

CHAPTER 6

Food and Health Bureau

Food and Environmental Hygiene Department

Management of public markets

**Audit Commission
Hong Kong
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This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 51 of the Director of Audit contains 12 Chapters which are available on our website at <http://www.aud.gov.hk>.

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MANAGEMENT OF PUBLIC MARKETS

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Public markets were provided by the former Urban Council (UC) and Regional Council (RC) to meet the needs of the community and to resite hawkers who would otherwise be trading on-street causing environmental nuisance and congestion to pedestrian and vehicular traffic. Since the dissolution of the then Provisional UC and Provisional RC on 1 January 2000, the Food and Environmental Hygiene Department (FEHD) has taken over the responsibility for managing the public markets.

1.3 As at 30 June 2008, the FEHD managed 104 public markets, comprising 79 wet markets and 25 stand-alone cooked food markets (CFMs), under the Public Health and Municipal Services Ordinance (PHMSO — Cap. 132). These markets together provided a total of 14,900 stalls, of which 11,390 (76%) were let out and 3,510 (24%) were vacant.

1.4 Of the 104 public markets, 20 markets (19%) were built before 1980 (see Table 1). The design and facilities of some of these old markets may not meet present-day expectations, and may offer limited scope for improvement.

Table 1

Public markets by year of commissioning

Year of commissioning	Number of public markets	
Before 1980	20	19%
1980 to 1989	48	46%
1990 to 1999	28	27%
2000 to 2008 (up to June 2008)	8	8%
Total	104	100%

Source: Audit analysis of FEHD records

Audit review in 2003

1.5 In 2003, the Audit Commission (Audit) conducted a review of the public markets managed by the FEHD. In the Director of Audit's Report No. 41 of October 2003, Audit reported that many market stalls were vacant or non-trading, and large operating deficits were incurred at some public markets. Audit recommended that the FEHD should take remedial action to reduce the vacancy rate of public markets and promptly conduct a comprehensive review of public markets with a view to ascertaining whether any of the markets should be closed down.

1.6 In its Report No. 41 of February 2004, the Public Accounts Committee (PAC) of the Legislative Council (LegCo) noted that the FEHD had embarked on a study to identify public markets that might merit closure, and upon completion of this study, the then Health, Welfare and Food Bureau (now the Food and Health Bureau — FHB) would draw up a rationalisation plan, including options for terminating the tenancies of incumbent stall tenants. The PAC recommended that the FEHD and the FHB should consult the stakeholders involved, including LegCo, in conducting the study and drawing up the rationalisation plan.

Subsequent developments

1.7 Through the Government Minute of 21 May 2008, the Administration informed LegCo of the following progress:

- (a) the FHB and the FEHD were reviewing the policy on the provision of public markets. The review focused on examining the relevance of the existing planning standard for the provision of new public markets and identifying measures to deal with public markets with consistently low occupancy;
- (b) in May 2008, the Administration presented the preliminary review findings to the LegCo Panel on Food Safety and Environmental Hygiene (LegCo Panel) and would proceed to consult other stakeholders, with a view to finalising the review by the end of the financial year 2008-09;
- (c) meanwhile, the FEHD would continue to implement measures to improve the facilities and viability of public markets, such as market improvement works, promotional activities, maintaining a high standard of cleanliness, maintaining flexibility in determining and changing the trade or sizes of stalls, and lowering the upset auction prices of long-standing vacant stalls to attract potential bidders; and
- (d) in the context of the review mentioned in (a) above, measures were being developed for dealing with markets with low occupancy.

Audit objectives and scope

1.8 With a view to identifying areas for improvement and providing timely input to the Administration in their policy review, Audit has recently conducted a follow-up review of the FEHD's management of public markets. The review focused on the following areas:

- (a) usage of public markets (PART 2);
- (b) market stall rentals and charges (PART 3);
- (c) problem of stall subletting (PART 4);
- (d) management of a public market in Kowloon (PART 5); and
- (e) planning of new public markets (PART 6).

Acknowledgement

1.9 Audit would like to acknowledge with gratitude the full cooperation of the staff of the FEHD and the FHB during the course of the audit review.

PART 2: USAGE OF PUBLIC MARKETS

2.1 This PART examines the usage of the public markets to assess whether they provide active market services to the community.

High costs of building and operating public markets

2.2 It is costly to build public markets. For instance, two new public markets cost \$175 million to build (excluding land cost). It also costs the Government some \$500 million a year to operate the 104 public markets. In 2007-08, the total expenditure in operating the public markets was \$508 million. Net of rental income of \$348 million, the FEHD incurred a deficit of \$160 million. According to the FEHD records, 84 (81%) public markets (including 15 CFMs) were run at a deficit in 2006-07 (Note 1), with 11 markets having deficits of over \$5 million a year (see Appendix A).

2.3 Given the high costs of building and operating public markets, Audit recently conducted an examination of the usage of public markets to ascertain if they were providing active market services to the community. In Audit's opinion, a public market is providing active market services if it is a vibrant one with high patronage, many stalls are in active business, and there is a practical need for it to continue operation in order to meet the community's needs (see para. 1.2).

2.4 From May to July 2008, Audit visited 25 public markets (including 4 CFMs) selected from three regional areas (8 from Hong Kong Island and the outlying islands, 10 from Kowloon and 7 from the New Territories).

Vibrant and less vibrant public markets

2.5 On one hand, Audit found that some public markets visited were very vibrant and highly patronised. Typical examples included the Tai Po Hui Market (see Photograph 1), the Ap Lei Chau Market, the Chai Wan Market and the Mong Kok CFM. Very often, such markets are centrally sited within densely populated catchment areas and are very convenient to the public. These public markets usually have the following characteristics:

Note 1: *According to the FEHD, financial results for individual public markets for 2007-08 were not readily available.*

- They are markets with improved designs and modern facilities.
- The markets are clean, tidy, dry, bright and well ventilated.
- The stalls are spacious and the passageways are wide enough to avoid congestion.
- The markets offer a wide choice of commodities ranging from fresh food to household items, and are well-patronised.
- They have very low market stall vacancy rates.

Photograph 1

Tai Po Hui Market



Source: Photograph taken by Audit on 11 July 2008 at 8:40 a.m.

Remarks: This was a very active and modern public market with many customers. It was tidy, bright and well ventilated. The stalls were spacious. As at June 2008, it had a low stall vacancy rate of 9%.

2.6 On the other hand, Audit found that some public markets were **not** so vibrant. These less vibrant markets usually have the following characteristics:

- The markets are generally less modern and a little shabby.
- The markets have high stall vacancy rates.
- In addition to having a large number of vacant stalls, many of the let-out stalls are not in business (e.g. many such stalls are often used as storage).
- Some stalls in business are mainly used for bulk sale (Note 2) and are usually only active for a short period in the mornings.
- The markets have low patronage and, for most of the time, the markets are quiet and inactive.
- There are a lot of fresh provision shops (FPS), superstores, supermarkets and on-street fixed-pitch hawkers in the vicinity.
- The markets are running at a deficit.

Examples of such less vibrant markets included:

- (a) Mong Kok Market (see Photograph 2);
- (b) Tai Yuen Street CFM in Kwai Chung (see Photograph 3);
- (c) Shau Kei Wan Market (see Appendix B);
- (d) Tsuen King Circuit Market (see Appendix C);
- (e) Kwun Chung Market in Yau Ma Tei;
- (f) Plover Cove Road Market in Tai Po; and
- (g) Fo Tan CFM (West).

Note 2: *“Bulk sale” means sale of goods in large quantities to meet the needs of certain customers (such as restaurant operators). According to the stall tenancy agreements, stall tenants are allowed to offer commodities for bulk sale in conjunction with retail sale. By contrast, wholesale (i.e. sale of commodities for resale rather than consumption or processing) is prohibited.*

Photograph 2
Mong Kok Market



Source: Photograph taken by Audit on 2 June 2008 at 10:45 a.m.

Remarks: This Market was not providing active market services. Of the 129 stalls in the Market, 49 were let out as at June 2008. Based on visits to the Market at peak hours in June and July 2008, Audit found that only 10 stalls were in business in the mornings and 3 stalls in the afternoons. Audit noted that the FEHD was actively pursuing the closure of this Market.

Photograph 3

Tai Yuen Street Cooked Food Market



Source: Photograph taken by Audit on 18 July 2008 at 12:00 noon

Remarks: As at July 2008, of the 20 stalls in this CFM, 6 were let out. Audit found that the CFM was mainly used for operating bulk sale of food.

2.7 The fact that some public markets had very poor patronage, were less vibrant and had a large number of vacant and non-trading stalls is a cause for concern. These markets were not providing active market services and, at the same time, were run at an operating deficit, without taking into account land and building costs. In fact, some of these markets (e.g. the Mong Kok Market) are located at valuable prime sites.

Market review by the Administration

2.8 The FHB and the FEHD were reviewing the Government policy on the provision of public markets (excluding CFMs — see para. 2.21). In May 2008, they briefed the LegCo Panel Members on the preliminary findings of their review and proposed the following criteria to assess the viability of public markets:

Criteria	Considerations
Vacancy rate	Whether a public market had a high vacancy rate, say of more than 60%, for three consecutive years.
Prospects for improvement	Whether measures could be taken to overcome adverse circumstantial factors so as to enhance the market's viability.
Availability of alternative sources for fresh provisions	Whether there were other public markets, supermarkets or fresh provision retail outlets in the vicinity to meet public demands.
Cost-effectiveness	Whether the public market showed a big deficit and the cost for infrastructural upgrading was substantial.

2.9 About the way forward, the FHB and the FEHD proposed the following actions:

- (a) in respect of markets with big deficits, the Government would first explore cost-reducing measures (such as streamlining market management and/or outsourcing) to enhance the cost-effectiveness of these markets;
- (b) in respect of markets with high vacancy rates, the Government would conduct in-depth investigation to explore the potential for improving the situation and revitalise the markets. In the event that appropriate measures could not be identified or that the viability of the markets was unlikely to be enhanced significantly, the Government would look into the possibility of closing down the markets; and
- (c) the Government would conduct a more in-depth review of public markets so as to identify those **with consistently high vacancy rate exceeding 60% and with big deficits**. On the basis of such findings, the Government would:
 - (i) inform the District Councils (DCs) concerned and tenants of markets identified to have viability problem;
 - (ii) ascertain if there were prospects for improvement, and whether there were alternative sources for fresh provisions according to the criteria set out in paragraph 2.8;
 - (iii) explore in depth appropriate expenditure-cutting and revenue-raising measures as well as improvement works to deal with each of the markets identified with viability problem; and

- (iv) if no other alternative was considered feasible, consult the DCs concerned and affected tenants on the possibility of closing down the markets.

Audit observations and recommendations

Need to review individual public markets

2.10 Audit welcomes the Administration's review, but considers that the proposed criteria used to assess the viability of a public market can be improved. **Whilst the criteria of "consistently high vacancy rate exceeding 60%" and "big deficits" (see para. 2.9(c)) are useful indicators, they are not the only factors to be considered. Audit considers that the FHB/FEHD needs to take into account the usage of the market in the assessment, i.e. whether the market is providing active market services to meet the needs of the community.** As stated in paragraph 2.3, a market is providing active market services if it is a vibrant one with high patronage, many stalls are in active business and there is a practical need for it to continue operation.

2.11 According to the FEHD records, as at June 2008, the stall vacancy rates for a number of less vibrant public markets (for example, those mentioned in para. 2.6(c) to (f)) were as high as 32% to 49%. Most of these less vibrant markets had also incurred deficits (Note 3). However, these markets still did not meet the stall vacancy rate of 60% as proposed by the FHB/FEHD to justify special attention. **Given that some of these markets had very low patronage and were not providing active market services, they should warrant an early review.** The Shau Kei Wan Market and the Tsuen King Circuit Market are examples (Note 4).

