CHAPTER 1

Home Affairs Bureau
Lands Department

Direct land grants to private sports clubs at nil or nominal premium

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

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DIRECT LAND GRANTS TO PRIVATE SPORTS CLUBS AT NIL OR NOMINAL PREMIUM

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Executive Summary

1. The Government has a long history of leasing lands at nil or nominal premium to "private clubs" (now termed "private sports clubs" by the Administration) to develop sports and recreational facilities for use by their members. Such leases for private sports and recreational purposes are commonly called "private recreational leases" (PRLs). As at 31 March 2013, 32 PRLs involving a total site area of some 430 hectares were granted to 27 private sports clubs. Of these 32 PRLs, 23 PRLs had expired in 2011 or 2012. As at 30 September 2013, 7 PRLs had been renewed whereas the remaining 16 PRLs were still under "hold-over" arrangement pending renewal.

2. The Home Affairs Bureau (HAB) is the policy bureau for overseeing PRLs and the Lands Department (Lands D) supports the HAB in administering the PRLs. The Audit Commission (Audit) has recently conducted a review of these 32 PRLs granted at nil or nominal premium to the 27 private sports clubs, with focus on how the Government has managed these PRLs. How the lands have been effectively used is also an issue of concern.

Government policy decisions in 1969 and 1979

3. ***Current policy on PRLs.*** The existing Government policy on PRLs is largely based on principles endorsed by the Executive Council (ExCo) over 30 years ago in 1979. No major policy revisions had since been made, except with the "greater access requirement" endorsed by ExCo in July 2011 (see para. 9 below). The PRL policy was primarily established based on the recommendations of two Review Reports, one issued in 1968 and another in 1979. The two Review Reports were endorsed by ExCo in 1969 and 1979, including the adoption of the "Special Conditions for Recreation Club Grants" as attached to the 1979 Report (1979 Special Conditions) (paras. 2.2 to 2.6).

4. ***The need to monitor the use of the PRL sites.*** The 1968 Report and 1979 Report had recommended that the recreational purpose for which the PRL was granted should be defined in the Special Conditions of the lease and new PRLs should strictly prohibit the use of land for non-recreational purposes other than as provided for under the Special Conditions. If any existing club was found using land for non-recreational purposes other than as provided for under the Special Conditions, the club should be required either to comply with the lease conditions or, if a lease modification was acceptable to the Government, to pay a premium for that portion of land involved or, be required to give up the land in question free. Audit however found that the 1969 and 1979 ExCo policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued for implementation (paras. 2.8 and 2.9).

5. In the absence of a clearly-defined permitted use of the PRL sites, coupled with the absence of any planning standards laid down within the Government on how the PRL site was to be apportioned for use among the various recreational, social and ancillary facilities, Audit has found that today, 16 of the 32 PRLs are granted to the private sports clubs for use as a "Recreation Club" or a "Sports and Recreation Club" and 14 of the 32 PRLs are permitted to use the PRL sites for such other purposes as defined in the clubs' Memoranda and Articles of Association. As a result, the clubs can operate a very wide range of facilities, sports and non-sports, on the PRL sites. Such non-sports facilities include restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, and barber shops. The clubs are enjoying much freedom in the use of the Government land granted to them at nil or nominal premium. Whereas many of the clubs were providing various types of sports and non-sports services on the PRL sites, Audit found that at least two clubs were not making effective use of the PRL sites (paras. 2.9, 2.10 and 2.12).

6. ***Granting of a new PRL in 1999.*** In September 1999, a 21-year PRL, involving a site area of some 170 hectares in the North District of the New Territories, was granted at a premium of $1,000 to one Club by the Lands D under delegated authority from ExCo. The PRL was granted to replace mainly an old lease of a site area of 159 hectares granted to the Club since 1930 and a site with an area of 11 hectares held by the Club since 1990 under a short term tenancy (STT).

Although the Lands D had obtained policy support from the then Broadcasting, Culture and Sport Bureau (now the HAB), Audit noted that the granting of the PRL to the Club was peculiar in various aspects. For example, the PRL has covered a large site area of some 170 hectares and has subsumed, as part and parcel of the PRL, the STT which was previously let out to the Club at market rental. Besides, the PRL had deviated from the 1979 Special Conditions (see para. 3 above) that govern all PRLs granted or renewed after 1979 in allowing the Club to use the PRL site for residential purposes for club members and their families, reciprocal members, overseas guests, and members of competing sports teams. Audit considers that in future cases of sufficient importance, the Administration should seek the advice of ExCo before the PRL is granted (paras. 2.19 to 2.24).

7. ***The urgent need for a comprehensive review of the PRL policy.*** In January 1969, when tabling the 1968 Report, the Administration informed ExCo that the Government would wish to conduct similar reviews of the PRL policy at suitable intervals in future as the public interest required. However, the existing Government policy on PRLs is largely based on principles laid down in 1979 and there has not been any comprehensive PRL policy review since 1979. As a result, most of the PRLs which expired in 2011 or 2012 were/would be renewed primarily based on the 1979 policy decisions (paras. 2.13, 2.28 and 2.29).

Implementation of the "opening-up" requirement

8. In accordance with the 1969 and 1979 policy decisions, almost all PRLs contain a requirement for the private sports clubs to permit the use of their grounds and facilities by eligible outside bodies for 3 sessions of 3 hours each per week when required by the competent authorities (i.e. Directors/Heads of a few designated bureaux/departments (B/Ds)). Audit has however found that for the past 13 years, the competent authorities did not play an active role in promoting the availability of the clubs' facilities and had not received any enquiries or requests from eligible outside bodies for using such facilities. Not until mid-2012 did the HAB begin to publicise that eligible outside bodies might contact the clubs direct to book their sports and recreational facilities during designated time slots for sporting use (paras. 1.11, 3.4, 3.15 and 3.16).

9. In July 2011, ExCo endorsed that PRLs should be renewed in accordance with the 1979 policy decisions, subject to the clubs having met various renewal criteria, including the modified lease conditions on the provision of greater access to "Outside Bodies" (which include, among others, schools, certain subvented non-governmental organisations and national sports associations). According to the more recent Special Conditions, the clubs are required to submit for the HAB's approval their "opening-up" schemes and to submit quarterly reports on usage under the approved schemes. Without awaiting the renewal of the PRLs, in June 2013, the HAB urged the clubs to start opening up their sports facilities to Outside Bodies in line with the greater access requirement. As at 30 September 2013, the HAB had approved the schemes for 20 PRLs. A "snap-shot" of the actual usage, based on the clubs' quarterly reports, shows that in most cases, the actual usage was far below the committed "opening-up" hours, indicating that the HAB needs to continue stepping up its efforts to urge the clubs to promote the availability of their sports facilities (paras. 3.4, 3.8, 3.11 and 3.18 to 3.22).

Monitoring of compliance with lease conditions

10. ***Inspections to ensure that the PRL site is used for intended purposes.*** PRLs were granted to private sports clubs to develop and operate sports and recreational activities. The clubs should not use the PRL sites for any other purposes (e.g. commercial activities or subletting). However, no evidence is available showing that the Lands D had itself conducted regular site inspections to ensure that the land is being used for the intended purposes. In particular, Audit noted that the scope and responsibility for monitoring permitted use and conducting site inspections have not been clearly defined between the HAB and the Lands D (paras. 4.7, 4.8 and 4.10).

11. ***Common breaches identified by Lands D.*** During the current round of renewal exercise, the Lands D identified common breaches of the Conditions of Grant in its site inspections. Such common breaches included unauthorised building works, slopes not properly maintained, encroachment on Government land and breaches of user restriction. Although breaches for some of the Conditions of Grant are regulated by other enforcement authorities (e.g. unauthorised building works by the Buildings Department), the Lands D needs to follow up such outstanding cases during the PRL renewal exercises by liaising with relevant enforcement authorities to make sure that they have been settled before the PRLs are renewed (paras. 4.7, 4.11 and 4.12).

12. ***Suspected non-compliances noted.*** Without regular site inspections of the land under the PRLs by either the HAB or the Lands D, the Government had not been able to timely detect non-compliance with the Conditions of Grant. Audit noted cases of such suspected non-compliances in this review. Such cases included suspected commercial activities/subletting on PRL sites (which are not allowed under the Conditions of Grant), such as operation of restaurants, a bar, sports shops, massage rooms and beauty salon by profit-making third parties (para. 4.13).

Current round of PRL renewals

13. ***A more coordinated approach is called for when assessing the need for public purposes.*** When considering whether a particular PRL should be renewed, the Lands D had been taking a coordinating role and would ask the relevant government departments whether "the site is required for a public purpose". In most cases, the government departments would reply individually that they had no comment/objection. Audit considers that such an approach to assess whether the PRL site would be required for a public purpose is too fragmented. Given that the Government is committed to increasing the supply of land in the short, medium and long terms, Audit considers that a more coordinated approach is required in future and the HAB needs to work collaboratively with the Development Bureau, the Lands D and other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (para. 5.4(a)).

Audit recommendations

14. **Audit recommendations are made in PART 5 of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Secretary for Home Affairs should, in collaboration with the Secretary for Development and the Director of Lands, as well as other relevant B/Ds, work on the forthcoming PRL policy review without delay, taking into account the needs and demands of different stakeholders and the audit observations and recommendations in this Audit Report, so that new policy directions on PRLs would be in place before the expiration of a number of PRLs (para. 5.8).**

15. **More specifically, Audit has *recommended* that the Secretary for Home Affairs and, where appropriate, the Director of Lands should, in collaboration with other relevant B/Ds:**

Government policy decisions in 1969 and 1979

(a) **examine individual PRLs on a case-by-case basis and consider how they should be revised/refined in the light of changes in circumstances, taking into account the key principles set in the forthcoming policy review on PRLs (para. 5.9(a));**

(b) **set up an effective mechanism to monitor the use of PRL sites (para. 5.9(b));**

(c) **draw up planning standards to help assess how PRL sites should in future be reasonably apportioned among sports and non-sports facilities to meet the purpose of the PRLs (para. 5.9(c));**

(d) **in future cases of sufficient importance, seek the advice of ExCo before granting the PRL (para. 5.9(f));**

Implementation of the "opening-up" requirement

(e) **keep the approved "opening-up" schemes for individual private sports clubs under regular review and monitor the scheme usage by Outside Bodies (para. 5.9(g));**

Monitoring of compliance with lease conditions

(f) **follow up the irregularities/suspected non-compliances with Conditions of Grant in the case studies reported in this Audit Report (para. 5.9(m));**

(g) **conduct checks on the suspected commercial/subletting cases identified in this Audit Report, with scope expanded where appropriate, to other private sports clubs holding PRLs, and determine the full extent and propriety of such practices (para. 5.9(n)); and**

Current round of PRL renewals

(h) **work collaboratively with the Secretary for Development and Heads of other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (para. 5.9(p)).**

Response from the Administration

16. The Administration generally accepts the audit recommendations. The Secretary for Home Affairs has pointed out that the HAB is responsible for the policy on the grant and renewal of PRLs, in the context of its overall responsibility for sports development policy. There are other issues that have a bearing on PRLs, but which are beyond the purview of the HAB, such as the wider land use policy considerations that govern the award of PRLs. The Secretary for Development and the Director of Lands have said that the Development Bureau and the Lands D stand ready to contribute to the HAB's forthcoming PRL policy review and the Lands D will support the HAB in implementing the audit recommendations.

