

CHAPTER 9

Marine Department

<p>Provision of local services by the Marine Department</p>
--

**Audit Commission
Hong Kong
26 October 2012**

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. 59 of the Director of Audit contains 10 Chapters which are available on our website at <http://www.aud.gov.hk>

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

PROVISION OF LOCAL SERVICES BY THE MARINE DEPARTMENT

Contents

	Paragraph
EXECUTIVE SUMMARY	
PART 1: INTRODUCTION	1.1 – 1.3
The 1995 audit	1.4
Audit review	1.5
Acknowledgement	1.6
PART 2: MANAGEMENT OF PUBLIC CARGO WORKING AREAS	2.1 – 2.5
Re-tendering of vacant berths	2.6 – 2.16
Audit recommendations	2.17
Response from the Administration	2.18 – 2.19
Redeployment of posts	2.20 – 2.24
Audit recommendations	2.25
Response from the Administration	2.26
Automated vehicle entry/exit control system	2.27 – 2.35
Audit recommendations	2.36
Response from the Administration	2.37

	Paragraph
Financial performance	2.38 – 2.40
Audit recommendations	2.41
Response from the Administration	2.42 – 2.43
Enforcement of licence and permit conditions	2.44 – 2.49
Audit recommendations	2.50
Response from the Administration	2.51
PART 3: SURVEYING AND LICENSING OF VESSELS	3.1
Statutory requirements	3.2
Roles of the Marine Department	3.3 – 3.4
Monitoring of authorised surveyors’ performance	3.5 – 3.8
Audit recommendations	3.9
Response from the Administration	3.10
Provision of plan examination and survey services	3.11 – 3.13
Audit recommendation	3.14
Response from the Administration	3.15
Vessels without valid licences	3.16 – 3.26
Audit recommendations	3.27
Response from the Administration	3.28
Follow-up action on vessels operating without valid licences	3.29 – 3.33
Audit recommendation	3.34
Response from the Administration	3.35

	Paragraph
PART 4: MANAGEMENT OF PRIVATE MOORINGS	4.1
Application for private moorings	4.2 – 4.4
Audit recommendation	4.5
Response from the Administration	4.6
Control of private moorings	4.7 – 4.13
Audit recommendations	4.14
Response from the Administration	4.15
 PART 5: MARINE ACCIDENT INVESTIGATIONS	 5.1
Investigation of accidents	5.2 – 5.3
Production of investigation reports	5.4 – 5.10
Audit recommendations	5.11
Response from the Administration	5.12
Monitoring implementation of recommendations	5.13 – 5.14
Audit recommendations	5.15
Response from the Administration	5.16
 Appendices	 Page
A : Marine Department: Organisation chart (extract) (30 September 2012)	64
B : Acronyms and abbreviations	65

PROVISION OF LOCAL SERVICES BY THE MARINE DEPARTMENT

Executive Summary

1. The Marine Department (MD) operates five programmes: Infrastructure, Port Services, Local Services, Services to Ships, and Government Fleet. Under the Local Services Programme, the MD is responsible, among other things, for managing public cargo working areas (PCWAs); managing typhoon shelters; managing private moorings; providing licensing services; enforcing the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); and under the Services to Ships Programme, conducting marine accident investigations that occurred within Hong Kong waters. As at March 2012, the MD had about 310 staff delivering these local services. The Audit Commission (Audit) has recently conducted a review of the MD's provision of local services and marine accident investigations.

Management of public cargo working areas

2. PCWAs are designated waterfront areas provided by the Government as common user facilities for loading and unloading of cargoes between barges and goods vehicles. At present, there are six PCWAs providing 129 berths. In 2011-12, the MD collected berthing fees of \$62 million, representing 50% of MD's total revenue from the operation of PCWAs. Since 1998, the MD has allocated PCWA berths through tenders. The system is generally business-friendly. However, Audit identified a number of issues that could be improved to enhance the overall performance, compliance with permit/licence conditions, safety, and operational efficiency.

3. *Re-tendering of vacant berths.* The Government is committed to devising an open, fair and economically viable system for the allocation of PCWA berths. From time to time, the MD conducted re-tendering exercises to dispose of vacant berths. Audit examination has revealed that the MD needs to explore ways of enhancing the transparency in re-tendering vacant berths. Audit has also noted an incident where a successful bidder was able to relinquish his berth obtained at a high

Executive Summary

bid price (after learning other successful bid prices at the end of a tendering exercise) and through a related company re-tender for the same relinquished berth at a lower bid price. The re-tendering was held after the Financial Services and the Treasury Bureau had reminded the MD to review the tender terms to minimise such risk. The MD needs to review the tender terms to prevent this from recurring.

4. *Automated vehicle entry/exit control system.* All six PCWAs provide waiting and parking areas for loading and unloading of cargoes. A vehicle driver using a PCWA for loading or unloading of cargo, waiting or parking is required to pay a vehicle entry ticket fee. This service generated a fee of \$49 million, representing 40% of the MD's total revenue from the operation of PCWAs in 2011-12. In 2000 and 2001, the MD installed automated vehicle entry/exit control systems at four PCWAs in order to save staff cost and improve operational efficiency. However, Audit has found that the management of the vehicle entry/exit control system needs improvement. The automated systems of two PCWAs in the New Territories had been out of service since June 2009 and September 2011 respectively. Moreover, two PCWAs on Hong Kong Island (which had been operating at a total deficit of \$8.38 million in 2010-11) were not equipped with automated systems. Installing and properly maintaining automated systems at all PCWAs could improve the control, cost-effectiveness, and the financial performance of the PCWAs.

5. Audit has also noted a few enforcement issues that may have safety implications. These include the mooring of vessels that exceeded the permitted berth width and the stacking of containers that posed potential hazard.

Surveying and licensing of vessels

6. The law requires that all local vessels (except those specifically exempted) must go through a survey to ensure compliance with the statutory safety and environmental protection requirements. The survey work may be carried out by the MD or a competent surveyor authorised by the MD for low-risk vessels before a licence is issued. In 2011-12, the MD collected licence fees of \$36.8 million and survey and plan examination fees of \$16.8 million.

Executive Summary

7. *Provision of plan examination and survey services.* The MD issued about 2,700 Certificates of Survey in 2011. While the number of vessels surveyed by authorised surveyors has increased from 627 in 2007 to 1,552 in 2011, the MD still faced challenges in performing its dual role as a survey service provider and a regulator. For example, in 2010-11 and 2011-12, the MD could not fully meet the pledged time targets in approving the plans for new building and modification of local vessels. From 2009 to 2011, the MD's quality checks on authorised surveyors' work also fell short of the laid-down requirement. Audit noted that low-risk vessels constituted a substantial part of the MD's survey work. There appears to be scope for the MD to leave more low-risk survey work to authorised surveyors so that it can focus more on its regulatory functions.

8. *Vessels without valid licences.* Under the law, a vessel owner who fails to license his vessel commits an offence. The MD conducts harbour patrols and will take prosecution action against owners of vessels found without valid licences. As at May 2012, 15,672 local vessels had valid licences while the licences of 14,517 other local vessels had expired. Besides, some owners' addresses have not been kept up-to-date. Of the expired licence cases, 3,310 vessels (23%) were also overdue for surveying. These vessels might pose a safety threat if still in use in Hong Kong waters. Besides harbour patrolling, the MD can also make use of its records to monitor some vessels which may be operating without valid licences. However, there were instances that the MD had not taken prompt follow-up action on such vessels.

Management of private moorings

9. According to the law, no person shall lay a private mooring anywhere in Hong Kong waters except in the place specified in the permission granted by the Director of Marine. In 2011-12, the MD derived revenue of \$16.1 million from letting out private mooring spaces. Audit found that there were cases that mooring owners had cancelled the licences of their designated vessels. However, the MD had not taken action to require the owners to remove their moorings and vacate the spaces for the MD's re-allocation to applicants on the waiting lists. There is also a need to publicise more proactively vacant mooring spaces. In areas where there are waiting lists for mooring spaces, there is a risk of subletting by taking advantage of the provision in the Shipping and Port Control Regulations (Cap. 313A) that a mooring can be used by a non-designated vessel if there is consent from the mooring owner. The guidelines and administrative measure for regulating mutual personal transfer of private moorings need to be reviewed.

Executive Summary

Marine accident investigations

10. The purpose of the MD's marine accident investigations is to determine the circumstances and the causes of the accidents with the aim to improve safety of life at sea and to avoid similar accidents from happening in the future. It is not intended to apportion blame or liabilities towards any individual or organisation. Accidents are categorised according to their seriousness and investigations are then conducted to ascertain the causes and the added measures required to improve the safety at sea and prevent recurrence. Audit noted cases of long delays in completing the investigations due to heavy workload of the investigation officers, case complexity and the time required for response from parties concerned during the investigation process. The actual times taken for completing 85% of the 34 accident investigation reports during January 2008 to May 2012 ranged from 33 to 164 weeks (averaging 69 weeks). On 1 October 2012, a Very Serious vessel collision incident occurred near Lamma Island resulting in a number of fatalities and injuries. According to the MD, it will endeavour to complete its investigation as early as possible.

Audit recommendations

11. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Marine should:**

Management of PCWAs

- (a) **review the tender terms with a view to minimising the risk of an operator surrendering his berth obtained at a high bid price and re-tendering for the surrendered berth at a lower bid price;**
- (b) **expedite action to replace the unserviceable vehicle entry/exit control systems for the two PCWAs in the New Territories;**
- (c) **consider installing suitable automated vehicle entry/exit control systems for the two PCWAs on Hong Kong Island;**

Executive Summary

Surveying and licensing of vessels

- (d) **conduct a review of the MD's survey work arrangements and requirements with a view to enhancing efficiency and effectiveness in performing its dual role as a survey service provider and a regulator;**
- (e) **take more targeted measures to tackle those expired licence cases where the vessels concerned are also overdue for surveying;**
- (f) **put in place monitoring procedures to ensure that any information on vessels which may be operating without valid Certificates of Survey and operating licences is promptly and effectively followed up;**

Management of private moorings

- (g) **require owners concerned to remove private moorings not in use and vacate the spaces for the MD's re-allocation to applicants on the waiting lists;**
- (h) **conduct investigations to ascertain the extent of the problem of subletting private moorings and seek legal advice on the possible enforcement actions that can be taken against subletting cases so identified; and**

Marine accident investigations

- (i) **as early as possible, complete the MD's investigations of the Very Serious accidents so as to draw lessons for improving the safety at sea and to prevent recurrence.**

Response from the Administration

12. The Administration agrees with the audit recommendations.

PART 1: INTRODUCTION

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

Background

1.2 The Marine Department (MD) operates five programmes: Infrastructure, Port Services, Local Services, Services to Ships, and Government Fleet. Under the Local Services Programme, the MD is responsible for providing local services to non-ocean going vessels, i.e. locally licensed and river-trade vessels (Note 1), to ensure their safe and efficient use of Hong Kong waters. The MD's work in this area includes:

- (a) managing public cargo working areas (PCWAs);
- (b) providing surveying and licensing services;
- (c) enforcing maritime legislation, such as the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and the Shipping and Port Control Ordinance (Cap. 313);
- (d) managing private moorings; and
- (e) conducting port formalities.

The MD also conducts marine accident investigations that occurred within Hong Kong waters under the Services to Ships Programme.

Note 1: *River-trade vessels are those employed in trading between Hong Kong and ports in the vicinity (including the Pearl River, Macau and other inland waters in Guangdong and Guangxi). They are either licensed in Hong Kong or registered in the Mainland China or Macau, and issued with a certificate by the relevant government authority permitting their trading to Hong Kong.*

Introduction

1.3 For 2012-13, the estimated expenditure on provision of local services by the MD is about \$100 million. As at March 2012, the MD had about 310 staff working in the following four divisions for providing various local services:

- (a) ***Planning and Services Division.*** The Cargo Handling Section of this Division is responsible for managing PCWAs;
- (b) ***Port Control Division.*** The Harbour Patrol Section of this Division is responsible for enforcing maritime legislation while its Licensing and Port Formalities Section is responsible for licensing services and port formalities. The Private Mooring Sub-unit is responsible for managing private moorings;
- (c) ***Shipping Division.*** The Local Vessels Safety Branch of this Division is responsible for surveying local vessels; and
- (d) ***Multi-lateral Policy Division.*** The Marine Accident Investigation and Shipping Security Policy Branch of this Division is responsible for conducting marine accident investigations.

An extract of the organisation chart of the MD is at Appendix A.

