REPORT OF THE

PUBLIC ACCOUNTS COMMITTEE

ON

REPORT NO. 34 OF THE DIRECTOR OF AUDIT

ON

THE RESULTS OF

VALUE FOR MONEY AUDITS

June 2000

P.A.C. Report No. 34

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I. INTRODUCTION

The Establishment of the Committee The Public Accounts Committee are 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	The Hon Eric LI Ka-cheung, JP
Deputy Chairman	The Hon Fred LI Wah-ming, JP
Members	The Hon David CHU Yu-lin The Hon NG Leung-sing The Hon Mrs Sophie LEUNG LAU Yau-fun, JP The Hon LAU Kong-wah The Hon Emily LAU Wai-hing, JP
Clerk	Mrs Florence LAM IP Mo-fee
Legal Adviser	Mr Jimmy MA Yiu-tim, JP

II. PROCEDURE

The Committee's Procedure The Committee's 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 Bureau Secretary 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 can assist the Committee in its deliberations;

(c) the Director of Audit and the Secretary for 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 can suggest fruitful areas for value for money study by the Director of Audit.

2. **The Committee's Report** This Report by the Public Accounts Committee corresponds with Report No. 34 of the Director of Audit on the results of value for money audits which was tabled in the Legislative Council on 29 March 2000. 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***.

3. **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.

III. THE DIRECTOR OF AUDIT'S REPORT ON THE RESULTS OF VALUE FOR MONEY AUDITS (REPORT NO. 33A)

Laying of the Report The Director of Audit's Report on the results of value for money audits (Report No. 33A) was laid in the Legislative Council on 13 October 1999. The Committee's subsequent Report (Report No. 33A), which also contains the Committee's supplemental report on Report No. 32 of the Director of Audit on the results of value for money audits, was tabled on 8 December 1999, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 33A was laid in the Legislative Council on 1 March 2000. The Committee will refer to matters arising from this Minute in their next Report.

IV. THE DIRECTOR OF AUDIT'S REPORTS ON THE ACCOUNTS OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE YEAR ENDED 31 MARCH 1999 AND THE RESULTS OF VALUE FOR MONEY AUDITS (REPORT NO. 33)

Laying of the Reports The Director of Audit's Report on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 1999 and the Report on the results of value for money audits (Report No. 33) were laid in the Legislative Council on 17 November 1999. The Committee's subsequent Report was tabled on 16 February 2000, thereby meeting the requirement of the Audit Ordinance and of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 33 was tabled in the Legislative Council on 10 May 2000. The Committee will refer to matters arising from this Minute in their next Report.

V. COMMITTEE PROCEEDINGS

Consideration of the Director of Audit's Report tabled in the Legislative Council on 29 March 2000 As in previous years, the Committee did not consider it necessary to investigate in detail every observation contained in the Director of Audit's Report. The Committee have therefore only selected those chapters in the Director of Audit's Report No. 34 which, in their view, referred to more serious irregularities or shortcomings. It is the investigation of those chapters which constitutes the bulk of this Report.

2. **Meetings** The Committee held 10 meetings and four public hearings. During the public hearings, the Committee heard evidence from a total of 16 witnesses, including three Bureau Secretaries and four Heads of Department. The names of the witnesses are listed in ***Appendix 3*** to this Report. A copy of the Chairman's Introductory Remarks at the first public hearing on 6 April 2000 is in ***Appendix 4***.

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

4. A verbatim transcript of the Committee's public proceedings will be placed in the Library of the Legislative Council for inspection by the public.

5. **Acknowledgements** The Committee wish to record their appreciation of the co-operative approach adopted by all the persons who were invited to give evidence. In addition, the Committee are grateful for the assistance and constructive advice given by the Secretary for the Treasury, the Legal Adviser and the Clerk. The Committee also wish 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 their deliberations.

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

Eric LI Ka-cheung
(Chairman)

Fred LI Wah-ming
(Deputy Chairman)

David CHU Yu-lin

NG Leung-sing

Sophie LEUNG LAU Yau-fun

LAU Kong-wah

Emily LAU Wai-hing

9 June 2000

CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 34 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT

Director of Audit's Report No. 34 Chapter	Subject	P.A.C. Report No. 34 Chapter
5	Services provided by the Official Receiver's Office	1
6	Management of outdoor road maintenance staff	2
7	The administration of the Judiciary	3

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

72. Public Accounts Committee

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

(a) on the accounts of the Government;

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

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

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

(3) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. The chairman and 2 other members shall constitute a quorum.

(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) 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 have a casting vote.

(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)

Mr E T O'Connell	Acting Official Receiver
Mr P W MAK	Assistant Official Receiver (Case Management)
Mr D F Manning	Assistant Official Receiver (Financial Services)
Mr Edward LAU	Acting Assistant Official Receiver (Legal Services)
Mr Rafael HUI Si-yan, GBS, JP	Secretary for Financial Services
Ms Julina CHAN	Principal Assistant Secretary (Companies) Financial Services Bureau
Miss Denise YUE Chung-yee, JP	Secretary for the Treasury
Mr LEUNG Kwok-sun, JP	Director of Highways
Mr C K WONG	Assistant Director (Headquarters) Highways Department
Mr Bernard K F CHONG	Departmental Secretary Highways Department
Mr Duncan W Pescod, JP	Deputy Secretary for the Civil Service
Mr Kevin HO	Acting Secretary for Transport
Mr Wilfred TSUI Chi-keung	Judiciary Administrator
Miss Emma LAU	Deputy Judiciary Administrator (Development)
Mrs Betty CHU	Judiciary Secretary
Mr Matthew CHEUNG Kin-chung, JP	Commissioner for Labour

Introductory remarks by the Chairman of the Public Accounts Committee, the Hon Eric LI Ka-cheung, JP, at the first public hearing of the Committee on Thursday, 6 April 2000

Good morning, ladies and gentlemen. Welcome to this public hearing of the Public Accounts Committee.

For the benefit of the members of the public and other concerned parties who are interested, I would like to give a brief outline about the role and function of the Public Accounts Committee.

The Public Accounts Committee is a standing committee of the Legislative Council. It plays the role of a watchdog over public expenditure through consideration of the reports of the Director of Audit laid before the Council on the accounts and the results of value for money audits of the Government and of organisations which receive funding from the Government. In accordance with Rule 72 of the Rules of Procedure of the Legislative Council, the Committee is required to make its report upon the Director's report to the Legislative Council within three months of the date on which the Director's report is laid on the Table of the Council. The purposes of the Committee's considering the Director's report are to receive evidence relevant to the report in order to ensure that the facts ascertained are accurate, and to make conclusions and recommendations in a constructive spirit and forward-looking manner. I also wish to stress that the objective of the whole exercise is such that the lessons learned from past experience and our comments on the performance of public officers concerned will enable the Government to improve its control over the expenditure of public funds, with due regard to economy, efficiency and effectiveness.

The consideration of the Director's report follows an established process of public hearing, where necessary, internal deliberations and publication of the Committee's report. The Committee has adopted procedures for ensuring that all parties concerned have a reasonable opportunity to be heard. After the Committee is satisfied that it has ascertained the relevant facts, it will proceed to making a judgement on those facts followed by a process of formulating its conclusions and recommendations.

The Director of Audit's Report on the results of value for money audits completed between October 1999 and February 2000 i.e. Report No. 34, was tabled in the Legislative Council on 29 March 2000. Following our preliminary study of the Director's Report No. 34, the Committee has decided to invite the public officers and relevant parties concerned to appear before the Committee today and answer our questions in respect of three chapters of the Director Report. After we have studied the issues and taken the necessary evidence, we will produce our conclusions and recommendations which will reflect the independent and impartial judgement and views of the Committee. These recommendations will be made public when we report back to the Legislative Council within three months' time. Before then, we will not, as a committee or individually, be making any public comments on our conclusions.

I now declare the Committee to be in formal session.

Chapter 1

Services provided by the Official Receiver's Office

The Committee noted Audit's review of the economy, efficiency and effectiveness of the services provided by the Official Receiver's Office (ORO). The review covered the following areas:

- monitoring of staff workload;
- ascertaining and realisation of assets of insolvent estates;
- distribution of realised assets and law enforcement;
- performance measurement and service delivery;
- appointment of private insolvency practitioners (PIPs) to handle insolvency cases;
- monitoring of the performance of PIPs and their fees; and
- fees charged by the ORO.

Monitoring of staff workload

2. The Committee noted that the ORO had not established standards on the productivity of Insolvency Officers (IOs) and that there was a wide variation in the workload of the IOs of the same rank. According to paragraph 2.4 of the Audit Report, most of the cases handled by all the IOs were small cases (i.e. cases with realisable assets not exceeding $50,000). Each case should have required less than 40 man-hours to complete. The wide variation in the IOs' workload suggested that there might have been undue delay in the completion of some cases by the IOs, resulting in a large backlog of active cases in their hands. Against this background, the Committee asked whether:

- there were established criteria for determining the number of insolvency cases to be handled by individual IOs;
- the ORO had required its staff to complete small cases within 40 man-hours; and
- the ORO would consider setting time limits for its staff to complete an insolvency case.

3. **Mr E T O'Connell, Acting Official Receiver**, and **Mr P W MAK, Assistant Official Receiver (Case Management)**, said that:

- there had been a number of highly complex and high-profile insolvency cases in Hong Kong over the years, such as the liquidation of the Bank of Credit and Commerce in 1991 and, more recently, the CA Pacific Group and the Peregrine Group companies. It was necessary to assign such cases to specialised and experienced case officers;

- the case IOs were required to go through a number of steps in processing an insolvency case, including gazetting, advertising and assessment of claims, which should take no more than 40 man-hours. According to past experience, the IOs were not expected to spend an excessively lengthy period on summary procedure cases. However, when there were problems, some cases might take more time to complete; and

- in the past, the ORO had not stipulated the time limit for the completion of cases by in-house staff. In response to the Audit Report, the ORO had implemented the requirement that an IO should complete most cases within nine months of receiving the case files.

4. According to paragraph 2.15 of the Audit Report, about 22% of the insolvency cases with realisable assets not exceeding $200,000 handled by the ORO's case management teams took more than three years to be completed. Given that the ORO was established in June 1992 and that the target completion time had only been set recently, the Committee queried why the ORO management had, over the years, tolerated the undue delay in the completion of some cases. The Committee also asked what the ORO's criteria for evaluating the IOs' performance were.

5. In response, the **Acting Official Receiver** and the **Assistant Official Receiver (Case Management)** said that:

- a number of performance indicators had been in place since 1992 which, at that time, were considered useful for measuring staff performance and efficiency. Such indicators included the prosecution action taken, number of cases handled by individual IOs, and number of cases being put on a dividend programme. Nevertheless, with the benefit of hindsight, those indicators were not the relevant key performance indicators;

- the workload of the ORO had been increasing throughout the years. The situation had worsened since 1998 when the Asian financial turmoil and the downturn of the Hong Kong economy led to a drastic increase in insolvencies and personal bankruptcies. The ORO was passive in the face of the increased workload as it had to accept all cases referred to it by the court. At the same time, the ORO did not have any increase in staff resources to address the soaring workload. Under the circumstances, the IOs just concentrated on handling new cases that were pouring in while leaving some of the older cases behind;

- as the workload of the IOs was already very heavy, the ORO had in the past failed to measure the output of individual IOs. Traditionally, the ORO had relied on hierarchical supervision for monitoring the IOs' performance, which meant that the superior officers on the immediately higher level would supervise the officers of a lower level. Having realised the problem in early 1999, the ORO had engaged the Management Services Agency (MSA) to conduct a review; and

- the ORO had also implemented some re-engineering measures with a view to addressing the concerns raised in the Audit Report. For instance, the Chief Insolvency Officers (CIOs) would be held responsible for the progress of the entire team of IOs under their charge, instead of having each superior officer supervising his own subordinates within the team. Monthly reports would be produced and submitted to senior management for monitoring of the situation.

6. Regarding the responsibility of the Financial Services Bureau (FSB) over the performance of the ORO, **Mr Rafael HUI Si-yan, Secretary for Financial Services**, stated that:

- the ORO was a professional department with the duty to handle insolvency cases. As insolvency cases involved legal processes, it was not always possible to stipulate by administrative means the time period to complete a case. Neither did the FSB have the expertise to set a time limit;

- in the past few years, the FSB was concerned that the workload of the ORO had been increasing all the time. At the policy level, the Bureau analysed the problem from a fundamental point of view. The issues considered included whether the ORO's establishment was sufficient, whether it was operating efficiently, how to improve its efficiency, whether its current mode of operation should continue, and whether more cases should be contracted out to private practitioners;

- the FSB did receive statistics of cases handled by the ORO over the past years. However, the Bureau did not make any directives as to the time limit for completing the cases. It was agreed that if the Bureau had treated the small cases in the same manner as the major cases, it should have discovered that the ORO's backlog would further accumulate as the IOs did not close cases as soon as possible. However, in reality, the FSB was more concerned about high-profile and major cases for which the court had constantly been making directives, or cases for which committees of inspection had been set up. Less attention was paid to those cases without committees of inspection, as the creditors were not so concerned about the amount of assets that could be recovered; and

- on the one hand the FSB realised that the ORO's workload was increasing year by year. On the other hand it also noted that there had not been any mistakes as far as major cases were concerned. The committees of inspection had not lodged any complaints and the court had not suggested that there had been any problems. Hence, the Bureau left the small cases to the ORO.

7. In the light of the Secretary for Financial Services' remarks, the Committee considered that the FSB had not properly supervised the performance of the ORO. In response, the **Secretary for Financial Services** said that:

- it was true that the FSB had not monitored how the ORO dealt with each individual case or how cases were allocated to individual IOs. Given the current economic situation, insolvency cases were bound to increase. To tackle the problem, the Bureau had all along concentrated on fundamental issues, such as reviewing the role of the ORO. The Bureau had also explored ways to increase the ORO's efficiency so that the time taken to complete a case could be reduced. The Bureau did not want to and had indeed refused to increase the establishment of the ORO. In the past five years, only a team of 17 officers had been added to the ORO; and

- if the Committee suggested that the FSB should be more closely involved in the monitoring of the ORO, including the allocation of cases within the ORO, he would have to consider whether it was appropriate to do so. The FSB considered that, being a policy bureau, it should address the problem at the policy level. As such, the FSB proposed to review the role of the ORO with a view to meeting public demands without adding to the taxpayers' burden.

Services provided by the Official Receiver's Office

8. In order to clarify the relationship between policy bureaux and the departments under their purview, and the responsibility of the bureaux for overseeing the work of the departments, the Committee sought written information from the Director of Administration. In response to the Committee's enquiries, the **Acting Director of Administration** stated in her letter of 24 May 2000 in ***Appendix 5*** that:

- a policy secretary formulates policies and initiates legislative proposals under his purview whereas a head of department is responsible to the respective policy secretary for implementation of approved policies, provision of direct services to the public and where appropriate, enforcement of relevant legislative provisions; and

- a policy secretary is also responsible for overseeing the operation of the departments under his purview with a view to ensuring that the overall policy aims of the bureau are met. However, the extent of involvement of a policy bureau in a particular departmental issue must have regard to the operational circumstances of the case and in this regard, it is up to the respective policy secretary to decide.

9. The Committee noted from paragraphs 2.20 and 2.21 of the Audit Report that although the ORO had issued technical circulars requiring the IOs to complete time record sheets, the requirement had not been followed by some case IOs. The Committee asked:

- what action had been taken against those IOs who failed to complete the time record sheets;

- who were responsible for enforcing the requirements of the technical circulars; and

- without the time record sheets, how the ORO could support its application to the court for reimbursement of fees.

10. The **Acting Official Receiver,** the **Assistant Official Receiver (Case Management)** and **Mr D F Manning, Assistant Official Receiver (Financial Services)**, said that:

- in the past many IOs did fail to complete the time record sheets despite the requirement stipulated in the technical circulars. Since the publication of the Audit Report, the situation had been rectified. The IOs were required to fill in a form specifying the man-hours spent on each case;

- the ORO's management and the CIOs of the various teams were responsible for ensuring that the contents of the technical circulars were complied with. So far, there had been no follow-up action against individual IOs who failed to complete the time record sheets; and

- time sheets were not as relevant in the ORO as in the private sector. For the PIPs, fees were charged on the basis of time cost. Thus, they recorded on the time sheets the number of hours spent on a case. In contrast, the ORO was only entitled to charge fees on the basis of time cost when the Official Receiver acted as the provisional liquidator. Hence, less emphasis was placed on time sheets as a basis for billing. For the small number of cases where the Official Receiver acted as the provisional liquidator, time cost had always been kept to justify payment of fees when the ORO made applications to the court.

11. The **Secretary for Financial Services** supplemented that he would, in conjunction with the ORO management, look into the cases revealed by the Audit Report. If there were cases which warranted disciplinary action in accordance with the Civil Service Regulations, follow-up action would be taken.

12. Referring to the review conducted by the MSA, the Committee asked why the ORO had to seek assistance from an outside party in reviewing its internal management, a task which should have been within its own competence. The Committee also questioned whether a head of department should be responsible for overseeing the management system of his department.

