will fully co-operate with the Legislative Council Public Accounts Committee (PAC) in its hearing on this subject. We agree to the recommendations in general and have started work to enhance the funding allocation arrangements and the system of declaration of interests. Details of these follow-up work were given in our replies to the PAC's written enquiries.

2. The Home Affairs Department (HAD) has all along formulated provisions on avoidance of conflict of interests under the District Council (DC) Standing Orders on the basis of the guidelines for a two-tier reporting system devised in collaboration with the Independent Commission Against Corruption (ICAC).

3. All DC members declared interests according to the DC Standing Orders and the declarations have been uploaded to DC websites for public viewing. The first-tier declaration requires DC members to report their personal interests within one month from the commencement of their term. The interests in focus in the first–tier declaration is pecuniary interests. The DC member should provide update on any change in such interests within 14 days. The second-tier declaration requires that any DC member who has pecuniary or other interests in any matter handled by the DC concerned, or has links with the benefitted party or potential benefitted party, including matters

on tender, quotation and DC funds, must, as soon as practicable after being aware of it, declare such to the DC concerned prior to the discussion of the relevant matter.

4. In addition, the Manual on the Use of District Council Funds provides further guidance on the second-tier declaration, requiring that DC members shall make declarations on any conflict of interest which may be actual, potential or perceived. They should also refrain from having business dealings with any party associated with projects financed by DC funds.

5. The two-tier declaration system is well-established with the first-tier declaration covering a comprehensive range of interests under eight categories. Most members are familiar with this system and make declarations accordingly. We review the DC Standing Orders from time to time in consultation with the ICAC. In reviewing the declaration system in 2015, we updated the Registration Form on Personal Interests of Members of a District Council or its Committees (Registration Form) with reference to the Legislative Council's requirements for declaration of personal interests, and uploaded the Registration Forms of DC and Committee members to DC websites for public viewing.

6. In consideration of the recommendations in the Audit Report, we have further enhanced the relevant arrangements and systems, including the following -

- HAD has, in consultation with the ICAC, formulated guidelines on the "other declarable interests" under the first-tier declaration to facilitate DC members in making the first-tier declaration more comprehensively and accurately. For example, under this principle, DC and Committee members' holding of positions in the implementation parties of CI projects are regarded as "other

declarable interests" and should be declared.

- Regarding the second-tier declaration, we have requested DC Secretariats to remind, at every meeting or during circulation of papers, DC and Committee members to declare interests and the Chairpersons to make rulings on the interests declared and to record such rulings in the minutes of meetings. Under the current practice, minutes of meetings are uploaded to DC websites for public inspection.

- We have also reminded secretariats of DC and Committees that matters shall be determined by circulation of papers only if the matter calls for urgent handling or the matter cannot be postponed to the next meeting.

- HAD has worked with DC Secretariats to devise good practice in the handling of declaration of interests and making of rulings at meetings by DC and Committee Chairpersons. The good practice has been distributed to DCs for reference.

- The Manual on the Use of District Council Funds provides for the principle for declaration of interests by DC and Committee members at DC and Committee meetings, which equally applies to Working Groups. Nevertheless, we will add the reference to "Working Groups" in the relevant parts in the DC Standing Orders so that the principle would be made more explicit to DC members.

- HAD has implemented or will implement other recommendations in the Audit Report.

7. Chairman, the Director of Home Affairs, Director of Leisure and

Cultural Services and I will be happy to answer any questions from the Members on the recommendations in the Audit Report and our follow-up measures.

8. Thank you, Mr Chairman.

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(By e-mail only)

7 November 2017

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Chu,

Public Accounts Committee
Consideration of Chapter 4 of the Director of Audit's Report No. 68
Provision of district council funds for community involvement projects

Thank you for your letter of 18.10.2017. Our response is set out in the ensuing paragraphs.

Response to Question (a)

Section 68 of the District Council Ordinance ("DCO") (Cap 547) provides that District Councils ("DCs") may make standing orders for regulating its procedures and that of its committees.

While the authority to make standing orders rests with DCs, the Home Affairs Department ("HAD") provides a model text of DC Standing Orders ("model text") to 18 DCs for reference. In promulgating the model text, we normally would highlight in bold the part of the model text adopted from the provisions of the DCO. We would also mark in italics those parts of text which the Administration considers necessary for inclusion in the DC standing orders. While the DCO provides that a DC may make standing

orders, we have asked for DC Secretariats' assistance in facilitating the adoption of the model text by their DCs as completely as possible.

The current arrangement has struck a balance between maintaining consistency in DCs' making of standing orders while allowing flexibility to cater for the situation of different districts. For example, as set out in PAC paper referenced R68/4/GEN3, we noted that ten DCs have adopted procedures on declaration of interest same as those of the model text and the other eight DCs have made only minor modifications to the model text.

In the case of implementation of community involvement ("CI") projects, HAD has compiled the "Manual on the Use of District Council Funds" ("HAD Manual") to provide further guidance to DCs. The HAD Manual covers different areas such as the funding coverage, vetting criteria, payment arrangements, monitoring mechanism, etc. On the basis of the Manual, each DC has devised its own detailed guidelines for implementation of CI projects and the district guidelines must comply with the principles set out in the HAD Manual.

As far as the performance management of CI projects are concerned, in addition to requiring all grantees to submit a final report to the DC Secretariat upon the completion of the projects, the HAD Manual also requires that an evaluation system should be put in place by all DCs to monitor the effectiveness of CI projects. DCs are given the flexibility to devise their own evaluation system that fits the situation of their districts. As the number of CI projects and their scales vary among the 18 DCs, it would not be feasible for HAD to standardise the shortlisting criteria for adoption by all the DCs.

At present, the HAD Manual has not set out the requirement for DCs to review the list of designated non-governmental organisations ("designated NGOs"). In the light of the Director of Audit's recommendation, we will provide DCs with suitable guidelines in this regard.

Response to Question (b)

Previously, to maintain a reasonable degree of certainty and continuity in funding, a baseline allocation was calculated for each district and the baseline allocation would be maintained unless there was increase in the overall funding for DC funds. Between 2008-09 and 2016-17, there were three increases in the overall funding for DCs respectively in 2012-13, 2013-14 and 2015-16. When there was increase in the total provision of DC

***Note by Clerk, PAC:** Please see Appendix 29 of this Report for R68/4/GEN3.*

funds, the allocation for the DCs in the past year would be used as baseline allocation. As for the additional provision, a portion of which would be allocated on an equal basis to the DCs and the remaining portion would be allocated according to the relevant factors (e.g. population and socio-economic factors) by using the latest data.

In view of the Audit's recommendation, HAD has duly reviewed and adopted a new allocation arrangement. Starting from 2017-18, less than half of the total funding for DCs (38.6%) would be allocated based on individual DC's allocation in the past year, and the major portion of the total provision (60.3%) would be allocated according to the latest data of the relevant factors (e.g. population and socio-economic factors). The remaining 1.1% of the total provision is kept by HAD as central reserve. This arrangement will be adopted for allocating the funding to 18 DCs at the beginning of a new DC term, or when there is further increase in the total provision in future. This would ensure that any changes to the relevant factors could be duly and timely reflected in the allocation.

Response to Question (c)

To facilitate DC Members carrying out their duties, HAD will organise induction briefings for them at the start of a new DC term. For the 2016-2019 DC term, two identical induction briefings were held on 8 and 12 January 2016 respectively. In the briefings, we introduced different manuals and guidelines related to the work of DCs, such as the HAD Manual on the Use of DC Funds and the Guidelines on the Remuneration Package for Members of the District Councils of the HKSAR. In addition, the briefing covers the functions of the Home Affairs Bureau and HAD, and the Code of Conduct for DC Members as well as a presentation by a representative from the Independent Commission Against Corruption on the conduct of DC Members as public officers. All DC members were also provided with an Information Kit (區議員參考資料2016-2019) and the HAD Manual, amongst others, was contained therein.

At the induction briefings, we briefed the DC members on, amongst others, the purposes of DC funds and the scope of CI projects. As DC members are conversant with the needs of their respective districts, we have not set any targets or drawn up guidelines on the allocation of funds to different project categories. Nevertheless, in view of the Audit's recommendation, we have already provided DCs with analyses of projects by categories for 2016-2017 for Members' reference. DCs can make reference to the analyses in considering allocation of DC funds to different project categories.

Response to Question (d)

HAD and the Leisure and Cultural Services Department (LCSD) have enhanced coordination at the Headquarters and district level, and agreed to adopt measures to ensure the uniformity and accuracy of the project statistics. Starting from the 2017-18 financial year, HAD and LCSD have designed a template for district staff to ensure the consistency and uniformity in data categorisation and presentation among the 18 districts. In addition, LCSD and HAD have nominated dedicated contact points at the Headquarter levels to enhance coordination.

On the basis of the above, the relevant statistics in the past years are revised as follows –

	2011	**2012**	**2013**	**2014**	**2015**
No. of CI projects	33,593	34,010	34,522	34,534	33,712
No. of participants (million)	16.88	17.12	18.06	17.13	15.92

Response to Question (e)

We have provided guidelines for DC Secretariats to classify CI projects into different categories (see **Appendix 1**). There are 23 categories on the list. For the purpose of conducting analyses, the Audit had discounted some items (e.g. the employment of dedicated staff to assist DC in implementing CI projects) or counted items of similar nature collectively (e.g. "District Cultural Project Grant Scheme" and "Culture and Arts" are grouped together). As for the item of "Others", the projects concerned were re-distributed to other related categories. As a result, a total of 15 project categories were reported in the Audit Report.