The 1995 audit

1.4 In 1995, the Audit Commission (Audit) completed a review of the MD's management of PCWAs. The results were included in the Director of Audit's Report No. 25 of October 1995. In response to the recommendations of Audit and the Public Accounts Committee of the Legislative Council, the MD implemented reforms on the management of PCWAs in 1998 and 1999 (see para. 2.5).

Audit review

1.5 Audit has recently conducted a review to follow up on developments of PCWAs after the management reforms and examine other services provided to non-ocean going vessels by the MD (Note 2). The review has focused on the following areas:

- (a) management of PCWAs (PART 2);
- (b) surveying and licensing of vessels (PART 3);
- (c) management of private moorings (PART 4); and
- (d) marine accident investigations (PART 5).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.6 Audit would like to acknowledge with gratitude the full cooperation of the staff of the MD during the course of the audit review.

Note 2: *Audit also conducted a review in 2008 of the MD relating to its provision of port services for ocean going vessels. The results were included in Chapter 9 of the Director of Audit's Report No. 51 of October 2008.*

PART 2: MANAGEMENT OF PUBLIC CARGO WORKING AREAS

2.1 This PART examines the following issues relating to the MD's management of PCWAs:

- (a) re-tendering of vacant berths (paras. 2.6 to 2.19);
- (b) redeployment of posts (paras. 2.20 to 2.26);
- (c) automated vehicle entry/exit control system (paras. 2.27 to 2.37);
- (d) financial performance (paras. 2.38 to 2.43); and
- (e) enforcement of licence and permit conditions (paras. 2.44 to 2.51).

Background

2.2 PCWAs are designated waterfront areas provided by the Government as common user facilities for loading and unloading of cargoes between barges and goods vehicles (Note 3). The MD is empowered to manage PCWAs under the Port Control (Cargo Working Areas) Ordinance (Cap. 81) and its subsidiary regulations. At present, there are six PCWAs (two on Hong Kong Island, two in Kowloon and two in the New Territories) providing 129 berths with a total length of 4,936 metres (Note 4). As at April 2012, the overall utilisation rate of the six PCWAs was 94% (in terms of berth length let out to operators), with the rates of individual PCWAs ranging from 76% to 100%. For 2011, the cargo throughput of PCWAs totalled eight million tonnes (Note 5).

Note 3: *PCWA operators handle different types of commodities, including general cargo, bulk cargo, container cargo, recyclable materials, and supplies for outlying islands.*

Note 4: *The six PCWAs are located in Chai Wan, Western District, Yau Ma Tei, Stonecutters Island, Rambler Channel and Tuen Mun. The length of berths varies from 8 to 112 metres.*

Note 5: *For 2011, the seaborne/river cargo throughput of Hong Kong totalled 277 million tonnes.*

Management of public cargo working areas

2.3 Before 1998, the MD allocated PCWA berths to users on a first-come-first-served basis under a permit system. In the 1995 audit, Audit found that the first-come-first-served arrangement was inefficient and had brought about the following management problems:

- (a) monopolisation of berths by habitual users and unfair access to other operators; and
- (b) subletting of berths by non-legal means at the expense of government revenue.

2.4 In the Director of Audit's Report No. 25 of October 1995, Audit recommended that if the Administration wished to use a fee mechanism to regulate the use of PCWA berths, it should allocate the right of using the berths by an open and competitive bidding process (Note 6). The Public Accounts Committee recommended in its Report No. 25 of January 1996 that an open, fair and economically viable system for the allocation of PCWA berths should be devised.

2.5 *Management reforms.* In 1996, the Government consulted PCWA operators and the Legislative Council Panel on Economic Development (ED Panel — Note 7) on the implementation of the recommendations of Audit and the Public Accounts Committee. The Government agreed that in order not to cause any major disruption to the livelihood of the existing operators and their employees, the PCWA reform should be introduced in a gradual manner. In 1998 and 1999, the MD implemented management reforms, as follows:

Note 6: *According to the Government Stores and Procurement Regulations, departments should normally adopt open tendering for invitation of tenders.*

Note 7: *The Panel was then known as Panel on Economic Services. For simplicity, they are both referred to as the ED Panel in this Audit Report.*

Management of public cargo working areas

- (a) *Allocation of berths.* In 1998, the MD allocated the berths through a restricted tendering exercise to the incumbent operators for a period of three years. The successful tenderers were granted the right to use the allocated berths by paying a monthly berthing fee (Note 8). The terms and conditions of using the berths were governed by Berth Licence Agreements between the Government and the operators. Unallocated berths were then disposed of by open tender;
- (b) *Landside reform.* After some studies, the MD found that the management of PCWAs could be further improved by streamlining the host of permits required for seven different cargo handling activities on the landside of PCWAs (e.g. permits for using a mobile crane and storage of cargo). In May 1999, the MD introduced a single operation area permit to allow operators to rent an area behind their berths for carrying out all permitted cargo handling activities without the need to pay individual fees for different operations under the old permit system. Besides providing a business-friendly environment and improving the productivity of PCWA operations, the MD estimated that the new permit system would save staff cost by \$1.7 million a year; and
- (c) *Other initiatives.* The MD also implemented other initiatives to improve the cost-effectiveness of PCWA operations, viz automating in 2000 the vehicle entry and exit control procedures of PCWAs and outsourcing since 2001 the security guard service of PCWAs.

Re-tendering of vacant berths

2.6 From time to time, there may be vacant berths arising in PCWAs. For example, there may be no successful bidders for some berths during a tendering exercise. An operator may also terminate the Agreement by giving the MD a three-month advance notice.

Note 8: *The fee was based on the tendered price and adjusted annually according to the movement of the Government Consumption Expenditure Deflator (an economic forecast index). In 2011-12, the MD collected berthing fees of \$62 million.*

2.7 Audit examined the MD's arrangements for re-tendering of vacant berths during the 2008-11 and 2011-16 Berth Licence Agreement terms (i.e. August 2008 to July 2011 and August 2011 to July 2016 respectively) and found that there was room for improvement (see paras. 2.8 to 2.19).

Re-tendering arrangement during 2008-11

2.8 In May and September 2008, the MD allocated berths for the 2008-11 Berth Licence Agreements by restricted tender (for six PCWAs in Kowloon and the New Territories) and open tender (for two PCWAs on Hong Kong Island — Note 9). In the event, 142 berths were let out and 17 were unallocated.

2.9 In October 2008, as one of the measures to facilitate the planned closure of Kwun Tong and Cha Kwo Ling PCWAs in 2011 (see para. 2.21), the MD invited operators of these two PCWAs to consider relocating to the 17 unallocated berths in other PCWAs by January 2009. In response, four operators indicated interest in the relocation. Accordingly, the MD earmarked four berths for them (Note 10).

2.10 In December 2008, the MD arranged re-tendering of the remaining 13 unallocated berths. As a result, four berths were let out and nine remained unallocated. From December 2008 to March 2009, seven operators surrendered their berths, thus making up a total of 16 vacant berths, including two each in Chai Wan and Western District PCWAs.

Note 9: *In 2008, in line with its open competitive tendering policy, the Government consulted the ED Panel and the cargo handling trade on a phased implementation of open tendering of PCWA berths. After taking into account their views, the MD allocated the berths at two PCWAs on Hong Kong Island by open tender.*

Note 10: *In the end, one operator withdrew his application and the other three relocated their berths to other PCWAs in Kowloon and the New Territories in January 2009. From February 2010 to July 2011, eight more operators of Kwun Tong and Cha Kwo Ling PCWAs relocated their berths to other PCWAs in Kowloon and the New Territories.*

Management of public cargo working areas

2.11 On 19 March 2009, the MD received a written request for another re-tendering exercise from an operator who expressed interest in bidding for the vacant berths in Western District PCWA. On 27 March 2009, the MD consulted the Transport and Housing Bureau on whether another round of re-tendering should be conducted for disposing of the 16 vacant berths, highlighting the following pros and cons:

- (a) **Pros.** Re-tendering would meet the operator's request and protect government revenue; and
- (b) **Cons.** Re-tendering would reduce the number of vacant berths and hence the opportunity of relocating operators of Kwun Tong and Cha Kwo Ling PCWAs before the expiry of the 2008-11 Berth Licence Agreements. These operators might object to the re-tendering because they were advised in October and December 2008 (see paras. 2.9 and 2.10) that any surrendered berths would be retained for the relocation.

2.12 In April 2009, upon the Transport and Housing Bureau's advice, the MD informed the operator that the feasibility of re-tendering was under consideration, but in the event, the MD had not arranged any re-tendering of the vacant berths.

2.13 Audit noted that there was room for improvement in providing information for the 2009 deliberation on whether the re-tendering of the 16 vacant berths (especially the four vacant berths on Hong Kong Island) should be arranged. In its memorandum of 27 March 2009 to the Transport and Housing Bureau, the MD said that the operators of Kwun Tong and Cha Kwo Ling PCWAs might object to the re-tendering (see para. 2.11(b)). However, the MD had not informed the Bureau of the fact that:

- (a) these operators did not express interest in relocating to the four vacant berths on Hong Kong Island (i.e. two each in Chai Wan and Western District PCWAs) in October 2008; and
- (b) they did not object when the four berths on Hong Kong Island were put out for re-tendering in December 2008.

Re-tendering arrangement during 2011-12

2.14 In April 2011, the MD allocated berths for the 2011-16 Berth Licence Agreements by restricted tender (for four PCWAs in Kowloon and the New Territories — Note 11) and open tender (for two PCWAs on Hong Kong Island). In the event, 96 berths were let out. Thereafter, the MD conducted two re-tendering exercises, as follows:

- (a) ***First re-tendering.*** In June 2011, the MD conducted re-tendering of 33 unallocated berths by both open and restricted tenders (Note 12). As a result, 25 were let out and 8 remained unallocated. Meanwhile, two operators surrendered their berths, thus increasing the number of vacant berths to 10; and
- (b) ***Second re-tendering.*** In October 2011, the MD conducted re-tendering of the 10 vacant berths (all on Hong Kong Island) by open tender. In the event, four were let out and six were unallocated.

2.15 On 6 September 2011, the Financial Services and the Treasury Bureau (FSTB) reminded the MD that given the short time interval between the first and second re-tendering (in June and October 2011 — see para. 2.14(a) and (b)), there might be a risk of a successful bidder surrendering his berth obtained at a high bid price (after learning other successful bid prices at the end of a tendering exercise) and re-tendering for the surrendered berth at a lower bid price. On 15 September 2011, the MD replied the FSTB that:

Note 11: *Given the reduced number of PCWAs from eight to six, the Government decided not to extend the open tendering arrangement to these four PCWAs. Only incumbent operators of these four PCWAs and those affected by the closure of Kwun Tong and Cha Kwo Ling PCWAs were invited to participate in the restricted tender.*

Note 12: *The MD obtained the Financial Services and the Treasury Bureau's approval to use restricted tender for allocating the five berths in Kowloon and the New Territories in order to give another opportunity for some outbid and disqualified tenderers in the first round of restricted tendering. They comprised 10 outbid operators who were affected by the closure of Kwun Tong and Cha Kwo Ling PCWAs and three disqualified operators (in Yau Ma Tei and Rambler Channel PCWAs) whose forms of tender were incomplete.*

Management of public cargo working areas

- (a) there was a need to conduct the second re-tendering as soon as practicable in order to put public resource to the best use;
- (b) the MD reckoned that the terms and conditions of the re-tendering should follow closely to those of the previous rounds so that the potential operators could have a reasonable basis to determine their bidding strategy; and
- (c) regarding the FSTB's concern, there was no evidence to substantiate that re-tendering for a surrendered berth was common among PCWA operators.

On 27 September 2011, the FSTB reiterated its concern and requested the MD to critically review the frequency of re-tendering and tender terms with a view to minimising the risk of re-tendering for a surrendered berth at a lower bid price. However, the MD had not done so before conducting the second re-tendering in October 2011. In April 2012, the FSTB asked the MD about the progress of the review and the tentative completion date. In May 2012, the MD informed the FSTB that details would be provided in future re-tendering exercise. Audit reviewed the four successful bids for the second re-tendering exercise and found that there was a case of re-tendering for the surrendered berth at a lower bid price (see Case 1).

Case 1

Re-tendering for a surrendered berth at a lower bid price

1. In June 2011, an operator (Company A) successfully bid for a berth on Hong Kong Island at a monthly berthing fee of \$94,080. In August 2011, Company A served a three-month advance notice to the MD for terminating the Berth Licence Agreement. In the re-tendering exercise of October 2011, another operator (Company B) successfully bid for the same berth (to be surrendered by Company A in November 2011) at a monthly berthing fee of \$46,200. The total berthing fee payable by Company B to the Government (from January 2012, the effective date of the new Berth Licence Agreement till its expiry in July 2016) would have been \$2.6 million less than that of Company A if it had not surrendered its berth.

