

## **CHAPTER 3**

### **Food and Environmental Hygiene Department**

<p><b>Public cooked food markets managed by the Food and Environmental Hygiene Department</b></p>
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**Audit Commission  
Hong Kong  
1 April 2015**

*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. 64 of the Director of Audit contains 8 Chapters which are available on our website at <http://www.aud.gov.hk>

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# **PUBLIC COOKED FOOD MARKETS MANAGED BY THE FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT**

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# **PUBLIC COOKED FOOD MARKETS MANAGED BY THE FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT**

## **Executive Summary**

1. The Food and Environmental Hygiene Department (FEHD) is responsible for managing public cooked food markets. It has been the Government's policy since the early 1970s that no new hawker licences should be issued under normal circumstances and on-street licensed hawkers should be put into off-street hawker bazaars or public markets. As at 31 December 2014, there were a total of 75 public cooked food markets, comprising 11 Cooked Food Hawker Bazaars (CFHBs), 25 Cooked Food Markets (CFMs) and 39 Cooked Food Centres (CFCs). CFHBs and CFMs are free-standing markets, and CFCs are attached to public markets that sell wet and dry goods. Stall operators in CFHBs must be licensed cooked food hawkers. For CFMs and CFCs, stall operators must not hold any hawker licence and holders of hawker licences are required to surrender their licences before they are allowed to operate. The 75 public cooked food markets provided a total of 1,282 stalls, comprising 238 stalls in CFHBs, 483 stalls in CFMs and 561 stalls in CFCs. The Audit Commission (Audit) has recently conducted a review to examine the FEHD's management of public cooked food markets.

### **Vacancy rates of markets**

2. *High vacancy rates of CFHBs.* The hawker policy has resulted in a decreasing number of licensed hawkers operating in CFHBs and an increasing number of vacant CFHB stalls over time. However, the FEHD has not taken timely action to deal with the problem. As at 31 December 2014, the 11 CFHBs had a stall vacancy rate of 61% on average, with the largest two having a vacancy rate of 75% and 81%. Of the total of 144 vacant stalls in these 11 CFHBs, 114 (79%) stalls had been vacant for over 10 years. The high percentage of long-vacant CFHB stalls suggests that the land is not put to the best use. The FEHD needs to critically examine the problem and take effective improvement measures, such as consolidating CFHBs with high vacancy rates and releasing sites which are no longer required (paras. 2.3 to 2.7).

## Executive Summary

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3. *Markets located at temporary sites.* Nine public cooked food markets had been located at temporary sites for some 30 to 42 years. The Cheung Sha Wan CFM, the largest one, had a high vacancy rate of 57% as at 31 December 2014. In 2001, the FEHD considered that the CFM should be closed down and the site returned to the Government. However, the FEHD did not formulate any work plan to do so, except for freezing 16 vacant stalls. The CFM continued to operate, and the 16 stalls (out of 28) had been frozen for over a decade. The FEHD needs to formulate exit plans as appropriate for markets located at temporary sites (paras. 2.8 to 2.11).

4. *Viability of markets.* The FEHD intends that all genuinely non-viable hawker pitches and market pitches should be delisted. However, it is not the FEHD's practice to conduct periodic reviews to assess the viability of each public cooked food market and its alternative use. Based on a review of the provision of the 25 CFMs and 39 CFCs by the FEHD in 2010, Audit noted that there were some CFMs/CFCs with low patronage, casting doubt on their viability (paras. 2.14 and 2.15).

### Provision of facilities in markets

5. *Fire safety measures.* In 2003, a joint meeting between the FEHD, the Fire Services Department and the Architectural Services Department concluded that full-scale fire service upgrading works should be implemented in the FEHD's markets. The FEHD drew up an implementation plan for CFCs and public markets selling wet and dry goods but not CFHBs and CFMs. The progress in improving fire safety measures has been slow. As at December 2014, many public cooked food markets had implemented only a few upgraded fire safety measures. This is a cause for concern because Audit's site visits revealed certain fire risk factors in public cooked food markets, such as open kitchens without fire-resistant partitions, keeping many liquefied petroleum gas cylinders, etc (paras. 3.4 to 3.9).

6. *Electricity supply for stall operation.* According to the FEHD's current standard, the electricity supply for each cooked food stall should have a capacity of 60 amperes. As at December 2014, none of the 25 CFMs, and only 2 of the 39 CFCs, had electricity supply that met the standard. Sub-standard electricity supply has caused problems such as overloading of electric system, and rendering the stalls unfit for letting and retrofitting of air-conditioning systems not feasible (paras. 3.15, 3.17 and 3.19).

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7. *Air-conditioning of markets.* As at December 2014, only 22 (29%) of the 75 public cooked food markets were air-conditioned. Retrofitting of air-conditioning systems for some markets could not go ahead due to inadequate electricity supply. Some stall operators have installed standalone air-conditioners without the FEHD's prior approval and without due consideration of the inadequate electricity supply, which could be a safety concern (paras. 3.24, 3.27 and 3.28).

### Management of market stalls

8. *Management of stalls in CFMs and CFCs.* CFM and CFC stalls were intended for small-scale operation. They may not meet the hygiene requirements and safety standards applicable to restaurants. However, some stalls were actually operating at a larger scale than traditional cooked food stalls. In addition, Audit's site visits found that some stalls without liquor licence sold liquor to patrons for consumption in the stall area, and some stalls without food factory licence might be used as food factories (paras. 4.5 to 4.7).

9. *Routine inspections of stalls.* Audit examination of the FEHD's routine inspections of stalls in the public cooked food markets revealed the following inadequacies: (a) not taking actions on some irregularities such as obstruction of public areas and improper use of liquefied petroleum gas; (b) inspections not thoroughly conducted; and (c) inspections not conducted in a timely manner in accordance with the FEHD's requirements (paras. 4.19 to 4.24).

### Management of stall rentals and charges

10. Stall operators in CFMs and CFCs, being public market stall tenants, are required to pay rentals and rates. They are also required to pay air-conditioning charges if their CFMs and CFCs are air-conditioned. In 2008, Audit conducted a review of the FEHD's management of public markets, and recommended that the FEHD should: (a) establish a suitable rental adjustment mechanism to address the issue that many stall tenants were paying lower-than-market rentals; (b) examine the issue that the FEHD had not recovered from stall tenants the rates paid on their behalf; and (c) work out an appropriate arrangement to tackle the issue of under-recovery of air-conditioning costs from stall tenants. As at December 2014, the FEHD had not fully implemented its follow-up actions on the issues (paras. 5.2 to 5.11, 5.14 to 5.17, and 5.20 to 5.28).

## Executive Summary

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### Way forward

11. In 2012, the Financial Services and the Treasury Bureau (FSTB) selected some government sites to study their redevelopment potential, including 12 public cooked food market sites. The FEHD considered that 3 CFHB sites could be released. So far, the FEHD has started the negotiation with the licensees of 2 of the CFHBs on closure. As the 2012 FSTB study did not cover the other 63 public cooked food market sites and some of these sites might be underutilised, the FEHD needs to explore their redevelopment potential or alternative use (paras. 6.5 to 6.8).

### Audit recommendations

12. **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 Food and Environmental Hygiene should:**

#### *Vacancy rates of markets*

- (a) **take effective measures to tackle the high vacancy problem of individual public cooked food markets, such as consolidating the markets and formulating exit plans for markets located at temporary sites (para. 2.16(b) and (c));**
- (b) **conduct periodic reviews to monitor the vacancy rate and assess the viability of each public cooked food market (para. 2.16(c));**

#### *Provision of facilities in markets*

- (c) **expedite the implementation of fire safety measures at public cooked food markets and explore effective measures to help better ascertain and address their fire risk (para. 3.11(a) and (c));**
- (d) **where feasible, take prompt actions to enhance the electricity supply for CFMs and CFCs, and take forward proposals for retrofitting air-conditioning systems (paras. 3.22(c) and 3.29(a));**

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- (e) promptly step up control to curb unauthorised installation of air-conditioners (para. 3.29(c));

### *Management of market stalls*

- (f) review the adequacy of facilities provided to stalls in CFMs and CFCs operating at a much larger scale than traditional cooked food stalls, and explore improvement measures (para. 4.8(a) and (b));
- (g) take necessary follow-up actions on the issue of selling liquor by stalls in public cooked food markets without liquor licence, and the cases involving stalls suspected to be running as food factories without food factory licence (para. 4.8(e) and (f));
- (h) ensure that FEHD staff conduct effective and timely inspections of public cooked food markets in accordance with the FEHD's requirements and properly follow up irregularities identified during inspections (para. 4.25(a), (c) and (e));

### *Management of stall rentals and charges*

- (i) expedite action to establish a suitable rental adjustment mechanism for public markets and to recover rates and air-conditioning costs from stall tenants (paras. 5.12(a), 5.18 and 5.29(a)); and

### *Way forward*

- (j) expedite actions to release the three public cooked food market sites for redevelopment, and explore the redevelopment potential or alternative use of other public cooked food market sites (para. 6.9(b) and (c)).

## Response from the Government

13. The Secretary for Food and Health and the Director of Food and Environmental Hygiene generally agree with the audit recommendations.



## **PART 1: INTRODUCTION**

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

### ***Hawker policy***

1.2 On-street hawkers, while providing a primary source of daily provisions for the general public, might cause obstruction, environmental nuisance or even hazards relating to hygiene and fire risks. It has been the Government's policy since the early 1970s that no new hawker licences should be issued under normal circumstances and on-street licensed hawkers should be put into off-street hawker bazaars or public markets. Succession to and transfer of hawker licences already issued have also been subject to stringent restrictions. As at January 2015, the total number of licensed hawkers was about 6,300, compared with about 20,000 in the late 1980s.

### ***Public cooked food markets***

1.3 On-street cooked food stalls operated by hawkers (commonly known as "Dai Pai Tong") have a long history in Hong Kong. In the 1970s to 1990s, in pursuit of the prevailing hawker policy, the former Urban Council and Regional Council built many public cooked food markets to resite on-street licensed cooked food stalls. These public cooked food markets include the following three types:

- (a) ***Cooked Food Hawker Bazaars (CFHBs)***. CFHBs are free-standing markets (see Photographs 1 and 2). Stall operators must be licensed cooked food hawkers;
- (b) ***Cooked Food Markets (CFMs)***. CFMs are also free-standing markets (see Photographs 3 and 4). Stalls are let, under a tenancy agreement, to operators not holding any hawker licence. Holders of hawker licences must surrender their licences before they are allowed to operate a CFM stall; and
- (c) ***Cooked Food Centres (CFCs)***. CFCs are attached to public markets that sell wet and dry goods (see Photographs 5 and 6). Similar to CFMs, stalls are let, under a tenancy agreement, to operators not holding any hawker licence.

## Introduction

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### Photographs 1 and 2

#### A free-standing CFHB (Lai Yip Street CFHB, Kwun Tong)

Photograph 1



Outside

Photograph 2



Inside

Source: Photographs taken by the Audit Commission in December 2014

### Photographs 3 and 4

#### A free-standing CFM (Chai Wan Kok CFM, Tsuen Wan)

Photograph 3



Outside

Photograph 4



Inside

Source: Photographs taken by the Audit Commission in January 2015

**Photographs 5 and 6**

**A CFC on the second floor of a municipal services building  
(Tai Shing Street CFC, Wong Tai Sin)**

**Photograph 5**



**Outside**

**Photograph 6**



**Inside**

*Source: Photographs taken by the Audit Commission in December 2014*

*Remarks: The ground and first floors house the Tai Shing Street Market selling wet and dry goods.*

1.4 On 1 July 1997, the Urban Council and Regional Council were replaced by the Provisional Urban Council and Provisional Regional Council respectively. Since the dissolution of these two provisional councils on 1 January 2000, the Food and Environmental Hygiene Department (FEHD) has been responsible for managing public cooked food markets as part of the work under its Market Management and Hawker Control programme. The aim of the programme is to maintain a clean and hygienic environment in public markets and to control on-street hawking activities. Its work involves managing and maintaining public markets; inspecting markets to ensure cleanliness and compliance with tenancy requirements and conditions; controlling and containing on-street hawking activities and obstruction; managing licensed hawker pitches, hawker permitted places and hawker bazaars; and taking enforcement actions. For 2014-15, the staff establishment for the entire Market Management and Hawker Control programme is about 3,650 and the estimated financial provision is about \$1,690 million. The FEHD does not have a breakdown

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of the programme resources showing the part of resources allocated to managing public cooked food markets (Note 1).

1.5 As at 31 December 2014, there were 75 public cooked food markets managed by the FEHD, comprising 11 CFHBs, 25 CFMs and 39 CFCs. Their years of commissioning, areas and number of stalls are summarised below (see Appendices A to C for details):

- (a) **Years of commissioning.** All the 11 CFHBs and the majority of the CFMs and CFCs were built in the 1980s or before (see Table 1). CFHBs and CFMs were mostly located in the old industrial areas. CFCs were mostly located within or near residential areas;

**Table 1**

**Years of commissioning of public cooked food markets  
(31 December 2014)**

Year of commissioning	No. of public cooked food markets			
	CFHB	CFM	CFC	Total
Before 1980	9	3	6	18
1980 to 1989	2	18	15	35
1990 to 1999	0	2	13	15
2000 to 2009	0	2	5	7
Total	11	25	39	75

Source: Audit analysis of FEHD records

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**Note 1:** *The management of public cooked food markets accounts for a small part of the work under the programme. For example, the programme includes managing some 13,400 stalls that sell wet and dry goods in public markets, compared to some 1,300 stalls in public cooked food markets (see para. 1.5(c)).*

- (b) **Areas.** Public cooked food markets had areas ranging from 150 to 4,030 square metres (m<sup>2</sup>). In general, CFHBs and CFMs were smaller in size than CFCs. There were 3 CFHBs, 7 CFMs and 22 CFCs with areas exceeding 1,000 m<sup>2</sup>; and
- (c) **Number of stalls.** The total number of stalls was 1,282, comprising 238 stalls in CFHBs, 483 stalls in CFMs and 561 stalls in CFCs. The number of stalls in individual markets ranged from 2 to 56. On average, a CFHB had 22 stalls, a CFM had 19 stalls and a CFC had 14 stalls.

## Audit review

1.6 The FEHD manages the public cooked food markets in accordance with the provisions on public markets or hawker bazaars stipulated in the Public Health and Municipal Services Ordinance (Cap. 132) or its subsidiary legislation (e.g. the Hawker Regulation — Cap. 132AI), as follows:

- (a) **CFMs and CFCs.** The provisions on public markets apply. For the purposes of the Ordinance, public markets comprise free-standing CFMs and public markets selling wet and dry goods, with or without CFCs attached (Note 2); and
- (b) **CFHBs.** The provisions on hawker bazaars apply because CFHBs are not public markets for the purposes of the Ordinance.