13. The **Acting Official Receiver** said that:

- sometimes when people were close to a problem they did not see what the problem was, and an independent party was needed to ascertain the problem. The MSA was approached in mid-1999 to study the functional operations of the ORO with a view to identifying areas for improvement; and

- the MSA review report, issued in December 1999, made a number of recommendations for re-engineering the ORO and enhancing efficiency, such as the establishment of specialised bankruptcy teams to deal with small bankruptcy cases expeditiously. Most of the recommendations had already been implemented.

Services provided by the Official Receiver's Office

14. **Miss Denise YUE Chung-yee, Secretary for the Treasury**, said that:

- according to the Public Finance Ordinance, all controlling officers, including department heads, were responsible for and accountable for their expenditure to ensure value for money and cost-effectiveness. Almost all department heads would feel at some point that with the passage of time, their departments' tasks and modus operandi, or the law enforced by them, might have become outmoded. They would naturally raise questions on whether changes were required and would deploy internal resources to review their work;

- once every several years, controlling officers would feel the need or the advantage of inviting outside experts to study more fundamental issues. In the circumstances, controlling officers would have two choices. They could seek assistance from the MSA or apply for funds for a consultancy study. The private sector also had such a practice. The senior management of large private corporations would conduct constant reviews of their operation. However, once in a while they would engage outside consultants for a fundamental overhaul; and

- the Administration considered that if some departments applied for funds to engage management consultants to help them conduct fundamental reviews, there would still be value for money. In fact, a sum of $8 million had been allocated in the year 2000-01 for a consultancy study, jointly commissioned by the FSB and the ORO, on the operations of the ORO.

15. The Committee asked whether the ORO had, over the years, reviewed its internal management system and operations from time to time before it approached the MSA for assistance. In response to the Committee's enquiry, **Mr Dominic CHAN Yin-tat, Director of Audit**, said that as far as Audit was aware, there was no evidence to suggest that the ORO had conducted such reviews.

16. The **Secretary for the Treasury** said that:

- the senior management of different departments had the discretion and flexibility to choose the most appropriate way to deal with their management problems; and

- when the MSA was approached by other government departments for conducting reviews, it would first consider its tasks on hand. If resources were available, the MSA would normally accept the invitation. Sometimes departments might have to wait for several months before the MSA could allocate the manpower resources to conduct the review. If the MSA could not allocate additional resources for the task, it might suggest the departments to enlist the help of a consultancy.

17. Referring to the question of whether or not the ORO had conducted internal reviews on its operations, the **Secretary for Financial Services** said that:

- the FSB noted that over the years, the management of the ORO had attempted to improve the handling of cases through administrative means such as compiling guidelines and devising an appropriate supervisory structure;

- although the Audit Report had revealed a number of inadequacies in the implementation of the various initiatives, it did not mean that the ORO management had not conducted any reviews. Actually, such reviews were bound to be done because every year the ORO, like other departments, would apply for additional staff. Such applications were normally not approved. As such, the management would have to review the department's operations and seriously consider how they could enhance efficiency; and

- the MSA was called in because after the Asian financial crisis, the number of insolvency cases and personal bankruptcies soared. Instead of handling the cases according to the established procedure, some fundamental changes might be needed. For example, it might be necessary to amend the existing legislation so as to shorten the processing time. Being lawyers, the ORO officers in the Legal Services Divisions were very familiar with the legal requirements and hence might not be able to look into the problems afresh. Therefore, a third party was invited to conduct the review objectively.

18. At the Committee's request, the **Acting Official Receiver** provided the terms of reference of the MSA study in his letter of 13 April 2000 in ***Appendix 6***, which were as follows:

- to review the existing case management process together with the underlying processes that were undertaken for winding-up and bankruptcy cases;

- to identify where bottlenecks or delays might exist with the existing case management process;

- to compare the timescales and processes undertaken by PIPs with those of the ORO and see what lessons could be learned, if the information was available for review;

- to recommend improvements to the case management process;

- to establish performance measures for the revised case management process; and

- to present findings and recommendations to the Steering Committee.

19. Noting that a sum of $8 million had been earmarked for a consultancy study on the ORO, the Committee asked about the details of the study. In reply, the **Secretary for Financial Services** said that:

- the FSB had been very concerned about the ORO's workload over the past few years. The ORO's work was done according to legislation enacted a long time ago after the British tradition. There had already been changes in this regard in the common law jurisdiction, including the United Kingdom (UK), in the past several years. The public began to question why the Government and taxpayers had to be responsible for the expenses incurred in dealing with insolvencies indefinitely; and

- the problems of the ORO were sometimes not a question of inefficiency, but of out-dated legal requirements. If the ORO followed the same old system, it could not handle all the cases even if the department was managed in an excellent manner. If the ORO kept on accepting all the cases referred to it, quality would suffer. The Law Reform Commission had actually proposed reforms in this regard before but the proposals were within the traditional framework. Thus, assistance from overseas legal experts in the UK and Australia was sought in conducting a study on the entire insolvency process, with a view to overhauling the system. The consultancy study was expected to commence in the autumn of 2000.

Services provided by the Official Receiver's Office

20. In response to the Committee's request, the **Acting Official Receiver** provided the terms of reference of the consultancy study in his letter of 13 April 2000 in ***Appendix 6***. In short, the objectives of the consultancy study were:

- to review critically and fundamentally the statutory role of the Official Receiver in the provision of insolvency administration service;

- to identify what future role the Official Receiver should play in the provision of insolvency administration;

- to study and recommend how the contracting-out schemes should be improved with a view to maximising private sector participation in the provision of such service;

- to recommend what changes need to be made to the present modus operandi of the ORO against the newly defined role of the Official Receiver; and

- to formulate strategic plans and milestones for the implementation of the proposed changes.

21. As to whether the Administration would conduct an open tender exercise for selecting the consultant, the **Secretary for Financial Services,** in his letter of 6 May 2000 in ***Appendix 7***, informed the Committee that:

- the FSB had written to the UK and Australian governments for nominations of potentially suitable candidates to undertake the review. Both the UK and Australia's insolvency administration regimes had a lot in common with that in Hong Kong and the two countries had recently introduced a series of reforms in their insolvency administration services to modernise their respective regimes. Feedback from them was still awaited; and

- subject to the response of the two governments, the FSB might launch a selection exercise through tender to identify the most suitable individual/firm either from overseas or locally. Details of the tender brief and the recruitment exercise were being worked out.

Services provided by the Official Receiver's Office

22. Responding to the Committee's question about when he first realised the need to conduct a major review on the role of the Official Receiver, the **Secretary for Financial Services** stated that:

- he had raised the issue with the Law Reform Commission about two to three years ago when the Commission was dealing with company law reform. At that time, the Commission was considering whether insolvent companies should be allowed to carry on operation under certain circumstances; and

- during the process, the FSB had suggested that the final receivership responsibility should not rest with the Government.

23. In response to the Committee's enquiry, the **Acting Official Receiver**, in his letter of 13 April 2000 in ***Appendix 6***, provided information on the personnel movement at the management level of the ORO since 1 January 1997. The Committee noted that there had been frequent changes in the ORO's top management in the past few years. The Committee asked what the difficulties in filling the posts were. They also queried whether, given the frequent personnel movements, any efforts to change could be sustained.

24. The **Secretary for Financial Services** replied that:

- the ORO was established in 1992 after the re-organisation of the then Registrar General's Department. The ORO had experienced a succession problem. After the retirement of the former Official Receiver, Mr A R Hearder, in 1998, the Administration had tried to fill the post by open recruitment in addition to internal appointment, but the response was poor. There were a few applicants from the private sector. Subsequently, one withdrew and another one also withdrew after interview. The Administration had discussed the problem with the legal profession and tried to identify a suitable person in the UK, but to no avail;

- as for Mr T E Berry who was the Official Receiver from 4 January 1999 to 31 August 1999, he returned to the Lands Department after serving in the post for a short time due to personal reasons;

- there were two professional streams of lawyers in the Administration. The Government Counsels in the Department of Justice were the first stream. The other stream was lawyers in the Unified Solicitors grade who used to be staff of the Registrar General's Department. After the re-organisation, they were deployed to the ORO, the Land Registry and the Companies Registry. From a professional point of view, they could be transferred across the three departments because a lawyer should be able to handle different branches of law. In reality, however, there was the factor of personal preference. Past recruitment experience indicated that not many government lawyers were interested in the post of the Official Receiver;

- despite the difficulties, the Administration had begun another recruitment exercise for the post and two candidates had been short-listed. Interviews would be held later. Hopefully, a suitable person could be selected; and

- as an immediate measure to improve the internal management of the ORO, he would arrange for an experienced management expert to assist the ORO in rectifying the management problem. At the same time, the consultancy study would also be undertaken which would take longer time to complete. Such a comprehensive review should be able to address the core of the problem.

25. The Committee asked whether there were any intrinsic problems with the post of the Official Receiver, such as the level of remuneration, which rendered the post unattractive. The **Secretary for Financial Services** said that:

- owing to historical reasons, the rank of the Official Receiver was not too high. Yet, apart from heading a professional department, the Official Receiver was also responsible for managing the Unified Solicitors grade, including the deployment of lawyers to the three departments. After discussing with the leadership of the Law Society of Hong Kong, he understood that there were indeed insolvency experts in the private sector who were well-qualified for the job. However, such people were able to secure a very high income. In comparison, the post of the Official Receiver was not a very attractive offer, particularly in view of its diverse responsibilities; and

- the ORO had to comply with statutory procedures and the head of the department was very often called up to the court to give explanation on many issues. A non-legal professional would find it difficult to handle the task. In other words, the post of the Official Receiver required both a legal professional with expertise in the insolvency field and a skilful manager. Such a person was difficult to recruit.

Services provided by the Official Receiver's Office

Ascertaining and realisation of assets of insolvent estates

26. According to paragraph 3.5 of the Audit Report, the ORO did not keep statistics on the number of doubtful cases referred by its Financial Services Division (FSD) to the Case Management Division (CMD) for follow-up action. The Committee asked how the ORO could be satisfied that, in the absence of such statistics, both the FSD and the CMD were effective in ascertaining hidden assets and prosecuting related insolvency offences.

27. The **Acting Official Receiver** said that:

- the role of the FSD was primarily to examine the statement of affairs, books of account, records and files of the insolvent company in order to provide the CMD and Legal Services Divisions with information as to whether, from a financial perspective, the directors' statutory duties had been complied with. The nature and scope of the FSD's work depended on the amount of liabilities of the insolvent company and whether or not additional information was required for possible prosecution action;

- the FSD provided the CMD with written comments on file setting out its findings in respect of each case. A checklist showing areas of follow-up action was highlighted and could provide the basis for the compilation of statistics. Yet, the CMD considered that statistics and the results of the review of assets might not reflect the effectiveness of the officers concerned. There was bound to be a lapse of the time between the closure of a company and the takeover of the company by the ORO. As a result, it was sometimes difficult to collect documentary evidence to facilitate recovery actions;

- a liquidator had to look to the assets in the estate to determine whether or not he could undertake civil action for further recovery. In many of the cases handled by the ORO, the wound-up companies' estate had little or no assets to enable action, such as civil litigation, to be taken against possible third parties for recoveries to the estate. Very often, even if the ORO wanted to seek a war chest from the creditors to recover possible hidden assets, the creditors rejected because they were not willing to spend more money on the case where there was no guarantee that they could get the money back; and

- in short, the ORO had fulfilled its regulatory and prosecutorial role in relation to the investigation of wound-up companies and bankrupt estates. Nevertheless, the ORO would issue more guidelines and provide more training on prosecution of insolvency offences.

28. The Committee agreed that it was not comprehensive enough to judge the performance of the ORO simply from the number of cases for which recovery action was pursued. However, the Committee queried how, without the statistics, the ORO could show that it had taken appropriate follow-up action on the cases and that it was accountable for its work.

29. The **Acting Official Receiver** and the **Assistant Official Receiver (Financial Services)** said that:

- although statistics could be compiled, it might not be cost-effective to do so. In fact, there was no evidence to indicate that appropriate follow-up action had not been taken on the irregularities identified by the FSD. In 1999-2000, 248 various possible irregularities had been identified. Such irregularities were possible fraudulent preferences and inter-dealings between directors' accounts. The FSD drew attention to each of those areas in their examination of the statements of affairs of the insolvent companies. The irregularities were also all documented very clearly on the case files; and

- before a case was put forward for release to the court, a case officer must examine the case in detail and be able to produce reasonable evidence to justify why certain follow-up action was not taken. Very often, although it appeared that follow-up action should be taken on a case, it might not be necessary in reality due to non-availability of the requisite information.

30. The Committee understood that details of the cases were recorded in each case file. However, as the ORO handled a large number of cases, the Committee queried how its management could monitor the cases without statistics, which served as summary information. They also questioned whether it was possible for a manager to go through each and every file in order to ascertain the work of the frontline staff. In response, the **Secretary for Financial Services** said that:

- according to common sense, it was not difficult to compile the required statistics. The ORO resisted doing so because, from their experience, such management tools were not very useful. Over the years, the ORO had handled a large number of bankruptcy and winding-up cases. In many of those cases, it did not matter whether or not the ORO pursue the debts with the directors because nothing could be recovered in the end. In the early stage, the creditors had already given up their interest in the recovery of their debts. Therefore, from a management point of view, the ORO considered that it was not necessary to keep the statistics. The management would just go through the files where necessary; and

- it should be noted that the ORO's work had not been undermined due to the absence of management tools. There had not been any dereliction of duty or serious mistakes. Nevertheless, it was still necessary to compile the statistics so as to enhance the credibility of the ORO's work. The management expert to be sent to the ORO would assist in the establishment of a proper management system having regard to Audit's recommendations.

31. With reference to the ORO's book debt collection scheme, the Committee noted from paragraphs 3.17 and 3.18 of the Audit Report that the rates of recovery of book debts by the respective debt collection agents for insolvency cases completed over the years were low. Moreover, the ORO simply wrote off the book debts as recommended by the debt collection agents without checking the details or requesting the agents to provide evidence of the non-recovery. The Committee enquired:

- whether the ORO had issued specific guidelines on how the case IOs would ensure that the agents would exercise due diligence on debt recovery;

- whether there were provisions in the ORO's contracts with the debt collection agents which empowered the ORO to review the agents' work in collecting book debts; and

- what actions had been taken by the ORO to monitor the agents' performance.

32. The **Assistance Official Receiver (Case Management)** said that the ORO had issued guidelines in 1992 on the writing-off of debts handled by its in-house staff, which were still valid at present. When the agent proposed to write off a book debt, the ORO staff would follow the 1992 guidelines to decide whether the recommendation should be accepted. The few cases where the agents' recommendation to write off debts were uncritically accepted, as revealed by Audit, were only isolated incidents. Sometimes because of the lapse of time, it was difficult to locate the debtors.

33. The **Acting Official Receiver** informed the Committee that:

- the ORO had introduced random check on the cases completed by the agents since the publication of the Audit Report; and

- the ORO did have the right to review the work of its agents in relation to their efforts in collecting book debts. However, the agents were professional solicitors firms and members of the Law Society of Hong Kong. They were subject to the discipline mechanisms of the Law Society in relation to the way in which they undertook work for and on behalf of a client. They had fiduciary duties and duties of care, the standards of which were very exacting and very high for professional solicitors firms.

34. In his letter of 29 April 2000 in ***Appendix 8***, the **Acting Official Receiver** supplemented that:

- there was a provision in the ORO's contracts with its debt collection agents which allowed the ORO to terminate an agent's contract for unsatisfactory performance;

- once the agents had completed their investigations in respect of a case file referred to them, a report on their findings was filed with the ORO, together with their recommendations on whether or not further action should be taken. In addition, a monthly status report was required from the current agent. The report must be submitted to the case IO;

- when deciding whether or not to accept the agent's recommendation, the relevant IO must apply the departmental guidelines. The guidelines required the IO to be satisfied that before the debt was written off, every avenue of recovery of the debt had been explored but to no avail; and

- the debt recovery process had to be tempered with commercial realities. If the debt was relatively small, such as $2,000, it might not be worthwhile for an IO to spend hours on collecting evidence before issuing legal proceedings at the end of which there was still no guarantee that payment would be recovered. In many of the smaller debt recovery cases, the actual costs of recovery might well exceed what was at stake.

35. Regarding whether ORO staff had followed departmental guidelines when considering the debt collection agents' proposals to write off book debts, the **Director of Audit**, in his letter of 28 April 2000 in ***Appendix 9***, advised the Committee that:

- the ORO's book debt collection scheme by outside collection agents started in November 1994. The ORO's Technical Circular No. 2/92 dated 26 June 1992 did not provide specific guidelines on how the IOs would ensure that the collection agents would exercise due diligence in taking debt recovery action. There were no other technical circulars in this regard;

- the ORO's contracts with the debt collection agents did not contain provisions which required the agents, when recommending write-off of book debts, to comply with the ORO's internal guidelines. Neither had the ORO issued specific guidelines on the writing-off of book debts to the agents; and

- there was no documentary evidence to show that ORO staff, when considering writing off debts as recommended by the agents, had followed the internal guidelines issued in 1992.