Response to Question (f)(i) to (f)(iii)

At the time designated funds were provided to DCs for arts and cultural activities ("designated funds") for the first time in 2013-14, HAD has required DCs to ensure that they will spend in each of the following years an amount no less that the DCs spent on arts and cultural activities in 2012-13 (i.e. the amount spent before the designated fund was first provided in 2013-14) and that the two additional designated funds (i.e. $20.8 million since 2013-14 and another $20.8 million from 2015-16 to 2019-20) will be spent solely on such activities.

The reasons for a difference between the amount that should have been spent on arts and cultural activities (the designated funds) and the actual spending by DCs include the following: (i) the actual expenditure incurred by certain arts and cultural projects was less than the approved amount as set out in the application; (ii) some approved arts and cultural projects were subsequently cancelled due to inclement weather or other unforeseen circumstances; or (iii) payments had to be rolled over to the next financial year as the reimbursement process could not be completed by the end of the financial year, pending submission of supporting documents.

Separately, as a budgetary strategy, the DCs are allowed to approve over-commitments up to 25% of their respective district allocations such that the funds available can be fully utilised when there is underspending or cancellation of some CI projects. The unspent balance of individual CI projects (including those for arts and cultural projects) was seen by DCs as part and parcel of the total funds that could be used to settle payment of CI projects in general and no separate approval was required for such usage of the funds. As there could be over-commitments of the DC allocations up to 25% and any unspent balance of DC funds (including those for arts and cultural projects) could be used for settling payment of CI projects in general (not distinguishing between arts/cultural and non-arts/cultural projects), it is not feasible to specify which particular projects had used up the said unspent balance.

It is worth noting that normally there is no lack of approved CI projects with significant art and culture elements, for instance, "2015年拉闊音樂賀中秋敬老綜藝音樂嘉年華" (categorised under "Festival celebrations and district festivals"), "勁歌熱舞同樂日 2015 Live Band Show", "懷舊金曲欣賞會", "體育武術文化嘉年華" and '玉器文化藝術推廣月' (categorised under "Recreational and sports activities"), '禁毒滅罪青少年潮藝發展計劃2015 - 音樂劇表演 (categorised under "Crime-fighting and corruption prevention") etc.

<u>Response to Question (f)(iv) to (f)(v)</u>

When DCs used the unspent fund on CI projects previously approved by them under the over-commitment mechanism, any issue of conflict of interest should have been dealt with when the DC first considered the CI projects and would not arise in the context of when the unspent balance is used. Furthermore, the unspent balance was seen by DCs as part and parcel of the funds for settling payment of approved CI projects in general, no reminders would be issued on the use of the unspent balance.

Response to Question (f)(vi)

To ensure DCs can fully use the designated funds, we have asked DC Secretariats to enhance budgetary control and management of the funds, e.g. by clearly delineating the major element in a project and in turn the appropriate classification and suitably considering over-committing for such arts and culture projects, so that the funds can be spent as far as possible by the close of the financial year.

Response to Question (g)

A copy of the Guidelines on "Other Declarable Interests" issued by HAD in September 2017 is at **Appendix 2**. As at early November 2017, the Guidelines have been adopted by eight DCs. As for the other ten DCs, the DCs concerned are in the process of considering the guidelines; for instance, by submitting them to DC/relevant committee for discussion and consideration.

Response to Question (h)

A copy of the Good Practice on the arrangement for handling declaration of interests by DC members and Co-opted members in vetting fund applications issued by HAD for DCs' reference in September 2017 is at **Appendix 3**. As at early November 2017, eight DCs have adopted the Good Practice in their standing orders or procedures. The other ten DCs will go through the necessary consultation process before adopting the Good Practice.

Response to Question (i)

For both Cases 1 and 2, the chairmen of the meetings concerned had not been reminded to make specific rulings on the interests declared by members. For Case 1, the Secretariat further explained that it is an established practice in the DC concerned that members should not speak or vote on the items on which they have declared conflict of interests. For Case 2, the Secretariat further explained that no explicit ruling was made in respect of members' declarations before September 2016 because all along, there was an implied consent from the Chairman and general acquiescence among members that where no direct conflict of interest was involved, those who declared interest could continue to stay at the meeting.

We acknowledge that there is room for improvement and the Secretariats concerned have already stepped up the arrangement by reminding chairmen of meetings to make specific rulings and ensure that such rulings are recorded in the minutes of meetings.

Response to Question (j)

A copy of the correspondence issued by HAD to the District Officers (DOs) on reminding the chairmen of meetings to make rulings on interests declared and record the rulings in the minutes of meetings is at **Appendix 4**.

Response to Question (k)

The principle of requiring DC members to declare interests as appropriate applies to Council, Committee, and Working Group meetings. Whilst the Standing Order refer to "Council" and "Committee" and "Working Group" is not explicitly mentioned, the HAD Manual has provided that DC members and co-opted members should make a declaration of interest before the relevant item is discussed. As Working Group members are either DC members or co-opted members, this would have governed the declarations of interest by members of Working Group and DC/Committees when handling CI projects. We have already reminded DC Secretariats that the stipulated procedures for handling conflicts of interest in DC/committee meeting also apply to working group meetings. Moreover, we will add the express reference to "Working Group" in the DC standing order to put the matter beyond doubt.

Response to Question (l)

Except closed-door meetings, minutes of working group meetings are made available on the DC website. While the recordings of working group meetings are not required to be uploaded onto the DC website, the recordings are available upon public request. The secretariat of the working group concerned explained that the meeting minutes were prepared in accordance with Clause 43 of the Standing Order of the DC. Clause 43 follows the model text provided by HAD, which is as follows:

"Order 43 of the model text –

The minutes of meetings of a working group shall record the final decisions of the discussion only. They shall be uploaded to the homepage of the Council except for the closed-door sessions of meeting."

This is a case of misinterpretation of Order 43 of the model text, which is intended to provide guidance that there is no need to record discussions of the working group in verbatim and that only the final decisions are required to be recorded. The intention is to streamline the work as there may be many working group meetings looking after many minute details of some projects. It is not the intention to allow the secretariat to leave out other essential details such as the attendance list and interests declared.

Starting from 2017, the minutes of the working group concerned have incorporated more details of the meetings, including the list of members in attendance, interests declared and rulings on interests declared.

Response to Question (m)

In June 2017, HAD reminded DC Secretariats that, for those working groups that were then endorsing CI project applications, they should (i) seek DC or the relevant DC committee's further endorsement on the working groups recommendations; or (ii) properly constitute the working groups as committees under Section 71 of DCO as appropriate. The relevant correspondence issued is at **Appendix 4**.

Response to Question (n)

It is a common practice amongst the DCs that a portion of DC Funds would, for budgetary purposes, be earmarked for some NGOs (hereunder referred to as "designated NGOs") to organise CI projects. These designated NGOs are still required to submit applications for formal funding approval as in the case of other applicants for DC Funds. These applications are subject to the same level of scrutiny by the respective DCs or DC committees as with those submitted by other organisations.

To ensure that only NGOs with good performance and track records are kept in the list of designated NGOs, we will require DCs to regularly review the list. We are preparing the guidelines for DCs which will set out the frequency for review and the general criteria for consideration.

Response to Question (o)

All the 3 DCs mentioned in paragraphs 4.13 to 4.17 concerned have used a standard evaluation form, which is basically the same as the one provided in the HAD Manual. A copy of the standard evaluation form is at **Appendix 5**. Part B of the standard evaluation form allows the evaluators to put down their comments (i.e. item (g) "Other Comments") and around 2.7% of these forms were with evaluators' comments.

Yours sincerely,



(Howard YAM)
for Director of Home Affairs

c.c. (By email)
Secretary for Home Affairs
Director of Leisure and Cultural Services
Secretary for Financial Services and the Treasury
Director of Audit

Appendix 1

活動性質分類

編碼	名稱	備註
01	地區節資助計劃	
02	地區文化活動資助計劃	
03	文化藝術	包括文化藝術活動及康文署推行的免費文娛活動
04	文娛康樂體育	包括興趣班、競技項目及康文署推行的康樂體育活動
06	節日慶典及區節	包括節日、回歸，以及建國慶祝活動
07	環境改善及保護	包括綠化活動及環保宣傳活動
08	健康及衛生	包括加強公共衞生、預防疾病、提倡健康生活的活動
09	防火	
10	滅罪及防貪	
11	樓宇管理	
12	社會服務	包括傷健活動、探訪／照顧社會有需要人士活動、關於社會服務需要的調查及研究、建立社會資本和促進助人自助的活動
13	地區行政	包括所有提高市民對地方行政計劃的認識的活動，有關區議會的宣傳活動、宣傳品／紀念品製作、工作報告製作、網頁製作、記者會，以及清潔區議會告示板和更新通告事宜
14	教育	包括升學及就業活動
15	圖書館	包括所有在圖書館內舉行的活動、其他加強圖書館服務的項目和活動，及康文署推行的圖書館活動
16	地區保育及推廣	包括所有地區保育，介紹及推廣本區文化、文物、景點，以及在本區推動本土經濟的活動
17	公民教育	包括國民教育，推廣基本法，人權教育，以維護法治精神，促進社區共融及種族和諧等推廣活動
18	交通及道路安全	
19	聘請專責人員	只包括使用不多於當區所得撥款的 15% 聘請以全年執行區議會職務的專責人員

編碼	名稱	備註
20	區議會資本物品	只包括購買、維修及保養有助區議會及其轄下委員會／工作小組推行社區參與計劃的資本物品
21	其他(請註明)	講座、調查、研討會、展覽會、嘉年華會等均應按活動主題歸納，如主題未能納入以上活動性質，始歸納為“其他”
22	推廣地區文化藝術(專項撥款)	包括使用 2013-14 年度起和 2015-16 至 2019-20 年度期間供區議會推廣藝術文化活動的專項撥款推行的文化藝術活動
23	文化藝術(原撥款及專項撥款)	

Note by Clerk, PAC: Chinese version only.