1.7 **2003 and 2008 audit reviews.** The Audit Commission (Audit) conducted a review of the FEHD's management of public markets in 2003 (Chapter 2 of the Director of Audit's Report No. 41) and a follow-up review in 2008 (Chapter 6 of the Director of Audit's Report No. 51). Both reviews covered public markets in general, excluding CFHBs (see para. 1.6(b)). The Public Accounts Committee (PAC) of the Legislative Council (LegCo) considered both Reports, and expressed concern about,

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**Note 2:** *As at December 2014, the number of public markets governed by the Ordinance was 101, comprising 25 CFMs, 39 public markets selling wet and dry goods with CFC attached and 37 public markets selling wet and dry goods without CFC attached.*

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among others, the management of market stall rental and charges (see paras. 5.5, 5.15 and 5.22).

1.8 *FEHD review of CFMs and CFCs.* In response to Audit's recommendations in 2008, the FEHD conducted a review of the provision of CFMs and CFCs in 2010. The findings and conclusions as reported to the LegCo Panel on Food Safety and Environmental Hygiene in December 2010 are summarised as follows:

- (a) on average, the stall let-out rate of CFMs was 92% and each CFM had 610 patrons per day. The figures for CFCs were 95% and 1,130 respectively;
- (b) the main reasons for patronising CFMs/CFCs were low prices and proximity to workplace or home. Many patrons considered that the decor was old, ventilation should be improved and the seating and layout should be upgraded. As regards management of the facilities, "crowded passageways" and "wet floor" were most cited as areas for improvement; and
- (c) the Government believed that CFMs/CFCs were still in demand. On the other hand, industrial areas were in decline and, more than 20,000 restaurant and factory canteen licences had been issued to provide adequate catering services for the public. Since there was strong public sentiment in favour of the preservation of the Dai Pai Tong culture, the Government did not see the need for building new CFMs/CFCs to resite on-street licensed Dai Pai Tongs. It would explore ways to further improve the condition of the existing CFMs/CFCs.

1.9 In November 2014, Audit commenced a review to examine the FEHD's management of public cooked food markets (Note 3), including following up relevant issues identified in the 2008 audit review of public markets. The review has focused on the following areas:

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**Note 3:** *There are cooked food venues in public housing estates operated by the Hong Kong Housing Authority. These cooked food venues mainly serve residents of the public housing estates concerned. This audit review does not cover such venues.*

- (a) vacancy rates of markets (PART 2);
- (b) provision of facilities in markets (PART 3);
- (c) management of market stalls (PART 4);
- (d) management of stall rentals and charges (PART 5); and
- (e) way forward (PART 6).

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

## **General response from the Government**

1.10 The Secretary for Food and Health and the Director of Food and Environmental Hygiene generally agree with the audit recommendations. On CFHBs, the FEHD has expressed the following views:

- (a) it was a clear policy intention that CFHBs were intended to be transient. As a corollary, a progressively high vacancy rate is a natural step leading to the ultimate decommissioning of a CFHB. The only discretion left to the Government is whether to let the vacancy situation aggravate naturally as licensees stop operation, persuade the licensees to move their operation to more permanent cooked food markets as and when such become available in the vicinity, or to accelerate the demise of a CFHB through non-renewal of licences or even forcible eviction of licensees still in operation in CFHBs with a high vacancy rate;
- (b) the demand for cooked food hawkers began to fall in the 1970s probably due to rising community affluence, changes in local eating habits, and the expansion of the restaurant and fast food business. With the passage of time, as no new cooked food hawker licence was issued, some CFHBs had a high vacancy rate; and

## **Introduction**

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- (c) although the Director of Food and Environmental Hygiene has the authority not to renew the relevant hawker licences and require the licensees to vacate their pitches within a certain period of time when a CFHB has reached a very low occupancy rate, the cost of social acrimony associated with non-renewal and forced eviction would need to be taken into account, especially since most of the operators are the grassroots of the community. The policy, therefore, has wider social considerations than just economic ones.

## **Acknowledgement**

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

## **PART 2: VACANCY RATES OF MARKETS**

2.1 This PART examines the vacancy rates of public cooked food markets, focusing on the following areas:

- (a) vacancy rates of CFHBs (paras. 2.3 to 2.7);
- (b) vacancy rates of CFMs and CFCs (paras. 2.8 to 2.12); and
- (c) viability of public cooked food markets (paras. 2.13 to 2.17).

### ***Intended use and average vacancy rates of public cooked food markets***

2.2 As mentioned in paragraph 1.3, public cooked food markets were built with a view to resiting on-street licensed cooked food stalls. Stalls in CFHBs were allocated to licensed hawkers mainly by ballot (Note 4). Stall operators in CFMs and CFCs must not hold hawker licences. Some of the stalls were let by open auction while some were let at concessionary rental (e.g. to former licensed hawkers who surrendered their licences voluntarily under special resiting schemes). As at 31 December 2014, the 75 public cooked food markets provided a total of 1,282 stalls. Table 2 shows the average vacancy rates as at 31 December 2014.

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**Note 4:** *The licensed hawkers do not need to pay rentals for their stalls. They are required to pay an annual fee (currently \$1,980) for licence renewals and another annual fee (currently \$26,514) for using their stalls.*

## Vacancy rates of markets

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Table 2

**Average vacancy rates of public cooked food markets  
(31 December 2014)**

Market	No. of stalls (a)	No. of vacant stalls (b)	Vacancy rate (c) = $\frac{(b)}{(a)} \times 100\%$
11 CFHBs	238	144	61%
25 CFMs	483	31	6%
39 CFCs	561	18	3%
Overall	1,282	193	15%

Source: *Audit analysis of FEHD records*

## Vacancy rates of Cooked Food Hawker Bazaars

### *High vacancy rates of CFHBs*

2.3 Table 2 shows that the 11 CFHBs had a total of 144 vacant stalls, much more than the 31 vacant stalls for the 25 CFMs and 18 vacant stalls for the 39 CFCs. The average vacancy rate of the 11 CFHBs was 61%, also significantly higher than the 6% for the 25 CFMs and 3% for the 39 CFCs. An analysis of the vacancy rates of individual CFHBs is shown in Table 3. It can be seen that the largest CFHB (the Ma Kok Street CFHB) had a vacancy rate of 75% (see Figure 1 and Photograph 7). The second largest CFHB (the Luen Yan Street CFHB) had a vacancy rate of 81% (see Figure 2 and Photograph 8).

## Vacancy rates of markets

**Table 3**

**Vacancy rates of CFHBs  
(31 December 2014)**

Serial no.	Name	Area  (m <sup>2</sup> )	No. of stalls  (a)	No. of vacant stalls  (b)	Vacancy rate  (c) = $\frac{(b)}{(a)} \times 100\%$
1	Ma Kok Street CFHB	2,360	36	27	75%
2	Luen Yan Street CFHB	1,673	36	29	81%
3	Tai Lin Pai Road CFHB	1,208	22	18	82%
4	Woosung Street Temporary CFHB	761	24	6	25%
5	Yu Chau West Street CFHB	757	26	22	85%
6	Kwai Wing Road CFHB	515	20	15	75%
7	Lai Yip Street CFHB	425	10	4	40%
8	Haiphong Road Temporary CFHB	367	20	9	45%
9	Reclamation Street CFHB	270	12	8	67%
10	Stanley Market Open Space Hawker Bazaar	250	28 (Note 1)	6 (Note 1)	21%
11	Lam Tei Market cum Hawker Bazaar	160	4 (Note 2)	0	0%
<b>Overall</b>		<b>8,746</b>	<b>238</b>	<b>144</b>	<b>61%</b>

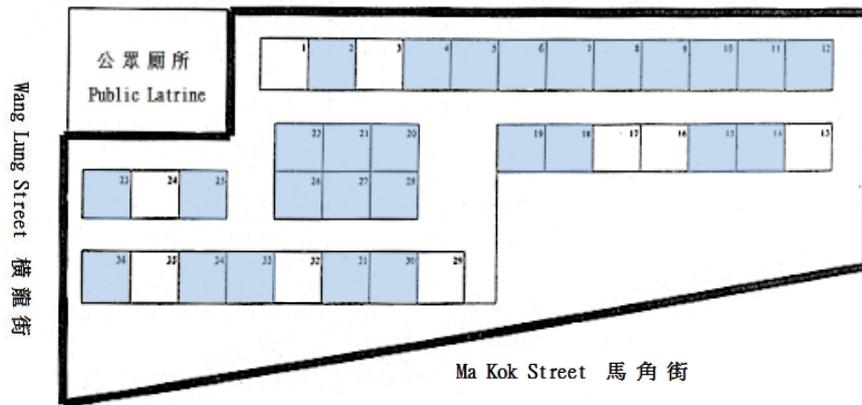
*Source: Audit analysis of FEHD records*

*Note 1: The 28 stalls comprised 2 selling cooked food and 26 selling dry goods. None of the 6 vacant stalls was a cooked food stall.*

*Note 2: The 4 stalls comprised 1 selling cooked food and 3 selling vegetables/dry goods.*

Figure 1

Floor plan of Ma Kok Street CFHB showing locations of vacant stalls  
(31 December 2014)



Legend:  Vacant stalls

Source: FEHD records

Photograph 7

Vacant stalls in Ma Kok Street CFHB



Source: Photograph taken by Audit in January 2015



## Vacancy rates of markets

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### *Long period of vacancy of CFHB stalls*

2.4 Audit analysis also revealed that the 144 vacant CFHB stalls had been vacant for a long time (see Table 4). In particular, 114 (79%) stalls had been vacant for over 10 years. Some long-vacant stalls were in a poor condition (see Photograph 9 for an example).

**Table 4**

**Period of vacancy of 144 CFHB stalls  
(31 December 2014)**

<b>Period of vacancy (Year)</b>	<b>No. of stalls</b>
1 or below	2 (1%)
Over 1 to 5	5 (4%)
Over 5 to 10	23 (16%)
Over 10 to 15	29 (20%)
Over 15 to 20	40 (28%)
Over 20 to 25	17 (12%)
Over 25 (Note)	28 (19%)
<b>Total</b>	<b>144 (100%)</b>

*Source: Audit analysis of FEHD records*

*Note: The longest period of vacancy was 29 years, involving 5 stalls.*

**Photograph 9**

**A long-vacant stall in Luen Yan Street CFHB**



*Source: Photograph taken by Audit in January 2015*

***Timely action not taken to deal with vacant CFHB stalls***

2.5 According to the Hawker Regulation, CFHB stalls can only be allocated for use by licensed hawkers. As mentioned in paragraph 1.2, it has been the Government's policy since the early 1970s that no new hawker licences should be issued under normal circumstances, and succession to and transfer of hawker licences already issued have also been subject to stringent restrictions (Note 5). As a result, the number of licensed hawkers operating in CFHBs has been decreasing over time, resulting in an increasing number of vacant CFHB stalls. The problem should have been anticipated when adopting the hawker policy. However, the high vacancy rates of CFHBs and long period of vacancy as at 31 December 2014 suggested that the FEHD had not taken timely action to deal with the problem. Case 1 below is an example.

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**Note 5:** *For example, hawker licences for selling cooked food in CFHBs can only be succeeded by or transferred to the licensee's spouse.*

### Case 1

#### Timely action not taken to deal with vacant CFHB stalls (2004 to 2014)

1. The Ma Kok Street CFHB (established in 1977) and the Luen Yan Street CFHB (established in 1985) are the two largest CFHBs. They are both located in Tsuen Wan, each providing 36 stalls (i.e. 72 stalls in total).

2. Like other CFHBs, the number of operators in the two CFHBs has been decreasing over time, resulting in an increasing number of vacant stalls. During the period 2004 to 2014, the number of vacant stalls increased from 43 to 56.

	31 December 2004		31 December 2014	
	No. of stalls occupied	No. of stalls vacant	No. of stalls occupied	No. of stalls vacant
Ma Kok Street CFHB	15	21	9	27
Luen Yan Street CFHB	14	22	7	29
Total	29	43	16	56

3. In late December 2014, the FEHD was exploring the feasibility of releasing some CFHB sites by relocating operators and consolidating CFHBs with high vacancies.

#### *Audit comments*

4. In 2004, the two CFHBs had in total 29 stalls occupied (see para. 2 above). All these 29 stalls could possibly be housed in either of the two CFHBs (both providing 36 stalls — see para. 1 above). The FEHD could have taken more timely action to explore such relocation/consolidation of CFHBs.

Source: *Audit analysis of FEHD records*

*Scope for consolidating some CFHB stalls*

2.6 Apart from the Ma Kok Street CFHB and the Luen Yan Street CFHB (see Case 1), Audit noted that there might be scope for rationalising the provision of stalls in other CFHBs. For example, the Woosung Street Temporary CFHB (25% vacancy rate) and the Reclamation Street CFHB (67% vacancy rate) could possibly be consolidated (see Case 2).

**Case 2**

**Scope for further rationalising the provision of stalls**

1. The Woosung Street Temporary CFHB and the Reclamation Street CFHB are both located in the Yau Tsim District, within a three-minute walk to each other (some 250 metres apart).

2. The Woosung Street Temporary CFHB is more spacious, having an area of 761 m<sup>2</sup> with 24 stalls (32 m<sup>2</sup> per stall on average — Note). The Reclamation Street CFHB has an area of only 270 m<sup>2</sup> with 12 stalls (23 m<sup>2</sup> per stall on average — Note).

3. As at 31 December 2014, the Woosung Street Temporary CFHB had 6 vacant stalls while the Reclamation Street CFHB had only 4 stalls occupied.

	No. of stalls	No. of stalls occupied	No. of stalls vacant
Woosung Street Temporary CFHB	24	18	6
Reclamation Street CFHB	12	4	8
Total	36	22	14

*Audit comments*

4. The 4 operators at the Reclamation Street CFHB could possibly be relocated to the nearby Woosung Street Temporary CFHB, which had 6 vacant stalls and was more spacious (see para. 2 above).