36. The Committee noted from paragraph 3.21 of the Audit Report that some debts referred to the agents could be collected very easily, such as by simply issuing demand letters. However, according to paragraph 3.24(e) of the Report, the ORO did not agree to Audit's recommendation that it should always use its in-house staff to collect book debts of insolvent estates in the first instance. As such, the Committee asked for the reasons why the ORO considered it not reasonable to scrutinise the cases by its staff before contracting them out.

37. The Committee also noted from paragraph 3.17 of the Audit Report that the agents tended to suggest writing off book debts which were difficult to collect since they were entitled to receive $3,000 per case as a handling fee, irrespective of the outcome of their recovery action. The Committee asked how the ORO could prevent the agents from abusing the system.

38. The **Acting Official Receiver** and the **Assistant Official Receiver (Financial Services)** replied that:

- the ORO firmly believed that outsourcing companies' debts as a package was most cost-effective and was in the best interest of the Government, taxpayers and creditors. Many of the cases out-sourced to the agents were small cases. There might be many book-debtors in a case, each with a relatively small amount of debt, making a total value of $20,000 or above. If the easily-collectable debts were to be collected by the ORO while leaving the difficult cases to the agents, it would be very unlikely that any debt collection agency would be interested in taking up the work;

- if the ORO were to screen the cases to pick out the debts which were easy to collect, it would mean that ORO staff had to go through all the files and documents. Very often, the books of the insolvent companies were in disarray and much evidence might be missing. In view of the large amount of debts involving relatively small sums of money, it would not be cost-effective to require civil servants to spend time going through the companies' ledgers; and

- as for the prevention of abuse, monthly progress reports and quarterly reports were provided by the agents which were reviewed and monitored by the ORO. There was also a provision in the ORO's contract with the agency for early termination due to unsatisfactory performance. The ORO would review the performance of the current agency critically at the termination of the contract.

39. To ascertain the percentage of cases involving book debts which were relatively easy to collect, the Committee requested Audit to conduct a random test to check the number of cases in the sample which involved debts due from government departments or public bodies and could be collected after issuing demand letters. In response to the Committee's request, Audit conducted a random test check of 50 liquidation cases handled by debt collection agents, out of 478 cases with book debts, during the period from 1 January 1997 to 25 April 2000. The results of the test, provided by the **Director of Audit** in his letter of 28 April 2000 in ***Appendix 9***, were as follows:

- out of the 50 liquidation cases (with 760 book debts amounting to $1,396 million) referred to debt collection agents, $192,913 (or 0.01%) involving 82 book debts was recovered; and

- out of the 82 book debts recovered, 76 book debts (including a book debt of $5,577 due from a government department and a book debt of $3,230 due from a tertiary institution in respect of two liquidation cases) were collected after issuing demand letters.

40. The Committee noted from Table 5 of the Audit Report that the ORO had referred a huge sum of book debts to the respective debt collection agents since the launching of the book debt collection scheme in 1994-95. According to paragraph 3.12, over the years, only one agent was appointed at the same time to handle all the cases contracted out by the ORO. For instance, from June 1997 to May 1999, book debts amounting to $2,967 million were referred to one single agent. In the circumstances, the Committee asked whether the ORO had followed any tender procedure in the appointment of the agents.

41. The **Assistant Official Receiver (Financial Services)** informed the Committee that the book debt collection scheme was started in 1994 as a pilot scheme with a solicitors firm for two years. That firm maintained that it did not make profit from the job. At the expiry of the contract, the ORO approached about 10 different legal firms and invited them to submit written quotations. One of the firms was selected as it offered the best terms. A two-year contract was offered. In the end, that firm also maintained that it suffered a loss on the job because the handling fee of $3,000 per case was far too low and its staff had to go through a large amount of documents. The current agent was appointed in 1999 after obtaining quotations from two firms.

42. In his letter of 24 May 2000 in ***Appendix 10***, the **Acting Official Receiver** supplemented that:

- prior to appointing the agent, which was a solicitors firm, in June 1997, 10 legal firms had been invited to bid under a restricted tender exercise. In response to the invitation, bids were received from nine firms. The bids were carefully reviewed at a meeting of the Selection Committee comprising six senior officers of the ORO. The solicitors firm was short-listed for further consideration. A meeting with the firm was held to discuss the terms of its bid. Following the meeting, the firm was appointed as the sole agent for the book debt collection scheme; and

- the ORO commenced negotiations with the solicitors firm in February 1999 for the renewal of its contract which was due to expire on 12 June 1999. In April 1999, two established book debt collection agencies approached the ORO to make proposals for the provision of debt collection service for insolvency cases handled by the ORO. In early May 1999, ORO decided to consider the proposals by the two agencies as the original agent had already indicated that it was losing money under the existing terms and would only renew the contract at a revised higher fee, which the ORO considered too high and, by then, time was running out for an open tender exercise. The terms of the two agencies were considered more attractive than the revised terms offered by the original agency. After careful consideration, the current agency was appointed.

43. Regarding the suggestion to appoint more than one debt collection agents concurrently, the Committee enquired whether the ORO had conducted any market research to see if private sector firms were interested in the job, given the current economic downturn.

44. The **Acting Official Receiver** responded that since September 1999 the ORO had written to the Law Society of Hong Kong and the Hong Kong Bar Association requesting for expressions of interest in relation to doing work, not just confined to book debt collection, for and on behalf of the ORO. As a consequence, the ORO received submissions from about 20 to 25 member firms of the Law Society of Hong Kong. About 50 barristers in the private sector had also expressed an interest. A roster of interested firms/people was being drawn up.

Distribution of realised assets and law enforcement

45. Paragraph 4.4 of the Audit Report revealed that despite the ORO's pledge to distribute dividends as soon as practicable, a substantial amount of funds was being held by the ORO pending distribution. In this connection, the Committee asked:

- what progress had the ORO made to speed up the distribution of dividends to creditors; and

- whether the ORO had set performance targets for the time taken for the distribution of interim and final dividends after the realisation of assets.

46. In reply, the **Acting Official Receiver** said that:

- after the draft Audit Report had been released in January 2000, instructions were given to ORO staff to identify all cases more than three years old where a dividend could be distributed and which had not been paid. 270 cases were identified. Action was being taken to distribute the dividend in all such cases by the end of April 2000. There were only one or two cases where the target could not be met. The dividends of those one or two cases would also be paid by June 2000;

- for all cases between one year and three years old where there was a credit balance on the estate sufficient to pay a dividend, the ORO's target was to pay the dividends by the end of July 2000; and

- to ensure prompt distribution of dividends in future, a new directive had been issued. In cases where a dividend could be paid to creditors, the dividend must be distributed within nine months of the case officer receiving the file. No excuses would be accepted.

47. The Committee noted from paragraph 4.7 of the Audit Report that part of the interest earned on bank deposits of the insolvent estates was paid to the general revenue. In this regard, the Committee asked for the total amount of interest which had been transferred to the general revenue in this way in the past three years. The **Acting Official Receiver**, in his letter of 18 May 2000 in ***Appendix 11***, stated that:

- under section 128A of the Bankruptcy Ordinance (Cap. 6) and section 294 of the Companies Ordinance (Cap. 32), interest paid in respect of deposits made from surplus funds under the Bankruptcy Account and Companies Liquidation Account was required to be transferred to the general revenue;

- for liquidation cases with estate cash balances in excess of $100,000, under section 295 of the Companies Ordinance, out of the interest paid in respect of those deposits, an amount equal to 1.5% per annum of the money invested would be transferred to the general revenue. The balance was paid to the credit of the company; and

- the amounts of money which had been transferred from the above sources to the general revenue in the past three years were as follows:

	1997-98 ($ million)	1998-99 ($ million)	1999-2000 ($ million)
Bankruptcy	7.7	10.2	11.8
Liquidation	18.9	53.2	82.7
	26.6	63.4	94.5

Performance measurement and service delivery

48. According to paragraph 5.15 of the Audit Report, the Administration had endorsed the ORO's proposal to install an on-line search via the Electronic Service Delivery (ESD) Infrastructure. A feasibility study for the project would be carried out in 2000-01 subject to the voting of funds by the Finance Committee of the Legislative Council. The Committee enquired why it was necessary to conduct a feasibility study.

49. In his letter of 29 April 2000 in ***Appendix 8***, the **Acting Official Receiver** informed the Committee that:

- after a prima facie case had been established for an initial request for computerisation, a feasibility study was normally required before seeking funding approval for implementation. The objective of the study was to assess the feasibility of the computerised solution and to quantify the requirements, costs, benefits and other implications of the proposed computer system;

- the project "Implementation of an On-line Search on Bankruptcy and Compulsory Winding-up of Companies via the ESD Infrastructure" aimed to set up an interface between the ORO Management Information System and the ESD infrastructure, through which members of the public could conduct searches on bankruptcy and compulsory wind-up of companies electronically; and

- the proposed feasibility study for the project would examine the scope and detailed requirements for receipt and processing of search requests, and sending of search results to the public via the ESD infrastructure or Internet supporting an 24-hour on-line service. The study would also assess the implications to existing systems and infrastructure, quantify the costs and benefits, and recommend the technical system option for implementation.

Services provided by the Official Receiver's Office

50. The Committee noted that the ORO had not revised its performance targets to reflect the present-day circumstances. In paragraph 5.7 of the Audit Report, the ORO was recommended to improve its existing performance pledges having regard to customer needs and the performance pledges of overseas insolvency administrators. In this regard, the Committee asked what progress had been made.

51. In his letters of 12 and 24 May 2000 in ***Appendices 12 and 10*** respectively, the **Acting Official Receiver** advised the Committee that:

- since 1 April 2000, the ORO had established the following performance pledges on the time limit for in-house staff to complete an insolvency case and on the time to be taken for the distribution of a dividend:

  (a) 12 months for closing a summary procedure case with insufficient assets for distributions; and

  (b) nine months to make a distribution of the dividend/interim dividend when sufficient funds were available for distribution;

- the above performance pledges had been made following consultation with the ORO Services Advisory Committee (Advisory Committee). The Advisory Committee comprised representatives from the Hong Kong Society of Accountants, the Law Society of Hong Kong, the Hong Kong Association of Banks and the Hong Kong Institute of Company Secretaries;

- the ORO's actual performance in achieving the performance pledges would be reported to the Advisory Committee at its quarterly meeting held in January, April, July and October each year. The annual results of all the ORO's performance pledges were published and made available to the public in the ORO's annual publication of the performance pledges, its annual departmental report and the homepage on the Internet; and

- the ORO had recently enhanced its Management Information System to enable members of the public to make on-line applications for bankruptcy and winding-up searches. Two terminals would be set up at the search area of the ORO by July 2000 for service users to enter their search criteria on-line. The search results would be available within one working hour after payment of the search fees. In conjunction with the Advisory Committee, the response time of one hour would be reviewed from time to time having regard to customers' needs.

Services provided by the Official Receiver's Office

Appointment of private insolvency practitioners to handle insolvency cases

52. The Committee understood that since May 1996, the ORO had operated a Panel A Scheme for the appointment of PIPs (mainly accountancy firms) as the liquidators for compulsory winding-up cases with estimated realisable assets exceeding $200,000. A Panel B Scheme was implemented since September 1997 for the appointment of PIPs as the ORO's agents in the administration of compulsory winding-up cases with estimated realisable assets not exceeding $200,000. Similar to the arrangements of the Panel A Scheme, the appointment of PIPs under the Panel B Scheme was based on an approved list and on a roster basis. The PIPs under the Panel B Scheme could receive a maximum subsidy of $60,000 from the ORO to meet the liquidation costs for each winding-up case.

53. According to paragraph 6.8 of the Audit Report, the Administration was planning to move from the roster system to a tender system. The Committee asked about the progress made and the criteria for selecting the PIPs if a tender system was to be adopted.

54. In response, the **Acting Official Receiver** said that:

- one of the purposes of the Panel B Scheme was to build up more insolvency expertise in the private sector. Actually, before the Audit Report was issued, the ORO and the FSB were considering the possibility of setting up a tendering system to reduce the subsidy by the Government. In order to cut the cost of subsidy, the maximum subsidy that could be received by a PIP for each winding-up case had already been reduced to $40,000 in late 1999; and

- the details of the tender system and the selection criteria were still being worked out. Apart from cutting the subsidy, the other policy objective was to include the smaller practitioners in the Scheme so as to enlarge the pool of insolvency expertise in Hong Kong.

55. The **Secretary for Financial Services** added that:

- ever since he assumed the post he had begun to explore the possibility of including more firms in the Panel A Scheme. However, this was not possible at the time because insolvency work was highly specialised in nature and had all along been undertaken by only a few large accountancy firms;

- simply introducing a tender system would not be meaningful if there was only a small number of firms in the market with the necessary insolvency expertise. The Scheme would still be monopolised by some bigger firms. To enable the tender system to achieve its purpose, some mechanisms had to be set up to broaden the insolvency base in Hong Kong. In this connection, the Administration had obtained consensus with the Hong Kong Society of Accountants. The Society would introduce relevant courses so that people would become qualified after completing the courses; and

- while the Hong Kong Society of Accountants supported the move to broaden the base of insolvency expertise, it was concerned about the quality of service. It hoped that the changes to be introduced would not be so radical or rash as to undermine the quality of service.

56. The Committee opined that smaller firms might be able to offer bids lower than those by larger firms. They asked for the reason why the Administration considered that if a tender system had been adopted for the Panel B Scheme, smaller firms might not be as competitive as the bigger firms.

57. The **Secretary for Financial Services**, in his letter of 6 May 2000 in ***Appendix 7***, stated that:

- whilst it was difficult to say with certainty at the present stage that, had the tender system been applied to the introduction of the Panel B Scheme, it would have been monopolised by the bigger firms to the exclusion of smaller firms, it was very likely that that would have been the case for the following reasons:

  (a) the readily available experienced manpower resources at the appropriate level and rank of staff for the work;

  (b) economies of scale;

  (c) established insolvency working practices and procedures; and

  (d) the ability to use a proportion of the work for practical training purposes for more junior staff; and

- as the Scheme had been in place for more than two years, steps were being taken to contract out cases under the Panel B Scheme through the adoption of a tender system. The FSB considered that it was timely to do so because a number of smaller firms had gained valuable experience over the period. Moreover, the post-qualification period would be lowered thus widening the pool of practitioners.

Monitoring of the performance of private insolvency practitioners and their fees

58. The Committee noted from paragraphs 7.16 and 7.17 of the Audit Report that in March 1998, the court had expressed concern about the level of fees and disbursements for which approval was sought by the PIP acting as provisional liquidators in connection with the liquidation of a group of companies. In November 1998, the court expressed its view that the Official Receiver was the appropriate person to assist the Taxing Master appointed to review the bills of the provisional liquidators. In this regard, the Committee asked about the support that could be provided by the ORO to assist the court in the assessment of liquidators' fees and disbursements.

59. Paragraphs 7.19 and 7.20 of the Audit Report also revealed that in the light of the above court case, the ORO considered that it was necessary to review the guidelines on the preparation of the liquidators' bills. In November 1998, the Official Receiver issued the ORO Circular No. 2/98 (which superseded ORO Circular No. 1/97) to PIPs requiring them to provide details to justify and prove their time-cost charges. However, in May 1999, the court held that ORO Circulars No. 1/97 and 2/98 were ultra vires the powers of the Official Receiver. The requirements set out in the circular were subsequently withdrawn. The Committee asked what follow-up action had been taken by the ORO to resolve the issue.

60. The **Secretary for Financial Services**, in his letter of 6 May 2000 in ***Appendix 7***, informed the Committee that:

- in view of the court's concern, the ORO had put into practice the vetting of liquidators' bills submitted to it for release of funds from the Companies Liquidation Account;

- as regards the ORO circulars, they were only intended to set administrative procedures where liquidators applied for the payment of funds out of the Companies Liquidation Account in settlement of their fees. The circulars were never intended to be a legal document, though they were prepared in consultation with the Legal Services Division of the ORO;

- in July 1999, the ORO had issued a letter of explanation to the court setting out the reasons for the issue of the circulars. In addition, in response to the court's concern on the overall issue of liquidators' fees and reimbursement, the ORO had recast the circulars into a set of guidelines. The guidelines were prepared in consultation with the professional and business organisations, setting out clearly how liquidation fees and disbursement might be charged; and

- the draft guidelines were being circulated to the relevant parties, including the Judiciary, for comments and were expected to be implemented in September 2000. It was expected that in future, the guidelines would form the common basis for the calculation of liquidation fees, subject to the sanction of the court.

Fees charged by the ORO

61. According to paragraph 8.8 of the Audit Report, the total operating deficit of the ORO for the period June 1992 to March 1999 amounted to $300 million. In 1998-99, the cost-recovery rate of the ORO was only 67%. In paragraph 8.12 of the Report, Audit considered that the adoption of the full cost of insolvency administration as a basis for determining the fees to be charged by the ORO provided a more reasonable and equitable approach to tackling the cost-recovery problem in insolvency administration.

62. On the question of full cost recovery, the **Secretary for Financial Services**, in his letter of 6 May 2000 in ***Appendix 7***, stated that full cost recovery would mean that the fees levied would differ from case to case depending on whether it was straightforward or complex. As a consequence, there would be a very significant increase in fees in many cases which might in turn deter creditors or debtors themselves from having access to the insolvency service and hence deprive them of their rights under the relevant legislation.