Guidelines on "Other Declarable Interests"

Other declarable interests include, but are not limited to, (i) membership (including president, chairperson, honorary president, honorary chairperson, etc.) of any organisations which may apply or have applied for funding from the District Council; and (ii) any consultant, client or other important relationship(s) with the organisations which may apply or have applied for funding from the District Council. Important relationship refers to the interest arising from such relationship which in the eyes of the objective and reasonable general public may influence the judgement of the member concerned.

Notes :

(a) The registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary or other interests under Orders 48(9) and (10) which are reproduced hereunder :

If a member of the Council or its committees has any direct personal or pecuniary interest in any matter under consideration by the Council or its committees, he or she must, after he or she has become aware of it, disclose such to the Council or its committees prior to the discussion of the item (Order 48(9)).

Any member of the Council or its committees shall declare interests before dealing with matters on tender, quotation and the District Council Funds if he or she finds he or she has any pecuniary or other interests in such matters or has any links with the benefited party or potential benefited party (Order 48(10)).

(b) Members should also note that under Order 48(15), "when the Secretary of the Council or its committees finds that a member of the Council or its committees has direct pecuniary interests in a matter under consideration, the Secretary shall refer this to the Chairman of the Council or the chairman of the relevant committee who shall then decide whether relevant papers shall be sent to the member concerned. Where a member of the Council or its committees is in receipt of a paper for consideration which he or she knows presents direct conflict of interest,

he or she shall immediately inform the Secretary of the Council or the relevant committee and return the paper."

Arrangement for Handling Declaration of Interests by District Council Members and Co-opted Members in Vetting Fund Applications

- Order 48(11) of the model text of District Council (DC) Standing Orders provides that the Chairman of the Council shall decide whether a member of the Council who has disclosed an interest in a matter may speak or vote on that matter, may remain in the meeting as an observer, or should withdraw from the meeting[1]. The Home Affairs Department has formulated the following good practice for DCs' reference in handling the declaration of interests and making rulings.

Vetting Fund Applications at Meetings

- The arrangements for handling declaration of interests are divided into three tiers in accordance with the position held by a member/co-opted member in the applicant organisation/co-organiser/assisting organiser.

  - Tier 1: a member/co-opted member associated with the applicant organisation/co-organiser/assisting organiser in **a nominal capacity** such as honorary chairperson, honorary president, advisor, etc. should declare interest prior to the discussion but can still take part in the discussion, decision-making and voting;

  - Tier 2: a member/co-opted member associated with the applicant organisation/co-organiser/assisting organiser in **an executive capacity** such as chairperson, vice-chairperson, committee member, secretary, treasurer, etc. should declare interest to the meeting and should be silent during the discussion of the application concerned, and abstain from decision-making or voting for the application concerned. The chairperson of the meeting may ask the member/co-opted member to provide supplementary information as appropriate; and

  - Tier 3: a member/co-opted member who is **an executor** of the project concerned such as the designated officer-in-charge or authorised person of the project, etc. should declare interest to the meeting and withdraw from the meeting during the discussion of the application concerned.

- Since definition of post titles varies in different organisations, members/co-opted members are to exercise their judgement and decide the tier to which they belong and make declaration as appropriate. For example, a member/co-opted member whose post title is honorary president in an

[1] If the Chairman of the Council has disclosed an interest in a matter, the Vice Chairman of the Council shall decide whether the DC Chairman may speak or vote on that matter, may remain in the meeting as an observer, or should withdraw from the meeting. If both the Chairman and Vice Chairman of the Council have disclosed an interest in the same matter, all members present at the meeting (excluding the Chairman and Vice Chairman of the Council who have disclosed an interest and other members of the Council who have disclosed an interest according to Order 48(9) of the Standing Orders) shall decide whether the Chairman and Vice Chairman may speak or vote on that matter, may remain in the meeting as a an observer, or should withdraw from the meeting.

organisation but has an executive capacity in the organisation should be regarded as Tier 2.

- A member/co-opted member having **business dealings** with any party associated with the projects financed by DC Funds or being aware of any **association with the supplier/contractor** of the project should declare interest and withdraw from the meeting during the discussion of the application concerned in accordance with the Tier 3 arrangement of declaration of interests.

- A member/co-opted member having **other interest** in the project concerned should declare interest, and follow the arrangements as decided by the chairperson of the meeting, for example, be silent during the discussion or withdraw from the meeting.

- In vetting fund applications for projects led by DC or its Committees/Working Groups (C/WGs) or Committees/Working Group (C/WGs) under XX District Office, members need not declare their interest in the capacity as members of DC or such C/WGs. Nevertheless, a member having other interest in the project concerned such as association with the service provider should declare interest, and be silent or withdraw from the meeting as appropriate.

Vetting Fund Applications by Circulation of Papers

- Members/co-opted members shall declare interest in writing;

- The vote of a member/co-opted member with any declarable interest in the application concerned other than that under Tier 1 should not be counted.

Home Affairs Department
September 2017

☐ Urgent ☑ Return Receipt ☑ Sign ☑ Encrypt ☐ Prevent Copy

Date: 06/06/2017 11:22:02

From: Howard YAM <[redacted]>

To: &HAD[All_DOs]

Cc: Janice SW TSE <[redacted]>, Jack JC CHAN <[redacted]>, Angora LY NGAI <[redacted]>, Belinda YY CHONG <[redacted]>, Elphie CHAN <[redacted]>, Maggie TL KWONG <[redacted]>, Peter CK KWOK <[redacted]>, Kelly KW MAN <[redacted]>, Simpson CH LO <[redacted]>, Terrence CY HO <[redacted]>, Matthew CY CHUI <[redacted]>, Joe C CHOW <[redacted]>, Kwong Kin CHIU <[redacted]>, Herman CK SO <[redacted]>, Marco CH CHU <[redacted]>, Freda YC CHEUNG <[redacted]>, Gillian HT CHAN <[redacted]>, Rainy KW CHUNG <[redacted]>, Carren KY MAK <[redacted]>, Penny SY WONG <[redacted]>, Tanna TN CHONG <[redacted]>, Gordon TY WU <[redacted]>, Simon TP WONG <[redacted]>, Lilian NL TSE <[redacted]>, Iris KY LEE <[redacted]>, Amy WY WONG <[redacted]>, Syrus CF TSUI <[redacted]>, Steve WONG <[redacted]>, &HAD[All_SEO[DC]s], Daisy PY LAI <[redacted]>

Bcc:

Subject: CONFIDENTIAL: Director of Audit's Report No. 68 - Provision of DC Funds for Community Involvement projects - List of follow-up actions by DOs

File Ref:

Dear DOs,

I refer to the recent Director of Audit's report on "Provision of DC Funds for CI projects" (http://www.aud.gov.hk/pdf_e/e68ch04.pdf) and our response to the questions raised by PAC (attached below).



Letter from LegCo (consideration of Director of Audit's Report No. 68 - Chapter 4 - provision of DC funds for community inv.pdf



Reply to PAC-Appendix.docx



Reply to PAC-Appendix-Chinese.docx

In connection with Audit's recommendations made in the report, please kindly take follow-up actions as set out in the attached checklist.



Checklist on follow up actions by DOs.docx

For item 5 of the checklist on DCs' practice of handling interests declared, item 8 on DCs' practice of selecting partner NGOs, and item 15 on DCFIS, grateful for your reply by **19.6.2017 (Monday)** so that we could follow up on those items. As foreshadowed in our reply to PAC (Q7), we also aim to provide broad principles of what constitute "other declarable interests" to facilitate reporting of such interests.

Many thanks in advance.

Howard

VFM audit – Provision of DC Funds for Community Involvement Projects

Checklist on follow-up actions by DOs

	Para.	Audit's findings/comments	Audit's recommendations	DOs' Follow-up actions

5.	3.12-3.13 3.14(a)(b)	Rulings not made – For the 129 cases of interest declared, rulings had not been made for 73 cases	Rulings should be made on interests declared by members in DC/committee meetings The rulings made and the rationale behind the rulings should be recorded in the minutes of the meetings as appropriate in accordance with the HAD Manual	Chairmen of meetings should be reminded to make explicit rulings on all interest declared. The rulings made and the rationale behind the rulings should be properly recorded in the minutes of the meetings.

7.	3.20 3.21(b)	Audit noted that 3 working groups had been delegated by their respective DCs with the authority to endorse project applications and considers such delegation arrangement may not be entirely proper	Ascertain whether DCs' practice of delegating functions to their working groups is in line with the District Councils Ordinance and take remedial action as appropriate	For those working groups that are currently endorsing CI project applications, DOs should (i) seek DC or the relevant DC committee's further endorsement on the working groups' recommendations; or (ii) properly constitute the working groups as committees under S. 71 of DC Ordinance (DCO) as appropriate. Given the Audit's comments, DOs are reminded to take note of S.71 of DCO which has set out the requirements in setting up a DC committee.