PART 1: INTRODUCTION

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

Background

1.2 The Government has a long history of leasing lands at nil or nominal premium ($1,000) to "private clubs" (now termed "private sports clubs" by the Administration), non-governmental organisations (NGOs) and other organisations to develop sports and recreational facilities for use by their members. Such leases for private sports and recreational purposes are commonly called "private recreational leases" (PRLs — Note 1). PRL is one type of private treaty grants (PTGs) for special purposes. It is non-renewable and, upon its expiry, the Government has the sole discretion of renewing it or not. Some of the existing PRLs in force have been renewed for a number of times since they were first granted. In July 1997, the Executive Council (ExCo) decided that the term of leases for recreational purposes, if extended at the Government's sole discretion upon expiry of the leases, may not be extended for a term exceeding 15 years.

1.3 As at 31 March 2013, there were 69 PRLs (Note 2). The Home Affairs Bureau (HAB — Note 3) has divided these 69 PRLs into five categories, namely:

Note 1: *Apart from PRLs, the Government has also granted land leases, such as short term tenancies, to other clubs and organisations for sports and recreational purposes.*

Note 2: *Although most of the PRLs are granted to the private sports clubs, NGOs and other organisations at nil or nominal premium, they are subject to Government rent at 3% of the rateable value a year. Taking the 32 PRLs granted to private sports clubs in paragraph 1.3(a) for example, based on the HAB records, Government rents payable, as assessed by the Rating and Valuation Department, amounted to some $20 million a year.*

Note 3: *In April 1998, the HAB took over the policy responsibility for culture and sports from the then Broadcasting, Culture and Sport Bureau.*

(a) 32 PRLs (PRL 1 to PRL 32) granted to 27 private sports clubs (namely Club 1 to Club 27 — Appendix A), with four of them holding two or more PRLs each;

(b) 15 PRLs to four uniformed groups, with three of them holding two or more PRLs each;

(c) 15 PRLs to 11 welfare organisations, with three of them holding two or more PRLs each;

(d) 5 PRLs to two national sports associations (NSAs) and three district sports associations; and

(e) 2 PRLs to two civil servants' associations.

1.4 The HAB is the Government's policy bureau for overseeing PRLs. In particular, it is responsible for policy issues on the grant and renewal of PRLs. However, with regard to matters involving land administration and enforcement, the HAB indicates that it has no executive role. The Lands Department (Lands D), as the Government land agent, supports the HAB in administering the PRLs. It takes advice from the HAB and, where appropriate or necessary, seeks the views of other relevant bureaux/departments (B/Ds).

Private recreational leases to private sports clubs

1.5 By granting PRLs at nil or nominal premium to private sports clubs and other organisations, the Administration is in effect providing them with financial subsidies in terms of premium foregone for the whole term of the lease.

1.6 Apart from being lessees of PRLs, most of the NGOs listed in paragraph 1.3(b) to (d) also receive recurrent subventions from the Government. Therefore, they are subject to the Government's regulation as subvented organisations, which may include entering into funding and service agreements with sponsoring B/Ds

which provide them with subventions (Note 4). Apart from the need to observe the Government's subvention rules, these subvented NGOs are accountable for their activities, including activities on the land under the PRLs, to the sponsoring B/Ds. They generally charge nil or low entry fees for membership and allow easy accessibility to their facilities.

1.7 Unlike the subvented NGOs, the 27 private sports clubs in paragraph 1.3(a) operate largely on their own. They are however obliged to observe the terms and conditions of the PRLs (Conditions of Grant — Note 5). As compared with the subvented organisations, the Government's control over the 27 private sports clubs is weaker. At the time when these 32 PRLs were first granted to the private sports clubs (with some cases in the form of Crown leases dating back to 100 years ago), there was an acute shortage of public sports facilities, and sports facilities built by these clubs for use by their members could help alleviate the shortage. However, over the years, circumstances have changed. In recent decades, there has been a substantial increase in the number of public sports facilities and sports facilities in private housing estates.

The role of private sports clubs today

1.8 In July 2011, the HAB informed the Legislative Council (LegCo) Panel on Home Affairs (Panel) that private sports clubs on land held under PRLs had made contribution to the promotion of sports development and the provision of recreational and sports facilities in Hong Kong, and they could continue to play an important role in this respect. The HAB indicated that:

(a) the private sports clubs had trained up a considerable number of elite athletes and squads to represent Hong Kong in local and international competitions at various levels, and had provided training and competition venues to local leagues of different sports;

Note 4: *Examples of such sponsoring B/Ds include the Social Welfare Department and the Leisure and Cultural Services Department.*

Note 5: *Conditions of Grant for PRLs, in common with the Conditions of Grant/Exchange/Sale for other types of land, comprise the General Conditions and the Special Conditions.*

(b) a number of private sports clubs had high quality sports facilities suitable for hosting major international sports events and they had worked with NSAs and the Government in organising activities to promote sport;

(c) it was clearly stated in PRLs that the lessees were required to open up their facilities to outside bodies, and some outside bodies had all along been using such facilities. A great number of the private sports clubs had allowed outside bodies to use their facilities for different purposes, including practices of school teams, training of Hong Kong sports teams and uniformed groups, as well as activities organised by social and welfare organisations; and

(d) such clubs had become well established after many years of development. They employed a total of over 6,200 full-time staff and their total operating expenditure was around $5.7 billion, representing a strong commitment of the clubs in operating their venues. They had provided high quality sports and recreational facilities which helped to attract overseas executives and professionals to work in Hong Kong and maintain Hong Kong's status as an international metropolis. The HAB believed that the clubs had played a role in the long-term development of sport in Hong Kong.

1.9 In June 2013, the HAB further informed the LegCo Panel that:

(a) many of the private sports clubs had invested in building facilities and running training programmes for members and non-members alike, without which many sports in Hong Kong would not have had the chance to develop;

(b) popular annual sporting events that were enjoyed by various sectors of the community, such as the Rugby 7s (in its initial years), the Hong Kong Cricket Sixes, the Hong Kong Golf Open Championship and the Hong Kong Soccer 7s, simply would not exist without the contribution of the host clubs and their members towards the provision of venues and event organisation;

(c) regular competitions run by many of the NSAs in sports such as tennis, squash, lawn bowls and hockey relied heavily upon the facilities provided by the clubs; and

(d) the sports and recreational facilities operated by the private sports clubs helped to significantly relieve the pressure on public facilities.

1.10 The 32 PRLs granted to 27 private sports clubs have the following characteristics:

- The 32 PRLs involve a total site area of some 430 hectares. These PRLs are located in various parts of the urban and rural areas of Hong Kong, with some located in the more densely populated areas.

- Some of these private sports clubs had been granted the PRLs as early as the pre-war days on an annual basis. From 1951 to 1978, these clubs were granted 10-year PRLs to enable them to develop their facilities more fully. The oldest clubs were founded in 1851, 1889 and 1910. Since 1979, PRLs to private sports clubs have generally been renewed on 15-year term.

- The types of sports facilities provided by the private sports clubs on land under PRLs are diverse, including tennis courts, basketball courts, swimming pools, squash courts, table-tennis tables, gymnasium and fitness rooms. Some of the clubs also offer sports facilities which are not commonly available in government venues, such as cricket pitches, lawn bowls greens, tenpin bowling, sailing facilities and golf courses.

- A few private sports clubs have quite a large number of members (such as Club 13 with some 50,000 members) and/or charge fees from $0 to $50,000 for entrance as ordinary members. Some however may have been perceived as "prestigious" clubs and charge high entrance fees for membership. A few clubs were initially set up to provide sports and recreational facilities for residents of a particular area.

1.11 The Conditions of Grant have stipulated that the private sports clubs must open up their grounds and facilities on the land under the PRLs to "Outside Bodies" (Note 6) under the purview of the competent authorities (CAs — Note 7). Such use generally does not apply to individual members of the general public.

More recent development in PRL renewal

1.12 Of the 69 PRLs (see para. 1.3), 51 PRLs, including 23 PRLs to private sports clubs, had expired in 2011 or 2012. As at the end of September 2013, the position of the 51 PRLs which expired in 2011 and 2012 was as follows:

Position as at the end of September 2013	**PRLs of**		**Total**
	Private sports clubs (Para. 1.3(a))	**Other organisations (Para. 1.3 (b) to (e))**	
	(No.)	**(No.)**	**(No.)**
Already renewed	7	4	11
Still under "hold-over" arrangement	16	24	40
Total	23	28	51

Note 6: *Such "Outside Bodies" include schools, NGOs receiving subvention from the Social Welfare Department, uniformed groups and youth organisations receiving subvention from the HAB, and NSAs (see para. 3.4).*

Note 7: *CAs are Directors/Heads of designated B/Ds as stipulated in the PRLs. They would refer requests from Outside Bodies (see Note 6) under their charge to the private sports clubs for use of the clubs' facilities (see details of CAs in para. 3.4).*

1.13 In the recent three years, because of the expiration of many PRLs, the subject of PRL has been under deliberations by LegCo on a number of occasions, with the issue very often raised for discussion by the HAB. In December 2011, the HAB informed LegCo that it was planning to renew all expired PRLs for 15 years on the basis that the lease conditions would be modified to require the lessees to grant greater access of their sports facilities to Outside Bodies. In May 2013, the HAB further informed LegCo that it had advised the lessees (including the private sports clubs) that the Administration would conduct a comprehensive review of the PRL policy and that the lessees should not assume that their PRLs would be further renewed or be renewed under the same terms and conditions upon expiry of the renewed lease.

Audit in 1990 and follow-up action by the Administration

1.14 In 1990, the Audit Commission (Audit) conducted an audit review of PRLs. Audit found that although the private sports clubs were required under the Conditions of Grant to open up their facilities to eligible outside bodies since the early 1980s, the arrangement was ineffective as the latter had made little use of the clubs' facilities, and the CAs had played a passive role in promoting the availability of the facilities.

1.15 In the follow-up of the 1990 audit, the Public Accounts Committee of LegCo was informed by the Administration in 1992 that:

(a) a 5-year strategic plan had been formulated to encourage increased use of clubs on PRLs and to seek better utilisation of the clubs' sports facilities to promote sports at the district level; and

(b) the Government would monitor the need to review the Conditions of Grant in the PRLs.

In the few years subsequent to the 1990 audit, the Administration made efforts to promote and maximise usage of the clubs' facilities, including dissemination via the CAs to schools, youth clubs and other bona fide organisations a list of clubs operating on PRLs together with details of their available facilities, level of charges and names of acceptable insurance companies. However, the promotional efforts were not very effective as usage by eligible outside bodies as reported by lessees, except for a few clubs, for the period April 1994 to March 1996 was generally not high.

1.16 Some 20 years since the 1990 audit, the Office of The Ombudsman conducted an investigation and reported in September 2012, among others, that "In the absence of Government publicity, it is no wonder that no eligible *(outside)* body had ever applied to the CAs for using the sports facilities of the sports clubs".

Audit review

1.17 In this review, Audit examined the 32 PRLs granted to 27 private sports clubs (see para. 1.3(a)). Focus is placed on how the Government has managed these PRLs to ensure that the objectives of granting the PRLs are met. Given that these PRLs have been granted to the private sports clubs at nil or nominal premium, how the lands have been effectively used is an issue of concern.