63. **Conclusions and recommendations** The Committee:

- express serious dismay at the dereliction of management duties on the part of the Official Receiver during the period covered by the Audit Report in the following areas:

  (a) monitoring of staff workload;

  (b) ascertaining and realisation of assets of insolvent estates;

(c) distribution of realised assets and law enforcement;

(d) performance measurement and service delivery;

(e) appointment of private insolvency practitioners (PIPs) to handle insolvency cases;

(f) monitoring of performance of PIPs and their fees; and

(g) fees charged by the Official Receiver's Office (ORO);

Monitoring of staff workload

- express serious dismay over the lack of a proper management system, as:

  (a) there was a wide variation in the workload of the Insolvency Officers (IOs) and the ORO had not established standards on the productivity of the IOs;

  (b) the ORO has not set a time limit for its in-house teams to complete an insolvency case. The time taken by the ORO to complete an insolvency case was on average longer than that taken by PIPs; and

  (c) the requirement to complete time record sheets had not been followed by the case IOs;

- urge the Official Receiver to:

  (a) establish performance measures (e.g. manpower resource budgets) for assessing the productivity of individual IOs and for determining the number of insolvency cases to be handled by them; and

  (b) promptly set up a time-recording system to record the manpower resource budgets and the actual time spent by ORO staff to complete an insolvency case, for the purposes of monitoring of performance and billing of fees;

- invite the Director of Audit to conduct a follow-up review on the ORO upon the tabling of the Government Minute, having regard to the weaknesses identified in the existing management control system and the extensive improvement required;

Ascertaining and realisation of assets of insolvent estates

- express serious dismay that:

  (a) the ORO had, from June 1997 to May 1999, referred a huge sum of book debts of $2,967 million to one single debt collection agent; and

  (b) the rates of recovery of book debts by the respective debt collection agents for insolvency cases completed over the years were low and that the ORO simply wrote off the book debts as recommended by the debt collection agents without checking the details or raising questions;

- urge the Official Receiver to:

  (a) require officers of the Financial Services Division (FSD) and the Case Management Division (CMD) to provide more management information (e.g. statistics) on the results of their review and investigation of assets reported by bankrupts and insolvent companies, and critically assess the cost-effectiveness of the work of the FSD and the CMD;

  (b) review and closely monitor the performance of the current debt collection agent to ensure that any write-off of book debts recommended by the debt collection agent is fully justified and that all debts collected by it are remitted to the ORO;

  (c) consider appointing more than one debt collection agents at the same time in order to encourage competition and seek necessary legal advice before entering into contracts with debt collection agents; and

  (d) ensure that, in the contracts with debt collection agents, there are provisions which enable the ORO to have access and the right to inspect the agents' records relating to the debts entrusted to them for collection;

Distribution of realised assets and law enforcement

- condemn the ORO because:

  (a) despite the ORO's pledge to distribute dividends as soon as practicable, a substantial amount of funds is being held by the ORO pending distribution; as at 31 July 1999, $2,378 million (52.6%) out of $4,523 million of the estates of insolvent companies placed on bank deposits in the name of the ORO had been held for more than one year;

(b) its undue delay in distributing dividends has prejudiced the creditors' rights and interests in favour of the Government, since part of the interest earned on the bank deposits of the insolvent estates is paid to the general revenue in accordance with the law; and

(c) the senior management of the ORO had, for years, adopted a dilatory attitude to the apparent delay in the adjudication of claims and the distribution of dividends;

- note the ORO's pledge to pay dividends to all long-outstanding cases by July 2000;

- urge the Official Receiver to:

(a) take prompt action to ensure that surplus funds of insolvent estates are distributed to creditors and shareholders at the earliest opportunity;

(b) closely monitor the progress of the distribution of realised assets in future; and

(c) maintain proper records of the resources used on the ORO's law enforcement activities and regularly review the work of the case IOs and legal officers to ensure that the time spent on their work is in accordance with the level pre-determined by the management;

- wish to be kept informed of the outcome of the review of all insolvency cases with substantial cash balances;

Performance measurement and service delivery

- note that the ORO:

(a) has established the following performance pledges on the time limit for in-house staff to complete an insolvency case and on the time to be taken for the distribution of a dividend:

(i) 12 months for closing a summary procedure case with insufficient assets for distributions; and

(ii) nine months to make a distribution of the dividend/interim dividend when sufficient funds are available for distribution; and

(b) has enhanced its Management Information System to enable members of the public to make on-line applications for bankruptcy and winding-up searches, and the search results will be available within one working hour after payment of the search fees;

- wish to be kept informed of the ORO's actual performance in achieving the above targets;

Appointment of private insolvency practitioners to handle insolvency cases

- urge the Official Receiver to consider ways of ensuring that competitive bids are received from PIPs before they are appointed (e.g. replacement of the existing roster system of appointing PIPs with a tender system of appointment based on competitive bidding) when:

  (a) the regulatory role of the Official Receiver over private sector liquidators has been properly established having regard to the consultancy study on the Review of the Role of the Official Receiver; and

  (b) a sufficiently large pool of the necessary insolvency expertise is available in the private sector;

Monitoring of performance of private insolvency practitioners and their fees

- express concern that the ORO had not taken adequate and effective action to monitor the performance of PIPs;

- note that the ORO and the Hong Kong Society of Accountants are working on a joint circular which will provide guidelines for PIPs;

- urge the Official Receiver to:

  (a) critically examine the accounts submitted by PIPs as liquidators to ensure that they are correct and take expeditious action to follow up any anomalies in the accounts; and

  (b) take more proactive action in his review of the accounts and fees submitted by PIPs as liquidators so that any problems are resolved at an early date;

Fees charged by the ORO

- express grave concern that:

  (a) the total operating deficit of the ORO for the period June 1992 to March 1999 amounted to $300 million; and

  (b) there were incidents which indicated that the ORO did not pay due regard to economy in administering insolvent estates;

- urge that the Official Receiver should:

  (a) remind all the IOs of the importance of exercising proper controls and the need to continuously explore ways of reducing the expenditure to be charged to insolvent estate; and

  (b) in consultation with the Secretary for Financial Services and the Secretary for the Treasury:

    (i) regularly review the target cost-recovery rate of the ORO, having regard to the prevailing economic climate, and submit fee proposals accordingly in order to achieve the target cost-recovery rate; and

    (ii) critically consider the feasibility of charging fees on the basis of the full cost of insolvency administration in the long term, having regard to the interests of creditors and debtors; and

- wish to be kept informed of the outcome of the consultancy study on the Review of the Role of the Official Receiver.

Chapter 1

Services provided by the Official Receiver's Office

Chapter 2

Management of outdoor road maintenance staff

The Committee noted that Audit had reviewed the Highways Department's (HyD) management and monitoring of the work performed by the outdoor road maintenance staff of the HyD's Regional Offices. Audit's major findings were as follows:

- the HyD did not have formal time/productivity standards for assessing the workload of its maintenance staff and Direct Labour Force (DLF) staff. Instead, it had relied on the experience and judgement of the supervisory staff to set the workload of their subordinates;

- there was insufficient management information to enable the HyD's senior management to assess the productivity of its outdoor staff objectively;

- the HyD had not issued clear instructions on the procedures for verifying the quantity and quality of work performed by the outdoor staff;

- the HyD's plan for the run-down of the DLF did not cover supervisory staff and Motor Drivers. It had only achieved limited success in transferring out the Workmen II of the DLF;

- the DLF had not been effectively utilised. The DLF staff had spent too much time on preparation work and non-core business, and were idle for a significant part of their working hours. The services they provided were much more costly than similar services provided by contractors;

- many HyD staff in the Regional Offices routinely worked a large number of overtime (OT) hours. The HyD had paid OT allowance in some instances where time-off in lieu, as a recompense, should have been more appropriate; and

- the three Regional Offices had not kept sufficient formal records to keep track of the earning, applications, approvals and taking of time-off in lieu.

Monitoring of outdoor staff

2. The Committee noted from paragraphs 2.5 and 2.6 of the Audit Report that in November 1998, the Civil Service Bureau (CSB) requested all government departments to review their systems of staff supervision. In October 1999, the CSB issued a set of guidelines on the supervision of outdoor duties. According to Audit, in November 1999, the HyD's monitoring mechanism had still not fully met the requirements laid down by the CSB. The Committee also noted from paragraph 2.14 of the Audit Report that the HyD's

Research and Development (R&D) Division had recommended that the quality of site inspection reports should be improved and that the Regional Offices should conduct random checks on the Works Supervisors' inspection reports to ascertain whether the reports accurately reflected the actual site situation. However, up to November 1999, the HyD had not taken specific actions to address this issue. The Committee asked:

- whether the HyD had taken any action to review and to improve its staff supervision systems since November 1998; and

- why the HyD had not taken any action to implement the R&D Division's recommendations.

3. **Mr LEUNG Kwok-sun**, **Director of Highways**, said that:

- in response to the CSB's request, the HyD completed a review of its staff supervision system in January 1999. In February 1999, it issued three departmental circulars which set out some general guidelines on the monitoring of staff productivity. In terms of implementation, there was room for improvement;

- as set out in paragraph 2.14 of the Audit Report, the Works Supervisors concerned had not followed the proper procedure to record the defective items in the inspection reports. However, the Works Supervisors had taken up the defective items with the utilities companies directly through some phone calls; and

- he disagreed with Audit that the HyD had not taken specific actions to improve the quality of site inspection reports. In fact, the matter had been included as a standing item on the agenda of the monthly meetings of the Maintenance Working Group.

4. **Mr Bernard K F CHONG**, **Departmental Secretary**, **Highways Department**, also said that:

- the HyD's R&D Division conducted the calibration exercises in 1998, i.e. prior to Audit's review in 1999; and

- further to the publication of the calibration reports, the R&D Division and representatives of the Regional Offices had conducted joint site inspections and had agreed on how the inspection reports could be improved.

5. **Mr Dominic CHAN Yin-tat**, **Director of Audit**, informed the Committee that during the course of the audit, the HyD had never indicated that it did not agree with Audit's observation as set out in paragraph 2.14 of the Audit Report. With reference to the last two sentences of paragraph 2.14, there was no evidence to indicate that the HyD had implemented the R&D Division's recommendation on the conduct of random checks on the Works Supervisors' inspection reports.

6. On the follow-up action taken by the HyD, **Mr Duncan Pescod**, **Deputy Secretary for the Civil Service**, said that:

- paragraph 2.5 of the Audit Report stated clearly that the Director of Highways had reacted to the CSB's request for a departmental review of staff supervision systems. Three departmental circulars were issued in February 1999, i.e. before the CSB issued the circular on the supervision of outdoor duties in October 1999; and

- the departmental circulars had set out some requirements for site inspections, which was one of the issues the CSB was concerned about. Though he was not in a position to comment on whether adequate follow-up action had been taken, it would be fair to say that the Director of Highways did react in an appropriate manner to the CSB's original request.

7. Referring to Audit's observation in paragraph 2.14 of the Audit Report that the HyD needed to improve the quality of the Works Supervisors' site inspection reports, the Committee asked:

- who should be responsible for ensuring that the guidelines stipulated in the departmental circulars were followed; and

- whether any disciplinary action had been taken against the Works Supervisors concerned.

8. The **Director of Highways** said that:

- each of the HyD's three Regional Offices was headed by an Assistant Director who was assisted by Chief Engineers, Senior Engineers, Engineers and Chief Technical Officers. The three Assistant Directors were responsible for ensuring that the guidelines set out in the departmental circulars were followed. The Engineers and Chief Technical Officers were directly responsible for the maintenance works;

- there was room for improvement as far as inspection of utility work sites was concerned. That was why the R&D Division had been asked to conduct the calibration exercises and a separate team of Works Supervisors had been assigned to inspect these sites. Any irregularities identified would be discussed at the monthly meetings of the Maintenance Working Group; and

- an enquiry had been made into the case referred to in paragraph 2.14 of the Audit Report to ascertain why the defective items had not been recorded. The explanation given was that no entry was made in the inspection reports because the defective items had been reported to the utilities companies. As the practice was considered to be not in order, the question of how the situation could be rectified had been discussed at the regular meetings between the R&D Division and the Regional Offices. There had been substantial improvement since then.

9. **Mr C K WONG**, **Assistant Director (Headquarters)**, **Highways Department**, added that the R&D Division and the Maintenance Staff had adopted different approaches in dealing with the defective items. While the R&D Division was required to keep a proper record of the defective items identified during the calibration exercises, the Works Supervisors had taken immediate action to ask the utilities companies to rectify the defects. The HyD was aware of the problem with the quality of site inspection reports and had since taken action to improve the situation.

10. In reply to the Committee's concern about the adoption of different approaches within the HyD, the **Director of Highways** said that:

- the matter related to the working style of the staff concerned. While some would take immediate action to rectify the defects by calling the utilities companies directly, others would prefer to report the defective items in the form of a memo. However, he agreed that for the sake of completeness, phone calls should also be recorded; and

- disciplinary action would be taken against those staff members who repeatedly failed to keep proper records of the work done.

11. In response to the Committee's enquiries about the disciplinary action taken, the **Director of Highways** provided the following information in his letters of 18 April 2000 and 10 May 2000 in ***Appendices 13 and 14***:

- copies of the HyD's three departmental circulars, i.e. Establishment Circular No. 1/99, 2/99 and 3/99 dated 23 February 1999, were attached in Appendix I of the letter of 18 April 2000;

- disciplinary proceedings were in progress against the Timekeeper in the New Territories Region for unauthorised absence. Investigation was being conducted on other Audit findings about the breach of departmental instructions by individual supervisory staff; and

- the HyD had closely monitored the performance of its staff and had taken necessary deterrent measures. Eight disciplinary cases had been instituted since January 1999 against a total of ten officers of different grades and ranks. Of the eight cases, one was instituted after the promulgation of the CSB's guidelines in October 1999. All of the cases except one involved duty-related misconduct. Details of the eight disciplinary cases were set out in the letter of 10 May 2000.

12. In reply to the Committee's enquiries, the **Director of Highways** said in his letter of 17 May 2000 in ***Appendix 15*** that following the Administration's established practice in handling personal data requests in compliance with the data protection principles and the other provisions under the Personal Data (Privacy) Ordinance, the HyD suggested that the names of the officers involved in the disciplinary cases be omitted from the Committee's Report.

13. On the same question, the **Secretary for the Civil Service** advised in his letters of 24 May 2000 and 8 June 2000 in ***Appendices 16 and 17*** that:

- Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486) stated that "personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than - (a) the purpose for which the data were to be used at the time of the collection of the data; or (b) a purpose directly related to the purpose referred to in paragraph (a)." In compliance with this principle and to ensure that any subsequent disciplinary proceedings were not prejudiced, the Director of Highways as the data user suggested that the names of the officers be omitted when his reply was included for publication of the Committee's Report. The CSB considered this request to be reasonable and in order; and

- it is the current practice of the Civil Service not to publish the names of the officers involved in disciplinary cases, either internally or for the information of the public. The CSB strictly observes all the data principles, including that relating to the use of the data for purposes other than for the purpose for which it was to be used at the time of the collection of the data.

14. At the request of the Committee, Audit reviewed the relevant documents in the HyD to ascertain the Director of Highways' claim that specific actions had been taken to address the issue of the quality of site inspections. In his letter of 20 April 2000 in ***Appendix 18***, the **Director of Audit** informed the Committee that:

- after the public hearing on 6 April 2000, the HyD had provided additional information to Audit on the actions taken regarding the quality of site inspections. The actions taken could be grouped into the following three broad categories:

  (a) communicating the findings and recommendations of the R&D Division's calibration report to the maintenance staff of the HyD's Regional Offices, including the need to conduct random checks on the Works Supervisors' site inspection reports;

  (b) unifying the standards of site inspections and providing training to the maintenance staff on the required standards for conducting site inspections; and

(c) revising the method of calculating non-compliance statistics, so that the Works Supervisors would be more willing to record the defects observed at sites;

- in the light of the new information provided by the HyD, Audit accepted that the HyD had been taking action to address the issue of the quality of site inspections; and

- although some random checks had been conducted, the HyD had not issued clear instructions on how the R&D Division's specific recommendation on random checks should be implemented nor maintained detailed documentation of such random checks. Audit considered that, without clear instructions and adequate documentation, the HyD had not fully addressed the issue.

15. The Committee noted from paragraph 2.9 of the Audit Report that the HyD did not have formal time/productivity standards for assessing the workload of its maintenance staff and DLF staff. The Committee asked:

- how the HyD could assess the productivity of its staff in the absence of a uniform and objective benchmark; and

- whether reference had been made to practices in the private sector where the actual performance was measured against the targets set during the planning stage.

16. The **Director of Highways** said that:

- the HyD did not have a formal monitoring mechanism in the past. The supervisors had a general knowledge of the work schedules of their teams. Inspection reports were often not filed and defects were rectified when identified;

- in terms of supervision of maintenance works, the HyD was short of manpower. In 1997, there were 50 vacancies. For projects which were of a smaller scale, the responsibility for inspecting and supervising the maintenance works had been left entirely to the Works Supervisors. It was recognised that certain tasks had to be properly documented. However, if the Works Supervisors were required to do a lot of paper work, then they would have less time to carry out their supervisory duties;

- productivity standards could be set for certain tasks such as cleaning traffic signs and railings. He pledged that formal standards for such tasks would be developed in due course;

- however, it would be difficult to set productivity standards for other tasks such as inspection of work sites because there were differences in terms of the distance of the sites from a particular Regional Office, the number of sites assigned to the Works Supervisors and the degree of complexity of the problems presented at the sites;

- instead of setting uniform productivity standards, there should be a proper system to facilitate communication and reporting by the Works Supervisors to their team supervisors; and

- the HyD had set up a Working Group, chaired by the Deputy Director of Highways, to consider whether better monitoring systems could be developed. Two meetings had been held to study Audit's recommendations.