### Case 2 (Cont'd)

5. Upon enquiry, the FEHD informed Audit in March 2015 that:
- (a) while proximity of location and availability of vacant stalls were relevant considerations for consolidating CFHBs, the FEHD would also have to take into account the physical condition of the CFHBs concerned, and whether improvement works in the pipeline would take up extra space, limiting the scope for consolidation with other CFHBs; and
  - (b) funding had been approved to renovate the Woosung Street Temporary CFHB. Opportunity was being taken to upgrade its fire safety facilities and other building services facilities. The number of stalls was expected to be reduced upon completion of the works. The FEHD would closely monitor work progress with a view to putting the CFHB to its best use after renovation. The FEHD would also explore the redevelopment potential of the site now occupied by the Reclamation Street CFHB.

*Source: Audit analysis of FEHD records*

*Note: The figure included communal areas.*

### ***Need to tackle the high vacancy problem***

2.7 The 11 CFHBs are occupying areas of ground totalling 8,746 m<sup>2</sup>. The high percentage of long-vacant CFHB stalls suggests that the land is not put to the best use. The FEHD needs to critically examine the problem and take effective improvement measures. It also needs to conduct periodic reviews to monitor the vacancy rates of the CFHBs for taking timely actions as and when required (e.g. consolidating CFHBs with high vacancy rates as appropriate).

## **Vacancy rates of Cooked Food Markets and Centres**

2.8 As at December 2014, the average vacancy rates of 6% for the 25 CFMs and 3% for the 39 CFCs were significantly lower than that of CFHBs (61%). In total, there were 31 vacant CFM stalls and 18 vacant CFC stalls (see Table 5). Audit selected the Cheung Sha Wan CFM and the Choi Hung Road CFC for examination. The audit findings are detailed in paragraphs 2.9 to 2.12.

## Vacancy rates of markets

**Table 5**

**CFMs and CFCs with vacant stalls  
(31 December 2014)**

Serial no.	Name	Area  (m <sup>2</sup> )	No. of stalls  (a)	No. of vacant stalls  (b)	Vacancy rate  (c) = $\frac{(b)}{(a)} \times 100\%$
<b><i>CFMs with vacant stalls</i></b>					
1	Cheung Sha Wan CFM	1,400	28	16	57%
2	Ka Ting CFM	648	16	3	19%
3	Kin Wing CFM	715	20	3	15%
4	Sze Shan Street CFM	370	17	2	12%
5	Nam Long Shan Road CFM	1,476	28	3	11%
6	Queen Street CFM	967	11	1	9%
7	Kwai Shun Street CFM	1,400	12	1	8%
8	Tsing Yeung CFM	922	18	1	6%
9	Wo Yi Hop Road CFM	850	18	1	6%
Total				31	
<b><i>CFCs with vacant stalls</i></b>					
1	Choi Hung Road CFC	2,502	19	6	32%
2	Aldrich Bay CFC	150	4	1	25%
3	Luen Wo Hui CFC	3,985	22	4	18%
4	Po On Road CFC	3,248	19	2	11%
5	Tai Shing Street CFC	1,661	11	1	9%
6	Bowrington Road CFC	1,049	12	1	8%
7	Ngau Chi Wan CFC	900	15	1	7%
8	Ngau Tau Kok CFC	1,500	21	1	5%
9	Tai Po Hui CFC	3,555	40	1	3%
Total				18	

Source: Audit analysis of FEHD records

Remarks: The remaining 16 CFMs and 30 CFCs did not have vacant stalls.

### *Inadequate exit planning for markets located at temporary sites*

2.9 As at December 2014, there were nine public cooked food markets located at temporary sites (see Appendix D). The total area of the temporary sites concerned was 4,850 m<sup>2</sup>. The nine public cooked food markets were built on the temporary sites between 1972 and 1984 (i.e. the markets had occupied the “temporary” sites for some 30 to 42 years).

2.10 Audit selected the largest one (i.e. the Cheung Sha Wan CFM) for case study. Of the 16 vacant stalls in the Cheung Sha Wan CFM, 11 had been vacant for some 20 years (since 1994) and 5 had been vacant for some 13 years (since 2001). Details are reported in Case 3 below.

### Case 3

#### Continue operating a temporary CFM despite many frozen stalls (2000 to 2014)

1. The Cheung Sha Wan CFM was built in 1982 on a site in Sham Shui Po. The site (1,400 m<sup>2</sup>) was acquired through temporary land allocation from the Lands Department and needed to be renewed periodically.
2. In 2000 when the FEHD took over the responsibility for managing the CFM (see para. 1.4), the CFM had 11 vacant stalls, which had been vacant since 1994. In 2001, the number of vacant stalls increased to 16.
3. In 2001 and 2003, the FEHD reviewed the use of the CFM and considered that the CFM needed to be closed down, as follows:
  - (a) **2001 review.** The FEHD considered that as the CFM was located at a temporary site, it needed to be closed down. The site should be returned to the Government. In the interim, the 16 vacant stalls (see para. 2 above) should be frozen because letting them would increase the number of operators required to be resited upon closing down the CFM; and
  - (b) **2003 review.** The FEHD considered that the CFM had strong close-down potential.

Case 3 (Cont'd)

4. Although the FEHD considered that the CFM needed to be closed down, it did not formulate any work plan to do so. Instead, it explored the defreezing of the 16 frozen stalls in 2002, 2009 and 2010 (for the purposes of accommodating on-street cooked food stalls in Sham Shui Po, letting out to other operators and relocating existing operators respectively). Due to various reasons, defreezing could not go ahead (Note).

5. As at December 2014, the 16 stalls continued to be frozen and the CFM was still in operation.

6. Since 2000, the FEHD had renewed six times the temporary land allocation for the CFM. The current allocation will expire in July 2016.

*Audit comments*

7. The FEHD has continued to operate the CFM despite its high vacancy rate. Given that more than half (57%) of the CFM's stalls had been frozen for over a decade, the FEHD needs to reconsider the continuance of the CFM and formulate a clear exit strategy.

*Source: Audit analysis of FEHD records*

*Note: A major reason was limited electricity supply, which could not support the additional loading arising from the letting of the 16 stalls (see para. 3.21).*

2.11 The FEHD needs to pay particular attention to the operation of the nine public cooked food markets located at temporary sites (e.g. their vacancy rates and viability — see paras. 2.13 to 2.15). Similar to the case of the Cheung Sha Wan CFM, if the FEHD considers that any of the other eight public cooked food markets should be closed down with the site returned to the Government, it needs to formulate a clear exit plan and ensure proper implementation of the plan.

## **Vacancy rates of markets**

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### ***Vacant stalls in Choi Hung Road CFC***

2.12 The Choi Hung Road CFC is attached to the Choi Hung Road Market. In 2012, Members of the Wong Tai Sin District Council expressed concern about the viability of the Market, which had a low patronage. The Members considered that it should be closed down. In the event, the FEHD decided to freeze the vacant stalls in the CFC. As at December 2014, the CFC had 6 vacant stalls frozen, out of a total of 19 stalls (i.e. 32% vacancy rate).

### **Viability of public cooked food markets**

2.13 When public cooked food markets were first built in the early 1970s, the original objective was to resite on-street licensed cooked food stalls. This objective has largely been achieved. More than 40 years have elapsed, and market stall operators are now facing keen competition because there is a large number of food premises in residential areas, commercial and industrial areas, and shopping malls throughout the territory. Viability of the public cooked food markets has become a cause for concern.

2.14 According to the FEHD, being viable means that operators are able to earn a reasonable living. Also, as stated in its Hawker Management Operational Manual, the FEHD intends that all genuinely non-viable hawker pitches and market pitches should be delisted. Although viability is a key factor in determining whether a public cooked food market should continue to operate, it is not the FEHD's practice to conduct periodic reviews to assess the viability of each public cooked food market and its alternative use. In Audit's view, such reviews are useful for taking early actions (e.g. formulating exit plans for non-viable public cooked food markets, and relocating affected operators to the viable ones).

2.15 As mentioned in paragraph 1.8, in response to Audit's recommendations in 2008, the FEHD conducted a review of the provision of the 25 CFMs and 39 CFCs in 2010. The FEHD found that CFMs/CFCs were still in demand. However, Audit analysis of the FEHD's review findings revealed that there were CFMs/CFCs with a low patronage. For example, there were 12 CFMs/CFCs with less than 20 patrons per day per stall. They included the Choi Hung Road CFC (see para. 2.12), which only had 10 patrons per day per stall. The low patronage of these CFMs/CFCs cast doubt on their viability. In Audit's view, the FEHD needs to closely monitor such CFMs/CFCs with a low patronage.

## **Audit recommendations**

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

- (a) **critically examine the high vacancy problem of CFHBs and assess how the current hawker policy may aggravate the problem over time;**
- (b) **based on the results in (a) above, take effective measures to tackle the high vacancy problem of CFHBs, such as:**
  - (i) **rationalising the provision of stalls in CFHBs by consolidating CFHBs and releasing sites which are no longer required; and**
  - (ii) **formulating exit plans for individual CFHBs, particularly those located at temporary sites;**
- (c) **conduct periodic reviews to monitor the vacancy rate and assess the viability of each public cooked food market, with a view to taking timely actions on non-viable markets; and**
- (d) **ensure that exit plans formulated for public cooked food markets are properly implemented.**

## **Response from the Government**

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

- (a) the former Urban Council introduced an ex-gratia payment scheme in 1983 to encourage on-street cooked food hawker licensees to surrender their licences voluntarily, and extended the scheme to cooked food hawker licensees in urban CFHBs in 1987. The FEHD aligned the scheme in 2002 so that licensees in the New Territories would also be eligible to receive ex-gratia payments for surrendering their licences from

## Vacancy rates of markets

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2002 to 2007. Out of the 131 licensees operating in CFHBs then, 37 had surrendered their licences;

- (b) although the Director of Food and Environmental Hygiene has the authority not to renew the relevant hawker licences and require the licensees to vacate their pitches within a certain period of time when a CFHB has reached a very low occupancy rate, the cost of social acrimony associated with non-renewal and forced eviction would need to be taken into account;
- (c) with the development of more permanent cooked food markets, the FEHD closed some of its CFHBs, including the Mui Fong Street CFHB and Tai Kok Tsui Temporary CFHB in 2004 and 2005 respectively. The site of the ex-Canton Road Temporary Cooked Food Hawker Bazaar was resumed in 2006 after the last licensee surrendered his licence;
- (d) for CFHB sites having no redevelopment potential and a reasonable level of occupancy, the FEHD would consider improvement works subject to resource availability. For example, funding was approved in 2010-11 and 2011-12 respectively, to refurbish the Woosung Street Temporary CFHB and Haiphong Road CFHB and to upgrade their fire safety facilities;
- (e) in 2011, the FEHD commissioned a consultant to assess the business viability of three public markets and six CFHBs. Based on the findings, in January 2013 the FEHD advised the Financial Services and the Treasury Bureau (FSTB) that the sites of two markets and three CFHBs could be released for redevelopment. In July 2013, the FEHD indicated to the Planning Department that the site of another CFHB could be released for redevelopment. The FEHD has started the negotiation with the licensees of two CFHBs on closure (see para. 6.6); and
- (f) the FEHD has formulated improvement or exit plans for some of the CFHBs and would continue its work for the rest of them and other public cooked food markets, with regard to their business viability, community needs, resource availability and competing priorities. The FEHD would endeavour to deliver the plans formulated for individual CFHBs, CFCs and CFMs though being keenly aware that some proposals may trigger from some segments of the community strong sentiments which also need to be addressed to the extent possible and justified.

## **PART 3: PROVISION OF FACILITIES IN MARKETS**

3.1 This PART examines the provision of facilities in public cooked food markets. Audit has found room for improvement in the following areas:

- (a) fire safety measures (paras. 3.2 to 3.14);
- (b) electricity supply for stall operation (paras. 3.15 to 3.23); and
- (c) air-conditioning of markets (paras. 3.24 to 3.31).

### **Fire safety measures**

3.2 Fire endangers lives and properties. Like any commercial premises and restaurants, public cooked food markets are subject to fire risk. From 2011 to 2014, there were 11 fire incidents at public cooked food markets (8 at CFMs, 2 at CFCs and 1 at a CFHB).

#### ***Fire safety requirements for commercial premises***

3.3 In 1997, the Fire Safety (Commercial Premises) Ordinance (Cap. 502) was enacted. The purpose was to provide occupants and users of commercial premises and commercial buildings with better protection from fire risk. Pursuant to the Ordinance, the Director of Fire Services may require certain fire safety measures be complied with, namely, the installation of the following equipment in the commercial premises and commercial buildings:

- (a) automatic sprinkler system;
- (b) automatic cut-off device for mechanical ventilating systems;
- (c) emergency lighting;
- (d) fire hydrant and hose reel system;

## **Provision of facilities in markets**

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- (e) manual fire alarm; and
- (f) portable fire extinguisher.

According to the Department of Justice's advice given to the Director of Fire Services in 1998, government-owned commercial premises do not fall within the purview of the Ordinance.

3.4 In 2003, a joint meeting was held between the FEHD, the Fire Services Department (FSD) and the Architectural Services Department (ArchSD). The parties discussed the applicability of the Fire Safety (Commercial Premises) Ordinance to the FEHD's markets. The meeting concluded that:

- (a) it was a good practice for the Government to follow the spirit of the Ordinance in administering and maintaining its premises; and
- (b) the fire safety measures stipulated in the Ordinance (referred to as stipulated measures hereinafter) were the minimum requirements. Full-scale fire service upgrading works should be implemented.

### ***Slow progress in improving fire safety measures***

3.5 Subsequent to the 2003 meeting (see para. 3.4), the FEHD reviewed the fire safety measures at CFCs and public markets selling wet and dry goods, and drew up an implementation plan to upgrade their fire safety measures. The implementation plan did not cover CFHBs or CFMs.

3.6 Upon enquiry, in December 2014, the FEHD took stock of the implementation of the stipulated measures and advised Audit of the situation (see Table 6). Of the 75 public cooked food markets, only 33 (44%) had implemented all the six stipulated measures (see para. 3.3(a) to (f)). In particular, many CFMs had implemented only a few stipulated measures, and no CFHBs had implemented more than two stipulated measures.

**Table 6**

**Implementation of stipulated measures for fire safety  
(December 2014)**

No. of measures implemented (Note)	No. of public cooked food markets which had implemented the measures			
	CFHB	CFM	CFC	Total
6	0	3	30	33 (44%)
5	0	9	8	17 (23%)
4	0	3	1	4 (5%)
3	0	1	0	1 (1%)
2	2	7	0	9 (12%)
1	3	2	0	5 (7%)
0	6	0	0	6 (8%)
Total	11	25	39	75 (100%)

*Source: Audit analysis of FEHD records*

*Note: This refers to the six stipulated measures mentioned in paragraph 3.3.*

3.7 As at December 2014, more than 10 years had elapsed since the FEHD decided in 2003 to upgrade the fire safety measures. It is unsatisfactory that many public cooked food markets had not implemented the stipulated measures, which were considered as minimum requirements (see para. 3.4(b)).