1.18 Audit started the review in early March 2013 (at which time all 23 of 32 PRLs to private sports clubs that had expired in 2011 or 2012 were still under "hold-over" arrangement pending renewal). In this review, Audit had examined records of the HAB and the Lands D relating to all 32 PRLs granted to private sports clubs, with more detailed examination on 15 PRLs granted to 12 private sports clubs. Although Audit has no right of direct access to the clubs' records, Audit was able to seek clarifications/additional information from the clubs through the support and assistance of the HAB and the Lands D, and also had the opportunity of conducting site visits to four of these 12 private sports clubs to gain a better understanding of their activities on the land under the PRLs.

1.19 This Audit Report covers the following areas:

(a) Government policy decisions in 1969 and 1979 (PART 2);

(b) implementation of the "opening-up" requirement (PART 3);

(c) monitoring of compliance with lease conditions (PART 4); and

(d) way forward (PART 5).

Although this audit only covers the Government's management of the 32 PRLs granted to private sports clubs, it is possible that the audit findings and recommendations are similarly applicable to the other 37 PRLs (see para. 1.3(b) to (e)). Therefore, Audit has suggested that the HAB should conduct a similar review of the Government's management of the other 37 PRLs in its follow-up of this Audit Report.

Acknowledgement

1.20 Audit would like to acknowledge with gratitude the full cooperation of the staff of the HAB and the Lands D during the course of the audit review. They have been very supportive and made great efforts to clarify the audit issues raised, particularly the case studies, with the private sports clubs where they considered necessary. Audit would also like to thank the clubs for their cooperation during Audit's site visits.

PART 2: GOVERNMENT POLICY DECISIONS IN 1969 AND 1979

2.1 This PART examines the implementation of the Government policy decisions on PRLs made in 1969 and 1979.

Current policy on private recreational leases

2.2 The existing Government policy on PRLs is largely based on principles endorsed by ExCo over 30 years ago in 1979. No major policy revisions had since been made, except with the "greater access requirement" endorsed by ExCo in July 2011 (see para. 2.6). The PRL policy was primarily established based on the recommendations of two Review Reports, one issued in 1968 and another in 1979. The 1968 Report and the 1979 Report were endorsed by ExCo in 1969 and 1979 respectively.

Policy decisions in 1969 and 1979

2.3 ***Policy decisions in 1969.*** Because a number of PRLs would expire in 1971 or 1972, the then Governor of Hong Kong set up an Advisory Committee to review the PRL policy in 1965. The Advisory Committee issued a Review Report in 1968 (the 1968 Report). The 1968 Report made the following key recommendations, which were endorsed by ExCo in January 1969:

(a) ***Length of leases.*** The renewal of existing leases should be for further terms of 10 or 21 years depending on whether or not substantial new expenditure was required to be amortised over a period longer than 10 years. These leases did not contain a right of renewal.

(b) ***Restrictions on use of the ground.*** The recreational purpose for which the grant was made should be defined in the Conditions of Grant (Note), which should also prevent the lessee from using the land for any other purpose. The relevant conditions should not, however, exclude the use of the property for all reasonable social functions and other recreational uses ancillary to the main objects.

(c) ***Use by outside bodies.*** The lessee should make the land available for use by other parties as specified by the appropriate CA, e.g. activities of schools and youth clubs.

(d) ***Applications for new PRLs.*** Applications for new PRLs, particularly in areas where land was in short supply, should only be considered from non-profit-making bodies having a wide representation or which proposed to provide recreation of a sort not already available in Hong Kong.

Note: *The Advisory Committee pointed out that the then PRLs, confining the use of the ground to purposes defined in the Memorandum and Articles of Association (M&As) of the lessees, had certain weaknesses as a means of control, and could have the effect of inducing the clubs to make their M&As so wide as to render control ineffective.*

2.4 The Advisory Committee also recognised that land then available for public use in built-up areas was inadequate, but most of the private clubs (now termed "private sports clubs" — see para. 1.2) then on land under PRLs were situated in the more densely populated areas of the territory, and it was in these areas which had the most pressing need for additional public recreation space. The Advisory Committee considered that whilst these clubs still had a part to play in the sporting life of Hong Kong, they ought to recognise that conditions had changed since they were formed and their leases originally granted. The Government also ought to review the position of these clubs from time to time to ensure that the public interest continued to be served.

2.5 ***Policy decisions in 1979.*** In November 1973, the Council for Recreation and Sport (CRS) was established to advise the Government on the formulation of policies relating to the promotion of recreation and sport. Ten years after the 1968 review, in 1977, because a number of PRLs would again expire (in 1981 or 1982), the CRS appointed a Working Group to again review the PRL policy, including reviewing the policy recommendations of the 1968 Report, and to make recommendations on the renewal of existing PRLs. The Working Group issued its report in January 1979 (the 1979 Report). The recommendations of the 1979 Report followed the basic principles advocated in the 1968 Report, but introduced further criteria for renewal of existing PRLs and granting of new PRLs. The following are the key recommendations which were endorsed by ExCo in May 1979:

Policy for renewal of existing PRLs

(a) All existing PRLs should be renewed subject to the site being compliant with the current zoning plan, not being required for a public purpose and there being no breach of lease conditions.

(b) All existing PRLs should in general be renewed for a term of 15 years.

(c) Renewal would be subject to the club adopting a non-discriminatory membership policy for the admission of new members in respect of any form of discrimination by race, religion, or sex or in the order in which applicants were given membership.

(d) If any existing club was found to be using land for non-recreational purposes *(i.e. other than as provided for under the Special Conditions of Grant)*, the club should be told to stop doing so immediately and to put the matter right by converting any buildings or other facilities to recreational use. If, however, the buildings and facilities involved were so substantial as to make it unreasonable or impracticable to demand their demolition (e.g. in the case of a restaurant), or when the club objected to the reversion of any buildings or other facilities back to its original use, then the Government would have to decide whether the PRL should be terminated or whether the club should be required to pay a premium for that portion of land involved and the matter could be dealt with by means of a waiver.

Basic principles in considering applications for new PRLs

(e) Applications for new grants of land for recreational purposes in the urban areas, including those in the New Territories, should be for a term of 21 years or the usual New Territories lease terms *(i.e. up to 1997)*. Such applications should be considered only from non-profit-making bodies which incorporated a non-discriminatory membership policy and had a wide representation with low charges or which provided facilities for recreation of a sort not already available in Hong Kong (para. 2.3(d) is also relevant).

(To be continued)

(Cont'd)

(f) Applications for new PRLs in "outside urban areas" of the New Territories should be considered on their individual merits subject to the availability of land.

Special conditions of PRLs

(g) All PRLs in future should be subject to the "Special Conditions for Recreation Club Grants" as attached to the 1979 Report (1979 Special Conditions — Note), which included, among others, the following Special Conditions:

(i) a requirement for the lessee to permit the use of its grounds and facilities by outside bodies (such as schools or welfare organisations — see para. 3.4) for a maximum of 3 sessions of 3 hours each per week (except weekends and public holidays); and

(ii) a requirement in new PRLs for the lessee to provide for approval of the land authority the layout plans and general development plans of any proposed development/redevelopment on the PRLs.

Note: In accepting the adoption of the 1979 Special Conditions in all future PRLs, the Administration informed ExCo that the Special Conditions might require amendments in future to comply with changes in policy and legislation.

More recent policy decision

2.6 Because most of the PRLs would expire in 2011 or 2012 (see para. 1.12), in July 2011, ExCo endorsed that, when renewing the existing PRLs in accordance with the 1979 policy decisions, the PRL lessees (including the private sports clubs) should be advised that:

(a) they were required to comply with modified lease conditions relating to the granting of greater access to their sports facilities by Outside Bodies; and

(b) there should be no expectation that any further extension of their leases would be granted upon expiry of the extended term, or that any further extension would be granted at nominal premium or that any further extension would be granted on the same terms and conditions as contained in the leases as so extended.

Audit findings

2.7 The following audit issues are examined in this PART:

(a) the need to monitor the use of the PRL sites (paras. 2.8 to 2.12);

(b) the need to review the private sports clubs' positions from time to time (paras. 2.13 to 2.17);

(c) granting of a new PRL in 1999 (paras. 2.18 to 2.24); and

(d) the urgent need for a comprehensive review of the PRL policy (paras. 2.25 to 2.30).

The need to monitor the use of the PRL sites

2.8 The 1968 Report and 1979 Report recommended, as endorsed by ExCo, that:

(a) the lessee should only use the PRL site for the recreational purpose for which it was granted. The recreational purpose for which the grant was made (e.g. a "Cricket Club") should be defined in the Special Conditions, as shown below:

> "The grantee shall not use or permit or suffer the use of the lot or any part thereof or any building or part of any building thereon, for any purpose other than for a (here insert the recreational purpose for which the grant is made, e.g. a cricket club) including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith and …" *(extracted from the 1979 Special Conditions as endorsed for adoption by ExCo);*

(b) new PRLs should strictly prohibit the use of land for non-recreational purposes other than as provided for under the Special Conditions;

(c) if any existing club was found using land for non-recreational purposes other than as provided for under the Special Conditions:

(i) the club should be required either to comply with lease conditions or, if a lease modification was acceptable to the Government, to pay a premium for that portion of land involved or, be required to give up the land in question free; and

(ii) should any serious breach of lease conditions be discovered, the then Secretary for the Environment with the advice of the CRS would decide if the PRL was to be renewed;

(d) no fixed proportions could or should be laid down in respect of land used for recreational and ancillary purposes because circumstances surrounding the individual clubs varied and depended on the nature of the clubs, their location, membership and other factors; and

(e) the following 1979 Special Conditions which empowered the land authority to govern the development of the clubs on PRL sites, should be adopted in all future PRLs:

(i) "The grantee shall not, except with the prior written consent of the Director of Public Works/Secretary for the New Territories *(i.e. now the Director of Lands)*, at any time erect upon the lot any building or structure or make any extension to any existing building or structure thereon"; and

(ii) "The grantee shall within 6 months from the date of this Agreement submit to the Director of Public Works/Secretary for the New Territories for his approval layout plans and general development plans for the development of the lot ….(collectively referred to as "the Master Plans"). …. Except with the prior written consent of the said Director/Secretary, no amendment, alteration or variation shall be made to the Master Plans." *(applicable to all new PRLs to be granted after 1979)*.