Annex G

Evaluation Report for Project Financed by District Council (DC) Funds

Part A: Background Information of the Project

(To be completed by DC secretariat and passed to the DC member/Co-opted member/staff of Home Affairs Department (HAD) before conducting the DC visit)

Project Name:

Project No.: Date/Period of Implementation:

Venue:

Name of Grantee:

Co-organiser(s):

Approved Project Fund:

Anticipated No. of Participants:

Any Special Conditions imposed by DC:

Part B: Evaluation of the Project during the DC Visit

(To be completed by DC member/Co-opted member/HAD staff and returned to the DC secretariat within two weeks of the date of DC visit)

To : The Secretariat of the 【 】District Council
Fax No.: 【 】

Assessment :

(Please refer to the application attached for details of the activity and put a "✓" in the appropriate box.)	Very Satisfactory	Satisfactory	Acceptable	Unsatisfactory
(a) Objectives of the activity met	☐	☐	☐	☐
(b) Expected benefits achieved	☐	☐	☐	☐
(c) No. of participants as compared with the estimated no. of participants	☐	☐	☐	☐
(d) Response of the participants	☐	☐	☐	☐
(e) Effectiveness of the use of funds	☐	☐	☐	☐
(f) Acknowledgement given to the Council	☐	☐	☐	☐

(g) Other comments (e.g. publicity for an individual in the activity which was in breach of the terms and conditions of grant)

_____

_____

_____

_____

Signature : _____ Date : _____
(Name of DC member/co-opted member/HAD staff)

Note :

1. An evaluation report would be made available for inspection by the DC, its Committee, HAD or the public.

2. The evaluation of performance of the project should be carried out by a DC member / co-opted member and/or HAD staff who is/are not involved in project administration and who does/do not have an interest in the organisation under evaluation.

Part C: Compliance Check against the Terms and Conditions of Grants of DC Funds

(To be completed by the subject officer of DC secretariat at the rank of Executive Officer II or above upon verification of the project completion report and Income and Expenditure Statement)

		Comply	Not Comply	Not Applicable
1.	Funding approved by DC prior to expenditure incurred	☐	☐	☐
2.	Project cost within approved ceiling or revised ceiling as may be approved	☐	☐	☐
3.	Appropriate mode of implementation adopted	☐	☐	☐
4.	Funds expended within the ambit of DC funds	☐	☐	☐
5.	Change in nature of project / cashflow requirement approved prior to implementation	☐	☐	☐
6.	Approval obtained for inclusion of items of expenditure not covered in the original approval / other additional expenditure exceeding 5% contingency fund	☐	☐	☐
7.	Verifiable project proof submitted	☐	☐	☐
8.	Name of DC stated in publicity items	☐	☐	☐
9.	Mandatory requirements fulfilled in the employment of casual/non-skilled workers	☐	☐	☐
10.	At least one reimbursement made before release of further advance payment/reimbursement in the subsequent year(s) of cross-year project implementation	☐	☐	☐
11.	The project should not give undue credit or publicity to an individual, a commercial firm, a political party or association	☐	☐	☐
12.	The project should not be intended for the exclusive or personal benefit of an individual	☐	☐	☐

		Comply	Not Comply	Not Applicable
13.	The project should not involve the disbursement of cash relief	☐	☐	☐
14.	The project should not be launched primarily for profit-making or fund-raising purposes	☐	☐	☐
15.	Others [DC secretariat may add more items]	☐	☐	☐

Completed By:

Signature:_____ _____

(Name and Post of officer) Date

民政事務總署
香港灣仔軒尼詩道一百三十號
修頓中心二十九及三十樓

Home Affairs Department
29th and 30th Floors, Southorn Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong.

本署檔號： HAD HQ CR/4-35/10/(C)
來函檔號： CB4/PAC/R68
電話： 2835 1483
傳真： 2834 5466

(By e-mail only)

12 July 2017

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Chu,

Public Accounts Committee
Consideration of Chapter 4 of the Director of Audit's Report No. 68
Provision of district council funds for community involvement projects

Thank you for your letter of 4 July 2017. The information required is provided below –

(a) The Home Affairs Department (HAD) has issued the following guidelines for District Council (DC) members on management of conflicts of interest in community involvement projects, including declaration of interests:

(i) Part L and Appendices IV and V of the model text of DC Standing Orders (model text), a copy of which is at Annex 1.

(ii) Part IX and Annex H of the Manual on the Use of District Council Funds, a copy of which is at Annex 2.

(b) On the handling of interests declared at meetings, the model text has provided that the chairman of the DC or the committee shall decide whether a member disclosing an interest in a matter may speak or vote on that matter, may remain in the meeting as an observer, or should withdraw from the meeting.

Some DCs, having regard to their operational experience, have formulated procedures on how to handle interests declared at meetings for reference by the DC chairmen. Examples of the arrangements as endorsed by the DCs concerned are attached at Annexes 3 and 4.

HAD is working with DC secretariats with a view to drawing up a set of good practices on the handling of interests declared and rulings made by the DC chairmen at meetings. These good practices would be circulated to all DCs for reference.

(c) Copy of the standing orders of all the 18 DCs in relation to declaration of interests is attached at Annex 5. While ten DCs (namely, Central & Western, Southern, Wan Chai, Kowloon City, Kwun Tong, Sham Shui Po, Yau Tsim Mong, Islands, North and Tuen Mun) have adopted procedures same as that of the model text, the other eight DCs (namely, Eastern, Wong Tai Sin, Kwai Tsing, Sai Kung, Sha Tin, Tai Po, Tsuen Wan and Yuen Long) have made some minor modifications for their standing orders. The differences have been highlighted in their respective standing orders and a table showing the reasons for the modifications is set out at Annex 6.

Yours sincerely,

(Howard YAM)
for Director of Home Affairs

c.c. (By email)
Secretary for Home Affairs
Director of Leisure and Cultural Services
Secretary for Financial Services and the Treasury
Director of Audit

Note by Clerk, PAC:** ***Please refer to District Council website for Annex 5, and Appendix 30 of this Report for Annex 6.

Annex 1

Extract from Model Text of District Council Standing Order (December 2015)

L. DECLARATION OF INTEREST

48. (1) *Except for the purpose of making registration of personal interests under Order 48(3), every member of the Council shall, within one month from the commencement of each term, furnish the Secretary of the Council with particulars of his or her registrable interests by using the registration form provided by the Secretary. (A sample form is at Appendix IV.)*

App IV

(2) *Except for the purpose of making registration of personal interests under Order 48 (3), every member of a committee under the Council shall, within one month from the date of his or her becoming member of the committee, furnish the Secretary of the Council with particulars of his or her registrable interests by using the registration form provided by the Secretary. (A sample form is at Appendix IV.)*

App IV

(3) *A new member of the Council or its committees shall, within one month from the date of his or her becoming a member of the Council/committee to fill a vacant seat, furnish the Secretary of the Council with particulars of his or her registrable interests by using the registration form provided by the Secretary. (A sample form is at Appendix IV.)*

App IV

(4) *A member of the Council or its committees shall furnish the Secretary of the Council with particulars of any change in his or her registrable interests within 14 clear working days of any such change by using the registration form provided by the Secretary. (A sample form is at Appendix IV.)*

App IV

(5) *"Registrable interests" mentioned in this Order shall include -*

(a) *remunerated proprietorships, partnerships or directorships of companies, public or private, including all proprietorships, partnerships and directorships for which a fee, honorarium, allowance or other material benefit is payable;*

(b) *remunerated work, including employments, offices, trades or professions for which a salary, honorarium, allowance or other material benefit is payable;*

(c) *the names of companies or other bodies registered in Hong Kong in which the member of the Council or its committees has, either himself or herself or with or on behalf of his or her spouse or infant children, a beneficial interest in shareholdings of a number greater than one-hundredth of the total number of issued shares;*

(d) *financial sponsorships received by a member in his or her capacity as a member of the Council or its committees, or by his or her spouse from any person or organisation (stating whether any such sponsorships include any payment or any material benefit or advantage to the member or his or her spouse, whether direct or indirect);*

(e) *visits or travels outside Hong Kong made by a member in his or her capacity as a member of the Council or its committees, or by his or her spouse relating to or arising out of his or her membership of the Council or its committees where the cost of any such visit or travel has not been wholly borne by the member or public funds (stating whether any such sponsorships include any payment or any material benefit or advantage to the member or his or her spouse, whether direct or indirect);*

(f) *land and property held in Hong Kong directly or indirectly;*

(g) *the names of clients (to whom a member of the Council or its committees renders personal services arising out of or relating to any manner to his or her membership of the Council or its committees, and hence from whom the member receives a fee, honorarium, allowance or other material benefit); and*

(h) *other declarable interests.*

(6) *The Secretary of the Council shall cause those particulars of the registered personal interests of the members to be entered in a register, which shall be made available for inspection by any person during office hours. The Registration Form on Personal Interests of Members of the Council or Its Committees will also be uploaded to the homepage of the Council for public viewing.*

(7) *The Chairman of the Council should, when he or she finds a personal interest in an item proposed on to the meeting agenda, surrender his or her power on deciding the inclusion of the item in the agenda to the Vice Chairman of the Council; and when both the Chairman and Vice Chairman of the Council find a personal interest in an item proposed on to the meeting agenda, the inclusion of the item in the agenda should be decided at the commencement of the meeting by all members present at the meeting (excluding the Chairman and Vice Chairman of the Council who have disclosed interests and other members of the Council who have disclosed interests according to Order 48(9)). (Members of the Council and its committees may refer to the Guidelines for a Two-tier Reporting System formulated by the Home Affairs Bureau with the assistance of the Independent Commission Against Corruption at Appendix V.)*

App V

(8) *The chairman of a committee should, when he or she finds a personal interest in an item proposed on to the meeting agenda, at the commencement of the meeting let all members present at the meeting (excluding the chairman of the committee who has disclosed interests and other members of the committee who have disclosed interests according to Order 48(9)) decide whether the item should be included in the agenda.*

(9) *If a member of the Council or its committees has any direct personal or pecuniary interest in any matter under consideration by the Council or its committees, he or she must, after he or she has become aware of it, disclose such to the Council or its committees prior to the discussion of the item.*

(10) *Any member of the Council or its committees shall declare interests before dealing with matters on tender, quotation and the District Council Funds if he or she finds he or she has any pecuniary or other interests in such matters or has any links with the benefited party or potential benefited party.*

(11) *The Chairman of the Council shall decide whether a member of the Council (other than the Chairman of the Council) disclosing an interest in a matter may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting. If the Chairman of the Council discloses an interest in a matter, the Vice Chairman of the Council shall decide whether the Chairman may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting. If both the Chairman and the Vice Chairman of the Council disclose an interest in the same matter, all members present at the meeting (excluding the Chairman and Vice Chairman of the Council who have disclosed interests and other members of the Council who have disclosed interests according to Order 48(9)) shall decide whether the Chairman and the Vice Chairman may speak or vote on the matter, may remain in the meeting as an observer, or should*

withdraw from the meeting.