2. Based on a search of the business and company registration records, Audit found that Company A and Company B were related in that the sole proprietor of Company A was the director of Company B as well as holding 50% shares of Company B.

3. In mid-August 2012, the MD informed Audit that it had not taken immediate action in September 2011 on the FSTB's advice to review the tender terms with a view to minimising the risk of an operator re-tendering for his surrendered berth at a lower bid price (see para. 2.15) because:

- (a) it was under time pressure to complete the second re-tendering in October 2011 in order to accommodate some operators affected by the closure of Kwun Tong and Cha Kwo Ling PCWAs; and
- (b) it considered that the risk mentioned by the FSTB was not high and believed that the requirement for three months' monthly fee as the tender/agreement deposit would help reduce the operators' incentives to surrender and re-tender berths.

Audit noted that for another re-tendering exercise commencing on 31 August 2012, the MD had not yet reviewed the tender terms.

Audit comments

4. It is evident that Company A had successfully bid for its surrendered berth through a related company (Company B) at a lower bid price. Therefore, the MD needs to take action on the FSTB's advice to prevent the recurrence of such a practice.

Source: MD records

Management of public cargo working areas

2.16 *Enhancing transparency.* At a meeting with the cargo handling trade representatives in December 2011, the MD invited views on whether there was a need for re-tendering the six vacant berths available at that time (see para. 2.14(b)). In this connection, some representatives raised questions on whether the MD would arrange re-tendering of vacant berths at regular intervals and how an interested operator could find out whether there were vacant berths available for letting. This suggests that the operators may have a greater information need than what is available under the present arrangements (i.e. through the MD's quarterly meetings with the trade representatives and answering public enquiry). To facilitate operators' planning and the letting of vacant berths, the MD needs to explore ways of enhancing the transparency in vacant berth re-tendering. For example, the MD may consider publicising information of both berth vacancy and upcoming tendering exercise on its website (or through other user-friendly means).

Audit recommendations

- 2.17 *Audit has recommended that the Director of Marine should:*
- (a) **in seeking policy direction from the relevant bureau (such as on re-tendering of PCWA berths), provide full information on the subject matter to enable an informed decision to be taken;**
 - (b) **review the tender terms with a view to minimising the risk of an operator surrendering his berth obtained at a high bid price and re-tendering for the surrendered berth at a lower bid price; and**
 - (c) **explore ways of enhancing the transparency in vacant berth re-tendering, such as publicising on the MD's website information of berth vacancy and upcoming tendering exercise.**

Response from the Administration

2.18 The Director of Marine agrees with the audit recommendations. He has said that:

Management of public cargo working areas

- (a) to prepare tendering exercises for PCWA berths, the MD had frequent liaison and dialogues with the relevant bureau though some of them were not documented on paper records. The MD will continue to provide full information to the relevant bureau to enable an informed decision to be taken;
- (b) while the MD's preliminary assessment did not indicate that the risk of an operator re-tendering for a surrendered berth at a lower bid price to be prevailing, it would constantly monitor the situation and review the tender terms for further enhancement; and
- (c) the MD will conduct studies with a view to introducing all feasible means to enhance transparency in vacant berth re-tendering.

2.19 The Secretary for Financial Services and the Treasury agrees with the audit recommendation in paragraph 2.17(b).

Redeployment of posts

2.20 PCWAs have been affected by territorial development projects from time to time. For example, in 2003, the former Wan Chai PCWA was closed to make way for Wan Chai Reclamation Phase II. The cargo working activities were subsequently re-provisioned to Chai Wan PCWA.

2.21 *Decommissioning of two PCWAs.* To make way for the open space development under the Kai Tak Outline Zoning Plan and the development of Trunk Road T2 respectively, both Kwun Tong and Cha Kwo Ling PCWAs were closed down on 1 August 2011.

2.22 On 31 July 2011, before their decommissioning, Kwun Tong and Cha Kwo Ling PCWAs had an establishment of 30 permanent civil service posts. Since 1 August 2011, the MD had gradually redeployed 14 posts (to other PCWAs and MD sections) and deleted one post. As at 15 August 2012, 15 posts remained on the establishment of the two decommissioned PCWAs, including 12 Senior Artisan and Artisan grade staff.

2.23 According to Financial Circular No. 4/94, a Controlling Officer (i.e. the Director of Marine in this case):

- (a) may redeploy non-directorate posts subject to the conditions as follows:
 - (i) *Permanent redeployment.* Permanent redeployment is the long-term transfer of a post (exceeding 12 months) when the original work for the post no longer exists. In effect, it is equivalent to the creation of a new post offset by the deletion of a post in the same rank elsewhere in the department. Permanent redeployment must follow the formal procedures of deletion/creation of the posts in question; and
 - (ii) *Temporary redeployment.* Temporary redeployment is the short-term transfer of a post (not exceeding 12 months) to meet an urgent or temporary need for additional manpower. The Controlling Officer may authorise the temporary redeployment of non-directorate posts for periods not exceeding 12 months on each occasion without reference to the Departmental Establishment

Management of public cargo working areas

Committee (Note 13), but must record such redeployment in the statement of total establishment and strength of the department; and

- (b) should constantly monitor the establishment to ensure:
 - (i) deletion of a post as soon as the need for it no longer exists and the opportunity of absorbing the incumbent elsewhere arises; and
 - (ii) full utilisation of the opportunities for redeployment.

2.24 Audit has found that:

- (a) the MD had not followed the requirement of Financial Circular No. 4/94 to obtain the Director of Marine's authorisation before temporarily redeploying 12 (Note 14) of the 14 posts mentioned in paragraph 2.22. While there were MD directorate staff's endorsements of the temporary redeployment, the redeployment durations were not specified and the justifications were not documented. Up to mid-August 2012, 11 of the 12 redeployed posts had either reached or were approaching the maximum 12-month period allowed for temporary redeployment. However, the MD had not taken a decision on whether the posts should be deleted or permanently redeployed. In this regard, the MD needs to conduct a critical review to see if there is genuine long-term need for these posts; and
- (b) as for the 15 posts still retained in the two decommissioned PCWAs for more than one year (Note 15), the MD had not taken action to delete them although the original work for them no longer existed. The MD needs to take urgent action to rectify the situation.

Note 13: *A Departmental Establishment Committee is normally chaired by the deputy head of a department with members comprising a directorate staff of the pertinent policy bureau, the Departmental Secretary and a departmental representative. Its terms of reference are to advise the Controlling Officer on matters relating to creation of posts in promotion rank and departmental establishment.*

Note 14: *The other two posts were permanently redeployed in accordance with Financial Circular No. 4/94.*

Note 15: *As at 15 August 2012, all the 15 posts were vacant.*

Audit recommendations

- 2.25 **Audit has *recommended* that the Director of Marine should:**
- (a) **take urgent action to delete the 15 vacant posts of the decommissioned Kwun Tong and Cha Kwo Ling PCWAs;**
 - (b) **grant covering approval for the 12 temporarily redeployed posts and critically review whether there is genuine long-term need for these posts with a view to arranging for their deletion/permanent redeployment in accordance with the requirements of Financial Circular No. 4/94; and**
 - (c) **strengthen internal controls to ensure that the requirements of Financial Circular No. 4/94 are followed in the deletion/redeployment of posts in connection with organisational changes.**

Response from the Administration

2.26 The Director of Marine agrees with the audit recommendations. He has said that the MD will review the scope for redeployment of the 15 vacant posts of the decommissioned PCWAs and arrange for their permanent redeployment/deletion as appropriate.

Automated vehicle entry/exit control system

2.27 Under the Port Control (Cargo Working Areas) Regulations (Cap. 81A), a vehicle driver using a PCWA for loading or unloading of cargo, waiting or parking is required to pay a vehicle entry ticket fee. The fee is charged at an hourly rate of \$33 and subject to a maximum of \$85 for the 14-hour period from 6:00 p.m. to 8:00 a.m. (Note 16).

2.28 Before 2000, the MD used a manual system for administering the vehicle entry ticket fee and access control for all PCWAs. In 1998, the MD obtained policy support for installing automated vehicle entry/exit control systems at four PCWAs in order to save staff cost and improve operational efficiency. The MD planned to extend the system to other PCWAs after reviewing the implementation results.

2.29 In 2000 and 2001, the MD installed automated vehicle entry/exit control systems at four PCWAs in Rambler Channel, Stonecutters Island, Tuen Mun and Yau Ma Tei (at a total cost of \$3.8 million) with the following features:

- (a) ***Automation at entry points.*** The entry points were provided with ticket dispensers for issuing magnetic entry tickets to drivers and auto access barriers for controlling vehicles entering the PCWAs;
- (b) ***Automation of fee calculation.*** The shroff offices were provided with ticket validators and computer systems for calculating the correct amount of vehicle entry ticket fee payable. All receipt transactions would be automatically recorded in the computer system; and
- (c) ***Automation at exit points.*** The exit points were equipped with ticket validators for checking that the drivers had paid vehicle entry ticket fee and they had not overstayed beyond the allowed 15-minute period (Note 17) before activating auto access barriers to allow their vehicles to leave the PCWAs.

Note 16: *According to the MD, the fee of a container truck with its trailer is charged as two vehicles.*

Note 17: *The Port Control (Cargo Working Areas) Regulations prescribe that a vehicle shall leave the PCWA within 15 minutes after making payment.*

Management of public cargo working areas

2.30 In 2000-01, with the installation of automated vehicle entry/exit control systems at four PCWAs, a total of 16 PCWA staff were saved.

Automated payment cum vehicle entry/exit control system

2.31 In 2004-05, the MD conducted a study to further automate the procedures for collecting vehicle entry ticket fee at PCWAs. The MD found that:

- (a) after four years of operation, the automated vehicle entry/exit control system installed in Stonecutters Island PCWA (in June 2000) required frequent replacement of spare parts, which resulted in an increase in maintenance cost. Based on the Electrical and Mechanical Services Department's advice that the software operating system and spare parts of the computer hardware were no longer available for replacement, it was proposed to upgrade the aged system with one having auto-payment function (i.e. the use of Octopus card for recording the arrival time at the entry point and making payment at the exit point). The new system was expected to streamline the payment process and reduce the traffic lining up outside the shroff office for making payment; and
- (b) according to an opinion poll, most drivers supported the use of auto-payment function.

2.32 In May 2006, the MD upgraded the automated vehicle entry/exit control system at Stonecutters Island PCWA with one having auto-payment function. In 2009, the MD also upgraded the automated vehicle entry/exit control system at Yau Ma Tei PCWA (Note 18). Table 1 shows the vehicle entry/exit control systems for the six PCWAs.

Note 18: *The capital cost of the new system was \$0.9 million for Stonecutters Island PCWA and \$1.5 million for Yau Ma Tei PCWA (which required more equipment for its double-lane entry/exit points).*

Table 1

**Vehicle entry/exit control systems for PCWAs
(July 2012)**

System	PCWA
1. Automated payment cum entry/exit control system	Yau Ma Tei
	Stonecutters Island
2. Automated entry/exit control system	Tuen Mun
	Rambler Channel
3. Manual system	Western District
	Chai Wan

Source: MD records

No automated system for Western District and Chai Wan PCWAs

2.33 Of the six PCWAs in operation in July 2012, only two PCWAs in Western District and Chai Wan (see item 3 in Table 1) were not equipped with any automated vehicle entry/exit control system. According to MD records, both Western District and Chai Wan PCWAs had been operating at deficits for many years (see Table 2). There is an urgent need to improve their financial performance by tightly controlling the operating costs (particularly staff cost which accounted for some 54% of PCWAs' total expenditure). The use of automated vehicle entry/exit control systems has proved to be cost-effective in the other four PCWAs which had achieved a saving of four staff in each case (see para. 2.30). Moreover, the use of automated payment control systems in PCWAs can help eliminate the risk of under-collection of vehicle entry ticket fee. The MD needs to install suitable automated vehicle entry/exit control systems for Western District and Chai Wan PCWAs to improve the cost-effectiveness and control of their operation.

Management of public cargo working areas

Table 2

**PCWAs operating at deficit
(2007-08 to 2010-11)**

Year	Operating deficit		
	Western District PCWA (\$ million)	Chai Wan PCWA (\$ million)	Total (\$ million)
2007-08	3.08	4.37	7.45
2008-09	2.93	4.28	7.21
2009-10	3.32	4.79	8.11
2010-11	4.41	3.97	8.38

Source: MD records

Remarks: As at September 2012, the MD was still compiling the operating results for 2011-12.