What was found in this audit

2.9 Audit has however found that the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued for implementation, as explained below:

(a) ***Need to define the recreational purpose for which the PRL was to be granted.*** Private treaty grants (PTGs) are normally made for a specific purpose with the land use specified in the Special Conditions. In the case of PRL which is one type of PTGs (see para. 1.2), the 1968 Report and 1979 Report had recommended that the recreational purpose for which the PRL was granted should be defined in the Special Conditions (see paras. 2.3(b) and 2.8(a)). The Advisory Committee also pointed out as early as in its 1968 Report that confining the use of the grounds to purposes defined in the M&As of the clubs had certain weaknesses as a means of control and would render the Government's control ineffective (see Note to para. 2.3(b)). Nonetheless, Audit has found that today, among the 32 PRLs granted to private sports clubs:

(i) instead of having a specific recreational purpose defined in the Special Conditions (such as a "Cricket Club") as endorsed by ExCo in 1979 (see para. 2.8(a)), 16 PRLs are granted to private sports clubs for use as a "Recreation Club", a "Sports and Recreation Club", a "Country Club" or a "Community Centre" (Note 8 and Note 9). The clubs for 9 of these PRLs are further permitted to use the PRL sites for such other purposes as defined in the clubs' M&As; and

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Note 8: *For example, in one PRL, the "User" provision allows the club to use the site "…. for the sporting and recreational purposes as specified in the Memorandum and Articles of Association of the Grantee including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith …".*

Note 9: *On one occasion in November 2002, the Secretary for Home Affairs informed LegCo that sports and recreational purposes could mean purposes in relation to the training of the body and mind of the general public, which included all popular sports activities and relevant facilities.*

(ii) for the remaining 16 PRLs (including four new PRLs granted to three private sports clubs after 1979), whilst they have been granted to the private sports clubs for a specific recreational purpose (e.g. "Yacht Club", "Golf Club" or "Cricket Club"), but in five of them, the clubs are also permitted to use the PRL sites for such other purposes as defined in the clubs' M&As.

Without a clearly-defined permitted purpose for use of these PRL sites and/or permitting the use of the sites for any other purposes as defined in the clubs' M&As, the clubs can operate a very wide range of facilities, sports and non-sports, on the PRL sites (Examples 1 and 2 are cases in point). It appeared that the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued; and

Example 1

1. One club, located at a prime location in the urban areas, was granted a PRL involving a site area of some 2 hectares for use as a "Recreation Club" (Note 1). As at December 2011, the club had some 3,400 members.

2. On the one hand, the club has provided sports facilities which are commonly provided by the Leisure and Cultural Services Department (LCSD), including 15 outdoor tennis courts (Note 2) as the principal sports facilities, and others, such as swimming pools, badminton courts and squash courts. On the other hand, the club also operates many non-sports facilities in the club premises, including:

- a Chinese restaurant (with 300 seats)
- a Western restaurant (with 220 seats)
- a coffee shop (with 240 seats)
- a bar
- 15 mahjong/private rooms
- a barber shop
- massage rooms

Note 1: The PRL was granted to the club "... for a Recreation club including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith and in accordance with Memorandum and Articles of Association of the Grantee".

Note 2: Within a 10-minute walk, 20 outdoor tennis courts provided by the LCSD for public use can be reached.

Source: HAB/Lands D records

Example 2

1. Another club, also located at a prime location in the urban areas, was granted a PRL involving a site area of some 3 hectares for use as a "Football Club" (Note). As at November 2012, the club had over 3,000 members.

2. Similar to Example 1 above, this club has provided a wide range of sports facilities on the PRL site, namely natural/artificial turf pitch, lawn bowls greens, bowling alley, tennis courts, squash courts, fitness centre, etc. On the other hand, the club also operates many non-sports facilities in the club premises, including:

- 8 food and beverage (F&B) outlets, one of which is a restaurant that can accommodate up to 250 persons. These F&B outlets together occupied some 1,800 square metres (m^2) of usable floor area
- 7 function/meeting rooms
- beauty and massage rooms

Note: The PRL was granted to the club for use as "a Football Club and those purposes defined in the Memorandum and Articles of Association of the Grantee, ... including such reasonable social functions and other recreational activities".

Source: HAB/Lands D records

(b) ***Land to be used for social and ancillary facilities should be reasonable.*** As mentioned in paragraphs 2.3(b) and 2.8(a), the private sports clubs should only provide reasonable facilities to meet social functions and other recreational uses ancillary to the main objects. It has transpired that without defining a clearly-defined permitted use for PRLs (see (a) above), coupled with the absence of any planning standards developed by the Administration on how land held under the PRLs should be apportioned for use among the various recreational, social and ancillary facilities, many of the clubs today are providing multifarious types of sports and non-sports facilities on the PRL sites. Sports facilities include tennis

courts, swimming pools, badminton courts and squash courts, whereas non-sports facilities found on the PRL sites include restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, barber shops and private rooms (most of which are generally not found in public sports centres of the LCSD). From an examination of the audited accounts of the private sports clubs granted with PRLs, Audit further found that their revenues generated from operating the non-sports facilities (e.g. from F&B operations) were very often significant.

The Lands D has been empowered to approve developments on PRL sites, including additions and alterations to buildings or structures (see para. 2.8(e)(i) and (ii)). However, because of the absence of a clearly-defined permitted use of the PRL sites in (a) above and the absence of any planning standards laid down within the Government on how the PRL site was to be apportioned for use among the various recreational, social and ancillary facilities in (b) above, it was difficult for the Lands D staff to assess whether the developments on the PRL site had met the Government's intended purpose and whether the apportionment of land for use among various sports and non-sports facilities was reasonable (Note 10). Nonetheless, in September 2013 the Lands D informed Audit that, where considered necessary, the Lands D staff would consult the HAB on the development plans, particularly those which might involve relatively more material changes to existing buildings, and it had done so in more recent cases for development plans received from the PRL lessees.

2.10 Whereas many of the private sports clubs were providing various types of sports and non-sports facilities on the PRL sites, Audit found that at least two clubs were not making effective use of the PRL sites, as detailed in Examples 3 and 4 below:

Note 10: *The Lands D has however informed Audit that most PRL sites had been developed during the earlier terms under the previous leases such that not much redevelopment/additions were expected to take place.*

Example 3

1. One club was granted a PRL involving a site area of over 1 hectare by the seaside in the New Territories for use as a "Recreation Club". As at December 2011, the club had some 1,000 members.

2. Based on the HAB's and the Lands D's records, facilities available on this PRL site included a barbecue area, a grassland area (for camping) and a 2-storey clubhouse with a resting area and a cafe only. According to usage reports submitted by the club to the HAB since October 2012, the PRL site has mainly been used by the club members for barbecue.

3. Audit noted that the Lands D, when processing the renewal of the PRL in 1981, had already noticed that the large area of land occupied by the club was "grossly under-utilised" and there was a case for reducing the club's land holding. The case was brought to the attention of the CRS which made enquiries with the club. It was then understood that the club was taking in more members and the use of the PRL site would increase with improved access provided to that area. However, the case was not adequately followed up since then.

Source: HAB/Lands D records

Example 4

1. Another club located in the urban areas was granted a PRL involving a site area of over 1 hectare for use as a "Recreation Club". According to the HAB's records, as at March 2013, the club had some 210 members, with another 2,000 dining members.

2. Based on the HAB's and the Lands D's records, sports facilities available on this PRL site included three tennis courts, two swimming pools and one basketball court. Based on the HAB's records, the usage of the facilities was low (e.g. some 30% for the tennis courts for the quarter ended March 2013). A site visit in June 2013 further revealed that the basketball court and swimming pools were in poor condition, and had been closed for repair since June 2012 and March 2013 respectively. As at September 2013, both facilities were still closed for repair. Based on the club's usage returns submitted to the HAB, Audit noted that no Outside Bodies had used the club's sports facilities for the six months ended March 2013.

3. In November 2012, the club informed the HAB that it planned to redevelop the site subject to renewal of the PRL.

Source: HAB/Lands D records

Lack of an effective mechanism to monitor the use of the PRL sites

2.11 Apart from the inadequate pursuit of the policy decision on the need to clearly define the permitted recreational purpose in the PRLs, Audit has also noted that an effective mechanism is not in place within the Government to monitor the use of the PRL sites. No lease requirement is laid down for the policy B/D to approve the facilities to be provided on the PRL sites. Although the HAB is the policy bureau for the PRLs (see para. 1.4 and Note 11), the lease conditions only require the clubs to seek the Lands D's approval of the development plans for the PRL site (applicable to new PRLs granted after 1979 only). Audit noted that with PTGs granted by the Government for other purposes (e.g. PTGs for the development of private hospitals, schools or welfare centres), apart from the Lands D which, as the government land agent, would approve building plans submitted by lessees to confirm compliance with the lease conditions, the policy B/D is also required to take steps to satisfy itself that developments on the PTG site have fully met the purpose of the grant as well as the economic, social and community needs in a timely and appropriate manner. For example, with PTGs granted for the development of private hospitals, apart from approval given by the Lands D for buildings to be erected on the site, the Department of Health (as the policy B/D) is also obliged by the lease conditions to approve in writing the facilities to be built/operated, including facilities for ancillary uses, by the private hospitals on the land held under PTGs (Note 12).

Note 11: *At a meeting in September 1977, the Working Group for the 1979 Report agreed that the Secretary for Home Affairs should be responsible for monitoring and deciding the extent to which the PRL was used for "social functions and other recreational activities as are ancillary to such use" was reasonable, and for advising the land authority if the condition had not been complied with.*

Note 12: *The PTGs for private hospitals have usually set the lease requirement that "The grantee shall ...erect and maintain upon the lot ... a non-profit-making hospital of ..... as may from time to time be approved in writing by the Director of Health ... and shall not at any time erect or maintain upon the lot any building other than a building or buildings required for the purposes of the said hospital to which the Director shall have given his prior approval in writing."*

Audit comments

2.12 With the inadequate pursuit of the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational use of PRL sites (see para. 2.9(a)), coupled with the lack of an effective mechanism within the Government to monitor the use of the PRL sites (see para. 2.11), many of the private sports clubs today are providing many types of non-sports facilities on the land under the PRL sites. While the 1979 Report had stated that proportions of land to be used for recreational and ancillary purposes would depend on circumstances which would depend upon the nature of the clubs, their membership, location and other factors (see para. 2.8(d)), in the absence of planning standards laid down by the Administration (see para. 2.9(b)), private sports clubs on PRL sites are enjoying much freedom in the use of the Government land granted to them at nil or nominal premium.

The need to review the private sports clubs' positions from time to time

2.13 The Advisory Committee considered in its 1968 Report that in the interests of a wider section of the community, the private sports clubs ought to expand their membership and increase the extent of the use to which their grounds were put. In anticipation that the demand for public open space in the urban areas would likely increase with growth of the population and rising aspirations, the Advisory Committee also considered that the Government should review the clubs' positions from time to time to ensure that public interest was served. When the 1968 Report was tabled in January 1969, ExCo was further informed by the Administration that the Government would wish to conduct similar reviews of the PRL policy at suitable intervals in future as the public interest required. Against this background, a Working Group was appointed in 1977 to review the PRL policy and to make recommendations regarding the renewal of PRLs which would be due to expire in 1981 or 1982 (see para. 2.5).

2.14 The existing Government policy on PRLs is largely based on principles laid down in 1968 and 1979 (see para. 2.2). Since the last comprehensive review in 1979, there was no evidence that the HAB (or the then Broadcasting, Culture and Sport Bureau (BCSB) before April 1998) had issued directives urging the private sports clubs to expand their membership and to increase the extent of the use to which their grounds were put. The Administration had also not reviewed the clubs' positions from time to time to ensure that public interest was served. In fact, the HAB had rarely collected membership and usage information from the clubs for monitoring until more recently when most of the PRLs were about to expire, but such usage information was mainly confined to sports facilities which had been opened up to Outside Bodies (see para. 1.13). Table 1 shows the changes in the numbers of members for some of the clubs in the past 35 years. Today, some of the clubs still have limited numbers of members. A full list of 32 private sports clubs with their numbers of members is shown at Appendix A.