(12) *The chairman of a committee shall decide whether a member of the committee (other than the chairman of the committee) disclosing an interest in a matter may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting. If the chairman of a committee discloses an interest in a matter, all members of the committee present at the meeting (excluding the chairman of the committee who has disclosed interests and other members of the committee who have disclosed interests according to Order 48(9)) shall decide whether the chairman of the committee may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.*

(13) *If the Chairman of the Council declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by the Vice Chairman. If both the Chairman and the Vice Chairman declare an interest in the same matter under consideration, the chairmanship may be temporarily taken over by a temporary Chairman elected in accordance with Orders 6(3) and 6(4) above.*

(14) *If the chairman of a committee declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by a temporary chairman appointed in accordance with Order 35(3) above.*

(15) *When the Secretary of the Council or its committees finds that a member of the Council or its committees has direct pecuniary interests in a matter under consideration, the Secretary shall refer this to the Chairman of the Council or the chairman of the relevant committee who shall then decide whether relevant papers shall be sent to the member concerned. Where a member of the Council or its committees is in receipt of a paper for discussion which he or she knows presents direct conflict of interest, he or she shall immediately inform the Secretary of the Council or the relevant committee and return the paper.*

(16) *All cases of declaration of interests shall be recorded in the minutes of the meeting.*

(17) *A member of the Council or its committees who fails to comply with the Standing Orders on declaration of interests may be admonished or reprimanded by the Council and such admonishment or reprimand shall be recorded in the minutes of the meeting.*

DISTRICT COUNCIL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

Registration Form on Personal Interests of
Members of a District Council or Its Committees

Please read the guidelines below before completing this registration form.

Guidelines on Registration of Personal Interests

(1) Order 48 of the District Council Standing Orders provides for the registration of personal interests of a member of the Council or its committees. Members of the Council or its committees shall carefully read the relevant provisions.

(2) Order 48(6) provides for the maintenance of a register of members' personal interests (the register) by the Secretary of the Council.

(3) The main purpose of the register is to provide information of any pecuniary interest or other material benefit which a member of the Council or its committees receives which might reasonably be thought by others to influence his or her actions, speeches or votes in the Council or its committees, or actions taken in his or her capacity as a member of the Council or its committees. Members of the Council or its committees are required to have this general purpose in mind when determining what interests should be properly declared.

(4) Members of the Council or its committees are not required to disclose the amount of any remuneration or benefit they may have, nor the interests of spouses or children, except in certain circumstances relating to material benefits and shareholdings.

(5) When reporting particulars of registrable interests under Orders 48(1), 48(2) or 48(3), members of the Council or its committees should complete and sign the registration form and then submit the entire set of the form to the Secretary of the Council. Members may provide information on extra sheets of paper if they find the space in this form insufficient. However when reporting particulars of any change in registrable interests in accordance with Order 48(4), members of the Council or its committees may simply complete and sign the relevant part(s) of the registration form and then submit it (them) to the Secretary, instead of submitting the entire set of the form.

(6) Under Order 48(6), registration forms completed by members of the Council or its committees shall be available for public inspection. Any person may also make copies of the forms at the Secretariat of the Council upon payment of a fee. The registration form will also be uploaded to the homepage of the District Council for public viewing.

(7) Members of the Council or its committees should comply with the requirements for registration of personal interests. Registering the interests as required should be regarded as representing a reasonable, minimum requirement and, as such, it is up to members of the Council or its committees, if they think it right and relevant, to disclose interests beyond those specified.

(8) It is left to individual members of the Council or its committees to give the required information and be responsible for what is recorded about himself or herself in the register, as each member is answerable to his or her fellow members and the public.

(9) A member of the Council or its committees is not required to register benefits such as the honorarium and operating expenses reimbursement known to be made available without discrimination to all members of the Council or its committees.

Name of District Council: _____ Name of Member: _____

Category 1 – Remunerated Proprietorships, Partnerships and Directorships

1(1). Do you have any remunerated proprietorships, partnerships and directorships of companies, public or private, including all proprietorships, partnerships and directorships for which a fee, honorarium, allowance or other material benefit is payable?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

If yes, please list the name and nature of business of the company in each case in the table below.

Notes:

(a) The term "material benefit" refers to (i) interests received from a single source in the course of one year (from 1 January to 31 December each year) where the total value of such interests exceeds 5% of the annual honorarium * of a member of the Council (* excluding various allowances/expenses reimbursement covering expenses incurred by his or her work as a member of the Council and medical allowances); or (ii) one-off material benefits exceeding $2,000 in value.

(b) Remunerated proprietorships, partnerships and directorships of both local and overseas companies are registrable.

(c) Remunerated proprietorships, partnerships and directorships through corporate proprietors, partners and directors are also registrable.

(d) Where you are a remunerated proprietor, partner or director of a company, all subsidiary or associated proprietorships, partnerships and directorships which you hold within the same group, whether remunerated or not, should also be registered.

(e) Holding company has the same meaning as in section 13 of the Companies Ordinance (Cap. 622) which specifies that –

" (1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if—

(a) it controls the composition of that other body corporate's board of directors;

(b) it controls more than half of the voting rights in that other body corporate; or

(c) it holds more than half of that other body corporate's issued share capital.

(2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate's holding company."

By virtue of section 13(2) reproduced above, company A is a holding company of company C if company A is the holding company of company B which in turn is the holding company of company C. In other words, both companies A and B are holding companies of company C. The names of all holding companies of a company of which a member is a remunerated director should be registered.

Details

Name of company	
- Nature of business of the company	
- Capacity *(Please ✓ where appropriate)*	☐ Proprietor ☐ Partner ☐ Director ☐ Others *(please specify)* _____
- Names of all holding companies, if any, of the company	

(If you have more remunerated proprietorship, partnership and directorships to register, please use the additional sheet provided after this page.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Name of company	
- Nature of business of the company	
- Capacity *(Please ✓ where appropriate)*	☐ Proprietor ☐ Partner ☐ Director ☐ Others *(please specify)* _____
- Names of all holding companies, if any, of the company	
Name of company	
- Nature of business of the company	
- Capacity *(Please ✓ where appropriate)*	☐ Proprietor ☐ Partner ☐ Director ☐ Others *(please specify)* _____
- Names of all holding companies, if any, of the company	
Name of company	
- Nature of business of the company	
- Capacity *(Please ✓ where appropriate)*	☐ Proprietor ☐ Partner ☐ Director ☐ Others *(please specify)* _____
- Names of all holding companies, if any, of the company	
Name of company	
- Nature of business of the company	
- Capacity *(Please ✓ where appropriate)*	☐ Proprietor ☐ Partner ☐ Director ☐ Others *(please specify)* _____
- Names of all holding companies, if any, of the company	

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

1(2). If you have ceased, during the term, to hold any remunerated proprietorships, partnerships or directorships of companies which have been registered, please list the details in the table below.

Details

Name of company

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 2 – Remunerated Employment, Offices, etc.

2(1). Are you receiving any remuneration from any remunerated work, including employments, offices, trades or professions for which a fee, honorarium, allowance or other material benefit is payable (apart from membership of the District Council)?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

If yes, please list the details of the employment, office, trade or profession in each case in the table below.

Notes: (a) An employment, office, trade or profession is "remunerated" where a fee, honorarium, allowance or other material benefit is payable.

(b) The term "material benefit" refers to (i) interests received from a single source in the course of one year (from 1 January to 31 December each year) where the total value of such interests exceeds 5% of the annual honorarium * of a member of the Council (* excluding various allowances/expenses reimbursement covering expenses incurred by his or her work as a member of the Council and medical allowances); or (ii) one-off material benefits exceeding $2,000 in value.

(c) "Remunerated offices" include "remunerated" public offices.

(d) Members of the Council or its committees who have paid posts as consultants or advisers should indicate the nature of the consultancy in the registration form, for example, "management consultant", "legal adviser", etc.

Details

Name of the remunerated employment, office, trade or profession	Nature of business of the firm

(If you have more remunerated employment, office, trade or profession to register, please use the additional sheet provided after this page.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Name of the remunerated employment, office, trade or profession	Nature of business of the firm

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

2(2). If you have ceased, during the term, to engage in any remunerated employment, office, trade or profession which has been registered, please list the details in the table below.

Details

Name of the remunerated employment, office, trade or profession

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 3 – Shareholdings

3(1). Do you have (either yourself or with or on behalf of your spouse or infant children) beneficial interests in shares in any company registered in Hong Kong or other body of a number greater than 1% of the total number of issued shares of the company or body?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

If yes, please list the details in each case in the table below.

Notes: (a) There is no need to register the size, or value of the shareholdings.

(b) "Shareholdings" is defined as personal shareholdings and does not include shareholdings held by a member of the Council or its committees in the capacity as a nominee shareholder.

(c) It is the obligation of a member of the Council or its committees to register interests which to his or her knowledge fall under this category.