Systems at Tuen Mun and Rambler Channel PCWAs overdue for replacement

2.34 The automated systems at Tuen Mun and Rambler Channel PCWAs had long downtime from 2008 onwards. Since June 2009, Tuen Mun PCWA has reverted to a manual system for collecting vehicle entry ticket fee and vehicle entry/exit control. Likewise, Rambler Channel PCWA has reverted to the manual system since September 2011 (Note 19). In November 2011 and April 2012, the Electrical and Mechanical Services Department confirmed that the automated vehicle entry/exit control system at Tuen Mun PCWA was unserviceable while the system at Rambler Channel PCWA was reaching the end of its serviceable life. However, the MD did not have any plan for replacing the unserviceable vehicle entry/exit control systems of these two PCWAs.

Note 19: *Since January 2012, the MD has engaged four additional staff and installed an additional entry point for Rambler Channel PCWA. According to the MD, no similar arrangement is required for Tuen Mun PCWA because its vehicular traffic is not as heavy as Rambler Channel PCWA.*

System at Yau Ma Tei PCWA calls for improvement

2.35 In 2011-12, Yau Ma Tei PCWA collected vehicle entry ticket fee totalling \$17 million of which only 33% was paid by Octopus card. However, unlike Stonecutters Island PCWA, Yau Ma Tei PCWA was not equipped with magnetic ticket dispensers to cater for non-Octopus card users. As a result, MD staff had to issue vehicle entry tickets manually to drivers not using Octopus cards for entering Yau Ma Tei PCWA.

Audit recommendations

2.36 **Audit has recommended that the Director of Marine should:**

- (a) **consider installing suitable automated vehicle entry/exit control systems for Western District and Chai Wan PCWAs, with a view to improving the cost-effectiveness and control of their operation;**
- (b) **expedite action to replace the unserviceable vehicle entry/exit control systems for Tuen Mun and Rambler Channel PCWAs; and**
- (c) **take measures to improve the utilisation of the automated payment cum vehicle entry/exit control system of Yau Ma Tei PCWA.**

Response from the Administration

2.37 The Director of Marine agrees with the audit recommendations. He has said that the MD will:

- (a) explore in more detail the case for installing automated vehicle entry/exit control systems for Western District and Chai Wan PCWAs taking into account all relevant factors;
- (b) explore the case for replacing the existing automated vehicle entry/exit control systems at Tuen Mun and Rambler Channel PCWAs; and
- (c) examine appropriate measures to promote and encourage vehicle drivers to use the automated payment system of Yau Ma Tei PCWA.

Financial performance

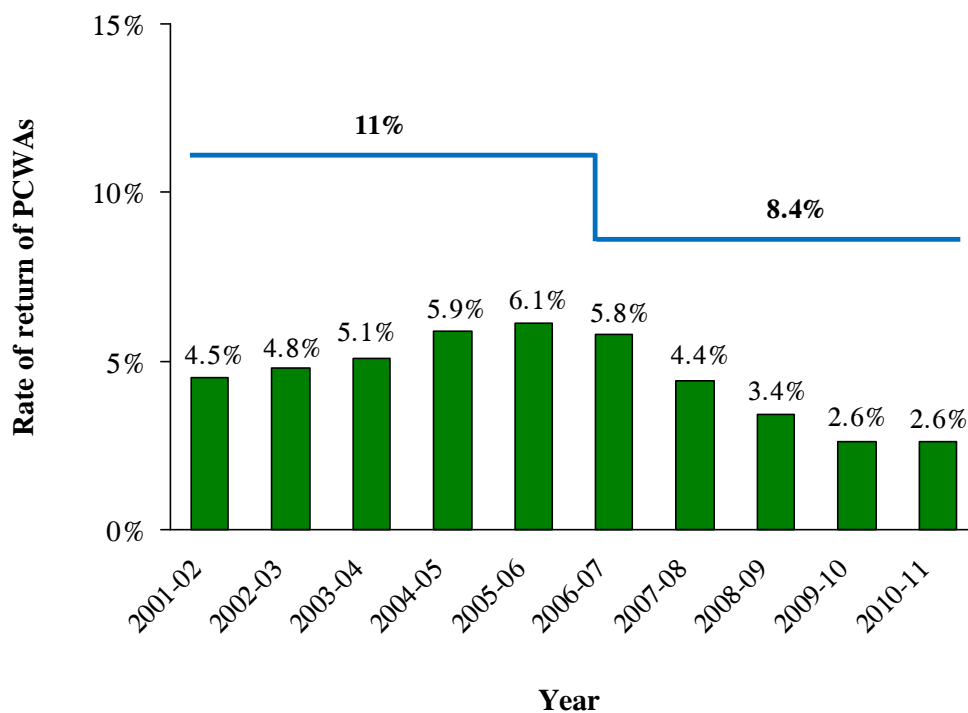
2.38 In return for various services provided to PCWA operators, the MD derives income mainly from charging the berthing fee, the vehicle entry ticket fee and the operation area permit fee. In 2011-12, the income from PCWAs totalled \$123 million (comprising \$62 million berthing fee, \$49 million vehicle entry ticket fee and \$12 million operation area permit fee).

2.39 According to the FSTB's (Note 20) direction in 1995-96, the MD is required to set the PCWA fees based on the Government utility approach. A target rate of return based on the average net fixed asset has been set for PCWAs both as a performance measure and a reference for fee review. The target rate of return is subject to review at regular intervals having regard to the market situation on the Government's cost of capital. Figure 1 summarises the financial performance of the PCWAs from 2001-02 to 2010-11 as against the laid down target rates of return.

Note 20: *Before July 2002, the FSTB was known as the Finance Bureau. For simplicity, both are referred to as the FSTB in this Audit Report.*

Figure 1

**Financial performance of PCWAs
(2001-02 to 2010-11)**



Legend: — Target rate of return
 ■ Actual rate of return

Source: MD records

Remarks: The MD did not prepare the actual rate of return on a regular basis. As at September 2012, the MD was still computing the actual rate of return for 2011-12. With effect from 2012-13, the target rate of return would be revised to 7.5%.

2.40 According to Financial Circular No. 6/2006, government fees and charges should generally be reviewed on an annual basis. However, it has been the practice of the MD to carry out reviews of the PCWA fees at three-year intervals to tie in with the tendering of PCWA berths for a new Berth Licence Agreement term. With the 2011-16 Berth Licence Agreements running for five years, there is a need to conduct interim reviews before the expiry of the Agreement term. Given the decreasing trend in the actual rate of return of PCWAs since 2005-06, the MD needs to closely monitor the financial performance of PCWAs and explore measures

Management of public cargo working areas

to reduce cost (such as deletion of surplus posts and installing automated vehicle entry/exit control systems) and increase revenue in the PCWA operation.

Audit recommendations

2.41 **Audit has *recommended* that the Director of Marine should:**

- (a) **conduct more frequent reviews of the financial performance of PCWAs; and**
- (b) **explore measures to reduce cost and increase revenue in the PCWA operation where appropriate.**

Response from the Administration

2.42 The Director of Marine agrees with the audit recommendations. He has said that the MD would:

- (a) conduct more reviews whenever appropriate taking into account the prevailing economic situation and the possible impacts on the competitiveness of the port; and
- (b) wherever appropriate, explore measures to reduce cost and increase revenue in the PCWA operation taking into account the prevailing economic situation and the possible impacts on the operators as well as the community at large.

2.43 The Secretary for Financial Services and the Treasury agrees with the audit recommendations.

Enforcement of licence and permit conditions

2.44 The Berth Licence Agreement stipulates the terms and conditions under which an operator shall use the allocated berth. For example, an operator is required to moor vessels within the specified berthing space for loading and unloading activities and comply with all Hong Kong laws in using the berth. The MD has the discretion to terminate the agreement if the operator fails to comply with any of these terms and conditions.

2.45 Similarly, an operator is required to comply with the conditions of the operation area permit in carrying out his landside cargo operations. The MD may terminate the permit if there is non-compliance with these conditions, such as protrusion from the rented area.

2.46 The MD has laid down guidelines for its frontline staff (e.g. Senior Artisan and Artisan grade staff) regarding the patrolling of PCWAs and reporting of any irregularities observed. They are required to record important events happening in PCWAs in their logbooks, which are subject to inspection by supervisors.

Reporting of non-compliance cases

2.47 Having regard to the fact that MD staff usually gave verbal warnings to operators who were found breaching the licence/permit conditions, in September 2010, the MD introduced a reporting system for keeping track of the non-compliance cases (on a monthly basis). The system enables the MD's senior management to consider taking stringent enforcement action (such as termination of agreement/permit) in warranted cases.

2.48 According to the monthly reports, there were only two non-compliance cases from September 2010 to May 2012. However, in a sample check of the logbooks of six PCWAs (Note 21), Audit found that there were 44 unreported non-compliance cases from 26 June 2011 to 14 April 2012 (see Table 3). Upon Audit's enquiry, MD staff said that the non-compliance cases were not reported to the senior management because they were rectified after verbal warnings. It

Note 21: *The most recently closed logbook of each PCWA was selected for checking.*

Management of public cargo working areas

appeared that the MD staff did not fully understand the purpose of the reporting system (see para. 2.47). The MD needs to step up training in this regard and ensure that all non-compliance cases are duly reported in future.

Table 3

**Unreported non-compliance cases
(26 June 2011 to 14 April 2012)**

PCWA	Period covered	Non-compliance cases (Number)	Operators with repeated non-compliance (Number)
Yau Ma Tei	27.11.2011 – 14.3.2012	17	2
Tuen Mun	26.6.2011 – 30.12.2011	13	3
Chai Wan	5.9.2011 – 22.2.2012	6	2
Rambler Channel	3.11.2011 – 29.2.2012	3	1
Western District	22.12.2011 – 14.4.2012	3	Nil
Stonecutters Island	17.7.2011 – 17.1.2012	2	Nil
	Total	44	8 (Note)

Source: MD records

Note: Three of the eight operators had breached the licence/permit conditions four to seven times. The breaches included placing containers outside the rented operation areas and mooring of vessels exceeded the boundary of the allocated berths.

Other enforcement issues

2.49 After examining MD records and conducting site visits to two PCWAs, Audit found other enforcement issues that warranted the MD's attention:

Management of public cargo working areas

- (a) **Mooring of vessels exceeded the permitted berth width.** In September 2011, staff of Chai Wan PCWA sought the Senior Marine Officer's advice on an operator's request to moor a vessel that would exceed the permitted berth width of 40 metres. Upon the Senior Marine Officer's instruction, the operator was allowed to moor a vessel not exceeding 50 metres in November 2011. In a site visit to Chai Wan PCWA on 19 July 2012, Audit found that some operators had moored multi-tiers of vessels exceeding the permitted berth width of 40 metres (see Photographs 1 and 2) without the MD's prior approval. As the licence/permit conditions are important for regulating the use of the PCWA berths/operation areas, any relaxation should be well justified on a case-by-case basis. The MD needs to put in place proper control procedures (setting out the level of approving authority and the approving criteria) to guard against any misuse/malpractice;

Photographs 1 and 2

Multi-tiers of vessels which exceeded the permitted berth width



Source: Photographs taken by Audit on 19 July 2012 at Chai Wan PCWA

- (b) **Stacking of containers.** Before 2003, the operation area permit conditions imposed a maximum load (10 kilo-newtons per square metre) in PCWAs which limited the stacking of containers to two layers. In 2003, the MD amended the permit conditions such that “the maximum superimposed load behind the existing seawall shall be limited to such an extent so as not to render inadequate margin of safety of or impair the structural integrity and stability of or cause danger to the existing

Management of public cargo working areas

seawall”. In 2009, Kwai Ching District Office of the Home Affairs Department raised concern about potential hazard posed by the stacking of containers in PCWAs. At a quarterly meeting of July 2009, the MD asked the operator representatives not to stack more than two layers of containers. However, the permit conditions were not revised to reinstate the height restriction. In site visits to Yau Ma Tei PCWA on 28 April and 9 July 2012, Audit found that the problem of stacking of more than two layers of containers still persisted (see Photographs 3 and 4); and

Photographs 3 and 4

Stacking of more than two layers of containers



Source: Photographs taken by Audit at Yau Ma Tei PCWA

- (c) **Unlawful use of fire hydrants.** In December 2011, the Water Supplies Department (WSD) received complaints that there was unlawful use of fire hydrants (Note 22) in Yau Ma Tei PCWA. The WSD’s surprise inspections revealed that an illegal tap was installed at a fire hydrant in the PCWA but did not find any unlawful taking of water at the scene. In

Note 22: According to section 29 of the Waterworks Ordinance (Cap. 102), except with the permission of the WSD, no person shall take water from the waterworks (such as a fire hydrant) other than through a fire service, inside service or public standpipe.

addition to surprise inspections, the WSD wrote to the MD requesting its assistance in reporting cases of suspected unlawful taking of water at the PCWA for the WSD's investigation but no such reported cases were received. In another surprise inspection conducted in February 2012, the WSD found that there was unlawful use of a fire hydrant in Yau Ma Tei PCWA and took enforcement action accordingly. In an Audit site visit to the PCWA on 9 July 2012, suspected unlawful use of a fire hydrant was also noted and the WSD was informed to take follow-up action. The MD needs to step up inspection and closely liaise with the WSD to tackle the problem of unlawful use of fire hydrants in Yau Ma Tei PCWA.