Table 1

Membership in selected private sports clubs on PRL sites over the past 35 years

Lessee	Approximate PRL site area (hectares)	No. of members		
		1976/77 (a)	Latest known position (b)	Increase/ (decrease) (c) = (b) − (a)
Club 5	177.3 (2 PRLs)	2,326	2,498	172
Club 6	129.0	2,560 (position as in 1994 — Note)	2,479	(81)
Club 7	2.0	273	1,064	791
Club 10	2.1	1,628	2,500	872
Club 12	6.5	261	447	186
Club 18	1.2	150	216 (with another 2,047 dining members)	66
Club 19	1.2	693	558	(135)
Club 22	2.4	764	685	(79)

Source: *HAB/Lands D records and company search*

Note: *Club 6 was granted the PRL in 1978, but had its developments constructed by phases with the last phase completed in the early 1990s.*

Remarks: *Only clubs occupying lands held under PRLs of sizeable areas, but with limited numbers of members are listed in this Table.*

2.15 Audit found that for some of the clubs, the growth in the number of members had remained sluggish for many years, with a few clubs even recorded a reduction in their number of members (e.g. Club 22). Taking one Club in Table 1 as an example, although the PRL had involved a site area of over 100 hectares, Audit found that the number of members of the Club had declined from some 2,700 in year 2000 to some 2,500 in 2013.

2.16 As early as July 1974, when seeking approval for the PRL, ExCo endorsed that the Club's M&As should stipulate that its membership was not transferable and debentures it issued should not be marketable commodities. Therefore, the lease conditions have provided that the rights and privileges of membership in the Club should be personal to the member concerned only, and should not be transferable, and should cease upon the death of such member or upon his ceasing to be a member. Additionally, a debenture holder may surrender his debenture to the Club for such consideration as the Club should decide. According to the Club's M&As and the HAB/Lands D's records:

- The Club has six types of members who are restricted to the use of one (or more) of the Club's different facilities. Under the Club's M&As, a member must subscribe for a debenture and therefore must be a debenture holder. However, a debenture holder may not be a member. He may have ceased to be a member of the Club by reason such as resignation, termination, death or liquidation. A debenture holder holds a certain number of units of debentures which carry with them the right of nominating an individual person as member.

- There had not been any increases in the number of members for the Club for many years. As at 30 September 2013, the Club had some 3,300 debenture holders, but only around 2,500 members.

(to be continued)

(Cont'd)

- Currently, a very limited quota was set by the Club for the surrender of debentures. Under the Club's "Surrender and Reissue" scheme, after a debenture holder had notified the Club of his desire to surrender the debentures, the Club would notify the debenture holder as to whether there was an acceptable applicant for membership, who was willing and able to subscribe for new debentures, of value at least equal to the current value of the debentures (with current value to be determined by the Club). If the debenture holder found it acceptable, the Club would proceed with the surrender and issue new debentures to the applicant. In accordance with the M&As, the Club would pay the outgoing debenture holder a premium after completing the surrender and reissue. Owing to the limited quota set, the Club more recently informed the HAB that a debenture holder on the Club's surrender waiting list might have to wait some 20 years (the longest) for the surrender of his debenture.

The fact that many debenture holders have rescinded their membership and the number of members for the Club had declined and maintained at 2,500 for many years on a PRL site of sizeable area warrants the HAB's attention. In response to Audit's enquiries on the usage of the Club's golf facilities (Note 13), the HAB was provided by the Club in October 2013 with its usage information for the first quarter of 2013. Audit noted that while the Club's 18-hole golf course was reported to have been "fully utilised", the usage of its executive nine golf course was low (around 10%). This may also warrant the HAB's attention.

2.17 To ensure that public interest will continue to be served, Audit considers that the HAB needs to keep the clubs' membership and use of the PRL sites under regular review (Note 14). In future, the HAB should also step up controls to ensure that commitments made by the Administration to ExCo relating to PRL policy are properly followed through for implementation.

Note 13: *Apart from usage by members, the Conditions of Grant for the PRL to the Club contain provisions for public use of the golf courses with an overall limit of 10% of the Club's playing capacity, as well as provisions to allow usage by eligible outside bodies of the Club's facilities when required by the CAs.*

Note 14: *In this connection, the PRLs contain no provisions to govern the size of membership and the usage of the clubs' facilities.*

Granting of a new PRL in 1999

1979 policy decisions

2.18 The Working Group stated in its 1979 Report that the Government should endeavour to provide adequate public recreational facilities for the population, particularly in the new development areas, and private recreational facilities were secondary to this provision and should, as a general rule, only be provided, if at all, on the periphery of or outside the development areas. The Working Group had also set the following principles:

(a) ***Urban areas.*** Clubs on prevailing PRLs should be allowed to remain in situ as long as the land they occupied was not required for a public purpose and that they continue to use the property for the recreational purposes for which it was originally granted. The Working Group considered, apart from the lack of suitable sites, in the light of political implications and the financial implications to the clubs, that renewal of the PRLs conditional upon their resiting away from the urban areas was quite an impracticable proposition. However, new applications would still be subject to examination individually; and

(b) ***New Territories.*** The basic principles for the urban areas in (a) above should also apply to the urban areas in the New Territories. However, even in the New Territories urban areas, the Working Group agreed that NGOs which:

(i) adopted an open-door membership policy;

(ii) provided virtually public services; and

(iii) promoted a sense of community belonging,

would have a strong case for being allocated new PRLs. Even so, the applicants must be non-profit-making bodies with a non-discriminatory membership policy and had a wide representation with low charges or was providing facilities for recreation of a sort not already available in Hong Kong (see para. 2.5(e)). Outside the New Territories urban areas, whilst there might be scope for allocating land for private recreation, applications should be considered on their individual merits subject to the availability of land (see para. 2.5(f)).

Delegation of authority for granting of PRLs

2.19 According to the Government land policy, all direct land grants have to be subject to stringent policy scrutiny and have to be thoroughly considered to be justified in the public interest, with specific approval granted by ExCo or by delegated authority exercised in accordance with the approval criteria set by ExCo, on a case-by-case basis. The authority to approve PRLs was delegated by ExCo to the Administration as early as 1973, with variations in the details of delegation over the years. However, the Administration informed ExCo in 1973 that individual cases where they were considered to be of sufficient importance would continue to be submitted to ExCo for advice. In May 1981, the then Secretary for the Environment issued an internal instruction indicating that cases of PRLs might be approved by the Lands D without reference to ExCo when the relevant policy bureau's approval had been obtained.

One PRL for land in the New Territories granted to a Club in 1999

2.20 In September 1999, a Club (Note 15) was granted a new PRL, for 21 years (1999 to 2020) at a premium of $1,000. The new PRL, involving a site area of some 170 hectares in the North District, was granted to replace the following lots and tenancy:

Note 15: *In accordance with the 1979 policy decisions, an applicant for a new PRL must be a non-profit-making body (see para. 2.18(b)). In this connection, the Club is limited by guarantee and is not subject to profits tax because, under section 24(1) of the Inland Revenue Ordinance (Cap. 112), it is deemed not carrying on a business in Hong Kong.*

(a) a lease, involving a site area of 159 hectares, had been granted to the Club on a year to year basis since December 1930 ("old lease") for the lawful purposes of the Club in accordance with its M&As. In the old lease, there was no provision on the date of expiration of the tenancy nor was there any specific provision on restriction for renewal. The tenancy would run from year to year until terminated by proper notice. According to the Lands D's records, if the Government decided not to renew the lease, half a year's notice must be served to the Club (Note 16);

(b) five old scheduled agricultural lots with a total area of 2,699.9 m^2; and

(c) a site with an area of 11 hectares held by the Club since 1990 under a short term tenancy (STT) at market rental, for use as an extension to the existing golf course on the lot referred to in (a) above. The term of the STT was one year certain commencing from 1 November 1990 and thereafter quarterly. In 1997, the Government received annual rentals of some $0.8 million from the Club under the STT.

2.21 Audit noted that as early as April 1987, the Club had written to the then Registrar General's Department (with responsibilities taken over by the Land Registry, the Companies Registry, the Official Receiver's Office and the Legal Advisory and Conveyance Office of the Lands D since 1992-93) for replacing the old lease by a PRL, similar to that which the Club had been granted in the Southern District of the territory, but the proposal was turned down by the Administration.

2.22 In July 1996, the Director of Lands informed the Club that should a PRL be considered, it would not be granted until after July 1997 because a lease of such a large area had not been included within that year's land disposal quota as agreed

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Note 16: *Nonetheless, the old lease also contained a provision to the effect that the lessee, subject to the good behaviour of the club members, should not be disturbed in the tenancy unless the Governor of Hong Kong was satisfied that such disturbance was warranted on strong public grounds. According to the Lands D, resumption of the lot under such a provision would be difficult. If the tenancy was to be disturbed and if approval under such a provision had not been delegated, personal approval from the Governor would have to be obtained.*

by the Land Commission (Note 17). In August 1996, the Director of Lands received a letter from the Club asking for a PRL to cover "the whole of the land now occupied" by the Club in the North District. After a few rounds of exchange of opinions and clarifications, policy support was given by both the then Secretary for Home Affairs (Note 18) and the then Secretary for Broadcasting, Culture and Sport, based on the 1979 policy decisions on grant of new PRLs outside the New Territories urban areas (see para. 2.18(b)). The Lands D granted the PRL to the Club in September 1999 under delegated authority for approving PRLs (see para. 2.19).

2.23 In this case, the 21-year PRL was granted to the Club in September 1999 in order to rationalise various land holdings held by the Club, including the old lease and the STT (see para. 2.20(a) and (c)), and the Lands D had obtained the necessary policy support (see para. 2.22). Yet, Audit noted that this case of granting a new PRL to the Club was peculiar in the following aspects (see the chronology of events relating to the granting of this PRL at Appendix B):

(a) ***A PRL of significant site area involved, with part of the land previously covered by an STT.*** The PRL was granted in response to a request from the Club in 1996 (see para. 2.22), which asked the Government to consider the granting of a PRL covering the whole of the land then occupied by the Club in the North District. The PRL granted had not only involved a large site area of some 170 hectares, over 90% of which had been occupied by the Club under the old lease for nearly 70 years, but also covered the conversion of an STT involving a site area of 11 hectares which had been let out to the Club at market rental since 1990 (see para. 2.20(c)). In response to Audit's enquiry on the reasons for the granting of a PRL, the Lands D has informed Audit that:

Note 17: *In accordance with Annex III of the Sino-British Joint Declaration 1984, the total amount of new land to be granted was limited to 50 hectares a year. A Land Commission was set up to monitor land use under a Land Disposal Programme. The Land Commission was empowered to consider and decide on proposals to increase the limit, and the Commission ceased operation after June 1997.*

Note 18: *The then Secretary for Home Affairs was responsible for safeguarding the rights of the individual and protecting press freedom, enhancing access to government information and encouraging the community to participate in local affairs.*

(i) the land involved in the STT is relatively inaccessible except through land owned by the Club and thus is incapable of separate alienation, and large site area is not in itself a criterion to require ExCo submission given the delegated authority (see para. 2.19); and