(d) Shareholdings held by the spouse of a member of the Council or its committees are not registrable unless such holdings are known to the member, and are held by the member "with or on behalf of" his spouse. This guideline is also applicable to shareholdings in respect of a member's infant children.

Details

Name of the company	Nature of business of the company

(If you have more shares to register, please use the additional sheet provided after this page.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Name of the company	Nature of business of the company

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

3(2). If you have ceased, during the term, to own or hold any shares of a company or body which has been registered, please list the details in the table below.

Name of the company

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 4 – Financial Sponsorships

4. **In your capacity as a member of the Council or its committees, have you or your spouse received any financial sponsorships from any person or organisation which in any way relates to your membership of the Council or its committees (stating whether any such sponsorships include any payment or any material benefit or advantage to the member or his or her spouse, whether direct or indirect)?**

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

Notes: (a) A member of the Council or its committees is expected to make the necessary enquiries of his or her spouse in order to make a full and timely return on the registration of interests relating to financial sponsorships.

(b) The term "material benefit" refers to (i) interests received from a single source in the course of one year (from 1 January to 31 December each year) where the total value of such interests exceeds 5% of the annual honorarium* of a member of the Council (*excluding various allowances/expenses reimbursements covering expenses incurred by his or her work as a member of the Council and medical allowance); or (ii) one-off material benefits exceeding $2,000 in value.

(c) Any material benefit or advantage received *gratis* or at a price below that generally available to members of the public.

(d) Where a company is named as sponsor, please indicate briefly the nature of its business.

(e) Regarding the financial sponsorships received from a political organisation(*) to which a member belongs, it will suffice if a member registers only financial sponsorships directly received from his or her political organisation. Such registrable interests include cash subsidy of HK$5,000 or above each month. Members having regard to their own knowledge of the circumstances shall consider whether acceptance of a particular financial sponsorship contravenes the provisions of the Prevention of Bribery Ordinance (Cap. 201).

* The definition of "political body" is the same as that in the Societies Ordinance (Cap. 151). The relevant definition in the Societies Ordinance is reproduced as follows:

"Political body" means:

(i) a political party or an organisation that purports to be a political party; or

(ii) an organisation whose principal function or main object is to promote or prepare a candidate for an election.

If yes, please give details.

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 5 – Overseas Visits

5. In your capacity as a member of the Council or its committees, have you or your spouse made any overseas visits or travels outside Hong Kong relating to or in any way arising out of your membership of the Council or its committees where the cost of the visit or travel has not been wholly borne by yourself or by public funds of Hong Kong (stating whether any such sponsorships include any payment or any material benefit or advantage to the member or his or her spouse, whether direct or indirect)?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

If yes, please list the details in the table below.

Notes: (a) A member of the Council or its committees is expected to make the necessary enquiries of his or her spouse in order to make return on the registration of interests relating to overseas visits.

(b) When registering visits or travels outside Hong Kong under this category, please provide relevant information of visits or travels about dates, countries or regions, purposes, names of the sponsors, reason for participation and nature of the interest received (please specify whether the interest relates to the provision of passage, accommodation and/or subsistence allowance). An interest under this category shall be registered within 14 clear working days of the conclusion of the visit or travel.

Details

Name(s) of the sponsor(s)	
Date(s) of the visit	
Country(countries) or place(s) to visit	
Purpose of the visit	
Reasons for participation in the visit	
Nature of interest received (Please specify whether the interest relates to the provision of passage, accommodation, and/or subsistence allowance)	

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 6 – Land and Property

6. Do you directly or indirectly hold any land or property in Hong Kong?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

Notes: (a) It is suffice to register the general nature of the land or property owned by a member of the Council or its committees. Details such as address are not required. Please write, for example, "own a commercial property in the Western Constituency of Central and Western District", "own a residential property in the Mong Kok Constituency of Yau Tsim Mong District" or "own an industrial property in the Kwai Fong Constituency of Kwai Tsing District".

(b) There is no need to register the only or principal residence in Hong Kong which a member of the Council or its committees owns and ordinarily lives in unless he or she also derives income from it.

(c) Land or property are registrable where a member of the Council or its committees has an autonomous right of disposition or has any pecuniary interest deriving from it. Registrable interests include land or property owned by the member in his or her own name, or held indirectly such as through a company or through another person. In the case of holding through a company, the interest is registrable where the member has control of the company or owns more than 50% of the shareholdings in it. In the case of holding through another person, the interest is registrable where the member may dispose of the land or property through that person or derive any pecuniary interest from it. Land or property held by a member as trustee and in which the member has no autonomous right of disposition (e.g. as a nominee, trustee or custodian) need not be registered.

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 7 – Clients

7(1). Have you rendered any personal services which arise out of or are related in any manner to your membership of the Council or its committees to any clients, and hence from whom you receive a fee, honorarium, allowance or other material benefit?

Yes ☐ **No** ☐ *(Please ✓ where appropriate)*

If yes, please list the details in each case in the table below.

Notes:

(a) Services in this context include those services rendered by a member of the Council or its committees personally or those, to the member's knowledge, rendered by an organisation of which the member is a partner, director, employee or office holder. A member shall make it clear to the clients that he or she must declare the names of the clients to the Council as stipulated in the District Council Standing Orders.

(b) The term "material benefit" refers to (i) interests received from a single source in the course of one year (from 1 January to 31 December each year) where the total value of such interests exceeds 5% of the annual honorarium* of a member of the Council (*excluding various allowances/expenses reimbursements covering expenses incurred by his or her work as a member of the Council and medical allowance); or (ii) one-off material benefits exceeding $2,000 in value.

(c) Under this category of registrable interests, a member of the Council or its committees is obliged to register those interests to the best of his or her knowledge. However, it is not necessary for the member to find out the names of all the clients to whom the member's organisation renders remunerated services.

(d) In the registration of interests, where a firm is named, a brief description of the nature of the firm's business should be given.

(e) On the registration of clients, the following are examples of registrable interests under this category which are provided merely for the purpose of illustration. Registrable interests are not confined to the professions cited in the following examples:

(i) An accountant firm of a member of a District Council or its committees acts for a client in preparing tender documents for a project which is under deliberations by the Council or its committees.

(ii) A member of a District Council or its committees is paid (e.g. by an organisation such as a public relations firm or an environmental group) to ensure that a particular point of view or issue is drawn to the attention of the members of the Council or its committees. The point of view could, for example, be related to an issue under debate by the Council, or it might simply be a matter on which the organisation seeks to lobby members of the Council or its committees.

Details

Name of the client	Nature of business of the client

(If you have more clients to register, please use the additional sheet provided after this page.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Name of the client	Nature of business of the client

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

7(2). If you have ceased, during the term, any employment under this category which has been registered, please list the details in the table below.

Details

Name of the client

(Please make a copy of this sheet if necessary, and sign on every such sheet.)

Signature: _____ Date: _____

Name of District Council: _____ Name of Member: _____

Category 8 – Miscellaneous
8. If, bearing in mind the purpose set out in the Guidelines on Registration of Interests and the principles mentioned in the Guidelines for a Two-tier Reporting System (Appendix V), you have any relevant interests which you consider should be disclosed but which do not fall within the seven categories set out above, please give details below.

Signature: _____ Date: _____

Declaration of Interests by
Members of Public Councils, Boards and Committees

Guidelines for a Two-tier Reporting System

General Principles

Some public councils, boards and committees are autonomous and have extensive powers over policy and financial matters. To maintain public confidence in the integrity of their members (including the chairman), as well as in the impartiality of their advice tendered to the committee, it is important that all members of such committees should disclose their general pecuniary interests on appointment to the committee, in addition to the report of conflicts of interests as and when they arise. To achieve greater transparency, such declarations should be made available for public inspection. By adopting this two-tier reporting system, members of these committees can be protected from criticism or embarrassment arising from the existence of any undeclared general financial interest which may have potential conflict with the work of the committee. The two-tier reporting system consists of the following -

(A) Register of Members' Interests

(i) The chairman and members shall register in writing their personal interest, direct or indirect, pecuniary or otherwise, when they first join the committee, and annually thereafter, to the secretary of the committee. The registration shall be made on a standard form.

(ii) The types of interests required for registration shall include -

(a) proprietorships, partnerships or directorships of companies;

(b) remunerated employments, offices, trades, professions or vocations; and

(c) shareholdings in a publicly listed or private company (e.g. 1% or more of the company's issued share capital); and/or

(d) other declarable interests, taking into consideration the nature of work of individual committees.

(iii) A register of members' interests shall be kept by the secretary which should be made available for inspection on request by any member of the public.

(B) Declaration of Interests at Meetings

(i) If a member (including the Chairman) has any direct personal or pecuniary interest in any matter under consideration by the committee, he or she must, as soon as practicable after he or she has become aware of it, disclose to the chairman (or the committee) prior to the discussion of the item.

(ii) The chairman (or committee) shall decide whether a member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.

(iii) If the chairman declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by a vice-chairman.

(iv) When a known direct pecuniary interest exists, the secretary may withhold circulation of relevant papers to the member concerned. Where a member is in receipt of a paper for discussion which he or she knows presents a direct conflict of interest, he or she should immediately inform the secretary and return the paper.

(v) All cases of declaration of interests shall be recorded in the minutes of the meeting.

Potential Conflict of Interest Situations

2. When a member (including the Chairman) of a public council, board or committee has a potential conflict of interest in a matter placed before the committee, he or she should make full disclosure of his or her interest. The basic principle to be observed is that members' advice should be disinterested and impartial and it is the responsibility of each member to judge and decide if the situation warrants a declaration, and to seek a ruling from the Chairman in case of doubt. The following are potential conflict of interest situations -

(i) Pecuniary interests in a matter under consideration by the committee, held either by the member or by any his or her close relative. Members are themselves the best judge of who, in the particular circumstances, is a "close relative".