Note 3: *For example, in 2006-07, the FEHD incurred operating deficits of \$5.51 million, \$3.19 million, \$2.88 million and \$2.05 million for the Kwun Chung Market, the Plover Cove Road Market, the Tsuen King Circuit Market and the Shau Kei Wan Market respectively.*

Note 4: *In the case of the Shau Kei Wan Market (with 87 stalls), Audit found that only some 10 stalls were in business (see Appendix B). Similarly, in the case of the Tsuen King Circuit Market (with 248 stalls), Audit found that less than 50 stalls were in business (see Appendix C). Apart from vacant stalls, these markets had a lot of non-trading stalls. They were not providing active market services.*

Need to collect usage information on individual public markets

2.12 At present, the FEHD maintains information on stall vacancy rate and financial position of individual markets, but no usage information, such as the number of patrons visiting the market and the number of stalls actually providing retailing services. **To more accurately assess whether a public market is meeting the needs of the community, Audit considers that the FEHD needs to put in place a proper system for collecting such usage information.**

Need to review attainment of objectives of providing public markets

2.13 Public markets were provided by the former UC and RC to meet the needs of the community and to resite hawkers (see para. 1.2). Since the dissolution of the Provisional UC and Provisional RC, the FEHD has taken up the responsibility of managing public markets. The policy on the provision and management of public markets has remained largely the same. Since 2000, there have been changes in circumstances which affect the demand for public markets, as follows:

- (a) with the completion of a number of hawker resiting exercises and the introduction in 2002 of a licence surrender scheme (which will expire by the end of 2008) to encourage itinerant hawkers to surrender their licences by offering them an ex-gratia payment and resiting opportunities, the number of licensed hawkers dropped from 9,900 ten years ago to 7,200 in March 2008. Moreover, since many hawkers selling wet goods had already moved into markets, the majority of the remaining ones sold dry goods and caused less environmental nuisance. According to the FHB/FEHD, the need to develop public markets for resiting hawkers has diminished; and
- (b) there have been a lot of changes in the retail trend as a result of the proliferation of supermarkets and FPS.

2.14 Given these changes, it may be opportune for the FHB/FEHD to assess, in the current market review, whether the two objectives of providing public markets (i.e. to meet the needs of the community and to resite hawkers) have already been met with the existing provision of public markets and, depending on the outcome, formulate the Government's strategy for the provision of public markets in future (Note 5).

Note 5: *The strategy may include, among others, examining the feasibility of consolidating stalls in multi-storey markets with high stall vacancy rates onto a single floor (to vacate space for alternative use) or closing down, if appropriate, some of those non-vibrant markets.*

2.15 In formulating the Government's strategy, the FHB/FEHD may need to take into account the following factors which suggest that public markets/market stalls might have been over-provided in some areas of the territory, as shown below:

- (a) ***Over-provision of stalls in some markets.*** In the former UC and RC days, many public markets were built to meet full resiting commitments of hawkers, but some of them chose to remain on-street instead of moving into the markets. As a result, the number of stalls built might exceed the actual needs;
- (b) ***Keen competition from other retail outlets.*** On-street licensed fixed-pitch hawkers, FPS, superstores and supermarkets selling similar commodities in the vicinity have posed strong competition to the public markets;
- (c) ***High stall vacancy rate.*** As of June 2008, 34 of the 104 public markets had a stall vacancy rate of 30% or above, of which 11 had a vacancy rate of 50% or above, as shown in Table 2:

Table 2
Market stall vacancy rate
(30 June 2008)

Stall vacancy rate	Number of markets
70% and above	2
60% to 69%	4
50% to 59%	5
40% to 49%	5
30% to 39%	18
20% to 29%	22
10% to 19%	27
Below 10%	21
Total	104

} 11
 } 34

Source: Audit analysis of FEHD records

- (d) ***Problem of non-trading stalls.*** In the Director of Audit's Report of October 2003 (see para. 1.5), Audit had already raised concern over the existence of many non-trading market stalls which was detrimental to the viability of a public market and that it would deprive other traders of opportunities to rent the stalls. The then Secretary for Health, Welfare and Food also agreed that the image of a public market was adversely affected by having a high percentage of let-out stalls in non-trading mode. However, Audit found in this review that the problem of non-trading stalls persisted. Although the FEHD records indicated that only 45 stalls had been approved for storage use as at May 2008, Audit found that stalls used for storage were quite common in some of the less vibrant public markets visited. Moreover, some stalls were in business in the mornings only (for bulk sale). The Shau Kei Wan Market (see Appendix B) and the Kwun Chung Market are examples; and
- (e) ***Public markets within the same catchment areas.*** Some public markets are in close proximity to one another in the same catchment areas. Obvious examples include the Centre Street Market and the Sai Ying Pun Market (located opposite each other along the Centre Street — Note 6), the Fo Tan CFM (West) (see para. 2.6(g)) and the Fo Tan CFM (East) (separated by a commercial building).

Need to consider effects of recent development in live poultry trade

2.16 The detection of H5N1 avian influenza virus in four public markets on 3 and 7 June 2008 led to the need for the Government to introduce new measures at all levels of the supply chain, especially the retail level, to improve the surveillance system. Law was passed to prohibit overnight stocking of live poultry at all retail outlets beginning from 2 July 2008.

2.17 On 14 July 2008, the Finance Committee (FC) of LegCo approved funds of \$1.1 billion to implement a buyout scheme for the live poultry trade. Under the scheme, poultry retailers could surrender permanently the permission to sell live poultry granted under their FPS licences or public market tenancies, and receive ex-gratia payments and compensation under a buyout package. The deadline for application, originally set at 24 July 2008, was extended to 24 September 2008.

Note 6: *To meet the district needs, the Centre Street Market now mainly sells dry goods and fruits whereas the Sai Ying Pun Market mainly sells wet goods. In 2005 and 2006, more than half of the stalls at the Centre Street Market were vacant. Since October 2006, these vacant stalls have been withheld from letting out due to the MTR West Island Line Project.*

2.18 As at 25 September 2008, retailers for 171 (66%) of 260 live poultry stalls in the public markets had opted for the buyout package, comprising 61 retailers who surrendered their stall tenancies and 110 retailers who would continue selling chilled/frozen poultry at their stalls. The fact that 61 retailers had surrendered their stall tenancies, coupled with the Government's plan to develop a poultry slaughtering and processing plant to achieve the policy objective of separation of live poultry and humans (Note 7), would affect the demand for poultry stalls in the public markets. **Audit considers that the FHB/FEHD needs to take on board the effects of the development in the live poultry trade in planning the provision of public markets in future.**

Need to factor in outcome of Government's review of hawker licensing policy

2.19 In June 2008, the FHB and the FEHD briefed the LegCo Panel on their ongoing review of the hawker licensing policy. They informed the LegCo Panel of the following:

- (a) the public had divergent views regarding the operation and management of hawking activities. Some were concerned about the environmental hygiene problems arising from hawking activities while others maintained that the existing hawker bazaars should be kept or even new ones should be established;
- (b) there were complaints from business operators (including market stall tenants), who had to pay rental for their trading premises, that street hawking had posed unfair competition to them; and
- (c) in their review, they would explore the feasibility of re-issuing new hawker licences and relaxing the requirements for succession and transfer of hawker licences without compromising environmental hygiene.

2.20 Given that hawking activities will affect the demand for market stalls and will impact on the future of existing public markets, particularly those with very low usage, Audit considers that the FHB and the FEHD need to take into account the outcome of the policy review on hawker licensing in planning the provision of public markets.

Note 7: *To address the avian influenza problem, the Administration originally planned to develop a poultry slaughtering plant in Hong Kong to put together poultry slaughtering activities by 2011 the earliest. However, in September 2008, the Secretary for Food and Health told the media that the scale of the slaughtering plant had to be revisited given the decrease in the number of poultry operators who would continue to run live poultry business after the buyout scheme.*

Need to conduct a review of provision of cooked food markets

2.21 The public market policy review currently undertaken by the FHB and the FEHD covers only 79 wet markets, but excludes 25 CFMs. For 2006-07, 15 of these 25 CFMs incurred deficits (e.g. over \$1 million each for the Queen Street CFM and the Tsun Yip CFM). As at August 2008, a number of the CFMs had very high stall vacancy rates, e.g. 70% for the Tai Yuen Street CFM (see para. 2.6(b)).

2.22 CFMs were originally provided by the Government as alternative catering facilities to replace illegal food establishments and hawker businesses. With the current large number of licensed restaurants and food premises and the provision of food courts in many large commercial centres, the need for CFMs may have diminished. Given the changes in circumstances which affect the role played by CFMs, it is considered desirable to conduct a separate review of CFMs.

Audit recommendations

2.23 **Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should:**

Need to review individual public markets

- (a) **conduct an early review of those public markets identified to have very low usage and which are not providing active market services;**

Need to collect usage information on individual public markets

- (b) **put in place a proper system for collecting regularly usage information (such as the number of patrons visiting the markets and the number of stalls actually providing retailing services) relating to individual markets;**

Need to review attainment of objectives of providing public markets

- (c) **review whether the objectives of meeting the needs of the community and resiting hawkers have already been met with the existing provision of public markets;**

- (d) **formulate the Government's strategy for the provision of public markets in future;**
- (e) **take into account the factors noted in paragraph 2.15 (such as the over-provision of stalls in some markets and the high vacancy rate) in formulating the Government's strategy for the provision of public markets;**

Need to consider effects of recent development in live poultry trade

- (f) **take on board the effects of the recent development of the live poultry trade and the future development of setting up the central poultry slaughtering and processing plant in planning the provision of public markets in future;**

Need to factor in outcome of Government's review of hawker licensing policy

- (g) **take into account the outcome of Government's review of the hawker licensing policy in planning the provision of public markets in future; and**

Need to conduct a review of provision of cooked food markets

- (h) **consider conducting a separate review of the provision of CFMs in due course.**

Response from the Administration

2.24 The Secretary for Food and Health and the Director of Food and Environmental Hygiene agree with the audit recommendations. They have said that:

- (a) non-trading stalls are not conducive to market vibrancy. The FEHD will:
 - (i) step up efforts in identifying non-trading stalls and take enforcement actions against them;
 - (ii) encourage the relevant tenants to reactivate their business so as to improve market vibrancy; and
 - (iii) consider terminating the tenancy with those who persistently leave their stalls in a non-trading state;

- (b) the FEHD has commenced a review of the public markets identified by Audit to have very low patronage (see Appendix D for details of measures/improvements to be implemented in four public markets);
- (c) subject to resource availability, the FEHD will conduct patronage surveys for selected markets to obtain an added indicator for assessing their viability and value to the local community. Patronage of a market may be affected by the prevalent mode of its stalls' operation. Retail stalls usually attract more patrons than bulk-sale stalls, although bulk sale is permitted to meet the legitimate needs of certain sectors of the community (such as restaurant operators). Hence, there is some limitation in assessing the value of a public market in terms of its patronage;
- (d) the review of public markets by the FHB and the FEHD seeks to update the Hong Kong Planning Standards and Guidelines for new market provision and the criteria for assessing public market viability, taking into account factors such as reduction in the need for resiting hawkers, change in customer shopping habits, and growth in the number of FPS and mega size supermarkets. Audit's recommendation in paragraph 2.23(c) is in line with the objective of the review. The Administration will present the conclusions of the review to the LegCo Panel by the end of 2008, and devise the strategy for the provision of public markets accordingly;
- (e) they will assess the impact of the live poultry trade buyout scheme on public markets and take this into account in planning the provision of public markets in future;
- (f) as pointed out in the paper submitted to the LegCo Panel in May 2008, the need to develop public markets for resiting hawkers has diminished because of the reduced number of licensed hawkers and more effective regulation of hawking activities. They are consulting hawker associations and DCs on the preliminary findings of the review of hawker licensing policy and will take into account the review outcome in planning the provision of public markets in future; and
- (g) they will consider conducting a separate review of the provision of CFMs on completion of the current review of wet markets.

PART 3: MARKET STALL RENTALS AND CHARGES

3.1 This PART examines the FEHD's administration of market stall rentals and charges.

Current market stall rentals

3.2 In May 2008, the FHB and the FEHD informed the LegCo Panel that:

- (a) according to a recent survey conducted by the Rating and Valuation Department (RVD), about 15% of stall tenants were paying full Open Market Rental (OMR — Note 8); and
- (b) the average rental paid by tenants was about 60% of the OMR.

Audit has analysed the rentals paid by stall tenants and the results are shown in Table 3. An analysis of the rentals paid by stall tenants as compared with the OMR is also provided in Figure 1.