(ii) the tenure of "from year to year" for the old lease was an insecure tenancy and would inhibit the Club from further investing in the club facilities and hence not optimising the use of the site. By converting the tenancy into a typical PRL, the Club could have a fixed and more secure period of tenure for planning the best use of the site;

(b) ***The site was considered to be situated in a rural area of the New Territories.*** If the site in question was located in urban New Territories, the Club could not be granted the PRL because it might not meet the criteria of "a wide representation with low charges" (see para. 2.18(b)). In response to the Lands D's request for policy support for the case in July 1997, the BCSB (now the HAB) sought clarifications in August 1997 on a number of points, including whether the site in question was considered to be in urban or rural areas of the New Territories (see item (e) at Appendix B). Both the Planning Department (Plan D) and the Lands D responded in September 1997 (see items (f) and (g) at Appendix B) that the PRL site should fall within the New Territories rural areas (i.e. the criteria of "applications should be considered on their individual merits" should apply — see para. 2.18(b));

(c) ***The individual merits to justify the granting of the PRL.*** In August 1997, apart from asking for clarifications as to whether the site was located in urban or rural areas of the New Territories, the BCSB also sought the Lands D's clarifications on the individual merits of the Club's application and whether there would be any financial implications for the Government if the STT was converted into a PRL (see item (e) at Appendix B). In response, in September 1997 the Lands D informed the then Planning, Environment and Lands Bureau (PELB, now the Development Bureau), copied to the BCSB (see item (g) at Appendix B), that the merits of the Club's application were that conversion to a PRL

would enable the Government to collect increased rental (Note 19) and to get rid of the unfavourable clause to the Government in the old lease (see Note 16 to para. 2.20(a)). The BCSB gave its policy support for the PRL after receiving the Lands D's clarifications (see item (i) at Appendix B). At the District Lands Conference (DLC — Note 20) meeting held in April 1998 when the granting of the PRL was approved, it was considered that from the land management point of view, it was desirable to replace the old lease with the new PRL which could incorporate better contractual terms and could also increase the annual Government rent;

(d) ***Potential long-term development of Northeast New Territories was envisaged.*** In 1997, the PELB was already working on a territorial development strategy review of Hong Kong (Note 21). In that review, a number of major constraints on development in the New Territories were identified, including the golf courses. It was then considered in a paper submitted by the Plan D to the Committee on Planning and Land Development (Note 22) that "… it is highly unlikely that such areas *(i.e. areas for special uses like golf courses)* will be made available for urban development unless exceptional circumstances warrant". In March 1997, the Director of Lands indicated in his correspondence with the PELB that should the PRL be granted, the constraint imposed by the golf courses would be a very firm one for the period of the lease (21 years). In response, the PELB pointed out that there seemed to be no

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Note 19: *The Lands D estimated that from converting the old lease and the STT to a PRL, the total annual rental to be received by the Government would increase from $0.8 million to $1.5 million, which would rise "with increases in rateable value" of the site.*

Note 20: *The DLC is chaired by an Assistant Director of Lands. Its members include the responsible District Lands Officer, the case officers of the Lands D, and representatives from other relevant government departments (such as the Highways Department and the Transport Department). The terms of reference of the DLC include the consideration, in the light of overall land policy and land instructions, of the terms and conditions for the disposal of land.*

Note 21: *The territorial development strategy review was conducted between 1993 and 1998 to identify new development areas to accommodate Hong Kong's fast growing population, which was then estimated to rise from some 6.8 million to some 8.1 million by 2011.*

Note 22: *The Committee on Planning and Land Development, chaired by the Secretary for Development, oversees the formulation and review of development strategies and land-use planning.*

intention of developing on a large scale the surrounding land. In September 1997, the Director of Lands further indicated to the PELB, copied to the BCSB, that if at some future date within the 21-year term, the land or part of it was required for a public project, the Government could resume it under the PRL (Note 23); and

(e) ***Deviations from the 1979 Special Conditions.*** The PRL, granted in 1999, had involved a few deviations from the 1979 Special Conditions as endorsed by ExCo to be adopted for all PRLs granted or renewed after 1979 (see para. 2.5(g)), as follows:

(i) the Special Condition on land resumption was amended to provide for no compensation payable by the Government in case of resumption under the lease. According to the Lands D, this was justified because site formation costs incurred by the Club on the PRL site were historic (not incurred subsequent to the granting of the PRL);

(ii) another deviation involved amending the 1979 Special Conditions to allow the Club to use the PRL site for residential purposes for "members of the Grantee and their families, reciprocal members and overseas guests, and members of sports teams competing with the Grantee". Based on the Lands D records, apart from three 18-hole golf courses, a gymnasium and two swimming pools, the Club also provided 51 rooms/suites on the land held under the PRL. The 1979 Special Conditions for PRLs have laid down the requirement that the lessees (including the private sports clubs) "shall not use or permit the use of the lot .... for residential purposes other than for persons employed on the lot by the Grantee". However, in response to a request made by the Club to keep the existing accommodation facilities which had already been provided on the site under the old lease (see item (k) at Appendix B), this restriction had been uplifted to allow the use on the PRL site for residential purposes for members and their

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Note 23: *The new PRL provides the Government the power to resume, re-enter upon and retake possession of the lot if required for the improvement of Hong Kong or for other public purpose whatsoever (as to which the decision of the Chief Executive of the Hong Kong Special Administrative Region shall be conclusive), and 12 calendar months' notice is required to be given and no compensation shall be paid by the Government to the Club.*

families, and guests. In response to the Lands D's request for policy support to the deviations from the 1979 Special Conditions, the HAB indicated in December 1998 that it had no objection from a recreation and sport angle (see items (l) and (m) at Appendix B); and

(iii) the lease had also excluded the 1979 Special Condition which required the Club to submit the Master Plans for the development of the lot to the Director of Lands for approval (which should have been applicable to all new PRLs granted after 1979 — see para. 2.8(e)(ii)). As informed by the Lands D, the 1979 Special Condition for submission of Master Plans was not included because the Club had already been developed and the Club's facilities, including accommodation, had already existed before the PRL was granted. While noting the Lands D's explanation, Audit observes that the inclusion of the 1979 Special Condition for submission of Master Plans can provide better basis for the Government to monitor and regulate any future developments (e.g. changes to the number and nature of accommodation). In particular, Audit has noted that in another PRL (granted to another Club), the lease has similarly allowed that Club to provide accommodation on the site for its members. Apart from the submission of Master Plans, Special Conditions were included in that PRL to require that Club to seek the Lands D's approval for any such residential accommodation to be provided for its members, including the number and nature of such facilities.

In response to Audit's enquiries, the Lands D explained that in the case of the PRL to the Club, it was not unreasonable or unacceptable in the circumstances to keep to the accommodation provision in the surrendered lease (i.e. the old lease) whereas in the case of the other Club (see (iii) above) which has similarly provided accommodation for members, the PRL was granted at the time when accommodation had yet to be built.

Audit comments

2.24 As mentioned earlier, the granting of a new PRL, particularly one involving a large site area, should be subject to very stringent policy scrutiny and thorough examination to ensure that it was fully justified in the public interest. In this case, the PRL granted to the Club has covered a very large site area and has subsumed, as part and parcel of the PRL, an STT of 11 hectares which was previously let out to the Club at market rental. In addition, the PRL involved a few deviations from the 1979 Special Conditions that govern all PRLs granted or renewed after 1979. Given the peculiarities of the case, it might have been more prudent to seek the advice of ExCo before granting the PRL to the Club (see para. 2.19). Whilst noting that the Lands D maintains the view that it had dealt with the case in an appropriate manner, Audit considers that in future cases of sufficient importance, the Administration should seek the advice of ExCo before the PRL is granted.

The urgent need for a comprehensive review of the PRL policy

2.25 PRLs are non-renewable leases and the Government has the sole discretion of renewing or not renewing them. At the same time, it is recognised that if the Government were to change a long-established policy on the renewal of a type of leases, it would reasonably be expected that lessees affected by such a change in policy should be given sufficient notice of such change. As such, the conduct of a comprehensive policy review well before each renewal exercise is of paramount importance.

2.26 The Government's PRL policy was reviewed in 1968 and 1979, some two to three years before most PRLs were about to expire. In the event, the PRLs were renewed in 1971 and again in 1981. In 1997, the Administration informed the Provisional Legislative Council of the then lease renewal policy for recreational purposes, i.e. such leases upon expiry could be extended for a term not exceeding 15 years. Most PRLs were renewed either in 1996 or 1997. With lease terms of 15 years, these PRLs were due to expire again in 2011 or 2012. In 2010, the HAB

initiated an internal review of the PRL policy (Note 24) and briefed the lessees publicly of the outcome of the review and the consequential new lease requirements (para. 1.13 is relevant). However, since the last comprehensive PRL policy review in 1979, the Administration had not conducted another similar review.

2.27 In April 2007, the Administration informed the LegCo Panel that the then Government's position was that:

(a) the original justification for the PRL policy was to facilitate the promotion of sports and recreational pursuits for the benefit of the community at large. With the extensive provision of public leisure facilities over the past decades, any new applications for such land grants could not be readily justified; and

(b) a review of land grants or leases which were still in force would inevitably involve complex legal and financial issues. With competing priorities, the HAB had no plan to conduct a comprehensive review on the matter. Leases that were due for renewal would be considered on a case-by-case basis taking into account all relevant factors.

In July 2011, the HAB informed the LegCo Panel that the Administration would conduct a comprehensive policy review after the current round of lease renewals. A chronology of events leading to the more recent Government decision for a comprehensive policy review after the current round of renewal exercise is at Appendix C.

2.28 There has not been any comprehensive PRL policy review since 1979. As a result, most of the PRLs which expired in 2011 or 2012 were/would be renewed primarily based on the 1979 policy decisions, albeit modified following the internal review conducted in 2010 and 2011.

Note 24: *As informed by the HAB, the internal review started in June 2010, with the outcome of the review submitted to ExCo for approval in July 2011 (see para. 2.6).*

Audit comments

2.29 The existing Government policy on PRLs is largely based on principles laid down over 30 years ago in 1979. In recent decades, circumstances have changed. Many of the principal sports facilities provided by the private sports clubs on PRL sites today are commonly provided by the public sports centres operated by the LCSD (Note 25). Although private sports clubs on PRL sites may still be playing a role in contributing to the promotion of sports development in Hong Kong, it is opportune for the Administration to consider whether the recreational purpose for which the PRL was granted needs revisions or refinement to cope with changes in the needs of the community. It is also high time for the Administration to review the appropriateness of continuing the granting of PRLs at nil or nominal premium to private sports clubs.

2.30 Audit considers that the HAB needs to work out its timetable for the conduct of a comprehensive PRL policy review to ensure that the Government's new policy directions on PRLs are readily available to provide a consistent and equitable treatment of all PRL renewals. Among the 17 PRLs that had not yet expired as at 31 March 2013 (including 8 PRLs granted to private sports clubs), four will expire between 2013 and 2015, one in 2018 and another in 2020.

Note 25: *It is also recognised that certain types of sports facilities operated by private sports clubs are still not commonly provided in government-operated venues, such as shooting ranges, cricket pitches, golf courses, and lawn bowls greens.*

PART 3: IMPLEMENTATION OF THE "OPENING-UP" REQUIREMENT

3.1 This PART examines the implementation of the "opening-up" requirement set by the HAB on the private sports clubs on the PRL sites.