Audit recommendations

- 2.50 **Audit has recommended that the Director of Marine should:**
- (a) **step up training of PCWA staff to ensure that all non-compliance cases found in PCWAs are duly reported to the senior management;**
 - (b) **put in place proper procedures to control the granting of any exemption from the berth licence agreement/operation area permit conditions (such as the mooring of vessels which exceeded the permitted berth width) to guard against misuse/malpractice;**
 - (c) **amend the operation area permit conditions to limit the stacking of containers in PCWAs to two layers and closely monitor the compliance thereafter; and**
 - (d) **step up inspection in Yau Ma Tei PCWA and closely liaise with the WSD to tackle the problem of unlawful use of fire hydrants.**

Response from the Administration

2.51 The Director of Marine agrees with the audit recommendations. He has said that the MD will:

- (a) further introduce appropriate training to PCWA staff and step up supervision of the frontline staff;

Management of public cargo working areas

- (b) enhance proper control over the granting of exemption and introduce measures to ensure proper implementation of such control;
- (c) communicate with operators concerning the stacking of containers in PCWAs. It will amend the operation area permit conditions as appropriate and closely monitor the compliance thereafter; and
- (d) work more closely with other relevant departments to tackle the operational problems of PCWAs.

PART 3: SURVEYING AND LICENSING OF VESSELS

3.1 This PART examines the following issues relating to the MD's surveying and licensing of vessels:

- (a) monitoring of authorised surveyors' performance (paras. 3.5 to 3.10);
- (b) provision of plan examination and survey services (paras. 3.11 to 3.15);
- (c) vessels without valid licences (paras. 3.16 to 3.28); and
- (d) follow-up action on vessels operating without valid licences (paras. 3.29 to 3.35).

Statutory requirements

3.2 The Merchant Shipping (Local Vessels) Ordinance requires that all local vessels (Note 23) shall be licensed. The salient requirements are summarised as follows:

- (a) **Surveying.** Before the issuance of an operating licence, a vessel (except those specifically exempted — Note 24) must go through a surveying process which comprises the MD's approval of its building plan and surveying of the vessel to ensure compliance with the statutory safety and environmental protection requirements. A Certificate of Survey (Note 25) will only be issued if the vessel is found to be fit for the service intended and in good condition. Depending on the type of the vessel, the

Note 23: *Under the Ordinance, local vessels are divided into four classes according to their purposes of use. Class I vessels are mainly for carrying passengers (e.g. ferries), Class II for carrying cargoes (e.g. tugs and barges), Class III for fishing and Class IV for pleasure purpose.*

Note 24: *Examples of exempted vessels are pleasure vessels not for letting and carrying not more than 60 passengers, and fishing boats not fitted with propulsion engines.*

Note 25: *For Class IV vessels surveyed by an authorised surveyor (see para. 3.3(a)), a Certificate of Inspection will be issued instead. The certificate is valid for one year and another survey is required for its renewal.*

Surveying and licensing of vessels

Certificate of Survey is valid for one to three years. The vessel owner is required to arrange for another survey of the vessel (periodic survey) for the renewal of the Certificate; and

- (b) **Licensing.** A vessel owner is required to obtain the following certificate and licence from the District Marine Offices of the MD (Note 26):
- (i) **Certificate of Ownership.** The certificate specifies the particulars of a vessel (e.g. class, name and tonnage) and the owner (e.g. name, address and identity card number). It is valid for life unless the owner applies for cancellation (for a vessel which has been destroyed or left Hong Kong permanently) or transfer of ownership; and
- (ii) **Operating licence.** The licence is issued upon application by the certificated owner, who is required to produce supporting documents such as a valid Certificate of Survey and third party risks insurance policy (Note 27). The licence should be kept at all times on board and be produced for inspection by MD staff. It is usually valid for 12 months and should be renewed upon expiry unless the owner applies for cancellation or transfer of ownership.

Roles of the Marine Department

3.3 In addition to its regulatory role under the law, the MD is also a provider of survey services of vessels:

- (a) **Service provider.** Before 2007, the MD was the only authority for approving building/modification plans and conducting surveys of vessels. In 2007, the law was amended such that vessel owners may engage

Note 26: *There are eight District Marine Offices located in Aberdeen, Central, Cheung Chau, Sai Kung, Shau Kei Wan, Tai Po, Tuen Mun and Yau Ma Tei.*

Note 27: *According to the law, all local vessels shall be insured against third party risks except for non-mechanically propelled vessels which do not exceed four metres in length.*

competent surveyors authorised by the MD (Note 28) to carry out such work for low-risk vessels (Note 29) while the MD can focus more on the high-risk vessels; and

- (b) **Regulator.** To uphold maritime safety and environmental protection standards, the MD carries out the following checks:
- (i) **Quality checks.** The MD conducts quality checks on the vessels surveyed by authorised surveyors to monitor their performance (see paras. 3.5 to 3.8); and
 - (ii) **Spot checks.** To ensure that the conditions of the vessels are in compliance with the statutory safety and environmental protection requirements after the surveys, the MD conducts spot checks of vessels irrespective of the party carrying out the surveys (the MD or authorised surveyors).

3.4 Table 4 shows the number of licences and Certificates of Survey issued and vessel building/modification plans examined by the MD from 2007 to 2011. In 2011-12, the MD collected licence fees of \$36.8 million and survey and plan examination fees of \$16.8 million.

Note 28: *These include individuals who are Registered Professional Engineers (Marine and Naval Architecture), surveyors of a recognised classification society, and two recognised Mainland authorities.*

Note 29: *Low-risk vessels refer to vessels of Class II to IV (except for Class II vessels transporting oil, dangerous goods, noxious liquid substances and harmful substances, and pleasure vessels carrying more than 60 passengers).*

Table 4

**Licences and Certificates of Survey issued and plans examined
(2007 to 2011)**

Year	Licences issued (Number)	Certificates of Survey issued (Number)	Plans examined (Number)
2007	13,500	3,500	4,042
2008	13,300	3,075	5,353
2009	14,100	3,260	5,161
2010	14,600	2,934	16,069
2011	15,400	2,701	12,189

Source: MD records

Monitoring of authorised surveyors' performance

3.5 As at June 2012, there were 15 authorised surveyors. Upon completion of his survey work, an authorised surveyor will issue a declaration of survey based on which the MD will issue the Certificate of Survey for Class II and III vessels. For Class IV vessels, the authorised surveyor will directly issue the Certificate of Inspection. To ensure that the work performed by authorised surveyors is up to standard, the MD conducts quality checks on the vessels surveyed by them. In this connection, the MD has laid down the following guidelines:

- (a) the quality checks should cover 10% of the work carried out by authorised surveyors annually. At least one vessel surveyed by each authorised surveyor will be selected randomly for the check; and
- (b) the MD will issue a warning letter to the authorised surveyor concerned if minor deficiencies are found in the quality check. In the event of major deficiencies, the MD will consider taking disciplinary action (such as suspension/revocation of authorisation).

Timeliness in conducting quality checks

3.6 The MD's guidelines have not stipulated a time limit for conducting quality checks after the survey work has been performed by authorised surveyors. In 2011, the MD conducted 67 quality checks on vessels surveyed by authorised surveyors. Audit examined 50 of these checks and found that in 13 cases, the quality checks were conducted after the issue of the vessels' operating licences. As a vessel would be put into use upon obtaining an operating licence, the vessel conditions could have changed through usage by the time the quality check was conducted. This was particularly so in two cases for which the checks were conducted 29 and 59 days after the issue of operating licences (averaging 6 days for the remaining 11 cases). The usefulness of these quality checks could have diminished. In Audit's view, the MD needs to improve the timeliness of its quality checks.

Extent of quality checks

3.7 The number of vessels surveyed by authorised surveyors had increased from 627 in 2007 to 1,552 in 2011. However, the number of quality checks carried out by the MD had decreased from 119 in 2007 to 67 in 2011. As a result, the percentage of checks had fallen short of the laid-down requirement of 10% from 2009 onwards. Table 5 summarises the position and the number of warning letters issued as a result of the quality checks.

Table 5

Quality checks conducted
(2007 to 2011)

Year	Number of vessels surveyed by authorised surveyors (a)	Number of quality checks by the MD (b)	Percentage of checks $\frac{(b)}{(a)} \times 100\%$	Number of warning letters issued
2007	627	119	19%	Nil
2008	659	78	12%	13
2009	847	66	8%	9
2010	944	50	5%	1
2011	1,552	67	4%	3

Source: MD records

3.8 With the increased number of vessels surveyed by authorised surveyors in recent years, Audit understands the MD's difficulties in meeting the 10% quality check requirement at all times. However, the MD needs to closely monitor the situation to ensure that any reduced scale of check is well justified based on an objective risk assessment. In this connection, Audit noted that there was room for improvement in the MD's selection of vessels for quality checks, as follows:

- (a) from 2008 to 2011, the MD did not conduct any quality check on Class IV vessels although they represented 39% to 75% of all vessels surveyed by authorised surveyors in these years; and

- (b) two authorised surveyors (Surveyor A and Surveyor B) conducted many vessel surveys in 2008 and 2009. After quality checks of their work in 2008, the MD issued six warning letters to Surveyor A but none to Surveyor B. Despite Surveyor A's weaker performance in 2008, the extent of quality checks on him in 2009 was less than that of Surveyor B, i.e. the MD checked 6 out of the 31 vessels (19%) surveyed by Surveyor A and 26 of the 99 vessels (26%) surveyed by Surveyor B (Note 30).

Audit recommendations

3.9 Audit has *recommended* that the Director of Marine should:

- (a) take measures to improve the timeliness in conducting quality checks on the survey work performed by authorised surveyors;
- (b) closely monitor the compliance with the laid-down 10% quality check requirement to ensure that any reduced scale of check is well justified based on an objective risk assessment; and
- (c) adopt a risk-based approach in selecting vessels for quality checks taking into account factors such as the past performance of authorised surveyors and coverage of different types of vessels.

Response from the Administration

3.10 The Director of Marine agrees with the audit recommendations. He has said that, to improve the timeliness of conducting quality checks, a risk-based approach will be adopted in drawing up a timeline for monitoring such checks. For a high-risk case such as when the vessel has been surveyed by an authorised surveyor with weak performance in the past, the MD will seek to conduct the check before the issue of a Certificate of Survey/operating licence.

Note 30: *After the checks in 2009, the MD issued two warning letters (out of the 6 checks conducted, i.e. 33%) to Surveyor A and one warning letter (out of the 26 checks conducted, i.e. 4%) to Surveyor B, indicating that the former's performance was still the weaker of the two.*

Provision of plan examination and survey services

3.11 The MD has pledged to achieve the targets shown in Table 6 in the provision of plan examination and survey services.

Table 6

Performance pledge

Service	Target time	Target
(a) Approval of plans for building of local vessels	Within 2 months	90%
(b) Approval of plans for modification of local vessels	Within 1 month	90%
(c) Local vessel survey outside Hong Kong	4 working days' notice	100%
(d) Local vessel survey or inspection within Hong Kong	1 working day's notice	100%

Source: MD records

3.12 While the number of vessels surveyed by authorised surveyors increased from 627 in 2007 to 1,552 in 2011 (see Table 5 in para. 3.7), Audit noted that the MD had faced challenges in performing its dual role as a survey service provider and a regulator:

- (a) ***Performance pledge not met.*** For two years, the MD could not fully meet the targets of approving 90% of the plans for new building and modification of local vessels within two months and one month respectively. In 2010-11, 78% and 63% of new building and modification plans respectively were approved within the target times while the achievements in 2011-12 were 71% and 73% respectively;

- (b) ***Spot checks not conducted proactively.*** While the MD's guidelines stipulate that spot checks of vessels after surveys (see para. 3.3(b)(ii)) should be conducted at a predetermined frequency, this requirement has not been put into effect. In practice, the MD only conducts spot checks when there are complaints from the public; and
- (c) ***Reduced quality checks on authorised surveyors' work.*** As mentioned in paragraph 3.7, the extent of quality checks from 2009 to 2011 on authorised surveyors' work was less than the laid-down 10%.