17. The **Director of Highways** further informed the Committee in his letter of 18 April 2000 in ***Appendix 13*** that the HyD's Working Group had decided to proceed with a comprehensive internal study as a matter of urgency. A dedicated Sub-Working Group, chaired by the Chief Highway Engineer/Research and Development, had convened its first meeting to work out the scope and methodology of the study. The outdoor operations of the DLF would be accorded priority. The HyD would also draw on the experience of other government departments which had a substantial number of outdoor staff, for example, the Water Supplies Department and the Food and Environmental Hygiene Department.

Management of the Direct Labour Force

18. Referring to the case in paragraph 3.26 of the Audit Report in which five members of the Paving and Patching Team only cleaned eight traffic signs and 120 metres of railings in one day and the other seven members did not find any potholes for patching, the Committee were concerned about the cost-effectiveness of the DLF and asked how the situation could be improved. The **Director of Highways** said that:

- the staff involved in this particular case explained that in normal circumstances, two vehicles would have been arranged to carry the two separate DLF teams to carry out their respective duties i.e. one for cleaning traffic signs and railings and the other for patching potholes. On 8 November

1999, one of the vehicles had broken down and the other one had to carry all twelve members to their work destination i.e. the Peak. Five team members were dropped off to do the cleaning work. As the traffic signs and railings along Peak Road were widely scattered and the team members had to walk all the way carrying the heavy cleansing utensils, their efficiency was particularly low on that day;

- it was a routine practice of the three Regional Offices to despatch their DLF teams to identify potholes for patching. On 8 November 1999, the team which was sent to inspect the roads on the Peak was unable to find any potholes;

- he accepted the explanation given. However, he agreed that productivity standards should be developed to assess staff output. The Working Group, chaired by the Deputy Director of Highways, would consider how this could be taken forward; and

- as regards the mode of operation of the teams responsible for identifying and patching potholes, there were two approaches. One was to act on complaints and the other to despatch the teams to inspect the roads on a regular basis.

19. The **Director of Highways** further informed the Committee in his letter of 18 April 2000 in ***Appendix 13*** that:

- the HyD had 24-hour complaint hotlines to serve the public. Once a complaint was received, the HyD would carry out the necessary inspection. If the complaint turned out to be valid, maintenance contractors would be instructed to patch up the potholes because they could mobilise their emergency set-up even after office hours. However, if the maintenance contractors were inundated with too much work, the DLF would take up the remaining patching works. It was through such joint effort that the HyD could fulfill its Performance Pledge of rectifying potholes within 48 hours upon receiving the complaints;

- in 1999, the HyD received on average 35 public complaint reports on potholes each month; and

- about 95% of the potholes were identified during road inspections by the

maintenance staff and the DLF. The DLF would patch up as many of these potholes as possible. The remaining ones, especially the urgent cases, were dealt with by maintenance contractors. The HyD patched up a total of about 2,100 potholes each month, 43% of which were carried out by the DLF and 57% by maintenance contractors.

20. In response to the Committee's concern about the low usage rate of the 24-hour complaint hotlines and the cost-effectiveness of road inspections, the **Director of Highways** said in his letters of 10 May 2000 and 16 May 2000 in ***Appendices 14 and 19*** that:

- the 24-hour complaint hotlines were publicised through various channels. The HyD received an average of 9,000 complaints a year, half of which were received through the telephone hotlines. Reports on potholes were just one of the many categories of complaints received;

- about 32 site supervisory staff and 15 contract cars were deployed for daily road inspections to identify defects including potholes. As for the DLF, about 16 staff members and four vehicles were deployed for pothole duties on a daily basis;

- in addition to the complaint hotlines and the road inspections, the HyD staff were also encouraged to report road defects during their home-office journeys and outside office hours; and

- the HyD would consider the feasibility and technicalities of setting up an incentive scheme as an additional means to publicise its road defect report/complaint system and give recognition to members of the public for their civic spirit.

21. With reference to paragraphs 3.21 and 3.22 and Figure 1 of the Audit Report, the Committee noted that the percentage of time spent by the DLF on core business (including resurfacing, potholes patching and road testing) was on the low side and fluctuated over the years (i.e. 46% in 1996/1997, 31% in 1997/1998, 25% in 1998/1999 and 38% from April to September 1999). The Committee asked why this was so and whether this was due to poor planning. The **Director of Highways** said that:

- the amount of work classified as core business was subject to factors such as weather and traffic/transport conditions, and requests from other departments;
- he agreed that the services provided by the DLF were not cost-effective. That

was why the HyD had decided to run down the DLF and had been trying to contract out its core business such as resurfacing and potholes patching as far as possible. This partly explained why the percentage of time spent on core business was declining; and

- before the run-down of the DLF was completed, the teams had to be given work to do. They were therefore deployed to perform minor duties which were classified as non-core business. However, these duties were also labour-intensive and manpower had not been wasted.

22. Having regard to Audit's findings in paragraph 3.24 of the Audit Report which indicated that the services provided by the DLF were much more costly than similar services provided by contractors, the Committee were concerned about the cost-effectiveness of deploying the more costly DLF teams to perform the minor duties. The Committee asked whether the DLF teams should be more gainfully employed by undertaking more core business. The **Director of Highways** said that:

- although the DLF was more costly, most team members were of the Workman grade and were not qualified to perform other duties with higher responsibility. One option to achieve greater cost-effectiveness was to run down the whole DLF; and

- there were arguments against deploying the DLF teams to undertake more core business because contractors could provide the same services at a lower cost. If the DLF teams were not deployed to perform the minor duties, additional expenditure would be incurred because the HyD had to pay contractors to do the work.

23. The Committee asked Audit, in consultation with the Director of Highways, to compare the relative cost-effectiveness of deploying the DLF to perform the various tasks set out in paragraph 3.24 of the Audit Report i.e. road resurfacing, patching of potholes and cleaning of road furniture. In Annex B of his letter of 20 April 2000 in ***Appendix 18***, the **Director of Audit** provided the Committee with a table setting out Audit's calculation of the relative cost-effectiveness of the three types of work performed by the DLF. Audit's calculation took into account the additional information provided by the HyD on its intended improvements in the DLF's efficiency and mode of operation. Based on the difference between the output value and total cost, Audit had arrived at the conclusion that the relative cost-effectiveness of the three types of work was in the following order:

- patching of potholes;

- cleaning of road furniture; and

- road resurfacing.

24. The Committee noted from paragraph 3.23 of the Audit Report that from 1991/1992 to 1994/1995, the HyD had conducted several cost-effectiveness studies of the DLF Paving Teams. The studies indicated that the cost of using the DLF in resurfacing work was nearly twice the cost of using contractors. The HyD had not conducted similar cost-effectiveness studies since 1995. In this regard, the Committee asked:

- why the HyD had not conducted any cost-effectiveness studies of the DLF Paving Teams since 1995;

- how the HyD had monitored the effectiveness of using the DLF in performing the various types of work since 1995, when the information on the cost per unit output of the DLF was not available; and

- whether the HyD had any plans to enhance the cost-effectiveness of the DLF, before it was run down entirely.

25. The **Director of Highways** replied in his letter of 10 May 2000 in ***Appendix 14*** that:

- cost-effectiveness studies were carried out between 1991 and 1995 to assess the cost differential between the work done by the DLF and the term maintenance contractors. The aim of these studies was to develop a policy on the future development of the DLF. The results showed that the DLF operation was not cost-effective. The policy to run down the DLF was subsequently adopted. The HyD therefore decided that further cost-effectiveness studies were not necessary;

- in pursuit of the policy to run down the DLF, the HyD's main focus was to ensure that the remaining staff members were fully engaged and the various tasks were completed satisfactorily. Monthly and weekly programmes were drawn up to make sure that the DLF staff were fully occupied and daily logs were used to monitor the work done. Priority was given to those tasks related to traffic safety such as patching of potholes; and
- following Audit's cost-benefit study, the HyD had transferred the paving tasks

from the DLF to the term maintenance contractor. In so doing, the Inspectorate Officers and Works Supervisory staff overseeing the paving work of the DLF could be redeployed for other duties. At the same time, the role of the DLF in undertaking patching and cleaning work had been strengthened. Productivity standards for these tasks were being developed and would provide the basis for monitoring the DLF's output.

26. According to paragraph 3.7 of the Audit Report, the HyD expected that, by July 2006, all Workmen II would have left the DLF mainly through transfers to other units. The Committee noted Audit's analysis in paragraph 3.10 that the HyD had only achieved limited success in transferring out the Workmen II. In this regard, the Committee asked:

- whether the transfers would require the consent of the staff members concerned; and

- whether the HyD had requested assistance from the CSB to facilitate the transfer of its Workmen II.

27. The **Deputy Secretary for the Civil Service** said that:

- transfers were only one of the options currently available. It would be desirable if both the officer concerned and the receiving department were agreeable to the transfer. However, there were cases in which officers had to be transferred because of surplus staff situations. The only requirement in such cases was that the jobs to which the officers were transferred should be appropriate to their level of education and training; and

- in order to deal with surplus staff, the CSB had set up a central clearing house. Government departments could request assistance from the CSB in transferring their surplus staff within the civil service. The scheme had been quite successful in the first year of its operation. Over 300 staff members had been transferred. In addition, the CSB had put forth the proposals on voluntary retirement recently. It was also considering different options to assist government departments to deal with the surplus staff situations.

28. The **Director of Highways** also said that:

- since 1990, 41 members of the DLF had been transferred to take up other jobs within the HyD. Another 19 had been transferred to other government departments;

- the HyD's Working Group was following up the transfers. There was a possibility that another ten staff members would be transferred to other units of the department; and

- in the past, the HyD had adopted a more conciliatory approach. A firmer approach could be adopted, but staff sentiments had to be assessed.

29. In his letter of 14 April 2000 in ***Appendix 20***, the **Secretary for the Civil Service** informed the Committee that according to the CSB's record, the Director of Highways had not requested assistance in the placement of his staff, including those in the DLF, to other departments. The HyD had been inviting the staff concerned to apply for transfer to other divisions within the department.

30. Noting that the HyD had only achieved limited success in transferring out the Workmen II, the Committee asked whether the HyD still expected to run down the DLF by 2016 and whether a clearer timetable had been developed. The **Director of Highways** said that:

- there was a misunderstanding that the HyD had set 2016 as the deadline for completing the run-down of the DLF. In fact, the HyD started the run-down process in 1996 and decided to review the staffing position every ten years. Hence, 2006 and 2016 were selected as the milestones along the time-line for assessing the staffing position. Throughout the years, the cost-effectiveness of the DLF had been kept under review. If there were justifications to call for its earlier run-down, the HyD would consider such an option seriously; and

- the introduction of the Voluntary Retirement Scheme would provide another opportunity to expedite the run-down of the DLF. The HyD would also find out whether there were any companies in the private sector which could take over the DLF's road testing function. Before any satisfactory arrangements could be made, the DLF would not be run down entirely. This would be further considered by the HyD's Working Group.

31. The Committee noted from paragraph 3.29(c) of the Audit Report that the DLF

had been instructed to carry out cleaning services under the "Healthy Living into the 21st Century Campaign". In view of the fact that this campaign was launched in 1998 and would come to an end in 2001, the Committee asked whether the HyD had any deployment plans for the DLF teams which were currently engaged in the campaign. In his letter of 18 April 2000 in ***Appendix 13***, the **Director of Highways** informed the Committee that:

- sixteen Senior Artisans, 28 Artisans and 31 Workmen II of the DLF in the three Regional Offices had contributed to the campaign by providing intensive cleaning services. After the campaign, the DLF would continue to maintain the cleanliness of road furniture according to the HyD's Performance Pledge and in support of the ongoing "Keep Hong Kong Clean" policy; and

- as requested by the Committee, the HyD was in discussion with Audit to firm up details for the most cost-effective deployment and utilisation of the DLF until its total disbandment.

32. On the transfer of the DLF staff, the Committee asked the Director of Highways to provide additional information on the following aspects:

- specific measures which the HyD had taken to encourage members of the DLF to fill vacancies in other units of the HyD; and

- the reasons for achieving limited success in transferring staff members out of the DLF.

33. In his letter of 16 May 2000 in ***Appendix 19***, the **Director of Highways** informed the Committee that:

- since the DLF review in July 1996 and up to January 2000, the DLF had been downsized from 161 to 120. It was anticipated that 13 Workmen II would be transferred in stages to the HyD's Survey Division and another five to various HyD general registries by April 2001. The HyD would continue to consider the possibility of transferring the DLF staff to fill vacancies in other HyD units. Circulars were issued to all DLF members from time to time to publicise the vacancies. Arrangements had also been made to explain to them the nature of the jobs available. At the quarterly staff meetings of the three Regions, the DLF representatives were briefed on the opportunities for internal transfer;
- the pace of transferring the DLF staff had been restrained by the availability of

vacancies in other HyD units and staff sentiments. To foster a positive staff attitude towards job changes and to avoid unnecessary staff confrontation, the HyD had resorted to consultation and encouragement rather than forced transfer in the past. As a result, only the more career-minded Workmen II who were interested in advancing to the promotion rank of Chainman in the Survey Division had applied for transfer. For Senior Artisans and Artisans, their transfer out of the DLF was subject to the availability of vacancies in other HyD units, which were quite limited. They could also apply for in-service appointment as Works Supervisor II in the HyD and other works departments. However, they were often restricted by their educational levels. Only one Senior Artisan and five Artisans had successfully bridged over to the post of Works Supervisor since 1990; and

- the Voluntary Retirement Scheme would provide an additional opportunity to downsize the DLF. The HyD was also exploring the possibility of redeploying the DLF staff for other new commitments such as scheduled calibration of survey equipment under the Quality Assurance Scheme.

34. In reply to the Committee's further enquiries on whether the conditions of service of the DLF staff had prohibited the HyD from transferring out its members and whether there was any evidence of staff confrontation in the past, the **Director of Highways** said in his letter of 24 May 2000 in ***Appendix 21*** that:

- there was no constraint arising from the conditions of service of the DLF staff for transferring them out of the HyD. The main obstacles were their inertia to be transferred, the absence of suitable vacancies in other units, and the limited scope of skills and educational levels of the staff members; and

- the main emphasis of the HyD's voluntary transfer approach was to foster positive staff relations and to avoid possible staff confrontation arising from a forced transfer policy. Although there was no solid evidence of staff confrontation in the past, through consultation channels with the DLF staff, the HyD anticipated that there would be resistance if the forced transfer policy were to be adopted.

35. In view of the fact that the HyD had only relied on natural wastage and voluntary

transfers to run down the DLF and had only achieved limited success, the Committee asked whether the CSB had any plans to assist the HyD to deal with the surplus staff situation in the DLF. The **Secretary for Civil Service** said in his letter of 15 May 2000 in ***Appendix 22*** that, to facilitate the run-down of the DLF, various grades in the DLF had been included in the Voluntary Retirement Scheme. The CSB expected the first batch of Voluntary Retirement-takers to leave the civil service in the third quarter of 2000/2001. The CSB would closely monitor developments in the HyD to ensure that those staff who did not choose to retire voluntarily would be suitably redeployed.

Management of OT work

36. From paragraphs 4.8 and 4.9 of the Audit Report, the Committee noted that many staff in the HyD routinely worked a large number of OT hours. According to the Independent Commission Against Corruption, regular or excessive OT would increase the risk of bribery and adversely affect staff productivity. The CSB's guidelines also stipulated that when OT became a regular pattern of work or had reached an excessive level, departments should review the work patterns and consider alternative methods of deploying staff such as rescheduling their duty hours or the weekly rest days. Referring to the third case study conducted by Audit on selected OT allowance claimants, in which the Testing Team of the DLF in the Kowloon Region had unduly long working hours and claimed OT allowance for performing road testing duties, the Committee asked whether the HyD had breached the CSB's guidelines.

37. The **Director of Highways** said that:

- the case mentioned was a special isolated incident. The DLF team was engaged in a road testing assignment along Lung Cheung Road and Ching Cheung Road. Road testing activities were always subject to very tight timing. In this particular case, the Police had only allowed the testing assignment to be completed within a few days after the Chinese New Year. The work was carried out intermittently so that the staff members concerned had not been required to work continuously without any rest periods; and

- as regards the claim for OT allowance, there were only a few cases which warranted concern. He had instructed his supervisory staff to prevent excessive claims for OT allowance and to use relief workers or deploy other teams to take over the tasks if necessary.

38. The Committee asked whether the cases studied by Audit were exceptional or

whether they were representative of a general situation. The **Director of Audit** said that although the cases selected might not represent a general situation, they were not entirely unique nor special. He drew the Committee's attention to Note 5 in Appendix K of the Audit Report which indicated that Case Three was not the only case where the DLF staff were engaged in unduly long duty hours, although it was certainly among the most serious cases.