(ii) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the committee.

(iii) Some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a member's advice to have been influenced by the closeness of the association.

(iv) A member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the committee.

(v) Any interest likely to lead an objective observer to believe that the member's advice might have been motivated by personal interest rather than a duty to give impartial advice.

Criteria for Adopting the Two-tier Reporting System

3. Public councils, boards and committees which have the following functions and characteristics should adopt the two-tier reporting system:

(i) high degree of management and financial autonomy;

(ii) extensive executive powers in matters of public interests;

(iii) instrumental in shaping major Government policies;

(iv) award of major Government contracts;

(v) access to market sensitive information (e.g. land development fees, charges and other forms of revenue, and licensing procedures);

(vi) control and disbursement of substantial public funds.

IX Conflict of Interest

9.1 DC members (including co-opted members) should make a declaration on any conflict of interest which may be actual, potential or perceived. For example, they should declare an interest under the following circumstances -

(a) they have pecuniary or other interest in matters relating to the endorsement of the project proposal and selection of quotations or have any connection with a party who has applied for/been granted DC funds for implementing a CI project; and

(b) they have introduced or nominated a supplier/contractor for a quotation exercise.

Other procedures set out in the DC's Standing Orders governing declarations of interest should also be observed.

9.2 DC members (including co-opted members) should refrain from having business dealings with any party associated with projects financed by DC funds, which may bring the DC into disrepute. If for any reason it is not possible to avoid such dealings (e.g. a DC member's company is the sole supplier), the DC member concerned should declare the transaction to the DC and withdraw from the relevant DC proceedings as appropriate.

9.3 DC members (including co-opted members) should, as far as practicable, make a declaration of interest before the matter is discussed. If at any other time a DC member (including co-opted members) finds that he has an interest to declare, he should do so immediately and, where appropriate, complete a declaration form at Annex H. Depending on the circumstances, the declaration may be discussed in the DC. In any case, the declaration form should be attached to the project completion report for submission to the DC.

9.4 All declarations of interest should be recorded in the minutes of the meeting, stating the nature of interest declared, the decision of the meeting and the rationale behind the decision as appropriate.

Annex H

To : Secretary, _____ District Council

Declaration of Interest for Project Financed by District Council Funds

I, _____ , have the following interest to declare in connection with _____ to be held on _____-

(Name of Project) (Date)

(a) I am associated with _____ which made a tender/quotation submission for the implementation of the project. (Please elaborate) _____[1]

(b) I am associated with the organisation applying for District Council (DC) funds in the capacity as _____[2]

(c) Other declarable interests[3]

_____

_____

Signature : _____

Name : _____

Date : _____

Telephone No. : _____

1. The declarant should provide details, e.g. he/she is the owner of the bidding firm or has nominated a tenderer or bidder for selection.

2. A declaration should be made if, for example, the person is on the executive committee or an ordinary member of the organisation which applies for DC funds and the relationship should be clearly described in the declaration form.

3. The DC may specify other interests to be declared.

Purposes of Collection

1. The personal data provided by means of this form will be used by Home Affairs Department for the purposes of handling matters relating to the use of District Council Funds as well as promoting community involvement activities and public participation in community affairs.

Classes of Transferees

2. The personal data provided by means of this form may be disclosed to other Government departments, bureaux and relevant persons and bodies for the purposes mentioned in paragraph 1 above.

Access to personal data

3. The responsible officer(s) of the organisation has/have a right of access and correction with respect to personal data as provided for under the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the data subjects' personal data provided by this form.

Enquiries

4. Enquiries concerning the personal data collected by means of this form, including access to and correction of the personal data, should be addressed to -

_____

(Designation of subject officer)

_____ District Office

_____

(Telephone No.)

Annex 3

SDC Paper No. 28/2016
(for discussion on 17.3.2016)

Southern District Council

Review on SDC Standing Orders, Arrangement for Appointment of Co-opted Members and Mechanism of Declaration of Interests in Vetting Fund Applications

Purpose

This paper aims to seek Members' endorsement of the proposed Southern District Council Standing Orders (the Standing Orders) and Mechanism of Declaration of Interests in Vetting Fund Applications (the Mechanism of Declaration) at **Annexes 3 and 4** respectively, and Members' consent to the arrangement for appointment of co-opted members as given in the ensuing paragraph 5.

Background

2. Section 68 of the District Councils Ordinance (Cap. 547) stipulates that a District Council (DC) may make standing orders for regulating its meeting procedure and that of its committees. The Home Affairs Department has prepared a set of Model Text of DC Standing Order (the Model Text) for the new term DCs, which serves as a basis for the respective DCs to make adaptation according to their own needs. The Model Text has been drawn up to put forth proposed amendments covering the four main categories as follows:

(a) Minutes of Working Group Meetings;
(b) Registration of Personal Interests of Members of a District Council or Its Committees;
(c) Code of Conduct for Members of the Council or Its Committees; and
(d) Procedure for Election of District Council Chairman and Vice Chairman.

3. At the 1st meeting of the fifth term SDC held on 5 January 2016, endorsement was granted to incorporate the proposed amendments first into the version of Standing Orders (Annex 3 of SDC Paper No. 1/2016) adopted by the last term SDC on 14 November 2013 for provisional use in the current term SDC.

Subsequently, a workshop was organised in order to have a detailed discussion of the provisions in the Standing Orders as well as the arrangement for appointment of co-opted members.

Proposal

Review on Standing Orders

4. A workshop was held by SDC on 3 February 2016 and Members were invited to submit any proposed amendments prior to the meeting. There were in total 14 Members at the workshop, whose names are shown on the list at **Annex 1**. Having discussed the amendments in detail, Members of the workshop agreed to recommend some amendments (**Annex 2**) to the SDC for consideration. Furthermore, some minor amendments have been made to the English version of the Model Text. A draft of the revised Standing Orders is provided at **Annex 3**.

Arrangement for Appointment of Co-opted Members

5. Members discussed the arrangement for appointment of co-opted members in the workshop and consented to adding co-opted seats to the Community Affairs and Tourism Development Committee (CATC), District Development and Housing Committee (DDHC), Traffic and Transport Committee (TTC), and Focus Group on Southern District Signature Projects (SDSP). Taking into account the terms of reference (ToR) and operational needs of various committees, Members agreed that a maximum of five co-opted members should be appointed to CATC, whereas a maximum of four be appointed to the other three committees. Meanwhile, the Standing Orders provisions on the appointment of co-opted members as well as the criteria for nomination and selection of co-opted members to a committee should remain unchanged.

Review on Mechanism of Declaration

6. The prevailing Mechanism of Declaration was reviewed at the workshop and Members have agreed on the following amendments:

Relevant Provision / Remark and Original Text	Proposed Amendments
Remark (v)	Addition of remark (v): If a SDC Member is also appointed to any of the committees set up by Southern District Office, he/she should declare his/her interest in accordance with the tier 1 arrangements in vetting the applications for projects organised / co-organised / assisted by those committees, and he/she can still take part in the discussion and decision-making after making the declaration.
Remark (vi) In case funding approval is sought by circulation of papers, members of respective meetings with declarable interests under the category of declaration of interests requiring abstention from decision-making (that is, tiers 2 and 3 under the prevailing three-tier system) should abstain from voting.	Revision on remark (vi): In case funding approval is sought by circulation of papers, members of respective meetings with declarable interests under the category of declaration of interests requiring abstention from decision-making (that is, tiers 2 and 3 under the prevailing three-tier system) should abstain from voting the circulation papers.

The revised Mechanism of Declaration is provided at **Annex 4**.

Advice Sought

7. Members are invited to give their views on the revised amendments to Standing Orders and consider endorsing the draft Standing Orders and Mechanism of Declaration at **Annexes 3 and 4** as well as giving consent to the arrangement for appointment of co-opted members mentioned in paragraph 5 above.

Secretariat, Southern District Council
March 2016

Annex 4

Mechanism of Declaration of Interests in Vetting Fund Applications

The following three-tier system has been adopted for declaration of interests:

(a) Tier 1: a member associated with the applicant organisation / co-organiser / assisting organiser in **a nominal capacity** such as honorary chairperson, honorary president, advisors, and so on should declare interest prior to the discussion but can still take part in the discussion and decision-making;

(b) Tier 2: a member associated with the applicant organisation / co-organiser / assisting organiser in **an executive capacity** such as executive chairperson, vice-chairperson, executive member, secretary, treasurer, and so on should declare interest to the meeting and keep their silence during the discussion of the application concerned, and should abstain from decision-making or voting for the application concerned. The chairperson may require the declarant to submit supplementary information as appropriate; and

(c) Tier 3: a member who is **an executor** of the project concerned in the capacity as designated officer-in-charge or authorised person of the project and the like should declare interest to the meeting and withdraw from the meeting during the discussion of the application concerned.

Beside, SDC members should take note of the following six points in making declaration of interests:

(i) Since definition of post titles varies in different organisations, members should, at their own discretion, decide the tier to which they belong and make declaration as appropriate. In case members have doubts about a declaration or a member's relationship with the applicant organisation / co-organiser / assisting organiser, the matter should be raised and resolved by members at the meeting.

(ii) A member should abstain from the meeting after declaring his/her association with the service provider in the project concerned.

(iii) For projects led by SDC or its Committees/Working Groups (C/WGs), members need not declare their interest in the capacity as a member of SDC or C/WGs under SDC. Nevertheless, for a member having other interest in the project concerned such as association with the service provider, he/she should declare his/her interest, and then keep his/her silence or abstain from the meeting, whichever is appropriate.