3.13 In Audit's view, the MD needs to review its plan examination and survey work arrangements and requirements with a view to enhancing efficiency and effectiveness in performing its dual role as a survey service provider and a regulator. In this connection, Audit noted that low-risk vessels constituted a substantial part of the MD's survey work. Of the 3,581 surveys carried out by the MD within Hong Kong in 2011, 2,341 (65%) were for the low-risk vessels. For the 186 surveys carried out by the MD outside Hong Kong (mostly in the Mainland), 70 (38%) were for the low-risk vessels. Survey work outside Hong Kong (averaging 15.6 manhours each) was more time-consuming than that conducted locally (averaging 2.5 manhours each). There appears to be scope for the MD to leave more of the low-risk survey work (particularly work conducted outside Hong Kong) to authorised surveyors so that it can focus more on its regulatory work.

Audit recommendation

3.14 **Audit has recommended that the Director of Marine should conduct a review of the MD's survey work arrangements and requirements with a view to enhancing efficiency and effectiveness in performing its dual role as a survey service provider and a regulator.**

Response from the Administration

3.15 The Director of Marine agrees with the audit recommendation. He has said that the Merchant Shipping (Local Vessels) Ordinance provides vessel owners with a choice to engage the MD or authorised surveyors to conduct plan approvals and surveys for their vessels. Due to the limited supply of authorised surveyors in Hong Kong and Mainland China, demand on survey services by the MD remains high. In the light of the situation, the MD is reviewing the survey work arrangements and requirements with a view to enhancing efficiency and effectiveness.

Vessels without valid licences

3.16 Under the Merchant Shipping (Local Vessels) Ordinance, a vessel owner who fails to license his vessel commits an offence. The penalty upon conviction is a fine up to \$25,000 and imprisonment of one year.

Prosecution action

3.17 The Harbour Patrol Section of the MD is responsible for conducting regular patrols within Hong Kong waters to ensure port users' compliance with both local and international maritime regulations. According to the MD guidelines, when a patrol officer detects any local vessel without a valid operating licence, he should initiate prosecution against the vessel owner. If the licence is found to have expired for shorter than the time limit set in the guidelines, no legal proceeding will be taken provided that such vessel is not operating and a survey is being arranged (to obtain a valid Certificate of Survey/Inspection) for renewing the expired licence within that period.

3.18 Table 7 is a summary of the number of vessels inspected by the Harbour Patrol Section and the prosecution statistics for the offence of invalid vessel licences from 2007 to 2011. The amount of fines for the convicted cases ranged from \$200 to \$3,500.

Table 7

**Prosecution of vessels without valid licences
(2007 to 2011)**

Year	Vessels inspected (Number)	Prosecution of vessels without valid licences (Number)	Convicted cases (Number)
2007	19,000	136	136
2008	18,000	101	100
2009	18,100	111	109
2010	15,500	97	97
2011	16,000	119	112

Source: MD records

Additional licence fee for belated licence renewal

3.19 In case a vessel owner applies for renewal of an expired licence, he is required by law to pay an additional licence fee to cover the period from the date of expiry to the date of renewal. The charging of additional licence fee is without prejudice to the owner's liability for an offence of invalid licence for the period before licence renewal.

Issuing reminders

3.20 In October 2008, a marine accident involving a Class II vessel with long expired licence (i.e. since December 2000) aroused the concern of the MD's senior management. In November 2008, the MD issued reminders to owners of similar Class II vessels which had operating licences expired in or after January 2006. Thereafter, the MD conducted three similar reminder-issuing exercises for expired licence cases, viz, the first one in April 2010 focusing on Class I vessels, the second one in September 2010 for certain Class II vessels (transportation boat type) and the third one in August 2011 covering vessels of all Classes with licences expired since July 2008.

Surveying and licensing of vessels

3.21 Since October 2011, the MD has carried out monthly reviews to identify vessels (of all Classes) with licences expired for one to two months for issuing reminders.

Measures for tackling high-risk cases

3.22 Audit examined MD records and found that as at May 2012, 15,672 local vessels had valid licences while the licences of 14,517 other local vessels had expired (Note 31). Of these 14,517 expired licence cases, 3,310 vessels (23%) also had expired Certificates of Survey (Note 32). As these vessels had not undergone periodic surveys to ensure compliance with the statutory safety and environmental protection requirements, they may pose a safety threat to other port users if they are still in use in Hong Kong waters (see examples in paras. 3.30 to 3.33). The MD needs to take more targeted measures to tackle these high-risk cases.

Issuing reminders for all expired licence cases

3.23 From November 2008 up to early June 2012, the MD issued reminders mainly for vessels with licences expired since July 2008. Of the 14,517 expired licence cases as at May 2012, the MD had not issued reminders for 11,794 cases. In response to Audit's enquiry in this regard, the MD considered that vessels with licences expired before July 2008 were likely to be inactive. However, the following observations suggest that there is merit to send reminders to all expired licence cases irrespective of the expiry dates:

- (a) in a scrutiny of the MD's prosecution records from March to May 2012, Audit noted that out of a total 18 cases related to vessels with expired licences, the expiry dates in 8 cases (44%) were before July 2008 (i.e. from May 2001 to November 2007);

Note 31: *The expired licences included old cases with some dating back to 1971. Under the law, only an owner may request the MD to cancel his vessel licence or the Certificate of Ownership. The MD is not empowered to cancel an expired licence or the Certificate of Ownership of such a vessel and remove them from record.*

Note 32: *Information of the expiry dates of these Certificates of Survey was not readily available from MD records. However, Audit noted that the licences of 2,850 of these 3,310 cases had expired for more than five years, suggesting that their Certificates of Survey could have expired for a similarly long period of time.*

- (b) after the issuance of 2,526 reminders in August 2011, 901 (36%) of the vessel owners concerned renewed their licences, showing that reminders are useful in promoting compliance with the licensing requirement; and
- (c) besides urging owners concerned to renew their licences, the reminders also advised owners to cancel their licences in case their vessels had been destroyed or had left Hong Kong permanently. Any feedback received in this regard would help the MD update its licence records.

Address proof for licence renewal

3.24 For the 2,526 reminders issued by the MD in August 2011, 206 (8%) of them were returned undelivered, showing that MD records of the owners' addresses had not been kept up-to-date. At present, the MD only requires a vessel owner to provide address proof upon first-time application of a licence but not for subsequent licence renewal. There is no assurance that the MD would be notified of changes in vessel owners' addresses. Given that an up-to-date address record is important for taking enforcement action (e.g. serving a notice or summons), the MD needs to tighten the requirement on address proof. In this connection, the MD may wish to draw on the experience of the Transport Department, which requires a vehicle owner to present his address proof for both the first-time application and renewal of vehicle licence.

Documentation of prosecution cases

3.25 According to the MD's guidelines, before the court hearing of a prosecution case, the responsible officer should prepare supporting information including the defendant's previous conviction history. From January 2007 to April 2012, there were a total of 28 prosecution cases whereby the vessel owners concerned had been previously convicted for the same offence of failing to renew the licences of their vessels. Audit examined the prosecution files of these cases and found that for eight of them (29%), the responsible officer had not documented the previous conviction records. Upon Audit's enquiry, the MD said that in practice, such information had been presented during every court hearing. In Audit's view, the MD needs to improve the documentation of prosecution cases.

Prosecution guidelines on belated licence renewal cases

3.26 For a belated licence renewal case, the vessel owner is still liable to prosecution under the law after paying the additional licence fee (see para. 3.19). However, the MD has not laid down prosecution guidelines for these cases. In practice, District Marine Offices would not refer these cases to the Harbour Patrol Section unless and until the Harbour Patrol Section's inspection of the vessels is required before approving the licence renewal. For such referral cases, the Harbour Patrol Section would take follow-up actions on District Marine Offices' requests and also initiate prosecution actions against the vessel owners. In other words, no prosecution would be initiated for those cases not referred to the Harbour Patrol Section. In Audit's view, the MD needs to conduct a review in this regard with a view to formulating appropriate prosecution guidelines to ensure a consistent enforcement standard is applied to all belated licence renewal cases.

Audit recommendations

- 3.27 **Audit has recommended that the Director of Marine should:**
- (a) **take more targeted measures to tackle those expired licence cases where the vessels concerned are also overdue for surveying;**
 - (b) **issue reminders to vessel owners with expired licences irrespective of the expiry dates;**
 - (c) **lay down requirement that a vessel owner has to present his address proof when applying for licence renewal;**
 - (d) **improve the documentation of prosecution cases; and**
 - (e) **conduct a review with a view to formulating appropriate prosecution guidelines on belated licence renewal cases.**

Response from the Administration

3.28 The Director of Marine agrees with the audit recommendations. He has said that:

- (a) as a targeted measure, the MD will closely monitor the licence validity of stationary vessels and those vessels without valid licences applying to leave or enter Hong Kong waters (see paras. 3.30 to 3.33) and take enforcement action as appropriate; and
- (b) the MD will issue reminders to vessel owners with expired licences in phases, closely monitor the feedbacks and evaluate the effectiveness of this measure.

Follow-up action on vessels operating without valid licences

3.29 Besides harbour patrolling, the MD can also make use of its records to monitor some vessels which may be operating without valid licences. Audit has found room for improvement in the MD's follow-up action on such vessels as detailed in paragraphs 3.30 to 3.35.

Stationary vessels located at typhoon shelters

3.30 Stationary vessels (e.g. a fish drying hulk) are only allowed to moor at a specific area (usually a typhoon shelter) and shall not be moved to other position except with the permission of the Director of Marine. To avoid proliferation of stationary vessels within typhoon shelters, the number of such vessels within each typhoon shelter is restricted. Based on MD records of these stationary vessels, Audit found that as at 30 June 2012, the licences of ten vessels located in three typhoon shelters had expired for 1 to 5 months (averaging 3 months). Of these ten cases, the Certificates of Survey for six vessels had also expired for 1 to 14 months (averaging 6 months) but the MD had not taken enforcement action (Note 33).

Vessels' departure and arrival records

3.31 According to the Merchant Shipping (Local Vessels) Ordinance and Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F), locally licensed vessels (except fishing vessels) and river-trade vessels have to apply for the MD's clearance approvals before leaving and entering Hong Kong waters. The MD guidelines stipulate that clearance approvals will only be given for vessels with expired licences (Note 34) under the following conditions:

Note 33: *Owners of eight vessels subsequently renewed/cancelled their licences. By August 2012, the MD had taken prosecution action on the remaining two cases.*

Note 34: *According to the MD, in practice, approvals will only be given to vessels under tow.*

- (a) **Departure.** A vessel with an expired licence is allowed to leave Hong Kong if the vessel owner can produce a certificate issued by a competent authority or authorised surveyor showing the sea-worthiness of the vessel; and
- (b) **Arrival.** A vessel with an expired licence is allowed to enter Hong Kong if it is intending to apply for licensing and the vessel should not be operated in Hong Kong waters before a valid licence is issued.

3.32 MD records showed that from January 2011 to early June 2012, a total of 11 vessels with expired licences were given approvals for entering or leaving Hong Kong. The owners of nine vessels (six and three respectively) subsequently cancelled/renewed their licences (i.e. within one to five months after entering or leaving Hong Kong). Up to end of July 2012, the remaining two vessels (with Certificates of Survey expired for 6 and 13 months respectively) had not yet cancelled/renewed their licences (see Table 8 for details).

Table 8
Departure and arrival of vessels with expired licences
(January 2011 to June 2012)

Vessel	Date of expiry of licence	Date of expiry of Certificate of Survey	Date of departure	Date of arrival
1	30 January 2012	27 January 2012	16 March 2012	16 May 2012
2	14 June 2011	6 June 2011	17 October 2011	N.A.

Source: MD records

Remarks: Both vessels are non-mechanised barges.

Surveying and licensing of vessels

3.33 In mid-August 2012, the MD informed Audit that for the two outstanding cases mentioned in Table 8 in paragraph 3.32, it issued a reminder each to the owners of Vessels 1 and 2 in March 2012 and August 2011 respectively. In its recent contact with these vessel owners, the MD learned that:

- (a) Vessel 1 had been under repair after its arrival. Survey for licence renewal would be arranged after the repair; and
- (b) there was no plan on when Vessel 2 would return to Hong Kong. The MD would keep monitoring the case and follow up with the owner on the vessel's arrival.