39. The Committee noted from paragraph 4.10 of the Audit Report that members of the Testing Team of the Kowloon Region's DLF were paid OT allowance for 3,799 OT hours during the period August 1998 to July 1999. During the same period, the Team members had on record a total of 4,600 idle hours within their normal duty hours. From paragraph 4.11, the Committee also noted that not all units in the three Regional Offices had kept sufficient formal records to keep track of the earning, applications, approvals and taking of time-off in lieu. The Committee asked:

- whether time-off in lieu should have been more appropriate as a recompense; and

- whether the problems identified were indicative of dereliction of duty on the part of the HyD's senior management.

40. The **Director of Highways** said that:

- in the past, there was no proper form for staff members to apply for time-off in lieu. This was only recorded in the leave application forms. Following the Audit review, the situation had been rectified and new forms were made available for staff members to fill out;

- the question about idle time was a complex one and had to be examined carefully. In some cases, the staff members concerned had not been meticulous enough in recording the work done. It was also doubtful whether the staff members were really idle during those periods of time which had not been properly documented. For example, the time spent on travelling might not have been recorded; and

- he would ask his staff to record their work in greater detail in future. The Working Group was also considering how the staff should be asked to keep a reasonable record of their work.

41. With reference to Audit's observations in paragraph 4.18 of the Audit Report

regarding the absence of supervisory controls over OT work and Audit's recommendation in paragraph 4.23 that the HyD should take vigorous action to strengthen supervisory control accountability, the Committee asked whether the HyD had taken follow-up action in this regard. The **Director of Highways** said that:

- there had been a significant amount of OT work because the HyD had experienced acute staff shortage. In 1997, there were 50 Works Supervisor vacancies in the HyD due to recruitment difficulties arising from competing demands in the booming construction industry. The situation improved slightly in 1998 as the economy slowed down. However, 27 posts were still vacant. As a result of the general freeze on recruitment in the civil service, these vacancies could not be filled. The work relating to the 27 posts, which were equivalent to 60,000 manhours, had to be shared among the existing staff members. OT work was therefore indispensable;

- with the CSB's consent, the HyD had planned to hire contract staff to fill the vacant posts. He was confident that the amount of OT work would be reduced once the posts were filled;

- as regards Audit's observation that a Senior Artisan and a Workman II were required to work OT almost every night to supervise the cleansing contractors in road sweeping and rubbish pick-up work along the high speed roads, the HyD would review the "ride-along" supervisory arrangement in order to reduce the need for OT; and

- the HyD had also improved the reporting and documentation systems for OT work. Staff members were required to fill out more forms.

42. In his letter of 18 April 2000 in ***Appendix 13***, the **Director of Highways** further informed the Committee that:

- in September 1997, the HyD's Structures Division obtained ISO 9001 accreditation. Since then, all its operational and staff management functions had been fully documented. Based on the Structures Division's experience, the HyD was extending the quality management and documentation systems to the whole department with a view to obtaining full ISO 9001 certification by the end of 2000;

- regarding the control of OT work, the HyD had reviewed its manpower and

new commitments before the Audit study commenced and decided to reduce the expenditure on OT work. As a result, the actual expenditure on OT for 1999/2000 was $10.9 million less than the approved provision of $41.7 million, representing a saving of 26%;

- for 2000/2001, the HyD had pledged to further reduce the expenditure on OT work by $5 million; and

- the HyD attached great importance to staff management and monitoring of staff performance. A record management system had been put in place. This would be further enhanced as ISO 9001 certification was implemented. The HyD was committed to continuous improvement and was taking forward the Audit recommendations in a serious and unreserved manner.

43. In order to ascertain whether there was dereliction of duty on the part of the HyD's senior management in its management of OT work, the Committee invited the Director of Highways to provide supplementary comments on the various issues arising from Audit's analysis of OT hours. In his letters of 16 May 2000 and 24 May 2000 in ***Appendices 19 and 21***, the **Director of Highways** provided the following information:

- the majority of OT work was carried out by the Inspectorate Officers and Works Supervisors. This included supervision of road maintenance works which, for various reasons, had to be performed at night or during weekends. As the duties required technical input and could not be performed by the more junior staff including Senior Artisans, Artisans and Workmen II in the DLF, there was no relationship between the OT work done by the Inspectorate Officers/Works Supervisors and the DLF;

- the DLF was also required to work OT, as some road paving and testing works and some minor supervision works had to be carried out outside normal duty hours to avoid traffic problems;

- the duties of the DLF were not classified as "core" and "non-core" business in the past. The DLF staff worked according to the priorities assigned by their supervisors. The HyD had reservations about Audit's calculation in Note 21 of the Audit Report which included "standby" hours and those hours without recorded activities as "idle time". Such "standby" and "unrecorded" activities included daily staff briefings, loading/unloading of plant and equipment, travelling between depots and work sites, housekeeping duties etc. Such activities had not been clearly recorded because of poor recording standards as

well as the deficiency of the record forms used. In order to improve the operational data management system, the standard DLF daily log sheet had been revised to make sure that it would give a detailed description of the work performed;

- the HyD had always tried to minimise OT work and to reduce idle time. Its effort was illustrated by the adoption of the following measures:

  (a) rescheduling the duty hours

  the working hours/days of the HyD staff had been and would continue to be rescheduled as and when required to meet operational needs. However, rescheduling was not always possible because the road supervisory staff had other duties during their normal working hours;

  (b) using time-off in lieu as the recompense for OT work

  the HyD did use time-off in lieu as the recompense for OT work. However, it could not compensate all OT hours by time-off in lieu because of the high vacancy situation in the Works Supervisor grade due to the boom in the construction industry in the past years. There were 49, 34 and 27 Work Supervisor vacancies in 1997/1998, 1998/1999 and 1999/2000 respectively. Despite the shortage of staff, the HyD managed to keep OT work to a minimum and to grant time-off in lieu as far as practicable. In 1999/2000, the actual expenditure for OT allowance was reduced from the approved provision of $13.7 million to $12.8 million for maintenance staff and from $5 million to $3 million for the DLF. A further $5 million was expected to be saved in the current financial year;

  in addition, the HyD had issued circulars to remind its supervisory officers of the policy on OT work, and the need to supervise OT work and to fully consider the option of time-off in lieu prior to approving OT allowance;

  (c) using contractors instead of DLF

  the HyD had been using term contractors instead of the DLF to perform works outside normal duty hours whenever it was more cost-effective to do so. Most of the resurfacing works had been gradually transferred to term contractors in the past years. Since the publication of the Audit Report, the DLF had not carried out any resurfacing works. The

remaining night work performed by the DLF was confined to testing works on road conditions, since no service providers in the private sector could be identified to undertake such works. The HyD was liaising with the relevant private laboratories to explore the possibility of outsourcing these works;

(d) productivity standards

the engineers in the HyD had been using their professional judgement and experience to allocate works and monitor staff productivity. However, it would be difficult to set productivity standards for maintenance works such as inspection, works supervision, co-ordination or road excavation, which were subject to the nature and the complexity of the works concerned. The HyD agreed that productivity standards should be provided for simple assignments such as cleaning of road signs and railings; and

(e) spot checks in accordance with the HyD's departmental requirements

Audit's interpretation of the departmental requirements for spot checks was different from that of the HyD. For the case set out in Appendix J of the Audit Report, the number of spot checks conducted by the HyD was well above that intended by the departmental requirements (i.e. the recommending and authorising officers should carry out one spot check once a month on only one of the staff in the same application).

44. **Conclusions and recommendations** The Committee:

Monitoring of outdoor staff

- express serious concern:

(a) that despite the fact that the Civil Service Bureau (CSB) had requested all government departments to review their systems of staff supervision in November 1998 and had issued a set of guidelines on the supervision of outdoor duties in October 1999, the Highways Department (HyD), other than issuing three departmental circulars and conducting various internal studies, had been slow in taking effective action to enhance its monitoring mechanism, and significant improvements in many areas are still lacking; and

(b) about the Director of Highways' statement at the public hearing on

6 April 2000 that:

(i) setting formal productivity standards for its outdoor staff could be a very difficult task; and

(ii) the monitoring of maintenance work had to be left entirely to the supervisory staff;

- recommend that the HyD should set comprehensive productivity standards and guidelines for staff performing both road maintenance and utility duties in various ranks/grades, so that sufficient management information will be produced to enable its senior management to assess the productivity of the whole department;

- urge the Director of Highways to implement the audit recommendations as soon as possible. In particular, the Director should:

  (a) establish procedures to ensure that sufficient operational data on the use of staff resources (e.g. the time spent by staff on various activities and output) are systematically collected and analysed to produce management information on staff productivity, and that the management information is reviewed periodically by the HyD's senior management;

  (b) develop formal time/productivity standards through work studies and analyses of operational data;

  (c) issue clear instructions on the frequency and procedures for verifying the quantity and quality of work performed by the HyD's outdoor staff, and on the documentation of the verification results;

  (d) closely monitor the implementation of the new requirements for pre-scheduled itineraries and documentation of spot checks;

  (e) take positive action to improve the quality of site inspections to ensure that all defective items at work sites are properly identified, reported and rectified; and

  (f) incorporate into the HyD's departmental instructions a requirement to conduct regular calibration exercises in order to provide independent assurance on the quality of site inspections;

- note that the HyD:

(a) has taken disciplinary action against the Timekeeper in the New Territories Region for unauthorised absence;

(b) is investigating other cases stated in the Audit Report about the breach of departmental instructions by individual supervisory staff; and

(c) has instituted disciplinary action against ten officers of different grades and ranks for misconduct since January 1999;

Management of the Direct Labour Force

- express astonishment and serious dismay that:

(a) according to Audit's calculations, all three types of work performed by the Direct Labour Force (DLF) are not cost-effective and are much more costly than similar services provided by maintenance contractors i.e. for road resurfacing, patching of potholes and cleaning of road furniture, the cost of using the DLF is twice, five times and 16 times that of using maintenance contractors respectively;

(b) the HyD has not conducted any cost-effectiveness studies of the DLF Paving Teams since 1995 and has not taken effective action to address the cost-effectiveness of the services provided by the DLF;

(c) the HyD's senior management has not given the DLF sufficient core-business work to do and has condoned slackness in the department;

(d) the HyD planned in July 1996 to run down the entire DLF in 20 years' time i.e. by 2016, and it has not been proactive in transferring out the Workmen II and in running down the supervisory staff and Motor Drivers of the DLF (who account for 44% of the DLF's staff cost);

(e) the HyD had only relied on natural wastage and voluntary transfers to run down the strength of the DLF, whereas the Deputy Secretary for the Civil Service has remarked that transferring staff on a voluntary basis was not the only option available;

(f) the HyD had not sought any assistance from the CSB to transfer its surplus staff to the civil service, which reflects a lack of determination by the HyD to tackle the problem seriously; and

(g) even at the public hearing, the Director of Highways still refused to

commit to a firmer timetable for the run-down of the DLF;

- urge the Director of Highways to:

  (a) set an earlier target date and explore measures, in consultation with the CSB, to run down the entire DLF (including the supervisory staff and Motor Drivers) as soon as possible;

  (b) ensure that satisfactory arrangements are put in place:

    (i) to deal with the surplus staff in order to minimise redundancy as far as possible; and

    (ii) to improve the performance of the DLF, including allocating sufficient core-business work to it and improving its mode of operation before the run-down of the entire DLF is completed; and

  (c) set up a mechanism (including drawing up a timetable for specific actions) for the HyD's senior management to:

    (i) monitor regularly the progress of the run-down of the DLF; and

    (ii) critically review the justifications for continuing to deploy more than 70 staff members of the DLF to provide cleansing service, taking into account the fact that the "Healthy Living into the 21st Century Campaign" will lapse in 2001;

- note that the HyD:

  (a) already has various channels whereby the public can report road defects including potholes or lodge complaints; and

  (b) will consider the feasibility and technicalities of setting up an incentive scheme as an additional means to publicise its road defect report/complaint system and give recognition to members of the public for their civil spirit;

Management of overtime work

- find it unacceptable and express serious dismay that there are clear signs of dereliction of duty on the part of the HyD's senior management in its management of overtime (OT) work, which include the following:

  (a) although many HyD staff, including the DLF which had significant idle time, routinely worked a large number of OT hours, the HyD had not critically reviewed and revised its staff deployment methodology to tackle the problem;

  (b) members of the DLF were paid OT allowance for a large number of OT hours, despite the fact that a significant proportion of their normal duty hours were spent on non-core business or reported as idle; in the case of the Testing Team of the Kowloon Region's DLF, the number of idle hours was greater than that of OT hours;

  (c) the existing management system had not been effective in preventing the HyD staff from taking excessive time-off in lieu or claiming excessive OT allowance;

  (d) the HyD had paid OT allowance in some instances where time-off in lieu, as a recompense, should have been more appropriate;

  (e) the HyD had not fully considered the option of time-off in lieu before paying OT allowance;

  (f) the HyD had not kept sufficient formal records to keep track of the time spent by staff on various activities and the earning, applications, approvals and taking of time-off in lieu;

  (g) the HyD had no productivity standards which could be used for work allocation and monitoring of staff productivity; and

  (h) the HyD's supervisory staff had not conducted spot checks in accordance with their own departmental requirements, and the Director of Highways' explanation of the intention of these requirements (i.e. the recommending and authorising officers should carry out one spot check once a month on only "one of the staff" in the same OT application) was unconvincing;

- urge the Director of Highways to:

(a) critically review the mode of operation, workload and productivity of staff/units with significant OT allowance claims in order to assess whether the OT work is really needed;

(b) develop productivity standards to help assess the need for OT work;

(c) consider rescheduling the duty hours or the weekly rest days of the staff concerned to minimise OT work;

(d) ensure that the HyD will use time-off in lieu as the recompense for OT work and, where OT allowance is granted instead, the approving officers should provide a documented assessment of the staffing/workload position to satisfy the HyD's senior management that time-off in lieu is not a feasible option;

(e) ensure that there are sufficient records on time-off in lieu, and establish adequate procedures to prevent staff from taking more time-off in lieu than they deserve;

(f) explore the possibility of transferring the surplus staff (in particular Inspectorate Officers and Works Supervisors) in the DLF to take up posts in other units of the HyD in order to reduce the OT work arising from vacancies in those units;

(g) use contractors instead of the DLF to perform the work outside normal duty hours whenever it is more cost-effective to do so;

(h) issue clear departmental instructions to require supervisory staff to strictly follow the spot check requirements, to plan their spot checks based on the assessment of risks and to record properly the date/time of spot checks conducted;

(i) issue departmental instructions to clearly convey to the supervisory staff the message that they are accountable for any misconduct of their subordinates, and to regularly remind them of the need to perform their supervisory duties properly;

(j) take necessary action (including disciplinary action) against those

supervisors who are found to be not performing their supervisory duties properly; and

(k) establish a mechanism for the HyD's senior management to regularly review the above issues, so as to ensure that OT work is always kept to the absolute minimum;

- note that the HyD has set up a working group, chaired by the Deputy Director of Highways, to follow up the various issues relating to:

  (a) the monitoring of the outdoor staff;

  (b) the management of the DLF; and

  (c) the management of OT work;

- urge the Director of Highways to take expeditious action to pursue any other measures proposed by the working group to address the issues raised; and

- wish to be informed of:

  (a) the actions taken by the HyD for implementing the above recommendations;

  (b) the results of the HyD's consideration of setting up an incentive scheme as an additional means to publicise its road defect report/complaint system;

  (c) the progress of the disciplinary actions taken; and

  (d) the review on the need for deploying a large team of DLF staff to provide cleansing service after the completion of the "Healthy Living into the 21st Century Campaign" in 2001.

Chapter 2

Management of outdoor road maintenance staff

Chapter 3

The administration of the Judiciary

The Committee noted that Audit had conducted a review to examine the economy, efficiency and effectiveness of the administration of the Judiciary. The review had examined the following aspects:

- the adequacy of the Judiciary's measures to reduce court waiting time;

- the measures taken by the Judiciary to meet the statutory time limit for hearing labour disputes;

- the utilisation of Judiciary's two major resources, i.e. judicial time and courtrooms; and

- the provision of services to support the efficient and effective operation of courts.

2. In examining the various issues raised in the Audit Report, the Committee were fully aware of the independence of the Judiciary and the fact that the scope of Audit's review did not include an assessment of judicial performance in terms of the effectiveness of judges in discharging their judicial duties.

Court waiting time

3. The Committee noted from paragraphs 2.9 and 2.10 and Table 2 of the Audit Report that the Judiciary had not been able to meet some of its waiting time targets for the higher courts. For the Court of First Instance of the High Court, the target waiting time had been exceeded considerably. For the period January to August 1999, the actual waiting time for criminal cases, appeals from Magistracies and civil cases had exceeded the target waiting time by 48%, 43% and 24% respectively. The Committee also noted from the Information Note tabled by the Judiciary Administrator at the public hearing (***Appendix 23***) that the actual waiting time for the above cases had been shortened during the period January to March 2000. The Committee asked whether the latest figures were indicative of a general improvement in the actual waiting time for cases in the Court of First Instance since the publication of the Audit Report.

