

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.

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