Audit recommendation

3.34 **Audit has *recommended* that the Director of Marine should put in place monitoring procedures to ensure that any information on vessels which may be operating without valid Certificates of Survey and operating licences is promptly and effectively followed up.**

Response from the Administration

3.35 The Director of Marine agrees with the audit recommendation.

PART 4: MANAGEMENT OF PRIVATE MOORINGS

4.1 A private mooring refers to a mooring laid by a person (the mooring owner) with the permission of the Director of Marine granted under the Shipping and Port Control Ordinance. No local vessel shall moor to a private mooring except with the permission of the mooring owner or pursuant to a direction given by the Director of Marine. This PART examines the following issues relating to the MD's management of private moorings:

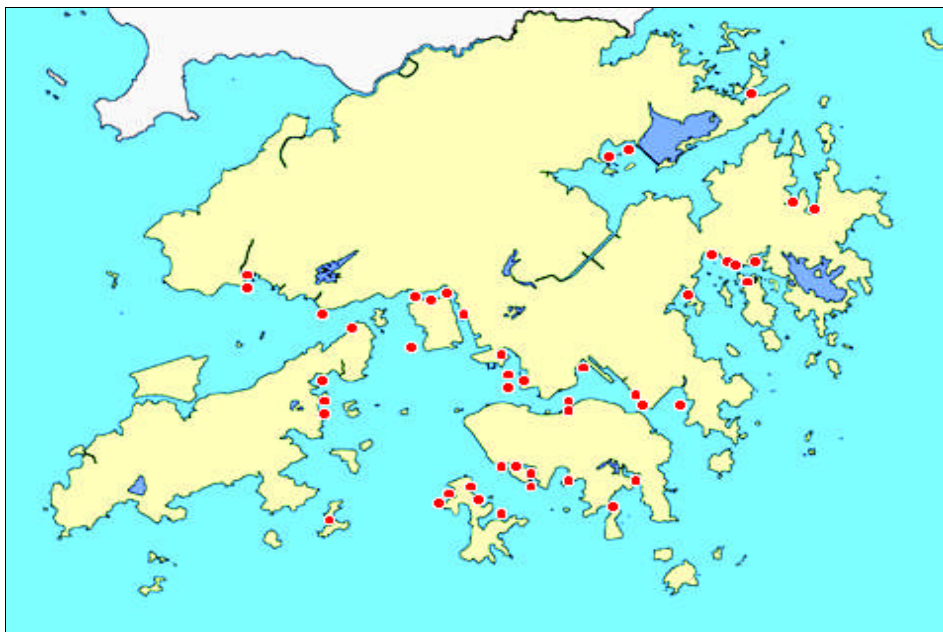
- (a) application for private moorings (paras. 4.2 to 4.6); and
- (b) control of private moorings (paras. 4.7 to 4.15).

Application for private moorings

4.2 According to the law, no person shall lay a private mooring anywhere in Hong Kong waters except in the place specified in the permission granted by the Director of Marine. There are 46 designated areas within Hong Kong waters for the laying of private moorings (see Figure 2).

Figure 2

Distribution of designated areas for laying private moorings



Legend: ● Designated areas for laying private moorings within Hong Kong waters

Source: MD records

4.3 To apply for a private mooring, the vessel owner shall make an application to the MD. The MD allows an applicant to indicate in the application form his preferred locations (in order of priority, up to four choices) for laying a private mooring. Upon receipt of an application, the Private Mooring Sub-unit of the Port Control Division will consider whether there is sufficient space and water depth in the applied locations for the applicant's vessel. The successful applicant will be given a written approval subject to the following standard conditions:

- (a) the mooring shall be a designated mooring for the vessel mentioned in the application form (the designated vessel);
- (b) no vessel exceeding the designated length of the mooring shall be secured to the mooring and no more than one vessel shall be secured to the mooring at any one time;
- (c) the owner of the mooring shall, within seven days, notify the Director of Marine in writing of any change in the particulars provided in the application form in respect of himself and his vessel;

- (d) the mooring owner shall pay the fees prescribed in the Shipping and Port Control Regulations (Cap. 313A) in advance at quarterly intervals; and
- (e) the Director of Marine may request the private mooring owner to remove the mooring at any time as he considers necessary upon giving 14 days' notice in writing to the owner thereof.

If there is no suitable or available space in the applied locations, the application will be placed on a waiting list. The list shall be maintained in chronological order by the date of receipt of each application. In 2011-12, the MD derived revenue of \$16.1 million from letting out private mooring spaces.

4.4 As at March 2012, there were a total of 2,048 private mooring spaces (Note 35). Of these mooring spaces, 1,874 (92%) were let out. While there were 174 (8%) vacant mooring spaces in 20 designated areas available for letting, there were 281 applications on the waiting lists for private moorings in 15 designated areas. Of these 281 applications, 80% had been waiting for more than one year. Audit found that the MD had not proactively publicised the vacant mooring spaces. For example, the MD had not made use of its website to promulgate the availability and locations of the vacant mooring spaces to facilitate applicants. The applicants could only obtain such information through enquiries with the MD.

Audit recommendation

4.5 **Audit has recommended that the Director of Marine should proactively publicise the availability of vacant mooring spaces for letting (such as posting such information on its website).**

Response from the Administration

4.6 The Director of Marine agrees with the audit recommendation. He has said that the MD will explore the best way to publicise the availability of vacant mooring spaces.

Note 35: *Over 70% of them were designated for mooring pleasure vessels.*

Control of private moorings

- 4.7 The Shipping and Port Control Regulations provide that:
- (a) a private mooring shall not be used by any vessels not owned by or under the control of the mooring owner except with the consent of the mooring owner or by direction of the Director of Marine; and
 - (b) if the owner of a private mooring sells or otherwise transfers the private mooring, he and the transferee shall notify the Director of Marine of the required information within 14 days after the date of sale or transfer and pay the prescribed transfer fees.

4.8 The MD's internal guidelines further stipulate that the private mooring owner who is not using the mooring has to surrender and return the space to the MD. Personal mutual transfer of private mooring space is not allowed. The MD will only consider allowing a transfer of the mooring space if there is no applicant on the waiting list in the mooring area concerned.

Private mooring not used by the designated vessels

4.9 As mentioned in paragraph 3.20, in August 2011, the MD issued reminders to the vessel owners whose licences had expired since July 2008. In the same month, the MD also conducted a check on the licences of the designated vessels of private moorings (see para. 4.3(a)). It was found that for 141 private moorings, their designated vessels' licences had already expired. In October 2011, the Private Mooring Sub-unit requested the Harbour Patrol Section to take follow-up action on these cases.

4.10 Audit found that up to June 2012, 14 (10%) of the 141 private mooring owners had renewed the licences of their designated vessels. Four (3%) mooring owners had cancelled the licences of their designated vessels (indicating that either their vessels had been destroyed or had left Hong Kong permanently). In other words, these private moorings were no longer used by their designated vessels. Of these four moorings, three lay in areas where there were waiting lists for mooring spaces. According to the MD's internal guidelines, a private mooring owner who is not using the mooring has to surrender and return the space to the MD (see para. 4.8). However, the MD had not taken any action to require the owners to remove these moorings and vacate the spaces for the MD's re-allocation to applicants on the waiting lists.

4.11 For the remaining 123 (87%) cases, the private mooring owners had not renewed the licences of their designated vessels. Audit found that 112 (91%) of these licences had expired for more than three years (with one expired for 30 years). The MD needs to take stringent enforcement actions against these long outstanding cases without delay.

Personal mutual transfer/subletting of private moorings

4.12 According to its internal guidelines, the MD will only consider allowing a transfer of the mooring space if there is no applicant on the waiting list in the mooring area concerned (see para. 4.8). However, the Shipping and Port Control Regulations provide that if the owner of a private mooring sells or transfers the private mooring, he and the transferee only have to notify the Director of Marine within 14 days after the date of sale or transfer and pay the prescribed transfer fees (see para. 4.7(b)). There is a discrepancy between the internal guidelines and the Regulations concerning the conditions of transfer of private moorings. In response to Audit's enquiry, the MD said that in view of the rising demand of private moorings particularly at popular designated areas, it had adopted the administrative measure of not accepting the mutual personal transfer of those moorings for which there were applicants on the waiting lists. In Audit's view, the MD should rationalise the administrative measure for regulating the transfer of private moorings and seek legal advice as appropriate.

4.13 As mentioned in paragraph 4.4, there are long waiting lists for private mooring spaces in some areas. There is a risk of subletting of mooring spaces in these areas by some mooring owners who may take advantage of the provision in the Shipping and Port Control Regulations that a private mooring can be used by a non-designated vessel if there is consent from the private mooring owner (see para. 4.7(a)). This is particularly so for those mooring spaces of which the designated vessel licences have been cancelled or expired for a long time (see paras. 4.10 and 4.11). Audit's enquiry revealed that the Harbour Patrol Section had not taken specific action on these high-risk cases. The MD needs to step up control in this regard.

Audit recommendations

- 4.14 **Audit has *recommended* that the Director of Marine should:**
- (a) **require owners concerned to remove private moorings not in use (such as those no longer used by their designated vessels as mentioned in para. 4.10) and vacate the spaces for the MD's re-allocation to applicants on the waiting lists;**
 - (b) **take more stringent enforcement actions against private mooring owners whose designated vessel licences had expired for a long time;**
 - (c) **rationalise the administrative measure for regulating the transfer of private moorings and seek legal advice as appropriate;**
 - (d) **conduct investigations to ascertain the extent of the problem of subletting private moorings and seek legal advice on the possible enforcement actions that can be taken against subletting cases so identified; and**
 - (e) **based on the results in (c) and (d), consider the need to review relevant legal provisions with a view to strengthening the control over the transfer and use of private moorings.**

Response from the Administration

4.15 The Director of Marine agrees with the audit recommendations. He has said that:

- (a) the MD is in the process of upgrading the computer system to enhance the linkage between the vessels' licence information and the database of private moorings in order to strengthen the control of private moorings. The MD will request private mooring owners concerned to update the information of their designated vessels so as to identify any private mooring not in use that could be vacated for re-allocation;

Management of private moorings

- (b) for expired licence cases, the MD will liaise with the private mooring owners for renewal of their vessel licences and take enforcement action accordingly;
- (c) the MD will review its existing system for regulating the transfer of private moorings and formulate the way forward; and
- (d) the MD will match the ownerships of the private moorings and the designated vessels in order to ascertain the problem of subletting. The MD will then formulate the way forward and seek legal advice as appropriate.

PART 5: MARINE ACCIDENT INVESTIGATIONS

5.1 This PART examines the following issues relating to the MD's marine accident investigations:

- (a) production of investigation reports (paras. 5.4 to 5.12); and
- (b) monitoring implementation of recommendations (paras. 5.13 to 5.16).

Investigation of accidents

5.2 The Shipping and Port Control Ordinance and the Merchant Shipping (Local Vessels) Ordinance have the following provisions regarding marine accidents that occur within Hong Kong waters:

- (a) **Reporting.** The owner or master of a vessel shall report to the MD any accident involving a vessel (e.g. collision, fire and explosion) and the person in charge of marine works shall report any marine industrial accident (e.g. collapse of a crane and persons seriously injured or killed in the course of works). Reporting shall be made within 24 hours of occurrence of the accident; and
- (b) **Investigation.** The MD is empowered to conduct investigations into the reported accidents.

5.3 The Marine Accident Investigation and Shipping Security Policy Branch is responsible for conducting marine accident investigations. To assist investigation officers to comply with the statutory requirements and the code of international standards and recommended practices of the International Maritime Organisation, the MD has laid down guidelines, including the following:

Marine accident investigations

- (a) the purpose of the Branch's investigations is to determine the circumstances and the causes of the accidents with the aim to improve safety of life at sea and to avoid similar accidents from happening in the future. It is not intended to apportion blame or liabilities towards any individual or organisation. Therefore, the investigation reports do not make any recommendation for prosecutions or disciplinary actions (Note 36);
- (b) reported accidents shall be categorised according to their seriousness:
 - (i) Very Serious Accident involving the total loss of a vessel, loss of life, or serious pollution brought about by the damage of a ship;
 - (ii) Serious Accident involving a fire, explosion, collision, grounding that has resulted in serious structural damage to a vessel, pollution problems or machinery breakdowns; and
 - (iii) Less Serious Accident that is neither a "Very Serious Accident" nor a "Serious Accident" defined above, but includes elements such as substantial damage to a vessel or a shore (or offshore) installation, or one or more persons have sustained serious injury.

For investigation of all the three serious categories, an investigation report shall be completed within 30 weeks of the accident. Justifications should be provided for cases that cannot be completed within the stipulated time; and

- (c) accidents not belonging to the three serious categories are referred to as Minor Accidents. A general assessment of a Minor Accident is required to identify the cause and the results shall be recorded on file not later than three months from the date of the accident.