4. **Mr Wilfred TSUI Chi-keung**, **Judiciary Administrator**, said that:

- Audit had affirmed in the Audit Report that the Judiciary had brought about some noticeable improvements in court waiting time despite a significant increase in caseload; and

- since the audit review, the Judiciary had made much effort to shorten the waiting time for cases in the Court of First Instance of the High Court. Five Deputy Judges had been appointed to make up a total of ten to help clear the backlog and to bring the actual waiting time down to the pledged targets. He was confident that with further efforts, the waiting time targets would be met.

5. The Committee noted that the Judiciary's proposal to revise the financial limit of the District Court from $120,000 to $600,000 would bring about a large-scale downward shift and redistribution of civil caseload to the District Court, thereby easing the pressure on the High Court. However, the necessary legislative amendments had still not been enacted. The Committee enquired about the present position of the District Court (Amendment) Bill 1999, which was introduced into the Legislative Council (LegCo) in October 1999.

6. **Miss Emma LAU**, **Deputy Judiciary Administrator (Development)**, said that:

- a Bills Committee of the LegCo was examining the District Court (Amendment) Bill 1999. Nine meetings had been held so far. The last meeting would be held on 19 April 2000. The Chairman of the Bills Committee would make a report to the House Committee at the end of April. The Judiciary hoped that the second reading debate of the Bill could resume in mid-May; and

- if the Bill could be enacted within the current legislative year, the Judiciary would be able to increase the financial limit of the District Court in August or September 2000.

7. The Committee noted the Judiciary Administrator's undertaking in paragraph 2.33(k) of the Audit Report that when the pressure on the Court of First Instance of the High Court was reduced and the waiting time came within target, the number of acting appointments for Deputy Judges could be reduced. The Committee asked whether the passage of the District Court (Amendment) Bill 1999 would have any impact on the staffing situation in the Court of First Instance of the High Court. The **Judiciary Administrator** said that the Judiciary would stop the acting appointments as far as possible. However, it would have to assess the impact of the revision of the financial limits of the District Court on the redistribution of civil caseload and decide whether additional staff resources were required.

8. The **Deputy Judiciary Administrator (Development)** also said that:

- the Judiciary expected that there would be a significant increase in caseload for the District Court upon the implementation of the new financial limit of the District Court. The number of cases and the number of trials in the District Court were expected to increase by 20% and 30% respectively. The number of interlocutory applications would increase substantially by 170%. For taxation cases, the number was expected to increase by 20%. However, the resource implications had to be assessed in the light of the actual caseload situations;

- in order to cope with the anticipated increase in the workload for the District Court, the Judiciary proposed to adopt a Master System so that the Masters could deal with the interlocutory applications while the other judges could focus their effort on handling the more complicated and contentious cases. If the new system were to be implemented, the District Court would require seven more judges and 24 support staff;

- as the workload for the High Court was expected to decrease, the Judiciary believed that there could be a reduction of four judges, four judicial officers and ten support staff. All these posts could be transferred to the District Court; and

- the Judiciary believed that there would not be a sudden upsurge in the number of cases and that the caseload would build up over a period of time. It would monitor the situation closely and deploy additional resources to meet the demand if necessary.

9. In reply to the Committee's concern about the long time taken to review the financial limit of the District Court and the future mechanism for reviewing the financial limits of the civil jurisdiction at all levels of courts, the **Judiciary Administrator** said that:

- if the District Court (Amendment) Bill 1999 was passed, the financial limit of the District Court would be increased to $600,000. The Judiciary had decided to review this limit in two years' time and to consider whether this could be increased further to $1 million; and

- the Judiciary was also committed to reviewing regularly the financial limits of civil jurisdiction at all levels of courts, in consultation with all the stakeholders concerned.

10. The Committee subsequently noted that the second reading debate on the District Court (Amendment) Bill 1999 resumed on 17 May 2000, and the Bill was passed on the same day.

11. While the redistribution of caseload brought about by the revision of financial limits would help to shorten the waiting time for civil cases, the Committee were concerned about the waiting time for criminal cases. According to the Information Note tabled by the Judiciary Administrator at the public hearing (***Appendix 23***), the actual waiting time for criminal cases and appeals from Magistracies were 165 days and 113 days respectively during the period January to March 2000. These had exceeded the respective pledged targets of 120 days and 90 days. The Committee asked whether any action would be taken to shorten the waiting time for these two types of cases. The **Judiciary Administrator** said that:

- there had not been a significant increase in the number of criminal cases in the past few years. The long waiting time was attributable to the fact that the number of complicated cases had increased in relative terms. For example, the number of cases involving commercial crime, which normally required 20 weeks for the proceedings to be completed, had increased from six in 1998 to 11 in 1999;

- the economic downturn since late 1997 had brought about a substantial increase in the number of civil cases. The deployment of staffing resources to deal with such cases had also affected the waiting time for criminal cases;

- upon the redistribution of caseload to the District Court, more judges in the High Court could be redeployed to deal with the criminal cases. More Deputy Judges would also be appointed. The waiting time could then be brought down to the pledged target of 120 days. These measures would also help to shorten the waiting time for appeals from Magistracies; and

- the Judiciary would try its utmost to meet the various waiting time targets. However, as it was impossible to predict the complexity of the cases and the time required to complete the proceedings, he was not in a position to commit to a definite timeframe for meeting these targets.

12. In his letter of 24 May 2000 in ***Appendix 24***, the **Director of Audit** provided the Committee with the following additional information:

- the main reason for the long waiting time for criminal cases and appeals from Magistracies was the large increase in the overall workload in the Court of First Instance of the High Court, which was largely due to the significant increase in the number of civil cases. Table 1 of the Audit Report showed that from 1989 to 1998, the civil caseload had increased by 170%. As judges of the High Court generally handled both criminal and civil cases, the increase in civil caseload had affected the waiting time for criminal cases;

- upon the redistribution of caseload from the Court of First Instance to the District Court, the waiting time in the Court of First Instance for criminal cases and appeals from Magistracies would be shortened; and

- the Judiciary Administrator had indicated that urgent actions should be taken to bring the waiting time within the performance pledges. In addition to the expected relief in the overall workload of the Court of First Instance, he would also consider taking various improvement measures.

13. After the public hearing, the Committee asked the Research and Library Services Division of the LegCo Secretariat to conduct a research on the practices and experience of other jurisdictions in the following areas:

- whether there were any established standards for the average court sitting hours for different levels of courts/tribunals;

- the arrangements for listing court cases; and

- how the utilisation of judicial time was monitored.

Ms Eva LIU, **Head**, **Research and Library Services**, advised the Committee that a preliminary search for the relevant materials revealed that the following quantitative measurements of the efficiency of the administration of justice were usually adopted in other common law jurisdictions including the United States Supreme Court, the United Kingdom Judiciary, the High Court of Australia and the Supreme Court of Canada:

- the number of cases filed;

- the number of applications for leave to appeal;

- the number of appeals heard;

- the number of appeal judgements; and

- the average time lapses at various stages of proceedings.

14. On the above quantitative measurements, the **Director of Audit** provided the Committee with the following comments in his letter of 28 April 2000 in ***Appendix 25***:

- the number of cases filed, appeal cases, and cases of appeals and of application for leave to appeal to Court of Final Appeal were included in the Controlling Officer's Report of the Annual Estimates of the Judiciary;

- the average court waiting time, which showed the average time lapse from the filing or setting down of a case to the first hearing, was included as a key performance target of the Judiciary in the Controlling Officer's Report;

- during the course of the audit, the Judiciary Administrator had been consulted on the possibility of using the average time lapse at various stages of proceedings as a performance indicator. Audit was informed that after the first hearing, the time lapses at other stages of proceedings depended on a number of factors which could be outside the control of the court administrators. Whether a case should proceed to the next stage was largely a judicial decision. Monitoring and assessing the average time lapses after the first hearing could affect, or be seen to affect, this decision. Having regard to the Judiciary Administrator's comments that this could impinge on judicial independence, Audit considered that for the current review, it was inappropriate to pursue this matter; and

- it was essentially an organisation's responsibility to choose the performance indicators appropriate to the organisation and its diversity, taking into account the interest of its stakeholders. The Judiciary should be encouraged to continue to identify other useful performance indicators to enhance its transparency and public accountability.

15. With regard to the experience of other common law jurisdictions in respect of quantitative measurements, the **Judiciary Administrator** said in his letter of 28 April 2000 in ***Appendix 26*** that:

- most common law jurisdictions used volume of caseload, case profile and waiting time. However, it would be difficult to compare the efficiency of the administration of justice purely on the basis of figures. There were differences in legal provisions, court rules, practice directions etc., which were not fully reflected in reported statistics;

- the outcome of the Judiciary's performance pledges were published in the Controlling Officer's Report as well as the Judiciary's Annual Report which was available to the public. The latter also included a progress report on the various improvements achieved to enhance the efficiency of Judiciary Administration; and

- in respect of the possibility of using the average time lapse at various stages of proceedings as a performance indicator, it should be pointed out that it would be absolutely inappropriate to control, or even attempt to control, the time spent on trials once they had started. Apart from the danger of not allowing parties to the litigation sufficient time to express their claims or defence (hence denying justice), there were factors beyond the control of judges, such as adjournments requested by counsel for negotiations, for calling additional witnesses, or due to unavailability of expert witnesses, that could prolong completion of the trial.

The Labour Tribunal

16. The Committee noted that there was a statutory requirement that the Labour Tribunal had to hear a claim within 30 days from the date of filing the case unless the parties concerned agreed otherwise. According to paragraphs 3.5 and 3.8 of the Audit Report, since 1992, the Judiciary had been recording the cases received initially in an appointment register, in order to ensure that all the incoming cases met the 30-day statutory time limit. LegCo Members were informed in 1995 that after setting up the tenth court, the Labour Tribunal should be able to cope with the new cases without resorting to the appointment register mechanism. The Judiciary expected that the Labour Tribunal should thereafter be able to dispense with the appointment register and to formally adopt the practice of filing a case on the date of receipt. Noting that the Labour Tribunal was still relying on the appointment register mechanism, the Committee asked:

- whether the Judiciary had sought legal advice on whether the use of an appointment register was legally acceptable and whether the adoption of this mechanism had amounted to circumventing the statutory time limit of 30 days;

- whether the Judiciary had considered revising the 30-day statutory requirement by amending the Labour Tribunal Ordinance; and

- why the Judiciary had not fulfilled its promise made in 1995 and was still using the appointment register mechanism.

17. In respect of the 30-day time limit, **Mr Jimmy MA Yiu-tim**, **Legal Adviser**, **Legislative Council Secretariat**, said that section 13 of the Labour Tribunal Ordinance stipulated that the registrar should have the case heard not earlier than ten days nor later than 30 days from the filing of the claim. The commencement of the proceedings was dependent on when the claimant officially filed his claim.

18. The **Judiciary Administrator** said that:

- the appointment register had provided a buffer against the increasing caseload of the Labour Tribunal. Without this mechanism, the Labour Tribunal would have difficulties in mobilising its resources in time to cope with the upsurge in labour disputes in the face of the economic downturn. The objective of the mechanism was to assist claimants in filing their claims quickly;

- the Labour Tribunal Ordinance was enacted in 1973. The aspirations of the community, the nature of labour disputes and the way these cases were handled had changed over the years. The Ordinance had also been amended many times. In spite of the discussion on the appointment register throughout the years, it was agreed that there was a practical need to retain the mechanism. While the Judiciary did not rule out the possibility of amending the legislation, it had to take into account the prevailing labour relations and the public's reaction to the proposal of extending the 30-day time limit;

- in 1995, the Judiciary had projected that with the setting up of the tenth court, it could dispense with the appointment system. However, the projection was distorted as there was a sudden increase in the number of labour dispute cases arising from the financial turmoil from late 1997. This was evidenced by the following figures:

Year	Number of cases
1995	7,645
1996	7,862
1997	6,319
1998	9,476
1999	11,594

- the figures in Figure 3 of the Audit Report had helped to demonstrate that the projection in 1995 was correct. In 1996, the average waiting time in the appointment register was 11 days and the duration from date of filing to date of first hearing was 23 days. Hence, the 30-day statutory requirement could almost be met. As a result of a 50% increase in the number of cases in 1998 and another 22% in 1999, the average waiting time increased from 15 days in 1997 to 27 days in 1998 and to 38 days in 1999;

- in order to cope with the increase in workload, the Judiciary had introduced night sittings in three Labour Tribunal courts and Saturday sittings in one court, in addition to the present set-up of ten. As resources were limited, the use of the appointment system was a reasonable measure to cope with the demand. It was hoped that when the economy improved, the number of labour dispute cases would drop and the practice of filing a case on the date of receipt could then be adopted; and

- the Judiciary noted Audit's recommendation on setting a target for the duration in which a case was kept in the appointment register before the case was formally filed. Since the publication of the Audit Report, the Judiciary had set a target of 30 days in respect of the duration in which a case was kept in the appointment register. This target was a reasonable one and the Judiciary would try its best to adhere to it.

19. Having regard to the fact that the appointment register mechanism was not provided for in the Labour Tribunal Ordinance, the Committee asked why Audit had recommended that the Judiciary should set a target for the duration in which a case was kept in the appointment register before the case was formally filed. **Mr Dominic CHAN Yin-tat**, **Director of Audit**, said that Audit did not agree that the appointment register mechanism should be legitimised. In fact, the mechanism was first devised as an interim measure to deal with the increasing workload of the Labour Tribunal. As the present situation still justified the need for this measure, Audit considered that a target should be set to ensure the efficiency of the mechanism. In the longer term, when the effect of the financial turmoil had waned, the Judiciary should consider stopping the practice of using the appointment register as a buffer against increasing caseload.

20. In reply to the Committee's question on when the use of the appointment system would be reviewed, the **Judiciary Administrator** said that:

- the experience in other jurisdictions was that the waiting time for labour dispute cases to be heard was much longer than that of the Labour Tribunal in Hong Kong. Nevertheless, the Judiciary was well aware of the public expectation for resolving labour disputes expeditiously; and

- the Judiciary had undertaken to review the use of the appointment system when the situation stabilised. It would review the waiting time for cases in the appointment register on a bi-weekly basis until it reached zero in terms of the number of days. In the meantime, the performance pledge for the appointment register would be adhered to so that claimants would not have to wait longer than 30 days for filing their claims.

21. The **Judiciary Administrator** supplemented in his letter of 20 April 2000 in ***Appendix 27*** that:

- according to records, the appointment register had existed in as early as 1987;

- the Judiciary had been adhering to and regularly promulgated the statutory provision that a claim would be heard not earlier than ten days nor later than 30 days from the date the claim was filed. Such information was published in the booklet entitled "Labour Tribunal" in the Guide to Court Services series. The same information was also accessible through the Judiciary Homepage on the internet and given in response to all verbal or written enquiries;

- since the Labour Tribunal did not allow legal representation, the Tribunal Officers had a duty to assist claimants in the preparation work for filing their claims in order to reduce the number of visits that they would have to make before hearing. An appointment system would ensure that adequate attention was given to the claimants when they turned up at the scheduled time. The system could also even out the caseload to ensure that manpower resources were optimally deployed. It was a practical necessity, particularly in group cases where hundreds of claims were involved; and

- barring unforeseen circumstances, the Labour Tribunal should be able to adhere to the target waiting time of 30 days for filing and 30 days for hearing, and to reduce the backlog gradually. He considered that these were very reasonable waiting time targets given the volume of cases, their complexity and the large number of claimants involved. However, he would have difficulties in specifying a timeframe within which the backlog of cases could be cleared as there were many variables beyond the control of the Judiciary which would lead to substantial fluctuations in caseload.

22. The Committee noted from paragraph 3.7 of the Audit Report that the Minor Employment Claims Adjudication Board (MECAB) was established in 1994 to take over the minor cases from the Labour Tribunal. In 1997, the financial limit of the MECAB's jurisdiction was increased to $8,000 per claimant and the maximum number of claimants involved in a case was increased to ten. The Committee also noted Audit's view in paragraph 3.15 that there was a need to review the financial limit of the MECAB's jurisdiction so that the pressure of increasing workload of the Labour Tribunal could be eased by transferring some of the minor employment claims to the MECAB for adjudication. The Commissioner for Labour indicated in paragraph 3.19 that he had no objection to this recommendation, subject to additional manpower and other necessary resources being made available to the Labour Department to cope with the additional workload. However, in paragraph 3.18(k), the Judiciary Administrator pointed out that adjudicators of the MECAB were not legally qualified persons. Any consideration of increasing the financial limit of the MECAB's jurisdiction, apart from the need to demonstrate cost-effectiveness, would also need to take into account whether it was the best way of preserving the quality of justice delivered and professionalism involved. In view of these comments, the Committee asked:

- how effective the MECAB was in providing the adjudication service; and

- how the waiting time of labour dispute cases could be shortened while the quality of justice could be ensured.