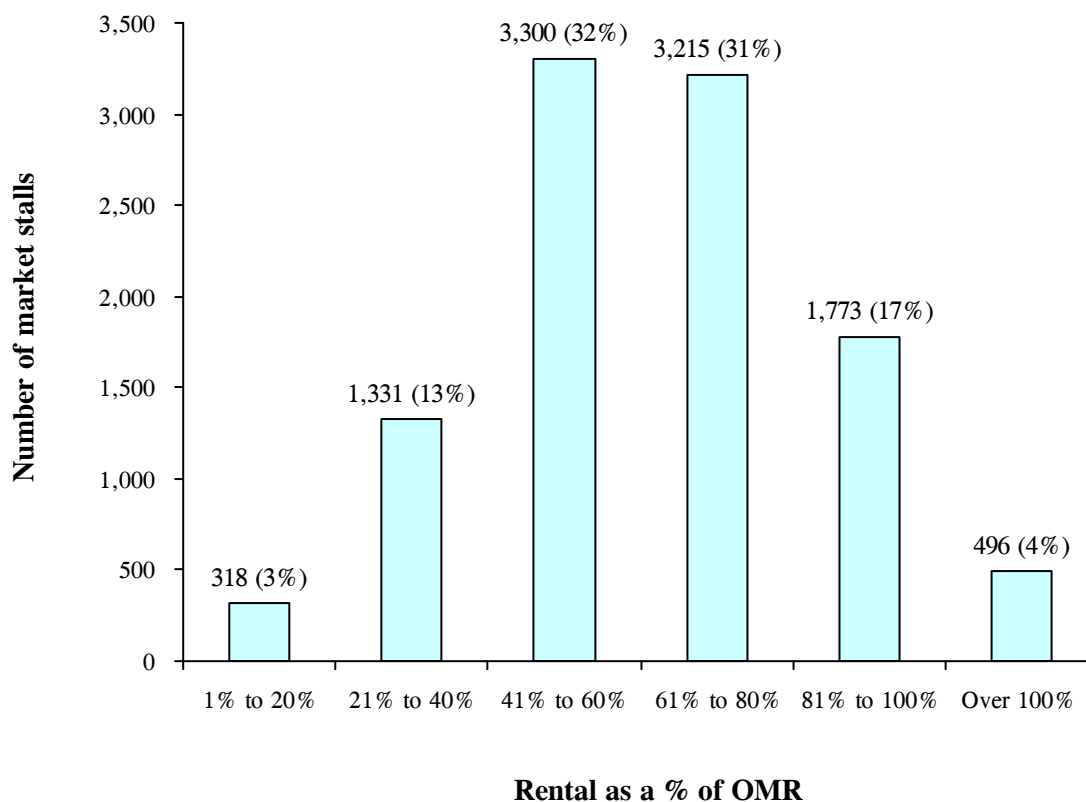
Note 8: *OMR is a reference provided by the RVD for use in rental assessment. It is based on various factors, such as the latest bid price for a similar stall in the same market, the different rating factors attributed to the unique features of the stall (such as its proximity to escalators), and customer flow.*

Table 3
Market stall rentals
(30 June 2008)

Monthly rentals	Market stalls	
	Number	Percentage
\$500 and below	861	8%
\$501 to \$1,000	1,911	17%
\$1,001 to \$2,000	3,678	32%
\$2,001 to \$3,000	1,848	16%
\$3,001 to \$4,000	944	8%
\$4,001 to \$5,000	709	6%
\$5,001 to \$6,000	522	5%
\$6,001 to \$7,000	336	3%
\$7,001 to \$8,000	183	2%
\$8,001 to \$9,000	117	1%
Over \$9,000	281	2%
Total	11,390	100%

Source: FEHD records and Audit analysis

Figure 1
Comparison of stall rental with OMR
(30 June 2008)



Source: FEHD records and Audit analysis

Remarks: A total of 10,433 (92% of 11,390) stalls were analysed. For 957 stalls, the FEHD could not readily provide Audit with their OMR information.

3.3 Figure 1 shows that stall rentals were generally far below the OMR. In particular, 48% (3% + 13% + 32%) of the stall tenants were paying 60% or less of the OMR, including 318 stall tenants (3%) who were paying rentals at 20% or less. Audit found that in some 150 cases, stall tenants were paying rentals at only 1% to 5% of the OMR. Two examples (with rentals at less than 2% of the OMR) are shown below:

Case 1: Ngau Tau Kok Market (Kwun Tong, Kowloon)

One stall tenant has rented a market stall for sale of wet goods since 1996. As at September 2008, she was paying rentals of \$112 per month, which was **less than 1%** of the OMR of \$11,900.

Case 2: Tai Shing Street Market (Wong Tai Sin, Kowloon)

One stall tenant has rented a market stall for sale of wet goods since 1998. As at September 2008, she was paying rentals of \$128 per month, which was only **1.4%** of the OMR of \$9,000.

Source: FEHD records

Reasons for the lower-than-market rentals

3.4 Rentals for most market stalls were below OMR because of the following reasons:

- (a) ***Concessionary rentals for ex-licensed itinerant hawkers.*** To encourage licensed itinerant hawkers to surrender their licences and move into public markets in line with the resiting objective, the hawkers have been allowed to rent public market stalls at a concessionary price. Under the licence surrender scheme (see para. 2.13(a)), such licensed hawkers who voluntarily surrender their licences may choose to continue their business in public markets. For those who take this option, **the annual rentals for their first tenancies (usually three years) are equivalent to the annual hawker licence fees (which are on average about 6% to 7% of the OMR) for small stalls, and 50% of the OMR for large stalls;**
- (b) ***Concessionary rentals for old market ex-tenants and ex-licensed fixed-pitch hawkers.*** When stall tenants of an old market or licensed fixed-pitch hawkers are to be resited to a new market, they are allowed to bid for stalls in the new market through a restricted auction at a lower upset price (which is normally set at 75% of the OMR);

- (c) ***Different rental adjustment mechanisms upon tenancy renewal.*** Although both the former Provisional UC and Provisional RC used OMR as the basis for assessment of renewal rentals, they adopted different rental adjustment mechanisms when renewing stall tenancies with rentals below the OMR. For stalls under the former Provisional UC, rental adjustment was made with reference to the difference between the contractual rental (i.e. the last rental specified in the tenancy agreement) and the prevailing OMR. The increase in renewal rental would be capped by the prevailing increase in consumer price index plus a pre-set percentage. The Provisional RC did not have a similar cap and would increase the renewal rentals gradually by phases to achieve a certain pre-set percentage of the OMR;
- (d) ***1998 rental reduction and subsequent rental freezes.*** In 1998, owing to the poor economic climate, the rentals of all public market stalls were reduced across-the-board by 30%. Since 1999, market stall rentals have been frozen 9 times at the reduced level, with the current rental freeze period due to expire on 30 June 2009. As a result, stall rentals for former licensed hawkers and market tenants have remained substantially below the OMR. Cases 1 and 2 in paragraph 3.3 are typical examples; and
- (e) ***Reduced rentals for long-standing vacant stalls.*** To attract potential tenants, since August 2003, the FEHD has also instituted the measure of lowering the upset auction prices of long-standing vacant stalls in selected markets.

Consequences of lower-than-market rentals

3.5 ***Big deficits even for vibrant markets.*** The FEHD incurred a deficit of \$160 million for 2007-08 (see para. 2.2). In May 2008, the FHB and the FEHD advised the LegCo Panel that some very vibrant public markets with high patronage also showed big deficits. In response to an enquiry from LegCo Panel Members about this, in July 2008, the Secretary for Food and Health said that:

- (a) these markets had incurred big deficits because of low stall rentals. For example, in four markets (namely the Pei Ho Street Market, the Ap Lei Chau Market, the Sai Ying Pun Market and the Smithfield Market), the percentage of stall tenants paying rentals below 50% of the OMR was 92%, 90%, 85% and 72% respectively; and
- (b) other factors leading to the deficit included the inability to fully recover the air-conditioning cost from stall tenants (see para. 3.19), and the actual number of vacant stalls in some of the bigger markets.

3.6 *Disparity in rentals for similar stalls.* Some stall tenants were paying extremely low rentals whereas others renting similar stalls through open auctions were paying higher rentals (see examples in Table 4). This arrangement might have discouraged traders to rent market stalls for business. The low rentals of some stalls might also increase the risk of stall subletting for financial gains (see para. 4.7(a)). The example at Appendix F is a case in point.

Table 4
Examples of disparity in rentals for similar market stalls
(30 June 2008)

Public market	Stall	Trading commodity	Rental (Note)
Ngau Tau Kok Market	Stall 1	Dry goods	\$3,900
	Stall 2		\$128
Sai Wan Ho Market	Stall 3	Dry goods	\$1,202
	Stall 4		\$119
Smithfield Market	Stall 5	Food-related wet goods	\$2,000
	Stall 6		\$112
Tai Shing Street Market	Stall 7	Food-related dry goods	\$3,500
	Stall 8		\$128
To Kwa Wan Market	Stall 9	Fish	\$11,000
	Stall 10		\$2,961
Yan Oi Market	Stall 11	Fish	\$15,000
	Stall 12		\$4,812

Source: FEHD records

Note: The OMRs for individual stalls in each pair were about the same.

3.7 *Stalls not in active business.* The low rentals might also be a reason for some stall tenants renting the stalls for purposes other than running an active retail business. Some might have used the stalls for storage and carried on business in places outside the markets (e.g. the Shau Kei Wan Market — see Appendix B). Others might have used the stalls mainly for bulk sale (e.g. the Kwun Chung Market).

Audit observations and recommendation

Need to devise Government's market rental adjustment mechanism

3.8 In January 2000 when the FEHD was established, the Administration undertook to review and align the different market rental adjustment mechanisms of the Provisional UC and Provisional RC (see para. 3.4(c)) within two years. In July 2000, the FEHD set up an inter-departmental working group to conduct the review. In May 2001, the Administration reported to the LegCo Panel that the letting and operation of market stalls were basically commercial activities and, as a general principle, rental should be set at the OMR. However, since stall rental was at that time significantly below the OMR, the working group considered it desirable to raise the rental to the OMR gradually by phases to minimise the impact on stall tenants.

3.9 The rental adjustment mechanism proposed by the working group was not put into operation as LegCo Panel Members' discussion held in October 2001 concluded that:

- (a) it was not opportune to increase stall rental in view of the then economic downturn and the poor business after the 11 September incident;
- (b) the Administration should consider reducing the stall rental to help stall tenants tide over difficult times; and
- (c) the Administration should take active steps to enhance the business environment of the existing markets to improve their competitiveness, such as providing air-conditioning for market stalls.

3.10 Since 2001, market stall rentals have continued to be frozen with the rental freeze period due to expire on 30 June 2009. However, up to September 2008, the Administration had not brought up any rental adjustment mechanism for the LegCo Panel's consideration. There is a need to devise a suitable and aligned rental adjustment mechanism to deal with stall tenancy renewal cases when they fall due on or after 30 June 2009 (the expiry date of the rental freeze period).

Audit recommendation

3.11 **Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should put up for the LegCo Panel's consideration as soon as practicable a suitable and aligned rental adjustment mechanism.**

Response from the Administration

3.12 The Secretary for Food and Health and the Director of Food and Environmental Hygiene agree with the audit recommendation. They have said that the FHB and the FEHD are reviewing the existing market rental adjustment mechanism and will present findings to the LegCo Panel once ready.

Rates paid on behalf of stall tenants

3.13 The stall tenancy agreements stipulate that stall tenants are responsible for payment of rates in respect of the stalls. Since 2000, the FEHD has paid rates on behalf of the stall tenants of public markets to the RVD (Note 9). However, the FEHD had not recovered from the stall tenants the rates paid on their behalf.

Audit observations and recommendation

3.14 Audit understood that the FEHD adopted the same practice as the Provisional UC and Provisional RC of not recovering rates from the stall tenants. However, such practice is not in accordance with the provisions of the stall tenancy agreements.

Audit recommendation

3.15 **Audit has recommended that the Director of Food and Environmental Hygiene should consult the Secretary for Food and Health and the Secretary for Financial Services and the Treasury on the recovery or the waiver of rates paid for stall tenants in the past years and the future arrangements for rates payment by the stall tenants.**

Note 9: *For the three years 2005-06 to 2007-08, the FEHD had made rates payments of \$67.8 million, with an average of \$22.6 million a year. According to the FEHD:*

- (a) *such rates payments covered both market stalls as well as market offices and other common areas (such as passageways and loading bay); and*
- (b) *the rates for the stalls should be borne by the tenants whereas those for the market offices and common areas should be borne by the FEHD.*

Response from the Administration

3.16 The **Director of Food and Environmental Hygiene** agrees with the audit recommendation and will seek advice from the Department of Justice, the Financial Services and the Treasury Bureau (FSTB) and the RVD on its implementation.

Recovery of air-conditioning cost

3.17 As at June 2008, 31 (30% of the total of 104) public markets were air-conditioned. In 2000, the Administration informed a LegCo Subcommittee (Note 10) that whilst the Government was responsible for the capital costs for installing the air-conditioning system in public markets, the recurrent costs would be borne by stall tenants.