Note 36: *The MD will take prosecution actions against vessels found violating local and international marine regulations. For other offences not within the ambit of the MD, they will be referred to other law enforcement agencies for follow-up action.*

Production of investigation reports

5.4 From January 2008 to May 2012, there were 48 accidents (Note 37) of all the three serious categories requiring the MD's investigation. According to the MD, the complexity of each of these accidents varied from one another. Audit examined the MD's management of these cases and found that there was room for improvement in the production of investigation reports (see paras. 5.5 to 5.12).

Timeliness in completing investigation reports

5.5 As at 31 May 2012, of the 48 accidents, the MD completed investigation reports for 34 cases. However, only 5 (15%) of these reports were completed within the 30-week target completion time. The actual times taken for completing the remaining 29 (85%) reports ranged from 33 to 164 weeks (averaging 69 weeks). Of the 14 accidents (Note 38) for which investigations were still in progress, 7 (50%) cases had already exceeded the 30-week target completion time. According to MD records, reasons for the delays in completing the investigation reports included heavy workload of the investigation officers, case complexity and the time required for response from parties concerned during the investigation process.

Note 37: *Apart from these 48 accidents, there were 33 accidents that occurred outside Hong Kong waters but involving vessels registered in Hong Kong. The MD's investigations of these cases (under the Merchant Shipping (Safety) Ordinance (Cap. 369) and the Merchant Shipping (Local Vessels) Ordinance) were not within the scope of this audit.*

Note 38: *Eight of the 14 accidents are of the Very Serious category. Up to late October 2012, the MD had completed investigation reports for seven of the 14 accidents. For the remaining seven accidents for which investigations were still in progress, four (57%) had exceeded the 30-week target completion time. Two of the four overdue investigations are related to Very Serious accidents.*

5.6 As the purpose of an accident investigation is to improve the safety at sea and prevent recurrence of similar accidents, it is important to complete the investigation report in good time for disseminating any lesson learned (Note 39). Audit noted that from September 2011 to April 2012, the MD increased the number of investigation staff from four to seven in the light of the heavy workload on investigation.

Translation of draft reports

5.7 According to the MD's guidelines, if the conduct of a person or an organisation is likely to be commented or criticised in an investigation report, the draft report should be given to the person or organisation for comment. As investigation reports are prepared in English, translation of the draft reports into Chinese may be required depending on the parties to be consulted.

5.8 The MD has not set any target time for the translation process. Audit found that of the 34 investigation reports mentioned in paragraph 5.5, 13 required translation for consultation. The translation process for 10 of these draft reports took 8 to 51 weeks (Note 40). The average time taken was 25 weeks which was disproportionately long compared with the 30-week target time for completing the reports. The MD needs to take measures to expedite the translation process.

Publication of reports

5.9 For the purpose of promoting safety awareness and avoiding recurrence of accidents, the MD publishes accident investigation reports of the Very Serious and Serious categories. As at 31 May 2012, 25 such reports had been published on the MD's website but all were in English only. As these reports would be of interest to

Note 39: *Before the completion of an investigation report, the MD will, where necessary, issue the lesson to be learned in the form of a Marine Department Notice to the industry. The attention of the appropriate enforcement party will also be drawn when suspected contravention of statutory requirement is discovered. On completion of the investigation, the Notice will be updated in the light of the conclusions and recommendations of the investigation.*

Note 40: *The translation process for the remaining three reports took four to six weeks. The English versions of these 13 reports were only 11 to 35 pages long.*

Marine accident investigations

both the local and river-trade vessel operators, there is merit to publish them also in Chinese.

Recent vessel collision incident

5.10 On 1 October 2012, a Very Serious vessel collision incident occurred near Lamma Island resulting in a number of fatalities and injuries. The MD has started an investigation into the incident. According to the MD, it will endeavour to complete its investigation as early as possible.

Audit recommendations

5.11 **Audit has recommended that the Director of Marine should:**

- (a) **tighten control over the timeliness in completing accident investigation reports;**
- (b) **as early as possible, complete the MD's overdue investigations of the Very Serious accidents mentioned in Note 38 to paragraph 5.5 and the investigation mentioned in paragraph 5.10 so as to draw lessons for improving the safety at sea and to prevent recurrence;**
- (c) **take measures to expedite the Chinese translation process of draft investigation reports; and**
- (d) **consider publishing the investigation reports in Chinese (besides English) for the benefit of local and river-trade vessel operators.**

Response from the Administration

5.12 The Director of Marine agrees with the audit recommendations. He has said that:

- (a) the present 30-week target completion time has not taken into account certain practical situations which are beyond the investigation officers' control, such as the time required for response from parties concerned, the complexity of individual cases, the distraction of the investigation officers from the cases to deal with other cases as they occur and new evidence that may emerge along the investigation process. The MD will review the 30-week target completion time in the light of the above factors. Having said that, the MD had developed a database in 2011 to monitor the workload and investigation progress of the cases investigated by each investigation officer. The actual time taken by the investigation officer can be checked against the performance pledge to see whether each investigation is meeting the time schedule; and

- (b) the investigation guidelines will be amended to specify clearly when English or Chinese language will be used in the drafting of investigation reports thereby minimising the need for translation. Special emphasis will be placed on the drafting of investigation reports in Chinese for incidents that involved local and river-trade vessel operators.

Monitoring implementation of recommendations

5.13 An investigation report may contain recommendations for implementation by relevant MD sections and/or by outside parties (e.g. the owner or master of a vessel involved in the accident). The MD's guidelines stipulate that the Marine Accident Investigation and Shipping Security Policy Branch shall inform the relevant sections to implement those recommendations within their respective ambit.

5.14 In an examination of the MD's follow-up action on five investigation reports (Note 41), Audit has found that there was room for improvement as follows:

- (a) three reports recommended specific action to be taken by the vessel owners/masters concerned to comply with certain statutory requirements (e.g. all crew members should be properly trained and certified). One of these reports (concerning a Serious vessel collision incident) also recommended that the Shipping Division of the MD should be informed of the abnormal performance of certain vessel type for taking necessary follow-up action with the shipping company concerned. Accordingly, this report was copied to the Shipping Division for its action. However, the other two reports were not copied to the enforcement sections responsible for checking the related compliance issues. For one investigation report (concerning a Very Serious marine industrial accident) issued in August 2011, the enforcement section (which conducted compliance checks on a sample basis) followed up the compliance issue with the shipping company concerned upon Audit's enquiry in June 2012 (after a lapse of ten months). For another investigation report (concerning a Less Serious vessel collision incident) issued in April 2012, the enforcement section (which conducted regular safety checks on vessels) followed up the compliance issue with the shipping company in the same month. There is a need to inform the relevant enforcement sections of any non-compliance issues identified in investigation reports so that the relevant sections would cover them in their compliance checks without delay; and
- (b) two reports (concerning Very Serious vessel operation accidents) recommended the adoption of certain good practices by the vessel owners/masters (e.g. instructing the crew members to use personal safety

Note 41: *The cases all involving casualties were selected from the 34 completed reports mentioned in paragraph 5.5.*

equipment when working aloft or near the sides of a vessel). After the issue of reports, the Marine Accident Investigation and Shipping Security Policy Branch did not make enquiries to ascertain whether the vessel owners/masters concerned had adopted the recommended good practices and if not the reason behind. As the recommended good practices would help improve the safety of life at sea, the MD needs to follow through their implementation and render assistance to the vessel owners/masters concerned in case they have any implementation problem.

Audit recommendations

5.15 **Audit has *recommended* that the Director of Marine should:**

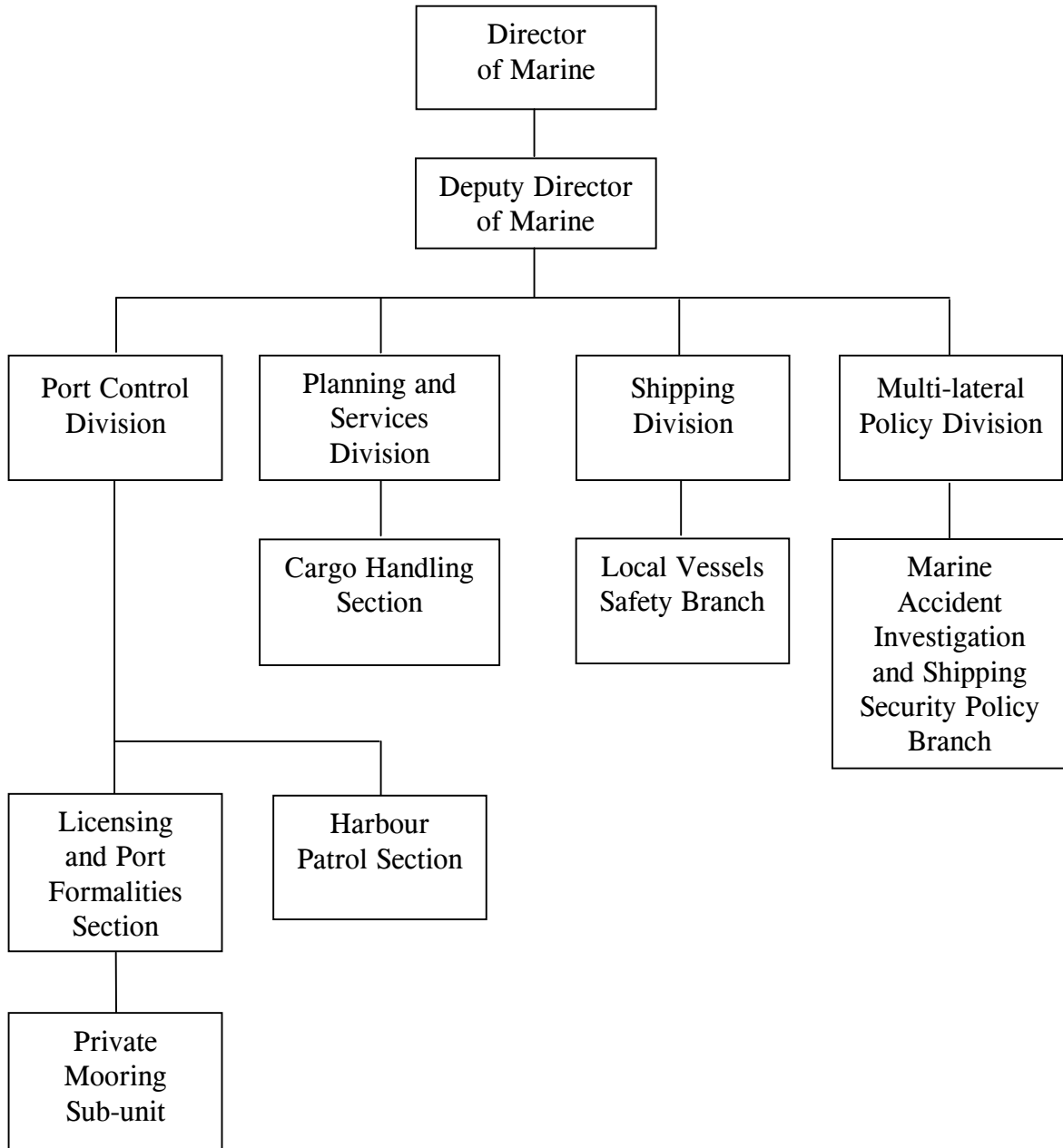
- (a) **take measures to ensure that relevant enforcement sections are kept informed of compliance issues identified in investigation reports so that they would cover these cases in their compliance checks without delay; and**
- (b) **require the Marine Accident Investigation and Shipping Security Policy Branch to follow up with the local parties involved in marine accidents their adoption of good practices recommended in investigation reports and render them assistance where necessary.**

Response from the Administration

5.16 The Director of Marine agrees with the audit recommendations. He has said that:

- (a) on completion of each investigation report, the relevant enforcement sections will be informed of the findings and the recommended measures. Such information will be kept in a database for record purposes; and
- (b) in case where the recommendations do not involve enforcement sections in the MD, the Marine Accident Investigation and Shipping Security Policy Branch will take up the responsibility to follow up with the local parties involved in the marine accidents to see that good practices recommended in the investigation reports are being followed up and that difficulties in adopting these practices are resolved.

**Marine Department
Organisation chart (extract)
(30 September 2012)**



Source: MD records

Remarks: Only Divisions and their operating units mentioned in this Audit Report are shown.

Acronyms and abbreviations

Audit	Audit Commission
ED Panel	Legislative Council Panel on Economic Development
FSTB	Financial Services and the Treasury Bureau
MD	Marine Department
PCWA	Public cargo working area
WSD	Water Supplies Department