(iv) As SDC Members are ex-officio members of the four Southern District Area Committees (ACs), Community Affairs and Tourism Development Committee (CATC) endorsed that in vetting the applications for projects organised / co-organised / assisted by the ACs, SDC Members should declare their interest in accordance with the tier 1 arrangements, and they can still take part in the discussion and decision-making after making the declaration.

(v) If a SDC Member is also appointed to any of the committees set up by Southern District Office, he/she should declare his/her interest in accordance with the tier 1 arrangements in vetting the applications for projects organised / co-organised / assisted by those committees, and he/she can still take part in the discussion and decision-making after making the declaration.

(vi) In case funding approval is sought by circulation of papers, members of respective meetings with declarable interests under the category of declaration of interests requiring abstention from decision-making (that is, tiers 2 and 3 under the prevailing three-tier system) should abstain from voting the circulation papers.

Annex 4

2016 年 2 月 17 日
討論文件

北區區議會
文件第 33/2016 號

《北區區議會議員和增選委員在審批撥款申請時作利益申報的處理安排》

目的

請議員考慮並通過《北區區議會議員和增選委員在審批撥款申請時作利益申報的處理安排》(下稱「《利益申報安排》」)的建議修訂。

背景

2. 北區區議會在 2016 年 1 月 7 日舉行的會議上曾討論《利益申報安排》。除了有關第三級的處理利益申報安排有建議新增規定外，北區區議會已通過《利益申報安排》。

建議

3. 因應區議會在上述會議上就《利益申報安排》中有關第三級處理利益申報安排的議決，秘書處建議新增規定的條文如下：

在會議上審批撥款申請

- 如議員／增選委員與該項獲得區議會撥款資助推行活動的人士／機構有**商業往來**，或議員／增選委員已知與該項撥款申請的**供應商／承辦商有聯繫**，須申報利益並於討論該項撥款申請時避席，即等同上文的第三級處理利益申報安排。

經修訂的《利益申報安排》全文詳見附件一；供議員／增選委員填寫的「北區區議會撥款資助活動的利益申報表」相應修訂詳見附件二。附件內以灰階印刷顯示的部分為建議修訂內容。

徵詢意見

4. 請議員考慮通過上文第 3 段就《利益申報安排》作出的建議修訂。

北區區議會秘書處
2016 年 1 月

Note by Clerk, PAC:** **Chinese version only.

附件一

《北區區議會議員和增選委員在審批撥款申請時作利益申報的處理安排》

在會議上審批撥款申請

- 按議員／增選委員在活動主辦／合辦／協辦團體擔任的職位，處理利益申報的安排可分為三級：

  - 第一級：如議員／增選委員身兼有關活動主辦／合辦／協辦團體**不具實務**的職銜，例如名譽主席、名譽會長及顧問等，只須在討論前申報利益，但仍可參與有關的討論、決議及投票；

  - 第二級：如議員／增選委員身兼有關活動主辦／合辦／協辦團體**具實務**的職位，例如主席、副主席、委員、秘書及司庫等，須申報利益並於有關討論中保持緘默，而且不可參與該項撥款申請的決議或投票。如有需要，會議主席可因應情況請有關議員／增選委員提供補充資料；以及

  - 第三級：如議員／增選委員為有關活動的**執行人**，例如負責人或獲授權人等，須申報利益並於討論該項撥款申請時避席。

- 如議員／增選委員與該項獲得區議會撥款資助推行活動的人士／機構有**商業往來**，或議員／增選委員已知與該項撥款申請的**供應商／承辦商有聯繫**，須申報利益並於討論該項撥款申請時避席，即等同上文的第三級處理利益申報安排。

- 如議員／增選委員與活動有**其他利益關係**，須作出利益申報。會議主席按情況決定處理安排，例如在有關討論中保持緘默，或被要求避席。

- 審批由區議會或其轄下委員會／工作小組及由北區民政事務處轄下委員會／工作小組主導的活動的撥款申請時，議員／委員／工作小組成員無須就這些身份申報利益。

以傳閱文件方式審批撥款申請

- 議員／增選委員須以書面作出利益申報；
- 除非所申報利益僅屬第一級，否則議員／增選委員就該項撥款申請的投票將不會被計算。

Note by Clerk, PAC: ***Chinese version only.***

附件二

致 ： 北區區議會秘書

北區區議會撥款資助活動的利益申報表(供議員／增選委員填寫)

本人＿＿＿＿＿＿＿＿＿＿現就＿＿＿＿＿＿＿＿＿＿
（日期）
舉行的＿＿＿＿＿＿＿＿＿＿，申報以下利益：
（活動名稱）

(a) 本人在上述活動的主辦／合辦／協辦*團體＿＿＿＿＿＿＿＿＿＿
（機構名稱）
擔任具實務／不具實務*的職位＿＿＿＿＿＿＿＿[1]
（職位名稱）

(b) 本人在上述活動的主辦團體＿＿＿＿＿＿＿＿擔任具實務的職位
（機構名稱）
＿＿＿＿＿＿＿＿[1]，並為主辦團體的獲授權人／活動的指定負責人*。
（職位名稱）

(c) 本人與＿＿＿＿＿＿＿＿＿＿有聯繫，其已為推行上述活
（機構名稱）
動遞交標書／報價*。(請說明詳情)＿＿＿＿＿＿＿＿＿＿
＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿[2]

(d) 其他須申報的利益[3]（例如與上述活動的人士／機構有商業往來）
＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿
＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿＿

* 請刪去不適用者

簽　　署：＿＿＿＿＿＿＿＿＿＿
姓　　名：＿＿＿＿＿＿＿＿＿＿
日　　期：＿＿＿＿＿＿＿＿＿＿
電話號碼：＿＿＿＿＿＿＿＿＿＿

[1] 申報人須作出申報，例如申報人是申請區議會撥款的主辦／合辦／協辦團體的執行委員會成員或普通成員，則申報人須在申報表清楚說明申報人與該機構的關係。

[2] 申報人應提供有關詳情，例如申報人是投標公司的東主，或申報人提名了某個投標者或競投者參與遴選。

[3] 區議會可指明其他須申報的利益。

個人資料收集目的

1. 在本表格內提供的個人資料，民政事務總署會用於推廣社區參與活動以及鼓勵市民參與社區事務。

資料轉移對象類別

2. 在本表格內提供的個人資料，可為上文第 1 段所述的目的，向政府其他部門、局以及其他有關人士和團體披露。

查閱個人資料

3. 貴機構的負責人員有權根據《個人資料(私隱)條例》(第 486 章)查閱和更正已提供的個人資料。查閱權包括取得本表格內資料當事人個人資料的副本。

查詢

4. 如對使用本表格收集的個人資料有任何查詢(包括查閱和更正資料)，請與下述人員聯絡：

一級行政主任(區議會)

北區民政事務處

電話：2675 1574

Note by Clerk, PAC:** **Chinese version only.

Reasons for differences between the Standing Orders of DCs and the model text of DC Standing Orders

	District Council	Reasons for differences
1	Eastern	Order 48(8), (12) and (14) have been modified so as to specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest. As the model text of the Standing Orders caters for the general situation applicable across 18 districts, it did not elaborate specifically on the role of the vice-chairman of a committee as it was not certain whether all committees would have a vice-chairman. The modification is in line with the requirement for a member without declared interest to handle the meeting proceedings.
2	Wong Tai Sin	The following additional clause was included to put beyond doubt the requirement for declaration in the situation mentioned in the additional clause. This is to ensure transparency and accountability. *If a member (including the Chairman) of the District Council or its committee is an executive member of a local organisation, he shall declare interest to the District Council or its committee before discussion on direct monetary benefit of the organisation considered by the District Council or its committee. (Order 48(7A))*
3	Kwai Tsing	While the model text states that "A member of the Council or its committees shall furnish the Secretary of the Council with <u>particulars of any change</u> in his or her registrable interests within 14 clear working days of any such change by using the registration form provided by the Secretary.", Kwai Tsing DC's version has required the member concerned to provide *<u>particulars of his or her registrable interests</u> within 14 clear working days of any change in such interests by using the registration form provided by the Secretary*. Kwai Tsing DC's requirement aims to provide convenience to readers, who will be able to grasp the full picture of

		the registrable interest by reading the most recent registration form without having to trace the changes to previous forms. *Kwai Tsing DC standing order 41(4)* *A member of the Council or its committees shall furnish the Secretary of the Council with particulars of his or her registrable interests within 14 clear working days of any change in such interests by using the registration form provided by the Secretary.*
4	Sai Kung	(a) While the model text requires members to furnish the Secretary of the Council with particulars of his or her registrable interests within one month from the commencement of each term, Sai Kung DC standing order has the same requirement and in addition requires their members to furnish such particulars within the first quarter of each year of the DC term (Order 48(1)). (b) Order 48(8), (12) and (14) have been modified so as to specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest.
5	Sha Tin	Minor modifications have been made to – (a) set out that the procedures for handling of declaration of interests in DC/committee meetings are also applicable to working group meetings (Order 48(7), (9), (10), (13), (16) and (18)); (b) specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest (Order 48(8), (12), (14)); and (c) incorporate the related provisions set out in the Manual on the Use of District Council Funds on the management of conflict of interest (Order 49).
6	Tai Po	Order 35(3), 48(12) and (14) have been modified so as to specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest.

7	Tsuen Wan	Order 48(8), (12) and (14) have been modified so as to specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest.
8	Yuen Long	Order 48(14) have been modified so as to specify the role to be played by the vice-chairman of a committee in case the chairman of the committee has declared an interest.