Historical developments on the "opening-up" of the private sports clubs' facilities

1969 and 1979 policy decisions

3.2 Against the background that land supply in the territory for public use in built-up areas was inadequate, the Advisory Committee stated in its 1968 Report that the PRL should require the lessee to make its facilities available for use by eligible outside parties as specified by the appropriate CA (see para. 2.3(c)). Such uses included:

(a) sports, physical education and other activities by schools, youth clubs and welfare organisations; and

(b) sports, physical education, exercises or displays by Armed and Auxiliary Services.

The Advisory Committee recommended that the CAs, in exercising their power, should satisfy themselves that such uses would not interfere with the proper care and maintenance of the grounds or with the lessees' own use of them.

3.3 In its 1979 Report, the Working Group further observed that based on information gathered from a questionnaire survey, most of the lessees had reported that facilities on their land under the PRLs were well used, but some of the club grounds were underutilised. Considering that these underutilised facilities could be used by outside bodies (such as schools and welfare organisations), the Working Group strongly recommended that the CAs should arrange for these grounds/facilities to be used, as specifically provided for under the 1979 Special Conditions, under which the clubs were required to make available their grounds/facilities for three sessions per week (see para. 2.5(g)(i)). Nonetheless, the

Working Group recognised that members of the clubs should have first call on the use of their grounds and facilities during peak hours (e.g. at weekends and public holidays).

3.4 In accordance with the 1969 and 1979 policy decisions, almost all PRLs contain a requirement for the clubs to permit the use of their grounds and facilities by eligible outside bodies for 3 sessions of 3 hours each per week (the "3 × 3" access requirement) when required by the CAs (Note 26). According to the more recent Special Conditions, CAs and such "Outside Bodies" include the following:

CA	Outside Bodies
Secretary for Education	Schools under the Education Ordinance (Cap. 279)
Director of Social Welfare	NGOs which are receiving recurrent subvention from the Social Welfare Department
Director of Leisure and Cultural Services	NSAs which are affiliated to their respective International Federations and are members of the Sports Federation & Olympic Committee of Hong Kong, China
Secretary for the Civil Service	Government B/Ds
Secretary for Home Affairs	Uniformed groups and youth organisations which are receiving recurrent subvention from the HAB

3.5 In the 1990 audit (see para. 1.14), Audit found that eligible outside bodies made little use of the private sports clubs' facilities and the CAs did not play an active role in promoting the availability of the clubs' facilities. In the follow-up of that audit review, the BCSB conducted a survey on the usage of the clubs' facilities by eligible outside bodies for the 2-year period from April 1994 to March 1996. A total of 11,700 hours were reported by 23 private sports clubs on PRL sites to have been used over the period by eligible outside bodies. The BCSB then made the following comments:

Note 26: *Four PRLs do not contain the "3 × 3" access requirement, but they generally contain other provisions for making available their venues/facilities to the public.*

(a) most of the usage were focused on a few clubs (namely Club 13, Club 14, Club 21 and Club 22). The vast majority of the other clubs were not commonly used by the outside bodies; and

(b) NSAs were primarily the major users.

The BCSB concluded in 1996 after its survey that the Administration, with the assistance of the relevant CAs, should regularly circulate information relating to the clubs' facilities to schools and other organisations, and the clubs should also be reminded of their obligation to allow eligible outside bodies to use their facilities. The Administration should request the clubs to simplify their booking procedures.

3.6 In 2001, the HAB reminded the CAs of the need to circulate information to schools and other organisations under their auspices, but did not take any further follow-up action in this regard until March 2010 when many of the PRLs would soon expire and decisions had to be made on whether policy support should be given for their renewal. In March 2010, the HAB requested the Lands D to send out survey forms for the collection of basic information from the clubs on membership and facilities (Survey 1). In May and October 2011, the HAB conducted two more surveys (Survey 2 and Survey 3). The purposes of the three surveys were as follows:

Survey	Purpose
Survey 1 (March 2010)	To collect basic information on membership, staff numbers, facilities available in the clubs and usage of facilities by outside bodies (if available).
Survey 2 (May 2011)	To collect details of facilities available, utilisation by outside bodies in 2010, membership information and number of staff.
Survey 3 (October 2011)	To collect details of facilities available, such as type, number, time slot and charges for use of the facilities by members, guests and non-members (including outside bodies), booking arrangements, staging of international events and publicity measures.

3.7 In May 2011, before the conduct of Survey 2, the HAB held a briefing session for explaining to all PRL lessees the further "opening-up" arrangement of the PRLs. In July 2011, the HAB informed the LegCo Panel that in the forthcoming renewal of the PRLs, the Administration would require all lessees to further open up their facilities to Outside Bodies. Specifically, they should:

(a) open up their facilities to Outside Bodies for 50 hours per month or more. They should also accord priority to Outside Bodies in hiring certain designated sessions;

(b) put in place junior membership schemes that would allow young sportsmen and sportswomen below a certain age to join at significantly reduced rates of entry;

(c) allow NSAs to use their facilities for training or competitions for an additional minimum of 10 hours per month; and

(d) allow NSAs to use their facilities for staging recognised international events, so that members of the public could have more opportunities to watch competitions which were staged in private sports clubs.

Under the renewed PRLs, Outside Bodies were allowed to book the lessees' facilities directly without going through a CA.

3.8 As mentioned in paragraph 2.6, ExCo endorsed in July 2011 that prevailing PRLs which expired/would expire in 2011 or 2012 would be renewed in accordance with the 1979 policy decisions subject to the clubs having met various renewal criteria, including the modified lease conditions on the provision of greater access to Outside Bodies.

Efforts made to improve publicity for the greater access requirement

3.9 Since July 2011, the HAB has taken the following measures to improve publicity for the "opening-up" arrangement of the lessees' sports facilities on the land under the PRLs:

(a) placing advertisements in the print media to publicise the availability of sports facilities on premises operated under the PRLs;

(b) asking the lessees to provide full information on their "opening-up" schemes (which are for opening up their facilities for use by Outside Bodies) on their websites;

(c) asking the CAs to advise Outside Bodies directly of the availability of sports facilities for hire on the lessees' premises;

(d) giving detailed information on the "opening-up" schemes to Outside Bodies through the CAs;

(e) giving detailed information on the "opening-up" schemes to District Offices of the Home Affairs Department and the Sports Federation & Olympic Committee of Hong Kong, China for onward transmission to their stakeholders; and

(f) uploading information on the "opening-up" schemes onto the website of the HAB.

3.10 At the LegCo Panel meeting held in June 2013, the HAB reiterated that the lessees (including the private sports clubs) should be encouraged to contribute more to the Government's key policy objectives for sports development, namely:

- Promoting sport in the community
- Promoting elite sports development
- Promoting Hong Kong as a centre for international sports events

At the same meeting, the HAB also reported to the LegCo Panel that:

(a) in line with the current PRL policy, the HAB would renew PRLs for a 15-year term, subject to compliance with the following conditions:

(i) the site not being required for a public purpose;

(ii) there being no significant breach of lease conditions; and

(iii) the lessee having a non-discriminatory membership policy.

In addition, the lessees were required to submit for the HAB's approval their "opening-up" schemes, and lease renewal procedures by the Lands D had proceeded on the basis of the approved schemes;

(b) the HAB had met individually the lessees with PRLs expired in 2011 or 2012 to discuss the detailed requirements taking into account the scale and range of facilities available at each PRL site. The HAB had also advised the lessees explicitly that there should be no expectation that their PRLs would be further renewed when they next expired, and that even if the PRLs were renewed, they might not be renewed at nominal premium or on the same terms and conditions as before;

(c) the HAB had stepped up publicity on various fronts (see para. 3.9); and

(d) the HAB had asked all lessees on PRL sites to submit quarterly reports on the utilisation of their sports facilities. To improve the monitoring process, the HAB was securing funds to set up an electronic database, and would conduct random checks and act on complaints. If lease enforcement action was justified, the HAB would follow up with the relevant enforcement authority.

Audit findings

3.11 ExCo endorsed in July 2011 that PRLs should be renewed in accordance with the 1979 policy decisions, subject to the clubs' compliance with the greater access requirement (see para. 3.8). Whilst the HAB had made concerted efforts in the past two years to persuade the clubs to open up their facilities on the land under the PRLs (see paras. 3.9 and 3.10), such "opening-up" arrangements are applicable to Outside Bodies only.

3.12 Over the years, some of the private sports clubs have contributed to the promotion of sports development in Hong Kong through the hosting of major international sporting events. Examples include:

- The Hong Kong Golf Open Championship
- The Hong Kong Cricket Sixes
- World Singles Champion of Champions
- The Hong Kong International Bowls Classic
- The Hong Kong Soccer 7s

3.13 Whilst recognising that the greater access requirement set by the HAB is still in its early stage of implementation, Audit examines the following issues in this PART:

(a) the level of usage by Outside Bodies (paras. 3.14 to 3.27);

(b) the extent of greater access achieved from the "opening-up" arrangement (paras. 3.28 and 3.29);

(c) conflicts between the private sports clubs' "Members only" policy and the Government's "opening-up" objective (paras. 3.30 to 3.32); and

(d) other issues which may affect the implementation of the greater access requirement (para. 3.33).

The level of usage by Outside Bodies

3.14 Members of private sports clubs are often required to pay substantial sums for entrance fees and monthly subscriptions. It is therefore understandable that they may expect to be entitled to enjoy the clubs' facilities with privacy and exclusivity. The 1979 Special Conditions provide that the PRL lessee should not permit the use of the lot or any part thereof by, among others, any persons other than "members of the grantee or their guests, guests of the grantee, and members of sports teams competing with the grantee", but the PRL lessee might use or permit the lot or any part thereof for the purpose of raising funds for any charity or charitable body, or for any major sporting function or other public entertainment etc. subject to the lessee's giving not less than six weeks' notice in writing and obtaining the written consent of the Director of Lands.

3.15 Before the current round of PRL renewals, the Special Conditions had laid down the requirement for the private sports clubs to make their facilities available for use for a maximum of "3 × 3" per week by eligible outside bodies (see para. 3.4). However, not until mid-2012 did the HAB begin to publicise that eligible outside bodies might contact the lessees direct to book their sports and recreational facilities during designated time slots for sporting use. A greater access requirement was only laid down as Special Conditions in the more recently renewed PRLs (see paras. 3.7 and 3.11).

The previous "3 × 3" access requirement

3.16 Despite the fact that the "3 × 3" access requirement has been set as a Condition of Grant in all PRLs after 1979, Audit found that in the past 13 years (2000 to mid-2013), no eligible outside bodies had ever sought the CAs' assistance for using the clubs' facilities. In July 2013, Audit surveyed all five CAs (see para. 3.4). They confirmed to Audit that:

(a) for the 13 years, they had not received any enquiries or requests from eligible outside bodies for using the private sports clubs' facilities; and

(b) before 2011, they had not regularly disseminated information about the availability of the clubs' facilities to eligible outside bodies.

The survey results tallied with the position reported by the HAB to LegCo in 2011. In December 2011, the Secretary for Home Affairs informed LegCo that in the past five years, no eligible outside bodies had sought the CAs' assistance and a considerable number of outside bodies had directly approached the clubs for using the clubs' facilities.