***Inadequate fire safety measures***

3.8 Given the slow implementation of the stipulated measures, some public cooked food markets might not have adequate fire safety measures to guard against the fire risk. In the period November 2014 to January 2015, Audit conducted site visits to 13 public cooked food markets (2 CFHBs, 9 CFMs and 2 CFCs) to examine the provision of facilities therein.

## Provision of facilities in markets

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3.9 Audit noted that CFHBs and CFMs were subject to certain fire risk factors. For example, open kitchens without fire-resistant partitions (see Photograph 10), keeping many liquefied petroleum gas (LPG) cylinders (see Photograph 11 — Note 6) and using many electric appliances in a crowded setting (see Photograph 12). The inadequate fire safety measures at these markets are a cause for concern.

### Photographs 10 to 12

#### Examples of fire risk factors

**Photograph 10**



**An open kitchen  
(Lai Yip Street CFHB)**

**Photograph 11**



**Keeping many LPG cylinders  
(Chai Wan Kok CFM)**

**Photograph 12**



**Using many electric appliances  
(Tai Yuen Street CFM)**

*Source: Photographs taken by Audit in December 2014 and January 2015*

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**Note 6:** *The FEHD generally prohibits the use of LPG in public cooked food markets, and allows the use of such energy sources as electricity and centralised piped-supply of gas (see para. 4.20(b)).*

3.10 The FSD conducts inspections of fire safety in such places as licensed restaurants and commercial premises (Note 7). However, stalls operating in public cooked food markets are not licensed restaurants (see paras. 4.3 and 4.10). Besides, like any other government-owned commercial premises, the public cooked food markets do not fall within the purview of the Fire Safety (Commercial Premises) Ordinance (see para. 3.3). Upon enquiry, the FSD informed Audit in January 2015 that it was not its practice to regularly inspect public cooked food markets for fire safety (Note 8).

### **Audit recommendations**

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

- (a) **expedite the implementation of fire safety measures at public cooked food markets and update the implementation plan, taking account of the need for:**
  - (i) **including in the plan those public cooked food markets (CFHBs and CFMs) which were not previously covered; and**
  - (ii) **giving priority to public cooked food markets which are subject to a higher level of fire risk;**
- (b) **regularly monitor the progress of implementation of fire safety measures to ensure that they are carried out as planned; and**

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**Note 7:** *The FSD's inspections of fire safety cover schools, child care centres, food premises, prescribed commercial premises, specified commercial buildings, composite buildings, karaoke establishments, drug dependent persons treatment and rehabilitation centres, and places of public entertainment.*

**Note 8:** *According to the Controlling Officer's Report of the FSD, a total of 82,360 fire safety inspections were conducted in 2013. The FSD informed Audit that none of the 75 public cooked food markets of the FEHD were covered by these inspections.*

## **Provision of facilities in markets**

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- (c) **in consultation with the Director of Fire Services, explore effective measures (e.g. conducting ad hoc inspections to selected public cooked food markets) to help better ascertain and address the fire risk at individual public cooked food markets.**

## **Response from the Government**

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

- (a) since 2002, the FEHD has implemented fire safety upgrading works alongside other general improvements measures at 19 CFCs and 3 CFMs. The fire safety upgrading works included the installation of automatic sprinkler systems, emergency lighting, etc;
- (b) having implemented fire safety measures at 19 CFCs and 3 CFMs, the FEHD will pursue fire safety upgrading works at the remaining CFMs and CFHBs which were not previously covered. The FEHD will take into account the technical advice of the ArchSD and the Electrical and Mechanical Services Department (EMSD) and other relevant factors, including plans of redevelopment of the sites concerned, existing usage and fire risk; and
- (c) the FEHD will join hands with the FSD to review the fire risk at individual public cooked food markets and take enforcement actions against violations of fire safety related regulations. Should the tenants/hawkers fail to comply with the relevant fire safety requirements despite the FSD's enforcement actions, the FEHD will consider terminating the tenancies/revoking the licences.

3.13 The Director of Fire Services has said that:

- (a) one of the statutory duties of the FSD is to give fire safety advice including, inter alia, the provision of fire service installations in private and government buildings. Similar to the past, the FSD continues to stand ready to provide pertinent fire safety advice upon request; and

- (b) regarding cooked food stalls operating in public cooked food markets, frontline operational units of the FSD will conduct routine visits to familiarise themselves with local risks and carry out fire hazard abatement actions where situation warrants.

3.14 The Director of Electrical and Mechanical Services has said that the EMSD will continue to provide engineering support to the FEHD in promoting and ensuring electrical and gas safety in public cooked food markets managed by the FEHD and take appropriate enforcement actions according to the relevant statutory requirements.

### **Electricity supply for stall operation**

3.15 Electricity is a major energy source for public cooked food markets (e.g. for lighting and cooking). According to the FEHD's standard for public markets (including CFMs and CFCs), the electricity supply for each cooked food stall should have a capacity of 60 amperes. In managing the electricity supply for public cooked food markets, the FEHD needs to seek advice from other government departments, for example, the ArchSD and the EMSD.

3.16 For CFHBs, operators of stalls are licensed hawkers. They make arrangements directly with electricity companies for power supply instead of via the FEHD.

### ***Sub-standard electricity supply***

3.17 Audit analysed the electricity supply for the 25 CFMs and 39 CFCs. As at December 2014, no CFM, and only two CFCs, had electricity supply that met the FEHD's 60-ampere standard (see Table 7).

**Table 7**

**Electricity supply for CFMs and CFCs  
(December 2014)**

Capacity (Note)  (Ampere)	No. of CFMs/CFCs with the capacity		
	CFM	CFC	Total
60 or above	0	2	2 (3%)
30 to 59	2	17	19 (30%)
29 or below	23	20	43 (67%)
Total	25	39	64 (100%)

Meeting standard }  
 Below standard }

*Source: Audit analysis of FEHD records*

*Note: This refers to the capacity available to each stall in the CFM/CFC.*

3.18 Upon enquiry, the FEHD informed Audit in December 2014 that lower standards for electricity supply might have been adopted prior to 2000, when public cooked food markets were under the purview of the former Urban Council and Regional Council (Note 9 — see para. 1.4). As shown in Table 7, the electricity supply for most CFMs and CFCs had not been upgraded to meet the current standard.

3.19 Nowadays, operators in public cooked food markets use more electric appliances which have become generally available. During the site visits to public cooked food markets (see para. 3.8), Audit noted that appliances such as electric fryers and commercial refrigerators were commonly used. Sub-standard electricity supply could lead to overloading of the electricity system (see para. 3.20) and could also cause other problems, such as rendering the stalls unfit for letting (see para. 3.21) and retrofitting of air-conditioning systems not feasible (see paras. 3.26 to 3.28).

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**Note 9:** *For example, for public cooked food markets under the purview of the former Regional Council, the standard capacity of electricity supply for a cooked food stall was only 30 amperes.*

*Overloading of electricity supply*

3.20 According to FEHD records, overloading of electricity supply had been noted in individual public cooked food markets, and inadequate electricity supply could be a contributory factor. Case 4 shows an example.

**Case 4**

**Overloading of electricity supply at Kwun Tong Ferry Concourse CFM  
(2008 to 2014)**

1. The Kwun Tong Ferry Concourse CFM was built in 1984.
2. As at December 2014, the CFM had 29 stalls, which had all been let to operators. Electricity supply for the CFM was inadequate. The capacity available to each stall was only 10 amperes, falling short of the 60-ampere standard.
3. Since 2008, electricity outages at the CFM had been noted from time to time. In particular, during the 112-day period from 1 March 2008 to 20 June 2008, electricity outages happened 12 times. Each time, the electricity supply was interrupted for 10 minutes to two hours.
4. The FEHD found that the electricity supply system had been overloaded. However, upgrading the electricity system would require the building of an off-site transformer room. The FEHD could not find a suitable site for the transformer room.
5. In 2012, the FEHD posted a notice at the CFM to solicit operators' cooperation to limit the use of electricity. However, the electricity supply system was still overloaded occasionally.

***Audit comments***

6. Inadequate electricity supply had adversely affected the operation of the CFM.

*Source: Audit analysis of FEHD records*

### *Stalls could not be let*

3.21 Another problem caused by inadequate electricity supply was noted in the Cheung Sha Wan CFM. As at December 2014, 16 (57%) of its 28 stalls had been made unavailable for letting for more than 10 years (see para. 2.10). A major reason for not being able to let the stalls was limited electricity supply. Details are in Case 5.

### Case 5

#### 16 stalls in Cheung Sha Wan CFM could not be let

1. In 2009, the FEHD intended to let out to operators through open auction the 16 stalls in the CFM that had been made unavailable for letting. The FEHD found that the electricity supply could not support the operation of the 16 stalls.

2. The FEHD explored with the electricity company different ways to upgrade the electricity supply. In 2010, the electricity company agreed to lay an additional underground power cable for the CFM, so as to upgrade the electricity supply.

3. However, up to December 2014, the upgrading works had not been carried out. According to the FEHD, as the future development of the CFM was uncertain, the upgrading work had been suspended. As the electricity supply was only sufficient for the operation of the existing 12 stalls, the 16 stalls continued to be unavailable for letting.

#### *Audit comments*

4. The electricity supply actually did not meet the FEHD's standard. Even without letting out the stalls, the capacity available to each of the existing 12 stalls was only 38 amperes, much below the 60-ampere standard.

*Source: Audit analysis of FEHD records*

## **Audit recommendations**

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

- (a) **review the adequacy of electricity supply for stalls operating in CFMs and CFCs against the FEHD's standard;**
- (b) **look into the reasons for sub-standard electricity supply in individual CFMs and CFCs, and assess the feasibility of upgrading the supply having regard to such factors as:**
  - (i) **technical feasibility and costs of the upgrading works;**
  - (ii) **future redevelopment plan and possible close-down potential of the CFMs/CFCs;**
  - (iii) **existing usage and electricity consumption of the CFMs/CFCs; and**
  - (iv) **risk exposure (e.g. fire risk and power outages from overloading);**
- (c) **take prompt actions to enhance the electricity supply for CFMs and CFCs where upgrading works are considered feasible; and**
- (d) **for CFMs and CFCs which are not suitable for upgrading works, take measures to:**
  - (i) **provide guidelines on the use of electric appliances in the CFMs/CFCs, particularly those high-consumption electric appliances (e.g. air-conditioners); and**
  - (ii) **ensure that the guidelines are properly implemented and updated as necessary.**

### **Response from the Government**

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

- (a) the FEHD will liaise with the ArchSD to review the adequacy of electricity supply in CFMs and CFCs, and for those with sub-standard electricity supply, assess the reasons and feasibility of upgrading the supply, including the costs of upgrading;
- (b) for CFMs and CFCs where upgrading works are considered feasible, the FEHD will follow up with relevant departments; and
- (c) for CFMs and CFCs found not suitable for upgrading works, the FEHD will establish guidelines, in consultation with relevant departments, on the use of electrical appliances and ensure they are properly implemented and updated.

### **Air-conditioning of markets**

#### ***Most markets not provided with air-conditioning systems***

3.24 In Hong Kong, air-conditioning is a significant factor in the operation of cooked food stalls. As at December 2014, of the 75 public cooked food markets, only 22 (29%) were air-conditioned (see Table 8).

**Table 8**

**Air-conditioning in public cooked food markets  
(December 2014)**

<b>Market</b>	<b>No. of markets</b>		
	<b>Air-conditioned (Note)</b>	<b>Not air-conditioned</b>	<b>Total</b>
CFHBs	0 (0%)	11 (100%)	11
CFMs	2 (8%)	23 (92%)	25
CFCs	20 (51%)	19 (49%)	39
Overall	22 (29%)	53 (71%)	75

*Source: Audit analysis of FEHD records*

*Note: This refers to air-conditioning by way of a central air-conditioning system. Individual operators might have installed standalone air-conditioners without the FEHD's approval (see para. 3.28).*

3.25 According to the 2010 FEHD review of the provision of CFMs and CFCs, poor ventilation was a major concern of operators and patrons. The review also found that, for those who did not patronise CFMs and CFCs, poor ventilation was also a major reason (Note 10).

***Retrofitting of air-conditioning systems not always feasible***

3.26 To explore whether or not to retrofit a public cooked food market with an air-conditioning system, it is the FEHD's practice to conduct a survey to gauge the intents of the stall operators concerned. If not less than 85% of the stall operators endorse retrofitting an air-conditioning system and agree to bear the recurrent costs (Note 11), the FEHD will conduct a detailed technical feasibility study. Taking into

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**Note 10:** *Other reasons for not patronising CFMs and CFCs included "place is not clean", "seating is uncomfortable" and "location is inconvenient".*

**Note 11:** *This refers to the electricity charges and costs of daily general maintenance after the installation.*

## **Provision of facilities in markets**

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consideration the study findings, the extent of works required, cost effectiveness, length of business disruption and tenants' views, the FEHD will decide whether there is a case for bidding resources for retrofitting an air-conditioning system.

3.27 Audit noted cases in which retrofitting projects could not go ahead despite stall operators having given adequate support. Case 6 shows an example. In the case, there was full support from all stall operators.

### **Case 6**

#### **Air-conditioning system not installed at Shui Wo Street CFC**

1. The Shui Wo Street CFC, situated within a municipal services building, was built in 1988 and was not air-conditioned. In 2010, upon the request of a stall operator, the FEHD conducted a survey and found that all the 20 operators supported retrofitting the CFC with an air-conditioning system.

2. The CFC did not have adequate electricity supply. The retrofitting project would require building an off-site transformer room some 30 metres away from the municipal services building.

3. In 2013, the ArchSD informed the FEHD that the project would cost over \$30 million. The construction period would take about 10 to 12 months. During this period, the operation of all the 20 stalls would need to be suspended. The ArchSD advised that the project might not be a practical and worthy one.

4. As at December 2014, the retrofitting project had not commenced. Instead, the FEHD had taken interim measures such as installing four evaporative air coolers at the CFC.

#### ***Audit comments***

5. Given the technical difficulties, the retrofitting project could not be carried out in spite of the full support given by stall operators.

*Source: Audit analysis of FEHD records*

*Installing standalone air-conditioners without prior approval*

3.28 During the site visits to public cooked food markets (see para. 3.8), Audit noted that it was not unusual for operators in markets not having air-conditioning systems to install standalone air-conditioners for their own stalls. According to FEHD records, some operators had installed standalone air-conditioners without the FEHD's prior approval and without due consideration of the inadequate electricity supply for the public cooked food market concerned (see Case 7).