3.18 Based on the result of a review of air-conditioning charges for public markets conducted in June 2008 by the FEHD, Audit noted that of the estimated air-conditioning cost of about \$53 million a year, only \$34 million had been recovered from stall tenants. Taking into account \$8 million being the apportioned air-conditioning cost for vacant stalls, which should be borne by the FEHD, there was a balance of some \$11 (53 – 34 – 8) million a year which had not been recovered.

Audit observations and recommendations

3.19 Audit found that air-conditioning cost of some \$11 million a year had not been recovered due to the following reasons:

- (a) ***No revision of the air-conditioning charges during rental freeze period (\$8 million).*** For 16 air-conditioned markets with the air-conditioning charges subsumed under the stall rentals, the air-conditioning charges have not been revised throughout the rental freeze period since 1999 (see para. 3.4(d)). For another 11 air-conditioned markets with separate charging of air-conditioning charges, the FEHD's practice is to revise the air-conditioning charges upon tenancy renewal. However, most of the tenancy agreements were extended instead of renewed during the rental freeze period (see para. 4.8(c)). As a result, the air-conditioning charges for most of the tenancies had not been revised; and

Note 10: *The Subcommittee was set up under the House Committee of LegCo to follow up on the outstanding capital works projects of the former Provisional UC and Provisional RC.*

- (b) ***Exemption from paying air-conditioning charges for three retrofitted markets (\$3 million).*** In 2000, three public markets (namely the Sha Tin Market, the Yan Oi Market and the Tai Kiu Market) had their air-conditioning retrofitting works completed. In line with the Provisional RC's decision of exempting tenants from paying air-conditioning charges until tenancy renewal and given that there had not been any tenancy renewal since 2000, the FEHD had hitherto not levied on existing stall tenants (except new tenants) any air-conditioning charges.

Audit recommendations

3.20 **Audit has recommended that the Director of Food and Environmental Hygiene should, in consultation with the Secretary for Food and Health and the Secretary for Financial Services and the Treasury, work out an appropriate arrangement for the recovery of air-conditioning cost from stall tenants in the long term. This may include:**

- (a) **separating the air-conditioning charges from the stall rentals (if not yet separated); and**
- (b) **revising the tenancy conditions to allow for annual revision of the air-conditioning charges (instead of allowing revisions only on tenancy renewal).**

Response from the Administration

3.21 **The Director of Food and Environmental Hygiene agrees with the audit recommendations. He has said that:**

- (a) **air-conditioning charges, separated from stall rentals, have been worked out and levied on all tenants of new markets and new tenants since 2002 and 2005 respectively. For sitting tenants, the FEHD will work out an appropriate arrangement for the recovery of air-conditioning cost from them in the long term after consultation with the stakeholders; and**
- (b) **a new tenancy clause has been imposed on new tenants and tenants of new markets since July 2008 to provide for annual revision of air-conditioning charges during a tenancy term. The same tenancy clause will be added to tenancy agreements in respect of stalls in air-conditioned markets upon tenancy renewal.**

PART 4: PROBLEM OF STALL SUBLETTING

4.1 This PART examines the problem of stall subletting in public markets, given that the Government is heavily subsidising the public markets and that stall subletting to make profit is unacceptable.

Day-to-day management

4.2 The FEHD manages the public markets through 19 District Environmental Hygiene Offices (DEHOs) of its three Operations Divisions (responsible for Hong Kong Island and the outlying islands, Kowloon and the New Territories). Each DEHO, headed by a superintendent, is responsible for regulating the operation of the market stalls under its portfolio by enforcing the PHMSO and the tenancy conditions, and supervising the cleansing and security service contractors.

4.3 The DEHOs (or FEHD contractors — Note 11) deploy staff to perform day-to-day management of public markets. These staff generally work in two shifts and report to the DEHOs.

Risk of subletting

4.4 *Subletting of market stalls is not allowed.* According to market stall tenancy agreement, a tenant should not “assign, sublet, transfer or otherwise part with any of the benefits or obligations” under the agreement. If a tenant is found to have sublet his stall, the tenancy agreement will be immediately terminated. Nevertheless, a tenant may either operate his stall personally or engage assistant(s) to run it for him (Note 12). In the latter case, he needs to have his assistant registered (registered assistant — RA) with the relevant DEHO. An Independent Commission Against Corruption (ICAC) review in 2004 (Note 13) reported that:

Note 11: *As at September 2008, the FEHD had outsourced the management of 49 markets in 10 districts to contractors.*

Note 12: *According to the FEHD, market stall operation is a commercial activity. It is permissible under section 5 of the Public Markets Regulation for tenants to engage authorised servant or agent to carry on their business. It is against this background that the FEHD has required assistants of the stall tenants be registered.*

Note 13: *In June 2004, the ICAC completed a review on the “FEHD — Management of Markets”.*

- (a) **as at March 2004, over 50% of the let-out stalls were operated by RAs;**
- (b) most stalls with RAs were operated by these assistants on a permanent basis in the absence of the stall tenants. The FEHD had long suspected that many of these stall tenants had in fact been subletting their stalls to RAs;
- (c) to discourage the malpractice in (b) above, the FEHD required both the tenant and his RA to declare on a form that the engagement was not subletting in disguise. The RA also needed to acknowledge in writing that he understood that all rights and benefits arising from the stall tenancy should belong to the stall tenant and should have nothing to do with him; and
- (d) **so long as the tenants and their RAs kept the subletting deal to themselves, it would be difficult for the FEHD to prove a case of subletting and take action.**

The ICAC recommended that the FEHD should consider, as a matter of principle, requiring stall tenants who were paying concessionary rentals to operate their stalls in person. The ICAC considered that this requirement would make subletting difficult (Note 14).

4.5 The FEHD has laid down the following procedures in the Operational Manual for Markets (Operational Manual) to curb subletting:

Tenancy renewal and power of attorney

- (a) a tenancy should be renewed by the stall tenant who should come to the FEHD office to sign the new tenancy agreement in person;
- (b) should a tenancy be renewed by a representative acting on behalf of the stall tenant who has left Hong Kong or is sick, a power of attorney will generally be accepted as an instrument, provided that documentary proofs (such as medical certificates or used airline tickets) are produced;
- (c) DEHO staff should compile and keep a return on tenancy renewal by the power of attorney with the representative's personal particulars and record of proof to help identify possible subletting activities for follow-up action;

Note 14: *The ICAC recommendation was supported in principle by the FEHD, subject to suitable law amendment and consultation with stakeholders. In the follow-up of the recommendation in 2005, the FEHD considered that the issue needed to be reviewed having regard to the implications and sentiment of stakeholders. As at September 2008, the recommendation had not yet been implemented.*

Registered assistant arrangements

- (d) to ensure that stall tenants and their RAs fully understand their roles and status in conducting business at the market stalls, they are required to sign undertakings (see para. 4.4(c)) to certify that:
 - (i) the RAs are only the tenants' authorised servants/agents;
 - (ii) the tenants and RAs shall keep a proper record of engagement of the RAs (e.g. payment slips);
 - (iii) when called upon by the FEHD, the tenants and RAs shall produce such engagement records for inspection and for making copies; and
 - (iv) the tenants shall immediately notify the FEHD in writing of any cessation of the RA engagement;
- (e) any breach of the undertakings in (d) above, without reasonable excuse, shall render the tenancy agreement terminated by the FEHD;

Stall operator status checking arrangements

- (f) the responsible DEHO staff (or contractors) should check the status of all stall operators (Note 15) at **bi-weekly** intervals and record the results in the Market Stall Operation Inspection Record (**Inspection Record**). Upon detection of unauthorised stall operators, the stall tenant concerned should be invited to register with the FEHD all persons authorised by him. If request for registration is refused, legal action should be taken for contravention of the relevant provisions of section 5 of the Public Markets Regulation (see Note 12 to para. 4.4);
- (g) the responsible DEHO staff (or contractors) should report irregularities and action taken to the DEHO;
- (h) the DEHO supervisory staff should make periodic checks on the Inspection Records; and

Note 15: *The stall operator status checking involves checking the identity of the persons operating the stalls to ascertain if they are the tenants, RAs or unauthorised persons.*

- (i) if a stall tenant is found absent continuously for a period of **six months**, the DEHO staff should ask the tenant for an interview and production of the engagement records of the RAs in order to ensure/document that the stall tenant is in charge of the market stall business.

Audit observations and recommendations

4.6 As at 31 July 2008, of 11,321 let-out stalls, 6,261 stall tenants (55%) had engaged RAs to run their business. As the ICAC commented, so long as the stall tenants and their RAs kept the subletting deal to themselves, it would be difficult for the FEHD to prove a case of subletting and take action. In recent years, the FEHD had identified three cases of improper stall subletting in three different public markets (Note 16). All three cases were revealed upon complaints. The FEHD terminated the stall tenancies in two of the three cases whereas the tenant terminated the tenancies (of two stalls) in the third case (see Note 18 to para. 4.8(b)(ii)). Details of one of the two former cases are shown below for illustration.

Note 16: *As informed by the FEHD in September 2008, in the past three years, the FEHD investigated a total of 44 cases of suspected stall subletting, including 18 cases tipped off by complainants. In 11 cases, stall tenants were interviewed as they had been found absent from their stalls for over six months during the FEHD's bi-weekly inspections. Some of the cases were still under investigation. A total of three improper subletting cases had been identified.*

Case 3

Subletting of a poultry stall at the Yue Kwong Road Market

1. Tenant 1 had been the tenant of a poultry stall since February 1991. The latest tenancy agreement was renewed in February 2000 and successively extended to September 2005.
2. In November 1992, Tenant 1 appointed Assistant 1 as his RA who died in June 1999. In February 2002, Tenant 1 appointed Assistant 2 (Assistant 1's wife) as his RA.
3. In July 2004, the FEHD implemented a voluntary surrender scheme of live poultry retail tenancy, under which all poultry retailers might opt to terminate their tenancies and receive ex-gratia payments. In September 2004, Assistant 2 lodged a complaint with the FEHD that there had been a subletting arrangement between Tenant 1 and Assistant 1 (i.e. her late husband), involving a consideration of \$40,000. She requested the FEHD not to offer the ex-gratia payment to Tenant 1 should he join the scheme.
4. An investigation by the FEHD revealed that:
 - (a) there was a subletting agreement of May 1992 between Tenant 1 and Assistant 1. Although Tenant 1 denied that he had sublet the stall to other persons, he could not produce any evidence, including business registration (BR) certificate, that he had actually operated the stall since May 1992; and
 - (b) based on the BR records kept in the Inland Revenue Department (IRD), the late Assistant 1 had registered his business at the stall (as business owner) since April 1996 until his death in June 1999.
5. The FEHD concluded that there was sufficient evidence to prove that Tenant 1 had sublet the stall to the late Assistant 1 and terminated the tenancy agreement in April 2005.

Source: FEHD records

4.7 The fact that all three cases of improper stall subletting were only revealed upon complaints suggests that there may be loopholes in the FEHD's procedures. Audit has found that the following factors have increased the risk of stall subletting:

- (a) **there is a temptation to sublet given that rentals of some stalls are far below the OMR (see para. 3.3). This is especially the case for those better-sited stalls in vibrant markets;**

- (b) **the RA arrangement has allowed a stall tenant to engage RAs to conduct business for him; and**
- (c) **although stalls are generally not transferable, the FEHD allows a stall tenant to nominate any person (e.g. his RA) for succession to the tenancy after his death (Note 17).**

4.8 Owing to the following reasons, Audit considers that the existing controls to deter subletting are inadequate and may be open to abuse:

- (a) the procedures laid down in the Operational Manual are inadequate. The Manual provides that, upon detection of any unauthorised persons in a stall, the stall tenant concerned is only asked to register with the FEHD all persons authorised by him (see para. 4.5(f)). However, the stall tenant is not penalised and legal action will only be taken against him if he refuses to register his assistant;
- (b) the stall operator status checking procedures in the Operational Manual were not always fully complied with. Audit visits to a number of public markets in June and July 2008 revealed the following inadequacies:
 - (i) Inspection Records (see para. 4.5(f)) and evidence of interviewing tenants and examination of RA engagement records could not always be produced for Audit's examination;
 - (ii) an examination of the Inspection Records of the **Haiphong Road Temporary Market** revealed that inspections were conducted quarterly, instead of bi-weekly as laid down in the Operational Manual. There was no recording of the status of the stall operators (i.e. whether they were the stall tenants, the RAs or unauthorised persons). As a result, Audit could not ascertain if the stall tenants had been absent for long periods and whether the tenants needed to be invited for interview and for production of the engagement records of RAs. Although the Inspection Records of this Market showed no cases of improper subletting in the past five years, Audit found that this Market had a high subletting risk (see Note 18 and para. 4.10); and

Note 17: *According to the FEHD's existing succession policy, only the surviving spouse, off-spring or nominated successor (with probate of the will) of a deceased tenant may be granted approval for succession of the stall.*

Note 18: *In 2005, a tenant of two stalls of this Market was alleged to have run one of the stalls under a partnership. Based on legal advice obtained by the FEHD, the partnership agreement provided by the complainant was prima facie evidence of a breach of the tenancy agreement. During the FEHD's investigation, the tenant terminated the two tenancies himself. In a subsequent open auction, the two stalls were re-let in January 2008 at monthly rentals of \$24,500 and \$27,100 (as compared with the old rentals of \$4,550 and \$600) respectively.*

- (iii) although it was a tenancy condition for a tenant to display at the stall a Notice (bearing the name in English and Chinese characters, with a photograph of the tenant), no such Notice was generally displayed. In the absence of the Notice on display, it would be difficult to conduct checking of the status of stall operators; and
- (c) tenancy renewal should normally provide a good opportunity to verify the status of stall tenants as they are expected to appear in person and sign the new tenancy agreements personally (see para. 4.5(a)). However, during the long period of rental freezes since 1999, the FEHD successively extended the old tenancies instead of renewing them (Case 4 is a typical example). The Operational Manual does not require stall tenants to sign in person the tenancy extensions, nor any checking of tenants' status before tenancy extensions. As a result, for many extended tenancies, the status of stall tenants might not have been verified for years.