23. **Mr Matthew CHEUNG Kin-chung**, **Commissioner for Labour**, said that:

- the MECAB had proven to be an effective and efficient mechanism. The adjudication of employment claims was conducted within five weeks after filing. About 67% of the cases could be concluded in one hearing session. There was only a small number of applications for leave to appeal to the Court of First Instance against the decisions of the MECAB. None of the appeal applications in recent years was successful. The number of cases reviewed was also very small. Twenty-three cases were reviewed in 1998 and 16 in 1999. All these figures showed that the parties concerned were satisfied with the adjudication service provided by the MECAB;

- the Labour Department had not conducted any user satisfaction survey on the service provided by the MECAB. However, the unions in general were unanimous in their endorsement of the mechanism. There had been very few complaints from employers;

- all Adjudication Officers of the MECAB were experienced Senior Labour Officers who had been thoroughly trained. The Department of Justice also conducted a 14 half-day legal training programme for these officers. They were therefore sufficiently competent to deal with the labour dispute cases under the MECAB;

- subject to the availability of additional resources, the Labour Department was prepared to take up more minor employment claims. During an earlier discussion with the Judiciary Administrator, the possibility of further co-operation between the Labour Tribunal and the Labour Department was left open for future consideration. Various options could be explored. For example, the MECAB could have one night Board and one Saturday Board. There could also be a trial period of several weeks to six months so that the MECAB could help ease the Labour Tribunal's backlog; and

- based on the workload in the previous four months, it was projected that if the financial limit of the MECAB's jurisdiction were raised to $10,000, the MECAB would be able to handle 700 extra cases. An additional one and a half Adjudication Officers would be required to handle these cases.

24. In ***Appendix 28***, the **Commissioner for Labour** provided the Committee with some background information on the establishment of the MECAB and some relevant statistics. He also pointed out in his letter of 17 April 2000 in ***Appendix 29*** that:

- in the light of the feedback from various channels, the Labour Department believed that the MECAB had been operating effectively and efficiently to the satisfaction of its clients. The feedback gathered included that made by members of the public sitting on the Labour Department Customer Liaison Group which was set up in 1993 for the purpose of soliciting views and monitoring public expectations on the Department's services. Occasional comments from workers' groups and trade unions also reinforced the Department's belief that the public had found the MECAB's service satisfactory;

- the number of applications for leave to appeal to the Court of First Instance against the decision of the MECAB had been very small over the years. There were eight in 1997, eleven in 1998 and nine in 1999, which represented only 0.5%, 0.4% and 0.3% of the total number of cases concluded in the three years respectively. None of these appeal applications was successful in reversing the MECAB's decisions; and

- the average cost incurred for a case dealt with by the MECAB in 1999 was $5,873.

25. The Committee noted from a memo dated 23 May 2000 from the Acting Judiciary Administrator to the Director of Audit in ***Appendix 30*** that the average cost for a case handled by the Labour Tribunal in 1999/2000 was $7,636.

26. Regarding the Judiciary's concern about the fact that the Adjudication Officers of the MECAB were not legally qualified persons, the **Judiciary Administrator** said that:

- disputes between private individuals were civil cases. Whether or not these cases should be left to an administrative department rather than the court for adjudication was an important policy issue. The Judiciary was only responsible for enforcing the law. However, it was prepared to take part in discussing this subject with the Commissioner for Labour, other government officials and LegCo Members; and

- the establishment of the MECAB in 1994 was based on practical considerations. It was an administrative means to relieve the heavy workload of the Labour Tribunal. While it had proven to be an effective mechanism to deal with minor employment claims, whether an administrative department should be charged with the responsibility for adjudicating civil cases remained a serious matter and should be further considered.

27. In view of the concern expressed by the Judiciary Administrator, the Committee invited the Secretary for Education and Manpower to put forth his views on the Government's policy in respect of the purpose and functions of the MECAB, and on the way forward. In his letter of 19 April 2000 in ***Appendix 31***, **Mr Joseph W P WONG**, **Secretary for Education and Manpower**, said that:

- although the Adjudication Officers of the MECAB were not legally qualified, they were all veteran Senior Labour Officers who were highly experienced in handling labour disputes and conversant with the Employment Ordinance and employment practices. They had also received tailor-made training, including basic legal knowledge, before taking up the adjudication duties under the MECAB Ordinance;

- in view of the proven effectiveness of the MECAB in adjudicating minor employment claims, the MECAB was ready to help ease the backlog of the Labour Tribunal. But it was up to the Judiciary to consider whether or not to take up this offer; and

- the financial limit of the jurisdiction of the MECAB was raised in June 1997 from $5,000 per claimant to $8,000 per claimant to offset the effect of cumulative wage increases since December 1994. If necessary, the financial limit would be reviewed in the light of changes in wage levels.

Utilisation of Judiciary's resources

28. The Committee noted from paragraphs 4.8 and 4.9 of the Audit Report that LegCo Members had raised concern about the average court sitting hours of judges since 1993. On the question of what should be the reasonable time for judges to spend in open court, the Chief Justice said in 1994 that he had given it considerable thought and had come to the conclusion that four hours a day was satisfactory as an average taken over the year. However, after a lapse of six years, the Judiciary had still not established any standards for the average court sitting hours for different levels of courts/tribunals. Having regard to the

Judiciary Administrator's response in paragraph 4.28 that he would discuss with the Chief Justice and court leaders whether certain norms in court sitting hours could be taken as the Judiciary's standard range, the Committee asked whether there was any progress in this regard.

29. The **Judiciary Administrator** said that:

- there was a general misunderstanding that judges' working time was confined to the time they spent in court. In fact, judicial time included the judges' working time in court and out of court. Apart from the court sitting hours, judges had to do a great deal of out-of-court work such as reading court files and reference materials. According to a survey conducted in 1999 on the utilisation of judicial time, a substantial proportion of the judges' time was spent on out-of-court work. This arrangement was in fact in the public's interest because if judges and legal representatives could spend more time on case preparation and pre-trial reading, then the parties concerned could focus on the more contentious issues at the court hearings. This would facilitate the adjudication process and would have an impact on litigation costs;

- the Chief Justice considered the findings of the 1999 survey to be reasonable. He had also set up a review committee, headed by the Chief Judge of the High Court, to review the existing procedures for adjudicating civil cases. There was a proposal that legal representatives should be required to submit more written arguments or documents before the trials. If this proposal was accepted, the court sitting hours would be further revised; and

- it was not the case that the Judiciary was not willing to establish standards for the average court sitting hours. In fact, such information would be useful to the administrators in monitoring the trend in the utilisation of judicial time. In deciding whether any standards should be established, the issue to be considered was whether the standards should be imposed on the judges and be used to assess their performance. The Judiciary was worried that this would give a wrong impression and mislead the public to believe that the longer the time judges spent in court, the more productive they were.

The administration of the Judiciary

30. According to paragraph 4.28(a) of the Audit Report, the surveys conducted by the Judiciary in previous years had indicated certain norms in court sitting hours. The Committee asked what these norms were and whether the Judiciary had drawn on the experience of other jurisdictions in monitoring the utilisation of judicial time. The **Judiciary Administrator** said that:

- the norms were obtained from the surveys conducted by the Judiciary in previous years. These indicated that the average court sitting hours ranged from 2.5 hours to four hours. There was no one single indicator for court sitting time;

- the Judiciary had frequently made reference to the practices in other jurisdictions. However, such information might not be very comprehensive as it was usually obtained from experience-sharing between judges in Hong Kong and their counterparts in other jurisdictions. As far as he knew, these jurisdictions did not have any rigid indicators for court time of judges; and

- the Judiciary would continue to monitor the court sitting time which had always been recorded. As regards the time spent on out-of-court work, the judges had been very co-operative in providing the relevant information in the past. The Judiciary would consider how such information could be obtained in future without causing inconvenience to the judges.

31. The **Judiciary Administrator** supplemented in his letter of 20 April 2000 in ***Appendix 27*** that:

- the Judiciary did not have any written or published information on the norms in court sitting hours adopted by overseas jurisdictions with legal systems similar to that of the Hong Kong Special Administrative Region. However, it was general knowledge within the Judiciary that the patterns of court sitting hours differed greatly among common law jurisdictions, as there were jurisdictions which limited oral arguments in court substantially while there were jurisdictions which did not rely much on the assistance of written submissions. Therefore, court sitting hours, even if recorded, was more a reflection of individual jurisdiction's procedural frameworks and case management practices than anything else;

- bearing in mind the existing procedural frameworks and the present level of the use of information technology in various levels of courts/ tribunals, the norms identified in the previous surveys appeared to be reasonable. However, he would not exclude the possibility of further revisions to those norms, if there were further changes in the procedural frameworks and the extent of use of technology in courts; and

- he would consult the Chief Justice and court leaders whether such norms could and should be taken as the Judiciary's standard range, and if so, the context within which such norms should be interpreted. If the Chief Justice and court leaders agreed that there was a need to conduct surveys periodically to monitor the trend in the utilisation of judicial time, he would give detailed consideration as to what methodology should be used. There were different ways in conducting surveys. Asking judges to fill in log sheets was only one of the options. He did not consider it advisable or necessary to make a decision on this matter at this stage.

32. In reply to the Committee's questions about the working hours of judges and why only judges in the Labour Tribunal and Magistracies were required to have Saturday sittings, the **Judiciary Administrator** said that judges were required to work a minimum of 44 hours per week. The actual working hours were much longer. Although there were no Saturday sittings in some courts, judges were engaged in other duties such as preparing judgements and reading reference materials on Saturdays. For example, judges in the Court of First Instance had worked a total of 290 hours on Saturdays in 1999. They were also involved in other activities such as registration of barristers and solicitors and attending training programmes to keep abreast of the law.

33. In respect of training activities for judges and judicial officers, the **Judiciary Administrator**, in his letter of 20 April 2000 in ***Appendix 27***, further said that:

- the Judiciary considered that professional development and enhancing professional competence were of the utmost importance. Training on Saturdays would create the least disruptions to the normal operation of the courts and allow fruitful training sessions lasting for a few hours to be held. It was therefore useful for planned activities of the Judicial Studies Board to be conducted on Saturdays. Training sessions of shorter duration or seminars involving visiting speakers were also held on a regular basis on other days of the week; and

- in 1999-2000, a total of 179 training sessions had been conducted for Judges and Judicial Officers in the Judiciary. Sixty-three of these sessions were held on Saturdays for 669 participants and 116 were held on other days of the week for 783 (or more) participants.

34. According to paragraphs 4.32 and 4.33 of the Audit Report, Audit had analysed the actual hours of utilisation of the 26 courtrooms of the District Court in 1998-99 and found that the average rate of utilisation of courtrooms was only 45%. Audit also found that on average in any half-day session, about 43% of the courtrooms were not used at all. In view of these findings, the Committee asked whether the Judiciary would take any action to optimise the utilisation of courtrooms. The **Judiciary Administrator** said that:

- under the current listing policy, it was expected that judges would use the courtrooms allocated to them for a full day, i.e. about five hours on every weekday. However, the unpredictable developments of cases had made listing a very complicated task. For criminal cases, if the defendant pleaded guilty at the early stage of a trial, then the case could be completed very quickly. The trials for civil cases could be more lengthy. But there were instances where the parties concerned settled out of court and the trials would be terminated. In the past six months, defendants in 16.6% of the criminal cases pleaded guilty and 37.9% of the civil cases in the District Courts were settled out of court;

- it was not always possible to make use of the vacant courtrooms arising from the collapse of cases because there were no other cases for the judges to hear on the same day. This was due to the fact that the parties concerned had to be notified 24 hours before the trials commenced;

- to improve the utilisation of courtrooms, judges were required to make use of the vacant courtrooms to conduct trials for some simple cases. Cases had also been over-listed. In the District Court, the listing rate for civil cases was 30% to 50% in excess, and for criminal cases, 15% to 20% in excess. However, this arrangement would result in inconvenience and costs to the parties concerned;

- despite the above measures, there were still vacant slots. The question to consider was whether the courtrooms should be 100% utilised or the parties concerned should be asked to bear with the inconvenience and costs. The Judiciary had tried to balance these considerations as far as possible in optimising the utilisation of courtrooms; and
- the Judiciary had adopted Audit's recommendation of incorporating

courtrooms of mixed sizes in the design of new court facilities.

35. The Committee noted from paragraph 5.20 of the Audit Report that since April 1998, the role of court reporters had changed from the direct delivery of court reporting services to the supervision of private contractors. In view of the Audit observation that the supervision cost of the court reporting services was on the high side, the Committee asked whether there would be further reduction in the number of staff in the Court Reporter' Office. The **Judiciary Administrator** said that:

- with suitable training, court reporters could be deployed to take up other duties. In fact, two court reporters had been deployed to take up computer-related duties. One of them had recently been transferred to take up public relations duties and another one to the Personnel Section. Two court reporters were working in the Legal Information Research Section; and

- twenty court reporters would be retained to perform the supervisory duties eventually.

36. **Conclusions and recommendations** The Committee:

Court waiting time

- express concern that:

  (a) for the Court of First Instance, the actual waiting time for criminal cases, appeals from magistracies and civil cases was 165 days, 113 days and 199 days respectively for the period January to March 2000, which exceeded the respective targets of 120 days, 90 days and 180 days. This is not consistent with the spirit embodied in the remarks made by the Judiciary Administrator that justice which is not affordable or delayed will amount to justice denied; and

  (b) there was an upward shift of civil caseload to the higher courts because there had been no legislation enacted to raise the financial limit of the civil jurisdiction of the District Court until the passage of the District Court (Amendment) Bill 1999 on 17 May 2000;

- note that the Judiciary Administrator:

(a) has agreed that there is a need to conduct regular reviews of the financial limits of the civil jurisdiction at all levels of courts, and a reviewing mechanism should be devised in consultation with judges, the Department of Justice, the Legal Aid Department and the legal profession;

(b) has agreed to exhaust the possibilities of redeployment before resorting to creating additional posts in the courts/tribunals; and

(c) will reduce the number of acting appointments for Deputy Judges when the pressure on the Court of First Instance of the High Court eases and when the waiting time is reduced to within target;

The Labour Tribunal

- express dismay that the Judiciary has resorted to using the appointment register mechanism as a means to circumvent the 30-day statutory time limit for the Labour Tribunal;

- urge the Judiciary Administrator to:

(a) urgently review the use of the appointment register mechanism;

(b) take effective measures to clear the backlog of cases in the Labour Tribunal, including the introduction of night court and Saturday court sittings; and

(c) actively consider raising the financial limit of the Minor Employment Claims Adjudication Board's (MECAB) jurisdiction so that the MECAB can take over more minor employment claims;

Utilisation of Judiciary's resources

- express serious dismay that:

(a) the issue of using court sitting time as an indicator for measuring the efficiency in the utilisation of judicial time, which was first raised by the Legislative Council in 1993, has still not been resolved, despite the Chief Justice's indication in 1994 that four hours a day was satisfactory as an average taken over the year; and

(b) there has been no sign of improvement to the court sitting hours of judges

and the unused time for courtrooms;

- acknowledge the following statement made by the Chief Justice of the Court of Final Appeal in 1999:

> "……Judges will have to recognise that court time is a public resource and that as with all public resources, it is limited. They therefore have to ensure that this public resource is fairly and efficiently allocated and used. Judges will find that they will be increasingly held publicly accountable for its use. ……";

- urge the Judiciary Administrator to make his best endeavours to enhance the Judiciary's transparency and public accountability in the utilisation of public resources;

- to enable the Council to follow up on the matter, have asked the Research and Library Services Division of the Legislative Council Secretariat to continue with its research on the practices and experience of other jurisdictions in the following areas:

  (a) whether there are established standards for court sitting hours for different levels of courts/tribunals;

  (b) the arrangements for listing court cases; and

  (c) how the utilisation of judicial time is monitored;

- urge the Judiciary Administrator to discuss with the Chief Justice and court leaders in respect of the following:

  (a) whether the norms in court sitting hours can be taken as the Judiciary's standard range, and whether there is a need to conduct surveys periodically to monitor the trend in the utilisation of judicial time;

  (b) improving support services to facilitate judges' work;

  (c) conducting user satisfaction surveys on court services so that the views of court users on the need for court sittings on Saturday can be gauged properly;

  (d) building courtrooms of mixed sizes in new court facilities and allocating

courtrooms by the nature of cases rather than by judges; and

(e) improving the utilisation of courtrooms (e.g. by pooling of courtrooms);

Provision of support services

- urge the Judiciary Administrator to:

  (a) review the staffing situation in the Court Reporters' Office to see whether the number of staff can be further reduced; and

  (b) conduct an overall review of the court reporter grade in consultation with the Civil Service Bureau; and

- wish to be kept informed of the progress of the actions taken by the Judiciary Administrator to:

  (a) clear the backlog of cases in the Court of First Instance of the High Court and in the Labour Tribunal;

  (b) devise a reviewing mechanism and review the financial limits of the civil jurisdiction at all levels of courts;

  (c) review the use of the appointment register mechanism in the Labour Tribunal;

  (d) review the financial limit of the MECAB's jurisdiction;

  (e) solicit the views of the Chief Justice and court leaders about the establishment of a standard for court sitting hours, the need for conducting surveys periodically to monitor the trend in the utilisation of judicial time, and the building of courtrooms of mixed sizes in the new court facilities;

  (f) improve support services to facilitate judges' work;

  (g) conduct user satisfaction surveys on court services;

  (h) address concerns expressed by judges, including strengthening support by resource redeployment; and

  (i) review the staffing position of the court reporter grade and the

justifications for retaining the grade in the long term.

Chapter 3

The administration of the Judiciary