**Case 7**

**Standalone air-conditioners at Tsun Yip CFM  
(2008 to 2014)**

1. The Tsun Yip CFM was built in 1985 with 56 stalls.
2. In 2008, the electricity company informed the FEHD that the electricity supply system of the CFM had been overloaded. It advised the FEHD to monitor the loading condition and restrict the load.
3. In 2009, the FEHD explored the upgrading of electricity supply for the CFM. In 2010, the ArchSD advised that a new transformer room needed to be built. However, no suitable location could be identified for it.
4. In 2011, the FEHD noted that 18 of the 56 stalls had installed standalone air-conditioners without its prior approval. For record purpose, the FEHD required operators of the stalls to apply for covering approval for installing the air-conditioners. Owing to the inadequate electricity supply, the FEHD considered that no further applications for installing air-conditioners should be accepted.
5. In December 2014, during the site visit to the CFM, Audit noted that 4 more stalls had installed standalone air-conditioners. The number of stalls with standalone air-conditioners totalled 22.

***Audit comments***

6. Operators kept installing standalone air-conditioners regardless of the inadequate electricity supply. The FEHD had not taken effective action to curb the unauthorised installation of air-conditioners, which could be a safety concern.

*Source: Audit analysis of FEHD records and Audit's site visit in December 2014*

## **Audit recommendations**

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

- (a) **keep in view the development in the upgrading of electricity supply for individual CFMs and CFCs (see para. 3.22(c)), with a view to taking forward proposals for retrofitting air-conditioning systems in a timely manner;**
- (b) **ascertain the extent of installation of standalone air-conditioners at CFMs and CFCs without the FEHD's approval; and**
- (c) **in consultation with the Director of Electrical and Mechanical Services, promptly step up control to curb unauthorised installation of air-conditioners as required, such as:**
  - (i) **taking measures to remove any unauthorised air-conditioners installed which could pose a threat to safety (e.g. fire safety from overloading);**
  - (ii) **reminding stall operators of the requirements on installing air-conditioners; and**
  - (iii) **taking actions to ensure that the FEHD's requirements on installing air-conditioners are followed.**

## **Response from the Government**

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

- (a) the FEHD will work with relevant departments in upgrading electricity supply for individual CFMs and CFCs and work in close liaison with stakeholders to take forward any proposals for retrofitting of air-conditioning systems;

- (b) the FEHD will step up inspections and remind stall operators to seek prior approval before installing air conditioners; and
- (c) if there is unauthorised installation of air-conditioners, the FEHD will take enforcement action under the Public Markets Regulation (Cap. 132BO) or issue warning letter for breach of tenancy agreement as appropriate to ensure that the irregularities are rectified.

3.31 The Director of Electrical and Mechanical Services has said that the EMSD will continue to provide engineering support to the FEHD (see para. 3.14).

## **PART 4: MANAGEMENT OF MARKET STALLS**

4.1 This PART examines the FEHD's management of stalls in public cooked food markets. Audit has found room for improvement in the following areas:

- (a) management of stalls in CFMs and CFCs (paras. 4.2 to 4.9);
- (b) management of hawkers operating in CFHBs (paras. 4.10 to 4.17); and
- (c) routine inspections of stalls (paras. 4.18 to 4.26).

### **Management of stalls in Cooked Food Markets and Centres**

#### ***Stalls in CFMs and CFCs exempt from obtaining a restaurant licence***

4.2 According to the Food Business Regulation (Cap. 132X), the operator of a restaurant (Note 12) is required to hold a restaurant licence from the FEHD. The FEHD will issue a licence only when the operator has complied with the hygiene requirements and safety standards (e.g. number of sanitary fitments and size of food room — Note 13). The purpose of licensing restaurants is to ensure that the premises are suitable for operating restaurant business, to safeguard public health and to ensure the safety of patrons.

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**Note 12:** *Under the Regulation, a restaurant means any food business which involves the sale of meals or unbottled non-alcoholic drinks other than Chinese herb tea, for consumption on the premises, but does not include a factory canteen or any business carried on by a hawker who is a holder of a licence under the Hawker Regulation.*

**Note 13:** *Food room refers to kitchen, food preparation room and scullery.*

4.3 According to the tenancy agreements, same as restaurants, stalls in CFMs and CFCs can sell any type of meals (Note 14). However, the stalls are exempt from obtaining a restaurant licence (Note 15). The exemption has the following historical background:

- (a) ***Small scale of operation.*** In the past, CFMs and CFCs were built to resite licensed hawkers operating on-street cooked food stalls in the form of Dai Pai Tong (see para. 1.3). According to FEHD records, these on-street Dai Pai Tongs were personally operated businesses and of small scale, both financially and in physical size. Traditionally, an on-street Dai Pai Tong was permitted to place only two tables with eight stools in its hawking area; and
- (b) ***Dai Pai Tongs not required to obtain a restaurant licence.*** Under the Food Business Regulation, the on-street Dai Pai Tongs were not restaurants and therefore not required to obtain a restaurant licence (see Note 12 to para. 4.2). The licensed hawkers operating them were controlled under the Hawker Regulation. However, after surrendering their hawker licences and becoming stall operators in CFMs and CFCs, they are no longer subject to such control.

Therefore, it is important to ensure that operators of stalls in CFMs and CFCs comply with the tenancy agreements in operating their stalls at the intended small scale commensurate with the less stringent control.

### ***Some stalls operating at a scale much larger than intended***

4.4 Audit's site visits to the 13 public cooked food markets in the period November 2014 to January 2015 (see para. 3.8) revealed that some stalls in CFMs and CFCs were operating at a larger scale than intended. In brief, they operated in a way similar to ordinary restaurants, while not being required to obtain a restaurant licence. Case 8 shows an example.

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**Note 14:** *The tenancy agreements also stipulate some requirements on stall operation (e.g. the maximum number of days for which operators could suspend their operations during a month).*

**Note 15:** *The Food Business Regulation (Exemption from Section 31(1)) Notice (Cap. 132Z) provides for the exemption.*

### Case 8

#### A CFM stall operating in a way similar to a restaurant

1. The Queen Street CFM had 11 stalls sharing a communal seating area for patrons. One of the stalls (Stall A) served western cuisine.

2. In January 2015, Audit staff visited Stall A at dinner time as normal patrons and found that Stall A reserved tables in the communal seating area for its patrons. About 15 tables in the communal area were set with tablecloths, crockery and cutlery of Stall A. The tables were subsequently filled up with patrons of Stall A. House wine was served, and spirit was also available (see para. 4.6).

#### *Audit comments*

3. Stall A was operating at a larger scale than, and in a different mode from, traditional cooked food stalls. Contrary to the tenancy agreement, it has occupied communal seating for the exclusive use of its stalls.

*Source: Audit's site visit in January 2015*

#### *Need to review facilities provided to stalls operating at a large scale*

4.5 As mentioned in paragraph 4.3, stalls in CFMs and CFCs are exempt from obtaining a restaurant licence for reasons including their small scale of operation. However, Audit found that some stalls were actually operating at a larger scale than traditional cooked food stalls. This is a cause for concern because although such stalls were similar to ordinary restaurants, they were not subject to the hygiene requirements and safety standards applicable to restaurants. For example, under the Food Business Regulation, restaurants (but not stalls in CFMs and CFCs) are required to be provided with food rooms of a size not less than a specified percentage of the gross floor area of the premises. In Audit's view, the stalls in CFMs and CFCs were intended for small-scale operation and might not be adequate for operating at a large scale, especially from a public health and safety perspective. The FEHD needs to review the issue and explore improvement measures for stalls operating at a large scale.

### *Using stalls to conduct regulated activities without a licence*

4.6 ***Sale of liquor.*** According to Dutiable Commodities (Liquor) Regulations (Cap. 109B), a liquor licence from the Liquor Licensing Board is required for the sale of liquor for consumption on the premises (Note 16). Audit noted that, as at December 2014, none of the stalls in public cooked food markets had a liquor licence (Note 17). However, during the site visits to CFMs and CFCs (see para. 4.4), Audit found some stalls selling liquor (e.g. beer, wine and spirit) to patrons, and cases in which the liquor was sold and consumed in the communal area (see para. 2 of Case 8 in para. 4.4 for example) or inside the stall area.

4.7 ***Running food factories.*** According to the Food Business Regulation, a licence from the FEHD is required for running food factories (Note 18). Audit's site visits to two CFMs with a low patronage revealed that there were stalls suspected to be used as food factories:

- (a) ***Providing delivery catering services.*** The Tai Yuen Street CFM was found to have a zero patronage in the FEHD's 2010 review. During Audit's site visit in January 2015, four stalls were in operation. They were all providing delivery catering services (see Photographs 13 and 14). The CFM did not have any patrons nor did it have any tables or seats for dine-in patrons; and

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**Note 16:** *The Board is a statutory body, with executive and secretarial support provided by the FEHD. All applications for liquor licences are referred to the Commissioner of Police and the District Officer concerned for comments. Public opinion is also sought by placing notices in newspapers. Liquor licensees have to observe a set of statutory conditions and any additional licensing conditions as may be imposed by the Board.*

**Note 17:** *According to the information on the website of the Liquor Licensing Board, it is the Board's policy that a liquor licence will only be issued when the premises have been issued with a restaurant licence or a provisional restaurant licence.*

**Note 18:** *A food factory means any food business which involves the preparation of food for sale for human consumption off the premises.*

## Management of market stalls

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- (b) *Mass roasting of pigs and poultries.* The Tsun Yip CFM was found to have 12 patrons per day per stall in the FEHD's 2010 review. During Audit's site visit in January 2015, four stalls were used for the roasting of pigs and poultries in bulk, and some being delivered off-site (see Photographs 15 and 16).

Audit examination revealed that the stalls concerned did not have a food factory licence.

### Photographs 13 and 14

#### Providing delivery catering services (Tai Yuen Street CFM)

**Photograph 13**



**Preparing food stuff for delivery**

**Photograph 14**



**Delivering food stuff off-site**

*Source: Photographs taken by Audit in January 2015*

Photographs 15 and 16

Mass roasting of pigs and poultries  
(Tsun Yip CFM)

Photograph 15



Roasts waiting for delivery

Photograph 16



Delivering roasts off-site

Source: Photographs taken by Audit in January 2015

## Audit recommendations

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

- (a) review the adequacy of facilities provided to stalls in CFMs and CFCs operating at a much larger scale than traditional cooked food stalls, especially from a public health and safety perspective;
- (b) based on the review results in (a) above, explore improvement measures for stalls operating at a large scale, with a view to better safeguarding public health and safety;
- (c) ensure that stalls in CFMs and CFCs comply with the tenancy agreements and do not occupy communal seating;

## **Management of market stalls**

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- (d) **critically examine the issue of selling liquor by stalls in CFMs and CFCs without a liquor licence and ascertain whether there are similar cases in CFHBs;**
- (e) **take necessary follow-up actions on the issue of selling liquor by stalls; and**
- (f) **follow up the cases involving stalls suspected to be running as food factories identified by Audit in paragraph 4.7 and ascertain whether there are other similar cases.**

## **Response from the Government**

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

- (a) the FEHD will review the adequacy of facilities in CFMs and CFCs. Although restaurant licences are not required, the operation of stalls in CFMs and CFCs is also subject to stringent health requirements for protecting public health and food safety;
- (b) the FEHD will step up inspections. If unauthorised occupation/unauthorised use of stall (e.g. running a food factory type business) is detected, it will take enforcement action or issue warning letter for breach of tenancy agreement as appropriate;
- (c) under Regulation 25A of the Dutiable Commodities (Liquor) Regulations, sale of liquor at any premises for consumption on those premises is prohibited except under a liquor licence. According to preliminary legal advice in 1999, Regulation 25A did not apply to those FEHD cooked food market stalls provided with communal seating areas. The FEHD will follow up Audit's observations on the sale of liquor in CFMs and CFCs and take appropriate action with the Police as necessary; and

- (d) the FEHD has stepped up territory-wide inspections including blitz operations to check against any unauthorised use of stall for other purposes, including the conduct of food factory business. Stern reminders and warnings have been given to operators concerned. Action will continue to stamp out the irregularities.

### Management of hawkers operating in Cooked Food Hawker Bazaars

4.10 Stalls in CFHBs are operated by hawkers holding a fixed-pitch hawker licence issued by the FEHD. The stalls are not governed by the Food Business Regulation (see Note 12 to para. 4.2). The FEHD manages these hawkers and their stalls in accordance with the Hawker Regulation. Audit reviewed the FEHD's management of hawkers operating in three CFHBs, comprising the two largest ones (the Ma Kok Street CFHB and the Luen Yan Street CFHB) and one other CFHB (the Lai Yip Street CFHB). The audit findings are in paragraphs 4.11 to 4.15.

#### *Control on appointment of deputies*

4.11 In accordance with the hawker policy adopted since the early 1970s (see para. 1.2), the FEHD has not issued new licences for hawking in CFHBs. Stringent control has also been placed on the succession and transfer of licences already issued. If a licence is cancelled (e.g. due to ill health, old age or death of the licensed hawker), a replacement licence may be issued only to the hawker's spouse.

4.12 A licensed hawker may appoint a deputy to operate his stall under specified circumstances. The relevant provisions of the Hawker Regulation are as follows:

- (a) ***Reasons for appointment.*** Where a licensed hawker leaves or intends to leave Hong Kong, or is incapacitated by illness, for a period of more than eight days, he may, with the prior permission of the Director of Food and Environmental Hygiene, appoint a person to be his deputy during the absence or incapacity; and
- (b) ***Maximum duration.*** The Director shall not, except in such special circumstances as he thinks fit, grant any permission for any period exceeding six months.

## Management of market stalls

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4.13 Audit noted that appointing deputies was common in the three CFHBs (Note 19). For the Lai Yip Street CFHB, in processing the applications for appointment of deputies, the FEHD required licensed hawkers to provide medical certificates to support their claimed illness. However, in processing the applications for the Luen Yan Street CFHB and the Ma Kok Street CFHB, medical certificates were not required to support the claimed illness (Note 20). Moreover, for all the three CFHBs, it was not the FEHD's practice to take follow-up action after the expiry of the period during which the deputy was appointed (e.g. conducting visits to ascertain whether the licensed hawker actually resumed operating the stall). There is a need for the FEHD to tighten its control in this regard.