Case 4

Successive tenancy extensions

Case particulars

1. Tenant 2 has rented a stall at Choi Hung Road Market since 1988. Tenant 2 last renewed his tenancy agreement in December 1999.
2. Subsequent to the tenancy renewal, the tenancy had been successively extended for 6 times, as follows:
 - 1 January 2003 to 31 December 2003
 - 1 January 2004 to 31 December 2004
 - 1 January 2005 to 30 September 2005
 - 1 October 2005 to 30 June 2006
 - 1 July 2006 to 30 June 2008
 - 1 July 2008 to 30 June 2009
3. As a result, as at July 2008, the tenancy agreement signed in December 1999 was still valid.

Source: FEHD records

4.9 The Business Registration Ordinance (Cap. 310) requires every person who carries on business in Hong Kong to apply for BR within one month from the date of commencement of the business, and to display a valid BR certificate at the place of business. The BR Office of the IRD maintains a Register of businesses registered with the Commissioner of Inland Revenue (Business Register), recording the particulars of the businesses as provided by the persons carrying on business to the Commissioner. The BR provisions also apply to market stalls. As such, the Business Register provides a useful source for checking whether the stall tenants are carrying on the market stall business (i.e. business owners). In other words, it helps detect improper subletting (Note 19). In two of the three FEHD-identified cases of improper stall subletting (see para. 4.6), the FEHD had used the BR records as supporting evidence of subletting.

4.10 In July 2008, Audit selected stalls from four public markets with higher subletting risks (Note 20) for conducting BR search. The results, as shown in Table 5, indicated that for some stalls, the tenants were **not** the business owners. Instead, businesses were carried on by RAs or third parties.

Note 19: *In September 2008, the FEHD informed Audit that according to its experience, the BR record was a useful clue in investigating subletting cases. It was, however, not conclusive evidence. Other evidence might be required to substantiate an allegation of subletting. As in Case 3 of paragraph 4.6, the BR record served as a useful supporting document. Subletting was eventually established on the basis of a subletting agreement made between the tenant and the RA.*

Note 20: *Three of the four markets were selected because they were vibrant ones with many stalls paying rentals far below the OMR. In addition, the Haiphong Road Temporary Market was selected because of its extensive bulk sale/wholesale activities in the mornings and previous complaint of improper subletting in 2005 (see Note 18 to para 4.8(b)(ii)). For each market examined, stalls with greater risk (e.g. stalls better-sited) were selected for BR search.*

Table 5
Results of BR search on stalls examined

Market	BR search of stalls (No.)	Stalls not run by stall tenants		
		Run by RAs (a) (No.)	Run by third parties (b) (No.)	Total (c) = (a)+(b) (No.)
Ngau Tau Kok Market	16	5 (see example at Appendix E)	4	9
Tai Shing Street Market	11	2	4 (see example at Appendix F)	6
Ap Lei Chau Market	11	4	1	5
Haiphong Road Temporary Market	9	5 (see example at Appendix G)	2	7
Total	47 (Note 1)	16	11	27 (Note 2)

Source: *Audit research*

Note 1: *BR records for these 47 stalls were found by matching their shop names and shop addresses.*

Note 2: *Among the stalls for which businesses were carried on by RAs or third parties, two related to poultry stalls warrant urgent attention. This is because the tenants concerned were entitled to surrender the permission to sell live poultry and apply for ex-gratia payment under the buyout scheme announced in July 2008 (see para. 2.17).*

4.11 **Given that the Government is heavily subsidising the public markets, improper subletting of market stalls for profit is unacceptable. Subletting of market stalls is a breach of the tenancy agreement. Audit considers that the FEHD needs to follow up on the suspected cases identified to see if there is subletting involved. There is also an urgent need for the FEHD to make vigorous efforts to step up its controls to deter subletting. Given that this audit covered only a very small sample of market stalls in a few markets, Audit considers that the FEHD needs to conduct similar checking (with the scope expanded, where appropriate) in other public markets, with priority given to those vibrant ones with higher risk of subletting.**

4.12 As a related issue, Audit found that some market stalls did not display any shop signs or BR certificates. For some stalls with shop signs, BR search could not find any records with matching shop names and shop addresses (Note 21). A list of such unmatched stalls has been separately provided to the FEHD for follow-up. **As failure to apply for BR or to display a BR certificate at the stalls would constitute an offence under the Business Registration Ordinance, Audit considers that the FEHD, as the market administrator, should remind stall tenants to comply with the Ordinance.**

4.13 As mentioned in paragraph 4.8(c), successive extensions of tenancies during the rental freeze period are not desirable as the FEHD would miss the opportunity to verify the status of stall tenants. With the continued adoption of the old tenancy agreements for prolonged periods, some tenancy conditions might have become outmoded and the FEHD might also have missed the opportunity to revise or improve the tenancy conditions (e.g. requiring tenants to display BR certificate and providing for the annual revision of the air-conditioning charges). **Audit considers that continuous rental freezes did not necessarily mean that tenancy renewals could not be arranged. As a matter of good market management, the FEHD needs to consider renewing the tenancies, as and when appropriate, instead of repeatedly extending the tenancies.**

Audit recommendations

4.14 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

- (a) **follow up on the suspected subletting cases identified by Audit as reported in paragraph 4.10;**
- (b) **make vigorous efforts to step up the FEHD controls over subletting, including a critical review of the effectiveness of the RA arrangements in the Operational Manual with a view to plugging the loopholes;**
- (c) **conduct checking in other public markets to identify improper subletting, with priority given to those vibrant ones with higher risk of subletting;**

Note 21: *In September 2008, the IRD informed Audit that its regular BR compliance checks found that: (a) sometimes BR certificates were not prominently displayed at business premises; and (b) some shop signs displayed at stalls belonged to previous operators who had already ceased business. Because IRD's BR enquiry system required exact matching of names, unmatched enquiries, based on the shop names (as shown in the shop signs), did not necessarily mean that the business operators had not applied for BR certificates.*

- (d) stipulate in the Operational Manual suitable procedures for tenancy extensions to tighten up the controls (e.g. requiring a tenant to appear in person to sign the extension);
- (e) consider renewing, instead of repeatedly extending, tenancies at an opportune time (e.g. at the end of the current rental freeze in June 2009);
- (f) take steps to ensure that the FEHD/contractor staff do carry out the market stall inspections and supervisory checking as required by the Operational Manual;
- (g) publicise a few blatant subletting cases (with stall tenants having been penalised) to create a deterrent effect; and
- (h) remind stall tenants to comply with the requirements laid down in the Business Registration Ordinance by applying for BR and displaying BR certificates at stalls.

Response from the Administration

4.15 The **Director of Food and Environmental Hygiene** agrees with the audit recommendations. He has said that:

- (a) the FEHD is actively following up on the suspected subletting cases identified by Audit;
- (b) the FEHD will remain vigilant in enforcing measures to guard against subletting and deploy all possible means to collect evidence to substantiate subletting cases. The FEHD will also review current practices and identify room for improvement, such as fine-tuning existing guidelines to make it clear that appropriate enforcement actions will be taken against a tenant who allows his stall to be run by assistants not registered with the FEHD;
- (c) the FEHD agrees with Audit's advice in paragraph 4.13 that the expiry of market tenancies offers an extra opportunity to verify tenants' involvement in running their stalls. The FEHD will explore the practicability of inviting all stall tenants (or their authorised legal representatives) to appear in person to sign the documents upon expiry of tenancies in future, taking into account the time and practical constraints;
- (d) the FEHD has already taken immediate action to remind staff of the need to comply with the Operational Manual fully, and to remain vigilant in conducting supervisory checks; and
- (e) the FEHD agrees that publicising some blatant subletting cases will have a deterrent effect. The FEHD will seek legal advice on how to do so without compromising the privacy and personal data of the tenants and related persons.

PART 5: MANAGEMENT OF A PUBLIC MARKET IN KOWLOON

5.1 This PART examines the FEHD's management of a public market in Kowloon (Market A). Unlike other public markets, the FEHD has outsourced Market A's management and maintenance services (MMS — Note 22) to one of the market tenants.

Market A

5.2 Market A was constructed in 1991 by a private developer under Conditions of Exchange for the Government. The Market was handed over by the Government Property Agency (GPA) to the then UC in 1992 and taken over by the FEHD in January 2000.

5.3 Market A occupies the ground floor (G/F) and the basement of a multi-storey building (development). The G/F, containing 11 stalls, is run as a food court whereas the basement, containing 8 stalls, is run as a public market for trading of specified commodities. Since the commissioning of Market A in 1994, all stalls on the G/F of the Market have been let out to a tenant (**G/F tenant**) and those in the basement to another tenant (**basement tenant**). Both tenants were related parties of the development owner. Their current tenancy agreements would expire in mid-April 2009.

5.4 In 1993, when approving the letting of all Market A's stalls to the two tenants (i.e. the G/F tenant and the basement tenant), the then UC also approved the outsourcing of the Market's MMS to them. The main reason was that the service fees charged by the two tenants were lower than the cost of providing the same service by in-house staff. The two tenants jointly had been the MMS contractors until mid-April 2006 when the FEHD entered into a new MMS contract with the G/F tenant. The tenancy periods always corresponded with the service periods of the MMS contracts. Therefore, the current MMS contract would also expire in mid-April 2009.

Note 22: *Such services include cleansing and security services for the Market, payment of gas/electricity charges and other outgoings for the common areas of the Market, and building maintenance services for the Market and an adjacent refuse collection point.*

Audit observations and recommendations

Need to assess whether Market A is providing active market services

5.5 The Government's original intention of constructing Market A was to provide a proper market to serve nearby residents. Market A was originally operated in the form of a supermarket selling fresh food and general provisions. Because of insufficient business, in 1996, the former UC approved the G/F tenant's proposal of converting the G/F into a food court to enhance viability.

5.6 At present, the G/F of Market A still operates as a food court (see Photograph 4). **As regards the basement, it does not appear to be providing active market services** (see Photograph 5). During an audit visit at 1:45 p.m. on a Friday, the basement stalls were found locked up (see Photographs 6 and 7). According to the notice posted at the stalls, the business hours of these stalls were from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 5:00 p.m. on Mondays to Fridays (which were shorter than the daily operational hours of 6:00 a.m. to 8:00 p.m. allowed for public markets). In April and November 2007, the FEHD Quality Assurance Section reported that the stalls at the basement were not in business. **Audit visited the basement on various occasions from May to July 2008 (when the basement stalls were in business) and found that there was no customer.** Audit also noted that although the basement tenancy agreement specified a variety of trading commodities to be sold at individual stalls, many such commodities (e.g. general groceries, chilled processed meats and sausages, biscuits and baked products, and candies) were found unavailable.

Photograph 4
G/F of Market A



(Food court was in operation)

Photograph 5
Basement of Market A



(Stalls were in business)

Source: Photographs taken by Audit on 4 July 2008 at 12:45 p.m.

Photograph 6
Basement of Market A



(Escalators were turned off and stalls were closed)

Photograph 7
Basement of Market A



(Stalls were not in business)

Source: Photographs taken by Audit on 16 May 2008 at 1:45 p.m.

Remarks: The basement stalls of Market A were closed from 1:00 p.m. to 2:00 p.m. when public market services should normally be available.

