

Laying of the Report Report No. 68 of the Director of Audit on the results of value for money audits was laid in the Legislative Council ("LegCo") on 26 April 2017. The Public Accounts Committee ("the Committee")'s supplemental report (Report No. 68A) on Chapters 1 and 4 of the Director of Audit's Report ("Audit Report") was tabled on 17 January 2018.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 68A was laid in LegCo on 11 April 2018. A progress report on matters outstanding in the Government Minute was issued on 25 October 2018. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 9 below.

Government's support and monitoring of charities
(Chapter 1 of Part 4 of P.A.C. Report No. 68A)

3. 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.

4. The Committee was informed that:

Administration of tax exemption of charities and tax-deductible donations

- the Inland Revenue Department ("IRD") had sought legal advice from the Department of Justice regarding the regulation of charities within the existing legislative framework and it was confirmed that:
 - (a) the Inland Revenue Ordinance (Cap. 112) ("IRO") did not provide the power for IRD to demand charities with expenses/activities contravening their governing instruments or incompatible with their charitable objects, or expenditures not incurred in furtherance of charitable objects to obtain refunds either in full or

in part of the contravening expenses or expenditures from the recipients;

- (b) in cases where IRD considered that a charity's contravention or incompatibility would not fundamentally change its charitable status after taking a holistic view, IRO did not empower IRD to demand the charity to take remedial actions before IRD continued recognizing its tax exemption status; and
 - (c) in respect of matters involving serious regulatory concerns, IRD could withdraw the recognition of tax exemption status of the charities concerned and raise tax assessment where appropriate. IRO did not stipulate any obligation or power for IRD to take any follow-up actions relating to the regulatory matters of charities;
- IRD issued detailed internal guidelines to remind its Charitable Donations Section staff of the factors to be considered and the required follow-up actions in ascertaining the tax-exemption status of charities for the purpose of section 88 of IRO;

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

Monitoring of applications and proper use of income generated from hostel/serviced residence on site granted by private treaty grant

- for the eight private treaty grants mentioned in the Audit Report which contained particular clauses in governing the use or operation of the hostels/dormitories (i.e. Leases F, G, H, I, J, L, M and N), as at mid-July 2018:
 - (a) the Social Welfare Department ("SWD") had confirmed that the hostels of Leases F, G, H, I and J were operated to its satisfaction;
 - (b) the Home Affairs Bureau had confirmed that the two catering facilities of Lease N were operated as part of and was ancillary to the hostel;
 - (c) Lease L was still under investigation by the Lands Department ("LandsD") and replies from bureaux/departments or the grantee were pending; and

- (d) LandsD was preparing to issue a warning letter to the grantee of Lease M for not submitting the audited accounts for 2016;

Inclusion of no-profit-distribution and/or submission of accounts clauses upon lease renewal/modification

- for Lease F, agreement had been made between SWD and the grantee that the hostel facilities on the subject site of Lease F, to be operated on a self-financing basis, would serve the purposes in compliance with the land lease requirements and for such purposes as approved by Director of Social Welfare;
- for Lease G, as agreed between SWD and the grantee of Lease G, the grantee would make use of part of the dormitory facilities for providing short-term accommodation service to those with family, marital or financial issues. The grantee had started receiving these applications since March 2018;

Submission of accounts in accordance with lease conditions

- for Lease H, SWD accepted the audited accounts for 2015-2016 and 2016-2017 and reminded the grantee to submit the audited accounts for 2017-2018 at appropriate time in accordance with the lease conditions;
- for Lease J, SWD accepted the audited accounts for 2016-2017 and reminded the grantee to submit the audited accounts for 2017-2018 at appropriate time in accordance with the lease conditions;

Monitoring of lease conditions of Lease N on income-generating facilities and subvention reduction arrangement for Grantee N

- Management Committee meeting was held on 24 July 2018 to examine the income and expenditure of the income-generating facilities of Grantee N's headquarters. Grantee N had also submitted the statement of accounts for the income-generating facilities for 2017-2018;

Review of the 2014 Protocol

- LandsD had completed Phase 2 of the stock-taking exercise which covered, together with Phase 1, private treaty grants granted at

nil/nominal/concessionary premium during the period from 1 January 2014 to 31 December 2017;

Assessment of the taxability of profits derived from commercial operations

- IRD informed two charities (which owned two of the 13 sites identified in the Audit Report) that the profits derived from the operations of facilities on the relevant sites should be liable to profits tax and issued Profits Tax returns for their completion. IRD would review the charities with operations on the remaining 11 sites to ascertain the taxability of the profits, if any, derived from the operations;

Regulation of Chinese temples

- the Chinese Temples Committee re-entered into an agreement with one of the delegated organizations with expired delegation agreement in December 2017 and discussion with the other delegated organization with expired delegation agreement was still ongoing; and
- the Chinese Temples Committee had revised the delegation agreements with six delegated organizations with clauses added to specify that the Committee was authorized to disclose on its website the financial information of the temples for public inspection.

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

Provision of district council funds for community involvement projects
(Chapter 2 of Part 4 of P.A.C. Report No. 68A)

6. 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 funds to DCs for

implementing community involvement projects in districts. Hon SHIU Ka-fai declared that he was a DC member, a member of the Liberal Party, and unremunerated honorary adviser or honorary member to some non-governmental organizations. 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 funds to DCs for implementing community involvement projects in districts.

7. The Committee was informed that the Home Affairs Department had issued guidelines to facilitate DC Secretariats to play a more active role in enhancing accountability, transparency and good governance in processing community involvement project applications and evaluating community involvement projects.

8. The Committee wrote to Secretary for Home Affairs on 4 January 2019 to enquire the implementation progress for each of the 18 DCs in adopting the guidelines in making declarations as well as for the chairpersons to make rulings on interests declared and record such rulings in the minutes of meetings; and measures taken by the Home Affairs Department/DC Secretariats to monitor the implementation of guidelines and follow-up actions that had been taken to address any discrepancies between practices adopted by different DCs in relating to the declaration of interests. The replies from **Director of Home Affairs** are in *Appendix 4*.

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