### *Hawking outside the stall*

4.14 According to the Hawker Regulation, licensed hawkers in CFHBs shall not hawk outside the stalls specified in their fixed-pitch licences. Audit's site visit to the Ma Kok Street CFHB in January 2015 found two licensed hawkers hawking outside their stalls, contrary to the Hawker Regulation. In addition to their own stalls, the hawkers also operated at adjacent stalls which were vacant. One of them occupied one vacant stall for serving customers, while the other occupied two vacant stalls.

4.15 Stalls in CFHBs, similar to those in CFMs and CFCs (see para. 4.5), are not subject to the hygiene requirements and safety standards applicable to restaurants. It is important to ensure that they comply with the Hawker Regulation and operate within their fixed pitches at the intended small scale commensurate with the less stringent control.

## Audit recommendations

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

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**Note 19:** *Of the 22 licensed hawkers in the three CFHBs, 9 (41%) had appointed deputies during the period 2012 to 2014.*

**Note 20:** *During the period 2012 to 2014, four applications were made on the grounds of illness, all of which were not supported by medical certificates but were approved by the FEHD.*

- (a) **tighten the control on the appointment of deputies by licensed hawkers in CFHBs; and**
- (b) **ensure that licensed hawkers in CFHBs comply with the Hawker Regulation and operate within their fixed pitches.**

### **Response from the Government**

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

- (a) the FEHD will step up inspections and take enforcement actions/issue warning letter if irregularities such as obstruction are detected; and
- (b) the FEHD has reminded district staff to act strictly in accordance with the prevailing guidelines which, among other things, require that the licensee should personally operate the business after expiration of the approved period on appointment of deputy. Any extension or repeated applications for appointment of deputy will not be considered unless supported by medical grounds or special justifications.

### **Routine inspections of stalls**

4.18 The FEHD's 19 District Environmental Hygiene Offices (referred to as District Offices hereinafter) manage the public cooked food markets in the districts concerned (Note 21). Staff of the District Offices (referred to as inspection staff hereinafter) carry out routine inspections of the markets. A key objective is to ensure that the various control requirements (e.g. tenancy requirements and conditions, licensing requirements and statutory requirements) are complied with.

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**Note 21:** *Each District Office has a Market Section responsible for managing CFMs and CFCs, and a Hawker Section for managing CFHBs. They also carry out other duties. For example, the Market Section manages public markets selling wet and dry goods, and the Hawker Section controls on-street hawking activities.*

## Management of market stalls

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4.19 During the period November 2014 to January 2015, Audit visited three District Offices, namely Central/Western District Office, Kwun Tong District Office and Tsuen Wan District Office. Audit examined the inspection work of these three Offices, and observed their inspection staff conducting routine inspections of nine public cooked food markets.

### *Actions not taken on irregularities*

4.20 During the inspections of the nine public cooked food markets, Audit noted incidents of suspected non-compliance with control requirements. The two most common non-compliant requirements were as follows:

- (a) ***Obstruction of public areas.*** According to the tenancy agreements, operators at CFMs and CFCs should not place any goods, utensils or articles outside their stalls. For CFHBs, according to the Hawker Regulation, operators shall not place commodities and equipment outside their stalls. Of the nine public cooked food markets inspected, obstruction of public areas was noted, to varying degrees, in every market; and
- (b) ***Use of LPG.*** The FEHD generally prohibits the use of LPG in CFMs and CFCs, and allows the use of such energy sources as electricity and centralised piped-supply of gas. Such a requirement has been laid down in the tenancy agreements for operators in CFMs and CFCs. For CFHBs, the FEHD only allows limited use of LPG (e.g. no more than three 16-kilogramme LPG cylinders at one place) in accordance with the relevant regulations (Note 22). Of the nine public cooked food markets inspected, the use of disallowed/excessive LPG was noted in 5 (56%) markets (see Photograph 11 in para. 3.9 for example). The use of a large number of LPG cylinders on the premises may pose safety risks.

4.21 While the irregularities in paragraph 4.20(a) and (b) were obvious, the inspection staff (with whom Audit accompanied) made no mention of them in the inspection records and did not take any follow-up action.

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**Note 22:** *The storage and conveyance of gas (including LPG) are regulated by the EMSD under the Gas Safety Ordinance (Cap. 51) (see para. 3.14).*

### ***Routine inspections not thoroughly conducted***

4.22 Audit also noted cases in which the inspection was not thoroughly conducted. Case 9 shows an example.

#### **Case 9**

##### **Conduct of a routine inspection (Luen Yan Street CFHB)**

1. On 16 January 2015, Audit accompanied a member of the FEHD inspection staff (Staff A) to conduct a routine inspection of the Luen Yan Street CFHB. The CFHB had 36 stalls, of which 7 had been allocated to operators.
2. The inspection started at 2:30 p.m. Of the 7 stalls, 4 had the roller shutter pulled down. The operators of the 4 stalls were still around. All of them were sitting in front of the roller shutter.
3. Staff A made an enquiry with each of the 4 operators, and was told that the stalls would not conduct business in the afternoon. Without requiring the operators to open the stalls for inspection, Staff A considered the inspection of the 4 stalls done. Staff A then moved on to inspect the remaining stalls in the CFHB.
4. Staff A entered “satisfactory” on the inspection records.

##### ***Audit comments***

5. Audit noted from FEHD records that 2 of the 4 stalls had a history of engaging in illegal food factory businesses. It was unsatisfactory that Staff A had not carried out the inspection thoroughly to follow up on the previously identified irregularities.

*Source: Audit’s site visit in January 2015 and FEHD records*

## Management of market stalls

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### *Routine inspections not conducted in a timely manner*

4.23 The FEHD requires routine inspections to be conducted in a timely manner. It has laid down the following requirements:

- (a) ***CFHBs.*** Routine inspections are to be conducted fortnightly (once every two weeks) during peak trading hours; and
- (b) ***CFMs and CFCs.*** Routine inspections are to be conducted twice daily, generally during peak trading hours.

4.24 Audit noted room for improving the timeliness of routine inspections, as follows:

- (a) ***Inspections of CFHBs conducted less frequently.*** Comparing with CFMs and CFCs, CFHBs were inspected much less frequently. According to the records of the three District Offices visited by Audit, irregularities were noted in CFHBs as well as in CFMs and CFCs. For example, when accompanying FEHD staff in conducting routine inspections, Audit noted “obstruction of public areas” in all the three CFHBs being inspected. The FEHD needs to consider inspecting CFHBs more frequently;
- (b) ***Number of inspections falling short of requirement.*** Records of the three District Offices indicated that routine inspections might not have been always conducted in accordance with the FEHD’s requirements. For example, there were 13 days in December 2014 during which routine inspections were conducted once daily (instead of twice daily as required) for the Chai Wan Kok CFM. Upon enquiry, a member of the inspection staff informed Audit in January 2015 that the manpower for inspection work had been tight;
- (c) ***Inspections not conducted during peak hours.*** Audit noted that routine inspections were normally not conducted during peak hours (e.g. lunchtime), contrary to the FEHD’s requirements. Records of the three District Offices indicated that, for example, no routine inspections were conducted during 1 p.m. to 2 p.m. (lunchtime) for December 2014 in at least five public cooked food markets, namely;

- (i) the three CFHBs mentioned in (a) above; and
  - (ii) the Sze Shan Street CFM and the Kwun Tong Ferry Concourse CFM; and
- (d) ***Inspection records not maintained.*** Audit also noted instances where inspection records had not been adequately maintained. For example, in the Central/Western District, the inspection records for the Centre Street CFC had not been maintained for 10 days in December 2014, casting doubt on whether inspections had been conducted.

### **Audit recommendations**

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

- (a) **take measures to ensure that irregularities at public cooked food markets identified during inspections are properly followed up and rectified;**
- (b) **remind staff of the need to adequately record details of the inspections conducted (e.g. date, time and observations) for management review;**
- (c) **identify the reasons for individual inspection staff not effectively conducting their work and take measures to enhance their performance (e.g. enhancing supervision and training);**
- (d) **review the frequency of inspections of CFHBs, taking account of the irregularities found; and**
- (e) **remind staff of the need to conduct adequate and timely inspections (e.g. during peak hours) in accordance with the FEHD's requirements.**

### Response from the Government

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

- (a) conduct inspections and take enforcement actions/issue warning letter if irregularities are detected;
- (b) remind frontline staff to conduct adequate and timely inspections and record details of inspections properly. Supervisors should also conduct site visits and check on the inspection records at appropriate intervals according to departmental guidelines and Operational Manual; and
- (c) review the frequency of inspections of CFHBs and consider revising the guidelines on inspections.

## **PART 5: MANAGEMENT OF STALL RENTALS AND CHARGES**

5.1 This PART examines the management of stall rentals and charges. Audit has followed up the issues raised in the 2008 audit review relating to market stall rentals and charges, and found room for improvement in the following areas:

- (a) charging of rentals (paras. 5.2 to 5.13);
- (b) recovery of rates (paras. 5.14 to 5.19); and
- (c) recovery of air-conditioning costs (paras. 5.20 to 5.30).

### **Charging of rentals**

5.2 Stall operators in CFMs and CFCs are public market stall tenants. They are required to pay rentals for their stalls in accordance with the tenancy agreement (Note 23). The Government's policy on public markets is to charge tenants open market rental (OMR — Note 24).

5.3 Stalls in CFMs and CFCs are let by auction, as follows:

- (a) ***Restricted auction.*** CFMs and CFCs were built mainly to resite on-street hawkers. In past resiting exercises, the FEHD allowed them to bid for stalls by restricted auction, with upset prices set at a level below the OMR

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**Note 23:** *Stall operators in CFHBs are licensed hawkers and do not need to pay rentals or rates for their stalls. They are required to pay an annual fee (currently \$1,980) for licence renewals and another annual fee (currently \$26,514) for using their stalls.*

**Note 24:** *The OMR is a reference provided by the Rating and Valuation Department for use in rental assessment. It is based on various factors, such as the latest bid price for a similar stall in the same market, the location of the market, the different rating factors attributed to the unique features of the stall concerned (such as its proximity to escalators), and customer flow.*

## Management of stall rentals and charges

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(e.g. at 75% of the OMR). The restricted auction prices became the rentals for the first tenancy; and

- (b) ***Open auction.*** Other operators acquired their stalls by open auction, with upset prices determined with reference to the OMR. The open auction prices became the rentals for the first tenancy. Open auction is now the norm for letting out vacant stalls arising from time to time.

Market stall tenancy generally has a three-year term. At the end of the term, it has been the FEHD's practice to renew the tenancy with the existing tenant (Note 25). Where the existing tenant chooses not to renew the tenancy, the FEHD will put the stall to open auction.

### ***The 2008 audit review***

5.4 In 2008, Audit conducted a review of the FEHD's management of public markets, including public markets selling wet and dry goods, CFMs and CFCs (see para. 1.7). The audit review found that many public market tenants were paying lower-than-market rentals. There were various reasons (see Appendix E), including a 30% across-the-board rental reduction in 1998 and the freezing of stall rentals since 1999. The consequences were that the FEHD incurred a big deficit in the management of public markets (\$160 million for 2007-08) and that some stall tenants were paying extremely low rentals whereas others renting similar stalls through open auction were paying higher rentals. Audit recommended that the FEHD should establish a suitable mechanism for rental adjustment.

5.5 In its Report No. 51 of February 2009, the PAC expressed concern that a suitable rental adjustment mechanism had not been devised, and that the disparity in rentals might have discouraged traders to rent market stalls for business.

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**Note 25:** *With the freezing of market stall rentals since 1999 (see paras. 5.4 and 5.8), the FEHD has been renewing tenancies with existing tenants without changes in rentals.*

***FEHD's proposed rental adjustment mechanisms***

5.6 After the 2008 audit review, the FEHD had proposed three different rental adjustment mechanisms and consulted the LegCo Panel on Food Safety and Environmental Hygiene in July 2009, December 2010 and January 2013 respectively. Members of the Panel did not give full support to the proposals.

5.7 According to the latest proposal of January 2013, public market stall rentals would be adjusted in accordance with the movement of the average Consumer Price Index (A) of the past three years, with the increase capped at 5% or the OMR, whichever is the lower. At the meeting of the LegCo Panel on Food Safety and Environmental Hygiene in January 2013, Members considered that the Government should conduct a comprehensive review covering the policy and usage of public markets, and improve their operating environment before considering implementing the new rental adjustment mechanism.

***Consultancy study***

5.8 In October 2013, the Government announced that the rental freeze implemented since 1999 would be further extended until December 2015. In December 2013, the Government commissioned a consultancy study on the function and positioning of public markets and measures to improve their operating environment. At the January 2015 meeting of the Subcommittee on Issues Relating to Public Markets of the LegCo Panel on Food Safety and Environmental Hygiene, the Government briefed Members of the key findings of the consultancy study and the Government's preliminary thinking. In respect of the rental adjustment mechanism (which will affect public markets selling wet and dry goods, CFMs and CFCs), the Government informed the Subcommittee that:

- (a) the consultant saw the continuously low rental for many of the stalls as an issue that should be duly addressed;
- (b) deficits had been recorded in the management of public markets. The Government needed a reasonable rental adjustment mechanism which allowed the rent of market stalls to catch up with rents of broadly comparable stalls which were recently allocated through open bidding in

## Management of stall rentals and charges

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other public markets. The lack of such a mechanism might likely be at a detriment to the vibrancy of the markets (e.g. tenants might lack motivation for running their business in an active manner);

- (c) while agreeing to the consultant's point that markets were intrinsically different from welfare services, the Government was mindful that some tenants were ex-hawkers or ex-tenants of other public markets resided to the existing public markets at a low rent and the Government needed to take into account the arrangement for this group of tenants when considering the rental adjustment mechanism; and
- (d) the Government would explore the rental adjustment mechanism with the Subcommittee.

### *Rentals of many stalls far below OMR*

5.9 In the 2008 review, Audit recommended that the FEHD should establish a suitable rental adjustment mechanism (see para. 5.4). In the absence of a rental adjustment mechanism since 1999, rentals for most stalls of CFMs and CFCs (Note 26) were below the OMR. Table 9 shows that, as at December 2014, of the 975 cooked food stalls in CFMs and CFCs (Note 27), the tenants of 846 (87%) stalls were paying less than the OMR. In particular, the tenants of 389 (40%) stalls were paying less than 50% of the OMR. As a result, the FEHD has continued to incur large deficits in the management of public markets (e.g. \$238 million for 2013-14 against \$160 million for 2007-08).