5.7 Audit noted that, after a review of the management of Market A, the ICAC informed the FEHD in a letter of July 2008 that:

- (a) joint site visits by the ICAC and the FEHD indicated that none of the stall spaces at the basement was used in accordance with the terms of the tenancy agreement. Cases of anomalies included the absence of manned stalls and using locked up stall spaces for storage purpose, all without the FEHD's consent; and
- (b) notwithstanding the blatant non-compliances in (a) above and that Market A had been subject to daily supervision and routine inspections by DEHO staff, there was no record of any such irregularities having been noted or any follow-up actions taken. The first warning letter in respect of the irregularities was not issued until late April 2008 (Note 23) prior to another visit by the ICAC.

5.8 For more effective contract administration, the ICAC recommended that the FEHD should put in place an effective monitoring system to guard against possible abuse (e.g. unauthorised usage).

Need to avoid single tendering of MMS contracts

5.9 Since 2000, the FEHD has awarded new MMS contracts three times through single tenders, i.e. to the two tenants jointly in 2000 and 2003, and to the G/F tenant in 2006. In seeking the FSTB's approval for waiving the normal open tendering procedures for the MMS contracts of 2003 and 2006, the FEHD said that:

- (a) because many plants and equipment of the Market could only be accessed via private areas of the development, there would be anticipated difficulty for a contractor other than one related to the development owner to carry out daily maintenance services; and
- (b) taking into account the unique nature of Market A, the FEHD considered that the market tenants and the MMS contractor should be of the same entity so as to facilitate the smooth running of both the tenancy agreements and the MMS contract.

Note 23: *In April 2008, the DEHO staff reported for the first time that the stalls at the basement were not in business.*

Regarding (a) above, in September 2008, the GPA informed Audit that the rights and obligations of the owner/occupiers of Market A to gain access to the plants and equipment of the Market in the subject development are governed by the Deed of Mutual Covenant concerned. The Deed provides:

“The right for the Owner and occupiers for the time being of the Market and the Refuse Collection Point with or without servants, workmen and others at all reasonable times on notice (except in case of emergency) to enter into and upon the other parts of the Development for the purposes of carrying out any work necessary for the inspection maintenance and repair of the Market and the Refuse Collection Point and their services and facilities causing as little disturbance as possible.”

In Audit’s view, the arrangement of always awarding Market A’s MMS contracts to the tenants without conducting market tests is not satisfactory.

5.10 In this respect, the ICAC pointed out in its letter of July 2008 (see para. 5.7) that there was an apparent and direct conflict of interest as the tenants were both the sole tenants and the sole management agent of Market A.

Need to critically review desirability of continuing operation of Market A

5.11 Market A was run at a small deficit (Note 24) and the basement did not appear to be providing active market services. **Audit considers that the FEHD needs to critically assess whether there is a need for the continued operation of Market A, particularly the stalls at the basement.** Depending on the outcome, the FEHD may consider taking the following actions:

- (a) if there is still a need to operate Market A, review how the current mode of operation can be improved in the long term. In particular, the FEHD needs to step up its controls over the management of Market A, including how to avoid conflict of interest resulting from the tenants being the MMS contractors; and
- (b) if there is no such need to operate Market A, explore in consultation with the GPA and the Lands Department the alternative gainful use of the market site.

Note 24: *In 2003-04, Market A had a deficit of \$0.9 million. In 2006-07, it still incurred a small deficit of \$0.04 million. The financial results of Market A for 2004-05, 2005-06 and 2007-08 were not available.*

Audit recommendations

5.12 **Audit** has *recommended* that the **Director of Food and Environmental Hygiene** should:

- (a) **critically assess the need for the continued operation of Market A, particularly the stalls at the basement;**
- (b) **if there is still a need to continue operating Market A, take appropriate actions to improve the current arrangements and step up controls over the management of Market A (see paras. 5.8 and 5.11(a)); and**
- (c) **if there is no need to operate Market A, explore in consultation with the Government Property Administrator and the Director of Lands the alternative gainful use of the market site (see para. 5.11(b)).**

Response from the Administration

5.13 The **Director of Food and Environmental Hygiene** agrees that the present contractual arrangement in respect of Market A is far from being ideal. He has said that:

- (a) he appreciates the audit findings and the FEHD will diligently follow up on the recommendations;
- (b) Market A has a rather peculiar configuration, with a considerable part of its plants and equipment located within the development. No MMS could be provided to the Market without gaining access through the development. It is against this background that the MMS contract of Market A was awarded to the G/F tenant who was also a related party of the development owner;
- (c) the MMS contract covers not only Market A but also an adjacent refuse collection point which serves the local community. Therefore, one could not equate the contract value with the management and maintenance expenses for Market A alone;
- (d) the FEHD will review the need to retain Market A taking into account the views of the DC and the local community in the process and work out the way forward; and
- (e) in the interim, the FEHD will also seek to improve the current arrangements and step up controls over the management of Market A as Audit has recommended.

5.14 The **Government Property Administrator** has said that the GPA will assist the FEHD in exploring alternative use of Market A if the FEHD considers that there is no need to retain it.

PART 6: PLANNING OF NEW PUBLIC MARKETS

6.1 This PART examines the planning of new public markets by the FEHD.

New public markets

6.2 The Tai Kok Tsui Market and the Aldrich Bay Market were two recently commissioned public markets after the FEHD had taken over the management responsibility for public markets.

Planning of Tai Kok Tsui Market

6.3 The Tai Kok Tsui Market was part of the Tai Kok Tsui Complex (Note 25), which was one of the projects previously handled by the Provisional UC. In December 2005, the Tai Kok Tsui Market, built at a cost of \$85 million, was commissioned to provide 123 market stalls and 12 cooked food stalls.

6.4 According to the Public Works Subcommittee (PWSC) paper submitted to the FC of LegCo for funding approval in May 2000, the Tai Kok Tsui Market would be used to resite stall tenants/licensed hawkers from four separate facilities (Note 26) in the Yau Tsim Mong District in order to improve the hygienic condition and the environment of the area. Appendix H shows the chronology of key events relating to the development of the Tai Kok Tsui Market.

6.5 For 2006-07, the Tai Kok Tsui Market was operating at a cost of \$8.08 million. Stall rentals collected amounted to \$5.24 million. Without taking into account the costs of land and buildings, the Market was operating at a deficit of \$2.84 million (\$8.08 million less \$5.24 million).

Note 25: *The project was to construct a 10-storey building to provide a public market and cooked food centre on the G/F, 1/F and 2/F, and leisure and cultural facilities on other floors.*

Note 26: *These facilities included the Tai Kok Tsui Temporary Market, the Boundary Street Market, the Canton Road Temporary Cooked Food Bazaar and the Tai Kok Tsui Temporary Cooked Food Bazaar. Upon completion of the Tai Kok Tsui Complex, the four sites occupied by these facilities would be released for open space development.*

Planning of Aldrich Bay Market

6.6 The Aldrich Bay Market (Note 27) was another project previously handled by the Provisional UC. The Aldrich Bay Market was built to serve the needs of the population in the Aldrich Bay area and to resite the on-street hawkers at Kam Wa Street, Tai Tak Street and Mong Lung Street in Shau Kei Wan. The PWSC paper of November 2001 stated that these hawkers' trading activities had created various environmental hygiene problems and the Aldrich Bay Market would help improve the environment. The Market would be constructed on the first level of a Home Ownership Scheme development and the Housing Department (HD) was the project coordinating department.

6.7 In April 2004, the FEHD, having consulted the HD, decided to proceed with the construction of a smaller-size market on the G/F of the building. In August 2008, the Aldrich Bay Market, built at an estimated cost of \$90 million, was commissioned to provide 67 market stalls (Note 28). Appendix I shows the chronology of key events relating to the development of the Aldrich Bay Market.

Audit observations and recommendations

Need to conduct comprehensive viability studies in planning for new markets

6.8 Since 1987, it had been the then UC's policy that **viability** should be a major factor in market construction and operation, and public markets should no longer be built to satisfy resiting commitments, but should be justified by establishing a distinct demand and role for them in a District Plan. To implement the policy, the then UC had adopted the following principles in the construction and design of markets:

Note 27: *The original scope of the project included a public market and other leisure and cultural facilities. Having reviewed the scope, the Administration considered that there was no need for the leisure and cultural facilities.*

Note 28: *Four cooked food stalls in the Market would be opened in November 2008.*

- A market should be placed in a central location within its residential catchment area.
- **There should be an adequate demand in the catchment area to sustain the number of stalls provided in the market.** Due consideration should be given to competition from retail outlets including markets in public and private housing, supermarkets and FPS.
- Competition from on-street hawkers nearby selling wet goods commodities should be eliminated.
- The extent of resiting commitment should be set at a realistic level having regard to viability.

Nevertheless, there were no detailed guidelines on how a viability study should be conducted.

6.9 Audit found that, in the planning of both the Tai Kok Tsui Market and the Aldrich Bay Market, the FEHD had not conducted comprehensive viability studies for the two markets to ascertain whether there would be adequate demand in the catchment areas, as detailed below. There are also indications that the viability of the Tai Kok Tsui Market in the long term may be questionable.

Tai Kok Tsui Market

6.10 In April 1997, the then UC completed a **viability** study on the Tai Kok Tsui Market, taking into account the population in the catchment area, number of supermarkets, FPS and licenced hawkers, and resiting commitments. The study concluded that since the number of public market stalls (to be resited) was 206, the proposed number of stalls in the Market of 170 was well justified from the viability point of view. In May 2000, prior to the FC's funding approval of the Tai Kok Tsui Complex project (see items (c) and (d) at Appendix H), the FEHD reviewed the utilisation rate of existing public market facilities in Mong Kok District (i.e. the average number of patrons per day and the vacancy rate).

6.11 However, Audit noted that a number of key factors (such as demographic mix, local residents' shopping habit/travelling pattern, and opinion surveys of stall operators and customers) for ascertaining whether there would be adequate demand in the catchment area (see para. 6.8) were not included in both the 1997 viability study and 2000 review.

6.12 The Tai Kok Tsui Market was planned to resite stall tenants/licensed hawkers operating at the four separate facilities (see Note 26 to para. 6.4). However, the FEHD had not sought the views of the tenants/hawkers about the resiting plan before seeking funding approval. On 10 May 2000, in its correspondence with the then Environment and Food Bureau, the FEHD said that:

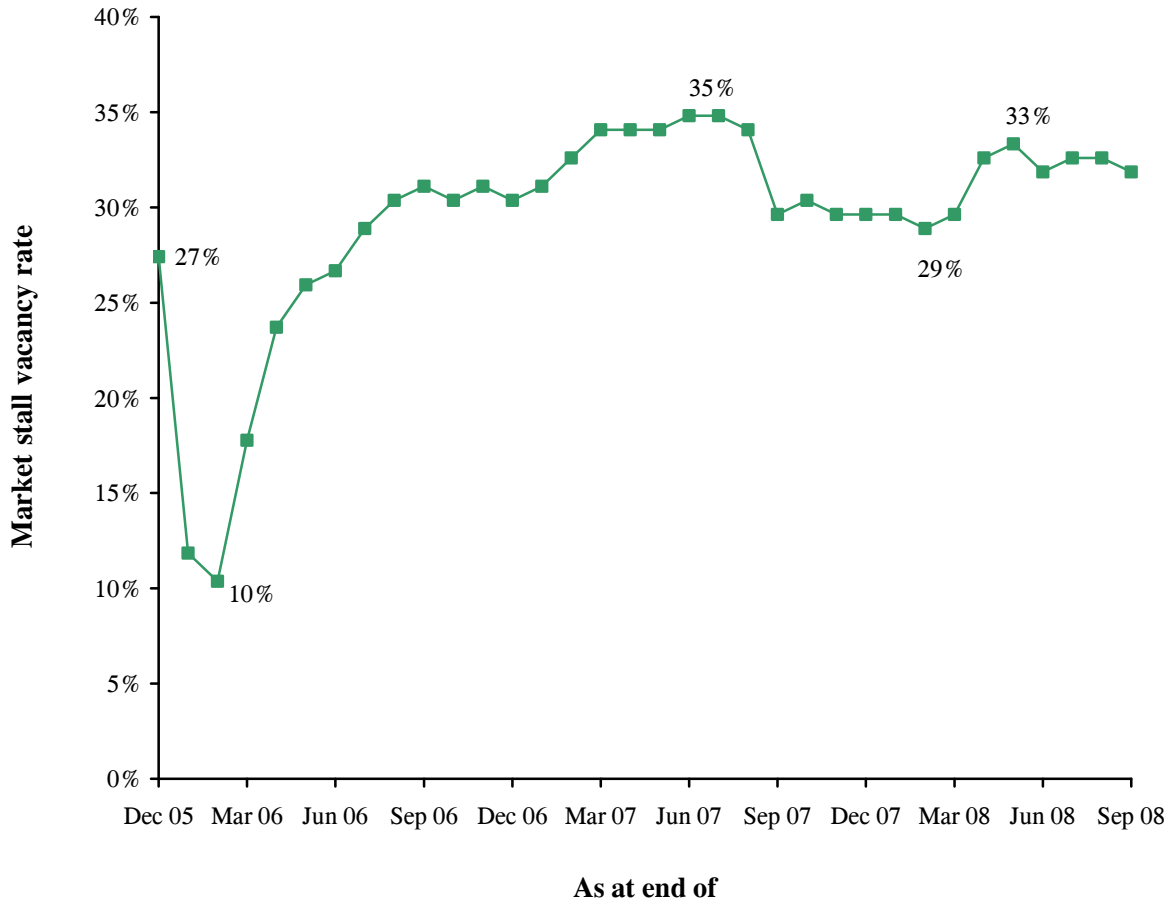
- (a) the resiting plan had not been disclosed to the stall tenants of the Boundary Street Market (one of the four markets about to be replaced); and
- (b) the stall tenants of the Tai Kok Tsui Temporary Market (another market to be replaced) were only informed of the resiting plan some six years ago (i.e. in December 1994).

6.13 As it transpired, there were indications that the number of stalls at the Tai Kok Tsui Market had been over-provided, as shown below:

- (a) in the PWSC paper of May 2000, the Administration estimated that 139 stalls (Note 29) should be provided to meet the resiting requirement. According to the FEHD records, there were about 180 eligible resitees as at May 2000. In November 2005 (shortly before the commissioning of the Market), the number of eligible resitees dropped to 126. Eventually only 109 eligible resitees attended the restricted auction to bid for new stalls and only 98 stalls were successfully let out; and
- (b) the Tai Kok Tsui Market had a stall vacancy rate of 27% in its first month of operation (December 2005). The rate dropped to 10% in February 2006, but rose again and reached the peak of 35% in June and July 2007. Since September 2007, the rate has ranged between 29% and 33% (see Figure 2).

Note 29: *Subsequent to the funding approval in June 2000, the number of market stalls was slightly reduced to 135 due to new design of poultry stalls and deletion of an ice store. Therefore, the total completed number of stalls is 135 (see para. 6.3).*

Figure 2
Stall vacancy rate of Tai Kok Tsui Market



Source: FEHD records

6.14 Without properly seeking the views of tenants/hawkers on the resiting plan and, coupled with the fact that most market developments would take some 8 to 10 years (or even more) from planning to commissioning, there is great uncertainty on whether the planned market facilities could, after construction, be put into optimal use.

Aldrich Bay Market

6.15 At the PWSC meeting of November 2001, the Administration informed LegCo Members that **viability** should be the overriding consideration in planning for public markets and it had followed this principle in planning the Aldrich Bay Market. However, Audit could not find evidence showing that, before the funding submission was made to the

PWSC and the FC, the FEHD had conducted a detailed viability study for the Aldrich Bay Market to ascertain whether there would be adequate demand in the catchment area (see para. 6.8), taking into account such factors as opinions of customers, existence of nearby public market facilities (e.g. the Sai Wan Ho Market and the Shau Kei Wan Market), demographic mix and local residents' shopping habit/travelling pattern.

6.16 In April 2004, the FEHD decided to proceed with the construction of a smaller-size market on the G/F of the building, because the Market would be more financially viable due to its improved accessibility and reduced scale. Accordingly, the FEHD advised LegCo of its decision and stated that it would inform the Eastern DC of the subsequent development progress of the new Market (Note 30). The FEHD emphasised that:

- (a) the FEHD would resite the on-street hawkers to the new Market as planned upon its completion; and
- (b) the commodities sold by the hawkers would be similar to those offered in the new Market. As such, the viability of the new Market would be seriously crippled if the hawkers were allowed to continue their business in the area, which was also against the FEHD's goal to improve the hygienic condition and the environment of the area.

Need to inform LegCo of deviations from original objective

6.17 In 2001, the Aldrich Bay Market was justified to be built, partly because of the need to resite the on-street hawkers at Kam Wa Street and its vicinity (see para. 6.6). However, in early 2008, the FEHD decided **not** to resite the on-street hawkers to the Market (see item (k) at Appendix I). As the decision of not resiting the on-street hawkers to the new Market had deviated from one of the original objectives of building the Market and might affect the Market's viability, the FEHD should preferably have informed the LegCo Panel of the changes. However, Audit noted that the FEHD only reported at a LegCo case conference in 2004 the hawkers' sentiments about the resiting plan (see item (g) at Appendix I). In Audit's view, the FEHD should also have devised an action plan to ensure that the viability of the new Market would not be compromised with the co-existence of the on-street hawkers at Kam Wa Street and its vicinity.

Note 30: *Accordingly, as the project was taken forward, the FEHD reported the progress regularly to the Eastern DC.*

Need to respond to retail trend

6.18 As mentioned in paragraph 2.2, it is costly to build public markets. In the past, public markets were often built to meet hawker resiting needs and there might have been an over-provision of public markets/market stalls in some areas of the territory (see para. 2.15). As a result, some markets had very low usage and were not providing active market services to the community (see paras. 2.6 and 2.7).

6.19 In May 2008, in reporting the preliminary findings of the review on the provision of public markets to the LegCo Panel (see para. 1.7(b)), the FHB and the FEHD also suggested that future planning of new markets would be considered on a case-by-case basis, taking into account not only the population of the area, but also a host of other relevant factors, such as demographic mix, community needs, provision of both public and private market facilities nearby, the number of fresh provision retail outlets in the vicinity, and public sentiments towards preservation of hawker areas in the particular locality.

6.20 Audit welcomes the Administration's suggestion and considers that careful planning of a new market is very important to ensuring its long-term viability. Since it takes many years to plan and build a public market, there may be significant changes in the retail trend which may affect the viability of a new market under planning. Audit therefore considers that the FEHD needs to regularly review the retail trend and, if required, conduct further viability studies on new markets under planning, having regard to the social and economic factors mentioned in paragraph 6.19. The FEHD also needs to incorporate suitable flexibility into the market design so that the new market could cope with changes in the retail trend and remain viable in the long run.

Audit recommendations

6.21 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

- (a) **given the high cost of constructing a new public market, strictly adhere to the principle that the construction of any new market will only be considered after the conduct of a comprehensive viability study;**
- (b) **devise clear guidelines on how a viability study should be conducted;**
- (c) **before making any important decision which may constitute a deviation from the original objectives of building a new market (e.g. the decision of not resiting the on-street hawkers to the Aldrich Bay Market), consider whether LegCo needs to be informed and devise an action plan to ensure the viability of the new market;**

- (d) **monitor closely the usage of newly commissioned markets, particularly the Tai Kok Tsui Market, and if necessary, take measures to improve their viability and usage;**
- (e) **in planning a new market, seek the views of affected tenants/hawkers and make a more realistic estimate of the number of tenants/hawkers who will eventually move to the new market; and**
- (f) **regularly review the retail trend and, if required, conduct further viability studies on new markets under planning, and incorporate suitable flexibility into the market design so that the new markets could cope with changes in the retail trend and remain viable in the long run.**

Response from the Administration

6.22 The **Director of Food and Environmental Hygiene** agrees with the audit recommendations. He has said that:

- (a) the FEHD recognised that certain relevant considerations suggested by Audit in paragraph 6.11 might not have been taken into account fully in the viability study/assessment for the Tai Kok Tsui Market and the Aldrich Bay Market. As stated in the LegCo Panel paper of May 2008, the FEHD proposed that future planning of new markets should be considered on a case-by-case basis, taking into account a host of relevant factors (see para. 6.19);
- (b) as Audit pointed out rightly in paragraph 6.14, market development projects normally take 8 to 10 years (or longer) from planning to commissioning. According to general procedures, consultation should be conducted at the planning stage of the market. The reference value of the consultation outcome diminishes over time as the external environment changes and tenants adjust their plans. To cater for different scenarios that may arise, sometimes further viability studies may need to be conducted before finalising the internal layout of new markets to ensure viability;
- (c) as regards the audit recommendation in paragraph 6.21(d), a number of market promotion initiatives (such as festive decorations and cooking demonstrations) have been implemented in newly commissioned markets; and
- (d) as regards the audit recommendation in paragraph 6.21(e), while surveys can be conducted at the planning stage, the views expressed by the tenants/hawkers are not binding on them and can only be used for reference.

**Eleven public markets with operating deficits of over \$5 million
(2006-07)**

Public market	Operating deficit (\$ million)
Smithfield Market	8.69
Shek Tong Tsui Market	7.92
Sai Ying Pun Market	7.47
Lockhart Road Market	6.41
Luen Wo Hui Market	6.38
Pei Ho Street Market	5.69
Sheung Wan Market	5.61
Ap Lei Chau Market	5.56
Kwun Chung Market	5.51
Chai Wan Market	5.20
Java Road Market	5.18

Source: FEHD records

Shau Kei Wan Market

1. The Shau Kei Wan Market, located at Shau Kei Wan Main Street East, was commissioned in 1973. The Market has two storeys with a total of **87 stalls**. As at May 2008, 52 stalls were let out and 35 stalls were vacant.

2. Based on visits to the Market on various days from May to July 2008, Audit found that the number of stalls in business, even at peak hours, was low:

Audit visit		No. of stalls in business	Remarks
Date (2008)	Time		
16 May	10:00 a.m.	11 (8 on G/F and 3 on 1/F)	Only 11 stalls (21% of 52) were in business and most of them appeared to be solely on bulk-sale activities. 41 let-out stalls (79%) were not in business, most of which were either locked up or piled up with things (see vacant and non-trading stalls in Photographs B1 and B2).
11 July	4:30 p.m.	8 (8 on G/F and 0 on 1/F)	44 let-out stalls (85%) were not in business.
13 July	8:30 a.m.	11 (8 on G/F and 3 on 1/F)	41 let-out stalls (79%) were not in business.

3. Audit noted that although the Market is located within a densely populated catchment area, it had very low patronage. In contrast, fixed-pitch hawker stalls, FPS and supermarkets in its neighbourhood (in less than 2-minute walk) were crowded with people (see Photograph B3). The Market looked inactive and quiet. Even at peak hours (say, at around 10:15 a.m.), over a period of 15 minutes, Audit found **no customer** entering the Market as compared with totals of 36 and 52 customers entering two of the supermarkets in the vicinity. In the mornings, Audit observed a few traders transporting commodities from the Market using trolleys to fixed-pitch hawker stalls in the vicinity.

4. For 2006-07, the Market was run at an operating **deficit of \$2.05 million** (without taking into account the costs of land and buildings).

5. As at May 2008, rentals for the 52 let-out stalls ranged from \$278 to \$1,826 a month, with 28 (54%) at rentals of less than \$500 a month and 12 (23%) at \$500 to \$1,000 a month.

Photographs B1 to B3
(Taken by Audit on 16 May 2008 at 10:00 a.m.)

B1.



(Stalls were mostly vacant on the G/F)

B2.



(Vacant and non-trading stalls on the 1/F)

B3.



Kam Wa Street, Shau Kei Wan
(Within 2-minute walk from the Market)

Audit comments

Given the very low usage of the Shau Kei Wan Market, Audit considers that the Market is not providing active market services.

Source: FEHD records and Audit visits

Tsuen King Circuit Market

1. The Tsuen King Circuit Market, located in Tsuen Wan, was commissioned in 1990. The Market has two storeys with a total of **248 stalls**. As at May 2008, 123 stalls were let out and 125 stalls were vacant.

2. However, based on audit visits to the Market on various days from May to July 2008, Audit found that the number of stalls in business, even at peak hours, was low:

Audit visit		No. of stalls in business	Remarks
Date (2008)	Time		
28 May	10:00 a.m.	47 (22 on G/F and 25 on 1/F)	76 let-out stalls (62% of 123) were not in business. The majority of them were simply locked up or piled up with things (see vacant and non-trading stalls in Photographs C1 to C3).
9 June	11:15 a.m.	30 (10 on G/F and 20 on 1/F)	93 let-out stalls (76%) were not in business.
18 July	4:45 p.m.	43 (14 on G/F and 29 on 1/F)	80 let-out stalls (65%) were not in business.