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**Note 26:** *As at December 2014, the average rental for stalls of CFMs and CFCs was \$6,050 a month. Rentals of individual stalls ranged from \$294 to \$120,000 a month.*

**Note 27:** *As at December 2014, a total of 995 stalls in CFMs and CFCs were let to operators, comprising 975 cooked food stalls and 20 other stalls (e.g. for selling dry goods).*

## Management of stall rentals and charges

**Table 9**

**Level of stall rentals of CFMs and CFCs  
(December 2014)**

Level of stall rental	Stall	
	No.	Percentage
Above OMR	47	5%
Equal to OMR	82	8%
70% to 99% of OMR	249	26%
50% to 69% of OMR	208	21%
30% to 49% of OMR	247	25%
Lower than 30% of OMR	142	15%
Total	975	100%

*Source: Audit analysis of FEHD records*

### ***Establishing a suitable rental adjustment mechanism***

5.10 The Government's policy on public markets is to charge tenants OMR (see paras. 5.2 and 5.8(b)). In formulating the proposed rental adjustment mechanisms (see para. 5.6), the Government aimed to minimise the financial impact on public market tenants. For example, in the proposal of January 2013 (see para. 5.7), the Government intended to adjust market stall rentals every three years, with the increase capped at 5% or the OMR, whichever is the lower. However, given that rentals of many stalls were far below the OMR (e.g. less than 50% of the OMR — see Table 9), the proposed adjustment is not likely to enable rentals to catch up with the OMR within a short time frame (see Case 10 for example).

### Case 10

#### Long time required for rental of a stall to catch up with OMR (Yue Kwong Road CFC)

1. The Yue Kwong Road CFC was built in 1981.
2. In 1998, an operator acquired the tenancy of Stall B through an open auction, at a rental of \$5,000 a month. Following a 30% across-the-board rental reduction in the same year (see para. 5.4), the monthly rental reduced to \$3,500. As at December 2014, the FEHD had renewed the tenancy with the operator 13 times at the same rental.
3. In 2014, the OMR of Stall B was \$7,000 a month. The monthly rental of \$3,500 was equivalent to only 50% of the OMR.

#### *Audit comments*

4. Based on the FEHD's 2013 proposed rental adjustment mechanism (see para. 5.7), Audit estimated that the stall rental would require about 15 increments or 45 years to catch up with the OMR at the 2014 price level.

*Source: Audit analysis of FEHD records*

5.11 The tenancy agreement entered into with stall operators states that a stall should be vacated and returned to the FEHD at the end of the tenancy. In practice, the FEHD allows the existing tenant to renew the tenancy (see para. 5.3). This might partly be due to the fact that some tenants were ex-hawkers or ex-tenants of other public markets resited to the existing public markets (see para. 5.8(c)). In the absence of rental adjustments since 1999, this practice had resulted in the rentals of many stalls being far below the OMR. This is at variance with the Government's stance that market stalls are basically commercial premises which are let out to traders for business operations, and that recovery of the OMR should remain the long-term objective of the Government. The FEHD needs to review its practice. In this connection, Audit noted that:

- (a) due to the limited number of vacant stalls available for open auction, potential operators might need to pay high rental to acquire a stall to earn a living. For example, through an open auction held in 2012, a vacant stall in Yue Kwong Road CFC (the CFC referred to in Case 10) was let to a new operator at 665% of the OMR (Note 28). In contrast, in Case 10, Stall B, with a comparable OMR, was being let to the operator at 50% of the OMR; and
- (b) as at December 2014, of the 975 cooked food stalls in CFMs and CFCs, the operators of 598 (61%) stalls, including the operator in Case 10, had acquired the first tenancy through open auction. The FEHD particularly needs to review whether it is appropriate to allow such operators to successively renew their tenancies at rentals far below the OMR without open auction.

### Audit recommendations

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

- (a) **given that the rentals of most of the public market stalls are far below the OMR and deficits are incurred in the management of public markets, expedite action to establish a suitable rental adjustment mechanism for public markets; and**
- (b) **review the practice of allowing stall operators to successively renew their tenancies instead of putting the stalls to open auction upon the expiry of the tenancy agreements, particularly for stall operators who had acquired their stalls through open auction.**

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**Note 28:** *The monthly rental was \$49,200, as against an OMR of \$7,400.*

### **Response from the Government**

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

- (a) the Government needs a reasonable rental adjustment mechanism which allows the rent of market stalls to catch up with rents of broadly comparable stalls which are recently allocated through open bidding in other public markets;
- (b) at the meetings on 14 July 2009, 14 December 2010 and 8 January 2013, the Government presented three different proposals on the rental adjustment mechanism to the LegCo Panel on Food Safety and Environmental Hygiene. LegCo Members did not give support to the proposals;
- (c) the Government has followed up and is about to finalise a consultancy study on the function and positioning of public markets and measures to improve their operating environment (see para. 5.8). At the January 2015 meeting of the Subcommittee on Issues Relating to Public Markets, the Government undertook to finalise the consultancy in the light of the comments received, and to revert to the Subcommittee before June 2015 with the preliminary proposals to implement the improvement plans, and at the same time, the proposals for rental adjustment mechanism; and
- (d) the FEHD is open to the suggestion of reviewing the existing practice of successively renewing the tenancies of cooked food market stalls, with regards to the pros and cons of putting the stalls to open auction upon expiry of the tenancy agreements. However, it envisages that any material change to the current practice which has become so deeply entrenched over the years will draw fierce resistance and criticism from the tenants. The proposed change will also have read-across implications on the tenancy renewal of over 13,000 public market stalls selling wet and dry goods. Such being the case, it is expected that much persuasion and time would be needed to institute any change.

## Recovery of rates

### *The 2008 audit review*

5.14 According to the tenancy agreements, stall tenants in public markets need to pay rates for their stalls. In the 2008 audit review, Audit found that the FEHD had paid rates on behalf of stall tenants to the Rating and Valuation Department (RVD), and that the FEHD had not recovered from them the rates paid. Audit recommended that the FEHD should examine the issue.

5.15 In its report of February 2009, the PAC expressed concern that rates had not been recovered from stall tenants, despite stipulation in the tenancy agreements that tenants were responsible for their rates payment.

### *Rates not recovered*

5.16 Currently, the FEHD is still paying rates for public market tenants. It has not sorted out the arrangements for recovering rates from them. According to the existing practice, the RVD levies rates on the FEHD instead of on individual public market tenants. For this purpose, the whole public market including the stalls, market offices and common areas is assessed to rates on a block basis (block assessment). There are currently 101 block assessments covering all the public markets (see Note 2 to para. 1.6(a)). This practice has been adopted since 1989.

5.17 Audit noted that the FEHD had consulted the RVD about the feasibility of charging public market tenants the rates. In November 2008, the RVD advised the FEHD that:

- (a) there was strong reservation on the feasibility of levying rates direct on public market tenants (some 15,000 in number). Enormous non-recurrent and recurrent resources would be required; and
- (b) a practical way might be to charge rentals on an inclusive-of-rates basis, and to collect the rentals with the rates from public market tenants simultaneously.

However, the FEHD had not taken forward the RVD's advice.

### Audit recommendation

5.18 **Audit has *recommended* that the Director of Food and Environmental Hygiene should explore the feasibility of charging rentals of public market stalls on an inclusive-of-rates basis, in order to recover the rates paid by the FEHD on behalf of stall tenants.**

### Response from the Government

5.19 The Secretary for Food and Health and the Director of Food and Environmental Hygiene agree that the rates should be paid by the stall tenants. They have said that:

- (a) consultation with public market tenants and trader organisations conducted at the request of the LegCo Panel on Food Safety and Environmental Hygiene in 2009 concluded that they unanimously objected the proposal that the rates should be paid by tenants. Some maintained the view that the Government's current practice of paying rates on behalf of the tenants, which had been adopted for years, should continue;
- (b) the Panel was not supportive of the idea of recovering rates from the stall tenants in public markets generally. This can be seen from the following motion, which was supported by all the Panel Members present at the meeting on 13 April 2010:  
  
"That this Panel urges the Government to continue to pay the rates on behalf of public market stall tenants in the territory, so as to support small business operations in markets."; and
- (c) in light of the above, the Government considers it pragmatic to focus on the setting up of a rental adjustment mechanism for public markets before exploring the recovery of rates from the stall tenants.

## Recovery of air-conditioning costs

5.20 As at December 2014, 2 CFMs and 20 CFCs were air-conditioned (see para. 3.24). The FEHD recovers the recurrent costs of air-conditioning (electricity charges and general maintenance costs) through two different charging arrangements, as follows:

- (a) *Subsumed charging.* Air-conditioning costs are factored into the OMR and form part of the rentals; and
- (b) *Separate charging.* Air-conditioning costs are charged separately from rentals.

### *The 2008 audit review*

5.21 In the 2008 audit review, Audit found that public market air-conditioning charges (whether subsumed within or separated from rentals) had generally not been revised throughout the rental freeze period since 1999 (Note 29), resulting in an under-recovery of air-conditioning costs (about \$11 million not recovered in 2008). Audit recommended that the FEHD should work out an appropriate arrangement to tackle the issue.

5.22 In its report of February 2009, the PAC expressed concern that air-conditioning cost had not been recovered, and that air-conditioning charges had not been revised.

### *Charges under the separate-charging arrangement still not revised*

5.23 Under the separate-charging arrangement, air-conditioning charges are levied on stall operators at a predetermined rate (referred to as charge-out rate

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**Note 29:** *For public markets under the subsumed-charging arrangement, rentals (which were inclusive of air-conditioning costs) had not been revised throughout the rental freeze period since 1999. For public markets under the separate-charging arrangement, in line with the rental freeze, the charges for air-conditioning costs had generally not been revised.*

## Management of stall rentals and charges

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hereinafter). Each air-conditioned public market (including the air-conditioned CFMs/CFCs) has its own charge-out rate, representing the recurrent cost of air-conditioning per unit area in the market (Note 30). The FEHD conducts specific exercises for compiling the rates.

5.24 Audit noted that:

- (a) the FEHD last compiled the charge-out rates in 2010. As at December 2014, the charge-out rates had not been further updated; and
- (b) as a general practice, the FEHD had all along been using the charge-out rates of 2005 to recover air-conditioning costs from public market tenants.

5.25 Upon enquiry, the FEHD informed Audit in December 2014 that:

- (a) the FEHD had since 2005 adopted the separate-charging arrangement for new tenants of public market stalls (many existing tenants still subject to the subsumed-charging arrangement — see para. 5.27);
- (b) in line with the rental freeze, the FEHD had not subsequently applied an updated (and possibly increased) charge-out rate to these public market tenants; and
- (c) as regards charge-out rates not being compiled after 2010, it was not worthwhile for the FEHD to compile the rates annually. In fact, the FEHD was still using the rates of 2005 (see para. 5.24(b)).

5.26 Audit has reservation about not revising the charge-out rates because of the rental freeze. Under the separate-charging arrangement, air-conditioning charges are in fact separate from the rentals. Audit also noted that the FEHD informed the FSTB in June 2007 that the charge-out rates would be reviewed

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**Note 30:** *In compiling the charge-out rate, reference is made to the estimated electricity charges and maintenance costs, taking account of such factors as pre-set temperature and operating hours.*

annually, and that the FEHD would apply the new charge-out rates to all new and renewed tenancies.

### *Many operators still under subsumed charging*

5.27 It is the FEHD's intention to replace the subsumed-charging arrangement with the separate-charging arrangement. However, as at December 2014, of the 3,277 stalls in air-conditioned public markets (including CFMs and CFCs), 427 (13%) were still charged under the subsumed-charging arrangement.

5.28 Upon enquiry, the FEHD informed Audit in December 2014 that during the rental freeze period, existing tenants were not willing to alter their tenancy agreements to give effect to the separate-charging arrangement. In this connection, Audit noted that there had been views that air-conditioning charges attributable to public areas of markets should be borne by the Government. The issue had been discussed at meetings of the LegCo Panel on Food Safety and Environmental Hygiene. As at December 2014, the Government had not yet come up with a final decision on the issue. For 2013-14, the amount of air-conditioning costs not recovered from stall operators was about \$16 million.

## **Audit recommendations**

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

- (a) **expedite action to work out an appropriate arrangement to recover air-conditioning costs from public market tenants;**
- (b) **in the interim, consider updating the air-conditioning charge-out rates for applying to public market tenancies; and**
- (c) **keep in view those tenancies which are still under the subsumed-charging arrangement, and replace it with the separate-charging arrangement when the opportunity arises.**

### Response from the Government

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

- (a) the Government's policy is to have the recurrent expenses, including electricity charges and general maintenance costs, borne by market tenants;
- (b) the Government had reviewed the arrangements for recovery of air-conditioning charges in public markets and considered that separate charging of rental and air-conditioning charges was more in line with the "user pays" principle. In this connection, the FEHD has adopted separate charging of rental and air-conditioning charges for all tenants in newly completed markets since 2002 and for all new tenants in all air-conditioned markets since July 2005;
- (c) the former Urban Council subsumed air-conditioning charges into the rents whereas the Regional Council adopted a separate charging arrangement. To-date, different air-conditioning charging arrangements are adopted in parallel, depending on whether the public markets were previously managed by the former Urban Council or Regional Council, the year in which the public markets came into operation and the year in which the tenants entered into tenancy;
- (d) the Government briefed the LegCo Panel on Food Safety and Environmental Hygiene on its views and proposals on the full recovery of air-conditioning charges in public markets in July 2009 and December 2010. The Panel did not give support to the proposals;
- (e) the Government made it clear in the paper for discussion on 18 November 2014 with the Subcommittee on Issues Relating to Public Markets that the present situation in which different air-conditioning charging arrangements applied to different tenants was less than fair or satisfactory. The Government intends to conduct a review to align the air-conditioning charging arrangements with regard to the "user pays" and "parity" principles, and amend the tenancy agreements of the relevant tenants

## **Management of stall rentals and charges**

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when they are due for renewal by the end of 2015. The Government would also apply the same principles to any existing FEHD markets for which the Government seeks to provide air-conditioning system retrofitting, and would amend the tenancy agreements with the tenants accordingly; and

- (f) in view of the audit recommendations, the Government will expedite the review to separate air-conditioning from rental charges while continuing the discussion with LegCo on the rental adjustment mechanism for public markets generally.

## **PART 6: WAY FORWARD**

6.1 This PART explores the way forward for the FEHD's management of public cooked food markets.

### ***Historical background***

6.2 It has been the Government's policy since the early 1970s that no new hawker licences should be issued under normal circumstances and on-street licensed hawkers should be put into off-street hawker bazaars or public markets. Public cooked food markets were built in pursuit of this hawker policy, with a view to resiting on-street cooked food stalls. The policy objective has largely been achieved. The Government's current thinking is that there is no need for building new public cooked food markets and it will explore ways to further improve the condition of the existing ones (see para. 1.8(c)).