3. Audit noted that stalls in business were scattered within this large two-storey Market. Most of the vacated stalls were on the G/F. As a whole, the Market did not attract customers. Even at peak hours (say, at around 11:20 a.m. on 9 June), Audit found **less than 15 customers** in the Market.

4. For 2006-07, the Market was run at an operating **deficit of \$2.88 million** (without taking into account the costs of land and buildings).

5. As at May 2008, rentals for 123 let-out stalls ranged from \$180 to \$2,940 a month (excluding a newspaper stall renting at \$7,900 a month), with 90 stalls (73%) at rentals of less than \$500 a month and 24 stalls (20%) at \$500 to \$1,000 a month.

**Photographs C1 to C3
(Taken by Audit on 28 May 2008 at 10:00 a.m.)**

C1.



(Vacant stalls on the G/F)

C2.



(Non-trading stalls on the 1/F)

C3.



(Non-trading stalls on the 1/F)

Audit comments

Given the very low usage of the Tsuen King Circuit Market, Audit considers that it is not providing active market services.

Source: FEHD records and Audit visits

**Measures/improvements to be implemented
in four public markets**

- (a) ***Mong Kok Market.*** The FEHD secured the support of the Yau Tsim Mong DC in 2006 to close this Market in view of its low occupancy rate. The DC suggested that the Government should explore the provision of enhanced ex-gratia payments to the affected tenants. The Administration considered the request carefully, but has concerns about its implications to future cases of market closure. In view of the persistently low occupancy of the Market, the FEHD will consult the DC again in the context of the current review.

- (b) ***Shau Kei Wan Market.*** The FEHD is following up on Audit's findings. If there is evidence of tenants holding hawkers licences or conducting wholesale business, the FEHD will take action to correct such irregularities. The FEHD is also actively exploring measures to enhance the attractiveness of this Market, such as widening the corridors and allowing space for exhibition activities.

- (c) ***Tsuen King Circuit Market.*** The FEHD is actively exploring measures to improve the operational efficiency and cost-effectiveness of this Market, including relocation of the stalls on 1/F to G/F so that the former could cease to be part of a public market and be released for other purposes.

- (d) ***Plover Cove Road Market.*** The FEHD is actively exploring measures to improve the operational efficiency and cost-effectiveness of this Market, including demolition of vacant stalls to provide a sitting area and possible introduction of service trades into the Market.

Source: FEHD reply of September 2008

Stall 13 at the Ngau Tau Kok Market

1. The Ngau Tau Kok Market is a very big and vibrant market. It is very well-patronised (see Photograph E1).

Case particulars

2. In September 1981, Stall 13 at this Market was rented by Tenant 3 for the sale of poultry. He appointed Assistant 3 as the RA of his stall in January 1997. Tenant 3 died in May 2002. His wife (Tenant 4) succeeded the tenancy of the stall in January 2003 and continued to appoint Assistant 3 as the RA of her stall.

3. As at July 2008, Tenant 4 was still the tenant. The monthly rental of the stall was about \$7,500 (93% of the OMR).

4. Based on BR search in July 2008, Audit found that Assistant 3 (i.e. the RA) had been the business owner of the stall for more than 10 years (since January 1997).

Audit comments

Based on the FEHD records, Tenants 3 and 4 were not active in operating the stall and might not be in charge of the business. There was however no evidence on record showing that the FEHD had ever asked Tenant 4 for an interview or production of the engagement records of the RA (para. 4.5(i) of the Report). The BR search result has indicated a need to investigate whether subletting is involved in this case.

Photograph E1 — Ngau Tau Kok Market
(Taken by Audit on 2 August 2008 at 11:00 a.m.)



Source: FEHD records and Audit research

Stalls 14 to 17 at the Tai Shing Street Market

1. The Tai Shing Street Market is a big and vibrant market in Wong Tai Sin (see Photograph F1).

Case particulars

2. Based on the FEHD records, Stalls 14 to 17 were rented by four different tenants. However, the 4 stalls appeared to be operating as a single business entity.

3. As at July 2008, the monthly rentals for Stalls 14, 16 and 17 were \$128 (4% of the OMR) each. The rental for Stall 15 was \$1,135 (30% of the OMR).

4. Based on BR search in July 2008, Audit found that all four stalls had been run by a third party (since 2000 for Stall 14, 2007 for Stall 15 and mid-2008 for Stalls 16 and 17).

Audit comments

Given that the market rentals for Stalls 14 to 17 were far below the OMR, there was a great temptation to sublet. The BR search results also show a need to investigate whether any subletting is involved in this case.

Photograph F1 — Tai Shing Street Market
(Taken by Audit on 10 August 2008 at 4:15 p.m.)



Source: FEHD records and Audit research

Stalls 18 and 19 at the Haiphong Road Temporary Market

1. The Haiphong Road Temporary Market is located at a prime site in Tsim Sha Tsui. There are extensive bulk sale/wholesale activities in the mornings (see Photographs G1 and G2).

Case particulars

2. Since 1978, Tenant 5 has rented 8 stalls at this Market. Two stalls (Stalls 18 and 19) were selected by Audit for examination. From September 1999 to June 2008, the tenancy agreements for Stalls 18 and 19 were renewed twice and the tenancy periods were extended 7 times. Audit found that the 2 tenancy renewals and 5 (out of 7) tenancy extensions were **not** signed by **Tenant 5 personally**.

3. Tenant 5's wife (Tenant 6) had also rented 3 stalls at the Market since 1978. For over 20 years from November 1987 to June 2008, tenancy agreements of the 3 stalls were renewed 6 times, and the tenancy extended 7 times. Audit however found that 11 of the 13 tenancy renewals/extensions were **not** signed by **Tenant 6 personally**.

4. Based on the FEHD records, Audit found that:

- (a) both Tenants 6 and 5 had appointed **Assistant 4** as their RAs for the stalls since 1999 and 2001 respectively. (Tenant 5 made the appointment through an authorised representative under a power of attorney arranged abroad);
- (b) since 2003, Tenants 5 and 6 had further authorised Assistant 4 to act on their behalf in all matters relating to the stalls/tenancies (through powers of attorney). Up to June 2008, Assistant 4 renewed/extended tenancies on behalf of Tenant 5 on five (of six) occasions, and on behalf of Tenant 6 on all six occasions;
- (c) there were indications that Tenant 6 might have been away from Hong Kong for long periods, as she signed most powers of attorney **abroad**; and
- (d) as at June 2008, monthly rentals of \$13,529 were charged in total for the 11 stalls rented (ranging from \$1,066 to \$2,345). Adjacent stalls of similar sizes in the same Market were however let out in 2008 at monthly rentals of \$5,600 to \$9,000 each.

5. Based on BR and company registration search in July 2008, Audit found that Assistant 4 was running business at 4 of the 8 stalls rented by Tenant 5 (including Stalls 18 and 19) under a company with himself as both the controlling shareholder and director.

Audit comments

The BR search result has indicated a need to investigate whether subletting is involved in this case. The frequent absence of Tenants 5 (over 8 years) and 6 (over 20 years) to sign the tenancy renewals/extensions personally also suggested that they might no longer be in charge of the stalls. There was however no evidence on record to show that the FEHD (or the former UC/Provisional UC) staff had raised queries. They had so far not reported any irregularities.

**Photographs G1 and G2 — Haiphong Road Temporary Market
(Taken by Audit on 2 June 2008 at 9:40 a.m.)**

G1.



G2.



Source: FEHD records and Audit research

Development of the Tai Kok Tsui Market

Date	Key events
(a) April 1997	The then UC completed a viability study on the construction of a new market within the Tai Kok Tsui Complex and concluded that the new market was well justified in replacing the Tai Kok Tsui Temporary Market, the Boundary Street Market and the Tai Kok Tsui Cooked Food Bazaar.
(b) January 2000	The Administration advised the LegCo Subcommittee (see Note 10 to para. 3.17 of the Report) that the Tai Kok Tsui Complex project was worthy of support.
(c) May 2000	The Administration requested the PWSC to recommend to the FC for the direct injection of the Tai Kok Tsui Complex project to Category A of the Public Works Programme.
(d) May and June 2000	The PWSC endorsed and the FC approved the project.
(e) January 2001	Construction of the Tai Kok Tsui Complex began.
(f) August 2005	The construction works of the Tai Kok Tsui Complex were completed.
(g) December 2005	The Tai Kok Tsui Market was commissioned.

Source: FEHD records

Development of the Aldrich Bay Market

Date	Key events
(a) September 2000	The FEHD completed a Preliminary Project Feasibility Study on the proposed Aldrich Bay Market. It was stated in the Study Report that the new Market was required to meet the demand of the new population and to resite the on-street hawkers at Kam Wa Street and its vicinity to resolve the environmental hygiene problems.
(b) December 2000	The Administration informed the LegCo Subcommittee that, after a review, it considered that the Aldrich Bay Market project should proceed, having regard to the views of DC members, likely population growth and potential commercial viability.
(c) June 2001	The FEHD conducted a survey on the retail outlets available in the Aldrich Bay area and considered that the provisions would not be adequate to meet the market demand of the area.
(d) November and December 2001	The PWSC endorsed and the FC approved funding for the project.
(e) September 2003	Piling works of the project commencing in February 2002 were completed.
(f) January and February 2004	<p>Following the issue of the Director of Audit's Report No. 41 of October 2003 (see para. 1.5 of the Report), the FEHD considered it necessary to review the general demand for market facilities, including the Aldrich Bay Market project. Therefore, the FEHD conducted two questionnaire surveys to solicit the views of those on-street hawkers trading at Kam Wa Street and its vicinity, and the opinions of patrons of the on-street hawkers.</p> <p>The survey results showed that 89% of the on-street hawkers were not willing to carry out their business in the new Market and only 16% of the patrons would choose to go to the new Market if the on-street hawkers were not removed.</p>

Appendix I
(Cont'd)
(paras. 6.7 and 6.17 refer)

Date	Key events
(g) March 2004	<p>Based on the survey results, the FEHD had doubts on the viability of the new Market and planned to abandon the project, and informed the Eastern DC accordingly. However, the Eastern DC strongly objected to its abandonment.</p> <p>In a LegCo case conference held on the project, five LegCo Members unanimously requested the FEHD to continue with the project to meet the demand of the new population. They considered that the issue of resiting on-street hawkers to the new Market should be considered separately.</p>
(h) April 2004	<p>The FEHD decided to proceed with the construction of a smaller-size market on the G/F of the building (see para. 6.7 of the Report). Thereafter, the FEHD continued to review the project design with the HD and, as a result, the number of stalls was reduced from 131 to 103.</p>
(i) January 2007	<p>The then Health, Welfare and Food Bureau and the FEHD reviewed the market design and decided to carry out some conversion works for enhancing the spaciousness inside the Market and improving the Market's overall attractiveness. As a result, the total number of stalls was reduced from 103 to 71.</p>
(j) October 2007	<p>The construction works of the Market (except 4 cooked food stalls) were completed.</p>
(k) January 2008	<p>12 Eastern DC members visited the new Market and suggested areas for improvement. The FEHD also informed DC members of the decision of not resiting the on-street hawkers to the Market.</p>
(l) March 2008	<p>The Eastern DC discussed the new Market with the FEHD which undertook to step up enforcement to improve the operating environment of Kam Wa Street and its vicinity.</p>
(m) July 2008	<p>All the 67 stalls available (excluding 4 cooked food stalls which would only be available in November 2008) were successfully let out in an open auction held by the FEHD at a total monthly rental of \$744,000, which exceeded the upset prices (i.e. OMR) by \$357,200 (92%).</p>
(n) August 2008	<p>The Aldrich Bay Market was commissioned.</p>
(o) October 2008	<p>The 4 cooked food stalls were put up for open auction. Two were let out at upset prices. The letting of the other two was not successful.</p>

Source: FEHD records

Acronyms and abbreviations

Audit	Audit Commission
BR	Business registration
CFMs	Cooked food markets
DCs	District Councils
DEHOs	District Environmental Hygiene Offices
FC	Finance Committee
FEHD	Food and Environmental Hygiene Department
FHB	Food and Health Bureau
FPS	Fresh provision shops
FSTB	Financial Services and the Treasury Bureau
G/F	Ground floor
GPA	Government Property Agency
HD	Housing Department
ICAC	Independent Commission Against Corruption
IRD	Inland Revenue Department
LegCo	Legislative Council
MMS	Management and maintenance services
OMR	Open Market Rental
PAC	Public Accounts Committee
PHMSO	Public Health and Municipal Services Ordinance
PWSC	Public Works Subcommittee
RA	Registered assistant
RC	Regional Council
RVD	Rating and Valuation Department
UC	Urban Council