### **Areas for improvement**

6.3 The majority of the public cooked food markets were built in the 1980s and before. The audit review has found room for improvement in the FEHD's management of these markets, including the following:

- (a) the 11 CFHBs had a high stall vacancy rate of 61% on average, with the largest two having a vacancy rate of 75% and 81%. Of the total of 144 vacant stalls in these markets, 114 (79%) stalls had been vacant for more than 10 years;
- (b) although viability is a key factor in determining whether a market should continue to operate, the FEHD did not conduct periodic reviews to assess the viability of each market and its alternative use. The last review of CFMs/CFCs conducted in 2010 revealed that there were 12 of them with less than 20 patrons per day per stall, casting doubt on their viability;

- (c) in 2003, the FEHD decided to upgrade the fire safety measures at the markets. However, the progress had been slow and many markets had still not implemented the improvement measures considered by the FEHD as minimum requirements;
- (d) the electricity supply for most CFMs and CFCs had not been upgraded to meet the current standard set by the FEHD. Inadequate electricity had caused problems such as overloading of electricity system, stalls unavailable for letting and retrofitting of air-conditioning systems not feasible;
- (e) none of the stalls in the markets had obtained from the Liquor Licensing Board a liquor licence, which is required for the sale of liquor for consumption on the premises. However, Audit's site visits to 11 CFMs and CFCs revealed some cases in which liquor was sold and consumed in the communal area or inside the stall area;
- (f) there were inadequacies in the FEHD's routine inspections of stalls in the markets, including not taking actions on some irregularities such as obstruction of public areas and improper use of LPG, and failure to conduct inspections in a timely manner in accordance with the FEHD's requirements; and
- (g) the FEHD had not completed its follow-up actions on certain issues identified in the 2008 audit review, including the charging of rentals, recovery of rates and recovery of air-conditioning costs.

6.4 Audit considers that the FEHD needs to take on board the observations and recommendations in this Audit Report in further improving the management of public cooked food markets.

### **Exploring redevelopment potential or alternative use**

6.5 In 2012, after reviewing about 4,500 government sites being used for providing various public facilities, the FSTB shortlisted some sites for further study by the Planning Department of their redevelopment potential. The FSTB requested the FEHD to review the possibility of releasing its 17 sites on the shortlist, including 12 sites at which five CFHBs, two CFMs and five CFCs were located.

## Way forward

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The FEHD considered that three CFHB sites could be released. The remaining nine sites either needed to be retained to relocate operators in the three CFHBs, or had high occupancy rates.

### *Progress of releasing three CFHB sites*

6.6 In February 2015, the FEHD conveyed to the FSTB the status, work plan and estimated timetable concerning the vacation of the three CFHBs. According to the FEHD, it has started the negotiation with the licensees of two CFHBs on closure and the negotiation concerning the other CFHB will begin soon.

### *Scope for reviewing other sites*

6.7 Under the review by the FSTB, only government sites meeting certain criteria, namely sites no less than 600 m<sup>2</sup> in area with low-rise (two to five storeys) facilities completed in 1980 or before, were shortlisted for further study of their redevelopment potential. Of the 75 public cooked food market sites, 12 (16%) sites meeting these criteria were shortlisted for further study. The other 63 (84%) public cooked food market sites did not meet the criteria and were not covered by the further study.

6.8 In Audit's view, the FEHD needs to explore the redevelopment potential or alternative use of the 63 public cooked food market sites as well, particularly those in prime areas, with high vacancy rates and viability problems, and having limitations in improving the facilities. In this connection, it is worth noting that the FEHD has in the past successfully undertaken projects to redevelop public market sites and achieved better use of the land (see Appendix F for example).

## Audit recommendations

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

- (a) **take on board the observations and recommendations in this Audit Report in further improving the management of public cooked food markets;**

- (b) expedite actions, with a view to releasing the three CFHB sites mentioned in paragraph 6.5 for redevelopment as soon as possible; and
- (c) explore the redevelopment potential or alternative use of other public cooked food market sites, particularly those in prime areas, with high vacancy rates and viability problems, and having limitations in improving the facilities.

## Response from the Government

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

- (a) continue to step up its efforts in enhancing the overall management of public cooked food markets, with due regard to the historical background of CFHBs and the interests of stakeholders;
- (b) expedite actions, with a view to releasing some of its CFHB sites for redevelopment as soon as possible, while giving due consideration to the interests of hawkers and other stakeholders who will be affected by the closure of the CFHBs; and
- (c) explore the redevelopment potential of other public cooked food market sites, particularly those that are located in prime areas, bear high vacancy rates and viability problems, and have limitations in improving the facilities.

**Cooked Food Hawker Bazaars  
(31 December 2014)**

Serial no.	Name	Year of commissioning	Area (m <sup>2</sup> )	No. of stalls
<i>Hong Kong and Islands</i>				
1	Stanley Market Open Space Hawker Bazaar	1972	250	28 (Note 1)
<i>Kowloon</i>				
2	Woosung Street Temporary CFHB	1984	761	24
3	Yu Chau West Street CFHB	1977	757	26
4	Lai Yip Street CFHB	1973	425	10
5	Haiphong Road Temporary CFHB	1978	367	20
6	Reclamation Street CFHB	1973	270	12
<i>New Territories</i>				
7	Ma Kok Street CFHB	1977	2,360	36
8	Luen Yan Street CFHB	1985	1,673	36
9	Tai Lin Pai Road CFHB	1976	1,208	22
10	Kwai Wing Road CFHB	1972	515	20
11	Lam Tei Market cum Hawker Bazaar	1969	160	4 (Note 2)
Total			8,746	238

Source: FEHD records

Note 1: The 28 stalls comprised 2 selling cooked food and 26 selling dry goods.

Note 2: The 4 stalls comprised 1 selling cooked food and 3 selling vegetables/dry goods.

**Cooked Food Markets  
(31 December 2014)**

<b>Serial no.</b>	<b>Name</b>	<b>Year of commissioning</b>	<b>Area (m<sup>2</sup>)</b>	<b>No. of stalls</b>
<b><i>Hong Kong and Islands</i></b>				
1	Cheung Chau CFM	1991	1,524	17
2	Nam Long Shan Road CFM	1987	1,476	28
3	Queen Street CFM	2004	967	11
4	Kut Shing Street CFM	1986	726	11
5	Mui Wo CFM	1985	642	20
<b><i>Kowloon</i></b>				
6	Tsun Yip CFM	1985	2,720	56
7	Cheung Sha Wan CFM	1982	1,400	28
8	Mong Kok CFM	2005	1,265	14
9	Kwun Tong Ferry Concourse CFM	1984	1,000	29
10	Sze Shan Street CFM	1980	370	17
11	Tung Yuen Street CFM	1983	370	8
<b><i>New Territories</i></b>				
12	Chai Wan Kok CFM	1979	2,572	32
13	Kwai Shun Street CFM	1990	1,400	12
14	Cheung Tat Road CFM	1987	993	12
15	Tai Yuen Street CFM	1984	950	20
16	Tsing Yeung CFM	1983	922	18
17	Wo Yi Hop Road CFM	1984	850	18
18	Kin Yip Street CFM	1985	800	14
19	Kin Wing CFM	1979	715	20
20	Tai Tong Road CFM	1985	700	18
21	Ka Ting CFM	1983	648	16
22	Fo Tan CFM (East)	1982	645	24
23	Fo Tan CFM (West)	1982	544	15
24	Kik Yeung Road CFM	1981	337	14
25	Hung Cheung CFM	1979	313	11
<b>Total</b>			<b>24,849</b>	<b>483</b>

Source: FEHD records

**Cooked Food Centres  
(31 December 2014)**

<b>Serial no.</b>	<b>Name</b>	<b>Year of commissioning</b>	<b>Area (m<sup>2</sup>)</b>	<b>No. of stalls</b>
<i><b>Hong Kong and Islands</b></i>				
1	Sheung Wan CFC	1989	2,300	20
2	Lockhart Road CFC	1987	1,727	19
3	Java Road CFC	1993	1,500	15
4	Yue Kwong Road CFC	1981	1,472	16
5	Tin Wan CFC	1979	1,386	10
6	Aberdeen CFC	1983	1,288	10
7	Smithfield CFC	1996	1,180	12
8	Yue Wan CFC	1979	1,100	20
9	Bowrington Road CFC	1979	1,049	12
10	Apleichau CFC	1998	992	6
11	Wong Nai Chung CFC	1996	955	6
12	Shek Tong Tsui CFC	1991	884	15
13	Sai Wan Ho CFC	1984	630	8
14	Quarry Bay CFC	1988	360	5
15	Centre Street CFC	1976	350	2
16	Electric Road CFC	1993	350	5
17	Chai Wan CFC	2001	340	6
18	Aldrich Bay CFC	2008	150	4
<i><b>Kowloon</b></i>				
19	Kwun Chung CFC	1991	3,260	19
20	Po On Road CFC	1988	3,248	19
21	Choi Hung Road CFC	1988	2,502	19
22	Pei Ho Street CFC	1995	2,265	20
23	Tai Kok Tsui CFC	2005	2,244	12
24	Tai Shing Street CFC	1998	1,661	11
25	Shui Wo Street CFC	1988	1,570	20
26	Ngau Tau Kok CFC	1991	1,500	21
27	Fa Yuen Street CFC	1988	1,086	15

**Appendix C**  
(Cont'd)  
(para. 1.5 refers)

Serial no.	Name	Year of commissioning	Area (m <sup>2</sup> )	No. of stalls
28	Ngau Chi Wan CFC	1986	900	15
29	To Kwa Wan CFC	1984	520	8
30	Hung Hom CFC	1996	520	18
31	Kowloon City CFC	1988	340	10
<i>New Territories</i>				
32	Shek Wu Hui CFC	1994	4,030	28
33	Luen Wo Hui CFC	2002	3,985	22
34	Tai Po Hui CFC	2004	3,555	40
35	Heung Che Street CFC	1972	2,640	40
36	Kwu Tung Market Shopping Centre CFC	1985	393	12
37	Sham Tseng Temporary CFC	1984	250	8
38	Kam Tin CFC	1964	176	5
39	Sha Tau Kok CFC	1998	166	8
Total			54,824	561

Source: FEHD records

**Appendix D**  
(para. 2.9 refers)

**Public cooked food markets located at temporary sites  
(31 December 2014)**

Serial no.	Name	Year of commissioning	Area (m <sup>2</sup> )
<b><i>CFHBs</i></b>			
1	Woosung Street Temporary CFHB	1984	761
2	Yu Chau West Street CFHB	1977	757
3	Lai Yip Street CFHB	1973	425
4	Haiphong Road Temporary CFHB	1978	367
5	Reclamation Street CFHB	1973	270
6	Stanley Market Open Space Hawker Bazaar	1972	250
<b><i>CFMs</i></b>			
7	Cheung Sha Wan CFM	1982	1,400
8	Tung Yuen Street CFM	1983	370
<b><i>CFC</i></b>			
9	Sham Tseng Temporary CFC	1984	250
Total			4,850

Source: FEHD records

### Reasons for public market tenants paying lower-than-market rentals

As noted in the 2008 audit review, the reasons for many public market tenants paying lower-than-market rentals included:

- (a) ***Concessionary rentals for old market ex-tenants and ex-licensed fixed-pitch hawkers.*** When stall tenants of an old market or licensed fixed-pitch hawkers were to be resited to a new market, they were allowed to bid for stalls in the new market through a restricted auction at a lower upset price (which was normally set at 75% of the OMR);
- (b) ***Different rental adjustment mechanisms upon tenancy renewal.*** Although both the former Provisional Urban Council and Provisional Regional Council used the OMR as the basis for assessment of renewal rentals, they adopted different rental adjustment mechanisms when renewing stall tenancies with rentals below the OMR. For stalls under the former Provisional Urban Council, rental adjustment was made with reference to the difference between the contractual rental (i.e. the last rental specified in the tenancy agreement) and the prevailing OMR. The increase in renewal rental would be capped by the prevailing increase in consumer price index plus a pre-set percentage. The Provisional Regional Council had a different practice. It did not have a similar cap and would increase the renewal rentals gradually by phases to achieve a certain pre-set percentage of the OMR;
- (c) ***1998 rental reduction and subsequent rental freezes.*** In 1998, owing to the poor economic climate, the rentals of all public market stalls were reduced across-the-board by 30%. Since 1999, market stall rentals had been frozen nine times at the reduced level, with the rental freeze period expiring on 30 June 2009 (Note). As a result, stall rentals for former licensed hawkers and market tenants had remained substantially below the OMR; and
- (d) ***Reduced rentals for long-standing vacant stalls.*** To attract potential tenants, since August 2003, the FEHD had also instituted the measure of lowering the upset auction prices of long-standing vacant stalls in selected markets.

Source: FEHD records

Note: The freeze of market stall rentals had been further extended five times, with the current rental freeze period expiring on 31 December 2015.

## **Redevelopment of the Tai Po Temporary Market**

1. In the early 1980s, the Tai Po Temporary Market was built to resite on-street hawkers. The Temporary Market was located at a temporary site of about 4,900 m<sup>2</sup>.
2. The facilities of the Tai Po Temporary Market were crude. In order to provide a modern and permanent market for the local community and to better use the site, it was decided in 1998 that a redevelopment project would be undertaken as follows:
  - (a) an eight-storey municipal services building would be built at another site. A floor of the building would be used as a CFC (Note);
  - (b) tenants of cooked food stalls at the Temporary Market would be relocated to the new CFC; and
  - (c) the temporary site would then be released for other uses.
3. In 2004, the new CFC was commissioned (i.e. the Tai Po Hui Market CFC). The temporary site was released for constructing a new public housing estate.

*Source: FEHD records*

*Note: The municipal services building also houses other facilities, including a sports centre, a library and a public market (the Tai Po Hui Market).*

## Acronyms and abbreviations

ArchSD	Architectural Services Department
Audit	Audit Commission
CFCs	Cooked Food Centres
CFHBs	Cooked Food Hawker Bazaars
CFMs	Cooked Food Markets
EMSD	Electrical and Mechanical Services Department
FEHD	Food and Environmental Hygiene Department
FSD	Fire Services Department
FSTB	Financial Services and the Treasury Bureau
LegCo	Legislative Council
LPG	Liquefied petroleum gas
m <sup>2</sup>	Square metres
OMR	Open market rental
PAC	Public Accounts Committee
RVD	Rating and Valuation Department