3.17 Despite the fact that the "3 × 3" access requirement has been effective since 1979, there was no definition in the 1979 Report of how the "3 × 3" access requirement was to be calculated (e.g. whether the "3 × 3" access requirement was directed to individual facilities or the entire set of facilities). In fact, in the past 30 years, the HAB had not provided the private sports clubs with a clear definition of how the "3 × 3" access requirement was to be calculated, and the clubs had also made no enquiries. That is, over the past 30 years, there had not been any clarifications or enforcement of the "3 × 3" access requirement.

The current greater access requirement

3.18 As a lease condition in the more recently renewed PRLs, the private sports clubs are required to submit for the HAB's approval their "opening-up" schemes (see para. 3.10(a)). As mentioned earlier, Outside Bodies are allowed to contact the clubs direct, but they can also contact the CAs for assistance if they encounter problems in the booking process. Besides, the HAB has required the clubs to submit quarterly reports on usage under the approved "opening-up" schemes. This arrangement has been implemented by the clubs since the last quarter of 2012 on a voluntary basis for leases still bound by the old lease conditions, but will become a lease condition when their PRLs have been renewed (see para. 3.10(d)). Furthermore, the CAs have also been asked to provide the HAB with quarterly statistics on requests for assistance from Outside Bodies under their purview.

3.19 Under the approved "opening-up" schemes in the more recently renewed PRLs, the "opening-up" hours are calculated based on facility-hours, which means that the use of any individual sports facility for any one hour will be counted as one facility-hour. For example, the use by an Outside Body of one table tennis table and one tennis court for an hour each would accordingly be counted as two facility-hours, and similarly, the use of four lanes in a swimming pool for an hour would be counted as four facility-hours. Example 5 shows how the "opening-up" facility-hours for a club's approved scheme are calculated by the HAB.

Example 5

Calculation of facility-hours under the approved scheme

1. One club was committed under the approved scheme to open up its tennis courts for the following time slots to Outside Bodies:

Number of tennis courts	"Opening-up" hours	Facility-hours per month (Note)
Two	Monday to Friday (except Wednesday) (11 a.m. — 4 p.m.) Wednesday (2 p.m. — 4 p.m.) Public holidays (not applicable)	176
One	Weekends and public holidays (11 a.m. — 1 p.m. and 2 p.m. — 4 p.m.) Weekdays (except public holidays) (11 a.m. — 4 p.m.)	132

2. The HAB reported to the LegCo Panel that each month, the club had committed to open up 720 facility-hours. These 720 facility-hours included 308 (176+132) facility-hours of its tennis courts (see para. 1 above) and 412 facility-hours of its other facilities (namely swimming pool, basketball court and conference room) for booking by Outside Bodies.

Source: *Audit analysis of HAB records*

Note: *The HAB's methodology used in calculating the "opening-up" hours is as follows:*

176 hours = 2 × 5 hours × 4 days × 4 weeks + 2 × 2 hours × 4 weeks
132 hours = 4 hours × 2 days × 4 weeks + 5 hours × 5 days × 4 weeks

Implementation of the "opening-up" requirement

3.20 In a briefing on PRLs held in June 2013, the HAB urged the clubs to start opening up their sports facilities to Outside Bodies in line with the greater access requirement and to step up publicity, even if their PRLs had not yet been renewed. The HAB also reported to the LegCo Panel that, following negotiations with the individual private sports clubs, it had so far secured the agreement from the clubs on 20 PRL sites (see Table 2) to open up their facilities far beyond the minimum of 60 (50 + 10) hours (see para. 3.7(a) and (c)).

Table 2

Monthly "Opening-up" facility-hours committed by clubs and their reported usage

PRL	Club	Committed "opening-up" facility-hours (Note) (a)	Reported usage (facility-hours) in March 2013 (b)	Percentage (c) = (b) ÷ (a) × 100%
2	Club 2	710	33	4.6%
3	Club 3	656	0	0.0%
4	Club 4	280	27	9.6%
6	Club 6	1,692	618	36.5%
7	Club 7	320	34	10.6%
11	Club 5	660	12	1.8%
12	Club 10	490	50	10.2%
15	Club 12	504	103	20.4%
17	Club 13	1,389	1,583	114.0%
20	Club 16	1,200	709 (see Example 6 in para. 3.23)	59.1%
21	Club 17	2,302	356	15.5%
22	Club 18	720	97 (see Example 7 in para. 3.23)	13.5%

Table 2 (Cont'd)

PRL	Club	Committed "opening-up" facility-hours (Note) (a)	Reported usage (facility-hours) in March 2013 (b)	Percentage (c) = (b) ÷ (a) × 100%
23	Club 19	2,250	126	5.6%
25	Club 21	3,320	545	16.4%
26	Club 22	1,178	81	6.9%
27	Club 23	161	51	31.7%
28	Club 13	382	0	0.0%
29	Club 24	272	0	0.0%
30	Club 25	320	30	9.4%
31	Club 26	284	0	0.0%
Overall		19,090	4,455	23.3%

Source: *Audit analysis of HAB records*

Note : *By the end of March 2013, only five of the above 20 PRLs had been renewed in the current round of renewals. That is, strictly speaking, only five of the approved schemes listed above are enforceable.*

3.21 Column (a) in Table 2 shows an encouraging picture of the clubs' "opening-up" schemes. However, a "snap-shot" (taken in March 2013) of the actual usage, based on the clubs' quarterly reports submitted to the HAB (see Column (b) in Table 2), shows that in most cases, the actual usage was far below the committed "opening-up" hours. Whilst Audit understands that strictly speaking, most of the approved schemes had not yet been effective by March 2013, the low usage figures indicate that the HAB needs to continue stepping up its efforts to urge the clubs to promote the availability of their sports facilities.

Implementation of the "opening-up" requirement

3.22 As at the end of September 2013, the HAB had approved the "opening-up" schemes for 20 of 23 PRLs which were in the process of renewal. Among the three remaining PRLs with schemes not yet approved, Audit noted from the HAB records that from October 2012 (before which no reporting to the HAB was required) to June 2013, the PRL granted to the club in Example 3 in paragraph 2.10 for use as a "Recreation Club" had recorded no usage by Outside Bodies, and the club had limited facilities, other than a barbecue site, that could be opened up for use by eligible outside bodies. Audit also noted from the HAB's records that the club proposed in June 2013 to provide water sports training courses under a proposed "opening-up" scheme, but to implement the courses, the club had yet to purchase boats and to recruit a manager to organise the courses. The HAB needs to closely monitor how the club would implement its proposed "opening-up" scheme before granting approval.

3.23 Column (b) in Table 2 shows the private sports clubs' reported usage by Outside Bodies in March 2013 only and, as mentioned earlier, the reporting arrangement for most of the clubs is on a voluntary basis before their PRLs are renewed. The HAB has yet to finalise detailed guidelines on how the clubs should report their usage by Outside Bodies under the approved schemes, and has yet to verify the usage reported. Meanwhile, in the absence of detailed guidelines and any verification conducted by the HAB, Audit has concerns about the accuracy of some of the reported usage. Two examples of questionable reporting are shown below.

Example 6

1. One club had committed to opening up 1,200 facility-hours a month under its scheme approved by the HAB. It reported that in March 2013, the club's facilities on the land under the PRL had been used by Outside Bodies for 709 hours.

2. Audit found that the 709 hours included the following:

(a) 495 hours of tennis courts were reported to have been used for competitions, but no documentary proof could be produced to support the usage by Outside Bodies, e.g. booking forms (as required to be completed under the booking procedures agreed by the HAB with the club);

(b) 48 hours of a tennis court were used by a school in the neighbourhood through private arrangements, but the usage was again not supported by booking forms; and

(c) 4 hours of the children's playground (which was not a type of sports facilities included under the approved scheme) used by an NGO.

Source: Audit analysis of HAB records

Example 7

1. Another club had committed to opening up 720 facility-hours a month under its scheme approved by the HAB. It reported that in March 2013, the club's facilities on the land under the PRL had been used by Outside Bodies for 97 hours, which covered usage of the club's tennis courts and conference room.

2. Audit however found that the reported usage was related to usage by two private organisations, both of which were not Outside Bodies. One of them used the facilities for providing fee-charging training courses for members and non-members of the club, whereas the other used the conference room for conducting music classes. Strictly speaking, usage of the conference room should not be grouped as usage of sports facilities.

Source: Audit analysis of HAB records and site visits

3.24 As at the end of September 2013, 7 of 23 PRLs had been renewed (see para. 1.12). To get prepared for the implementation of the greater access requirement, Audit considers it essential for the HAB to issue more detailed guidelines and set up a proper mechanism as early as possible to monitor the quarterly usage reports submitted, once all PRLs have been renewed.

3.25 According to the HAB, some facilities in private sports clubs may be used less frequently by Outside Bodies, either because these Outside Bodies were not aware of the availability of such facilities or such facilities were not in easily accessible locations. The HAB considered that this situation could be improved by enhanced publicity and information dissemination, including requiring the clubs to publicise information of their facilities on their websites and uploading the relevant information onto the websites of the HAB and CAs.

3.26 It is recognised that the HAB has taken more vigorous actions in recent years to step up publicity on various fronts, including requiring the clubs to publish their "opening-up" schemes on their websites, and uploading details of the clubs' "opening-up" schemes onto the HAB website (see para. 3.9(b) and (f)).

3.27 According to the HAB's records, the clubs have allowed three major types of users to use their facilities, namely members, non-members (including guests of members) and Outside Bodies. One major criterion which the HAB considered in approving the clubs' "opening-up" schemes was whether they had adopted a reasonable fee scale for charging Outside Bodies. In assessing the reasonableness of the fees, the HAB made reference to the fees charged by the LCSD for use of similar public sports facilities. Audit analysed the fees set by the clubs and found that most of them were generally comparable to or slightly higher than those set by the LCSD.

The extent of greater access achieved from the "opening-up" arrangement

3.28 It is quite encouraging, as shown in Table 2 of paragraph 3.20, that the private sports clubs on PRLs had agreed to open up in total almost 20,000 facility-hours a month. Audit however noted that the actual usage reported by many of the clubs was far below the committed "opening-up" hours available and looking

ahead, there are factors which may discourage the use of the clubs' facilities by Outside Bodies (see para. 3.33). Besides, Audit has the following observations on the approved schemes:

(a) as explained in paragraph 3.17, there was no definition of how the previous "3 × 3" access requirement per week (i.e. 3 sessions of 3 hours each per week) was to be calculated. Furthermore, there had not been any effective enforcement of the "3 × 3" access requirement in the past. As the "opening-up" hours per month under the approved schemes were calculated on "facility-hours" basis, a meaningful comparison between the two arrangements cannot be made;

(b) although the committed "opening-up" hours under the approved scheme of individual clubs (to be effective upon the renewal of a PRL) have generally well exceeded the minimum of 60 (50+10) hours per month (see para. 3.7(a) and (c)), the renewed PRLs have also laid down a Condition of Grant that the lessee should provide sports facilities for an aggregate of "not less than 50 hours" per calendar month. According to the HAB:

(i) this minimum access requirement of 50 hours a month was set as an across-the-board benchmark in the PRLs having regard to the fact that some of the clubs are relatively small, have fewer facilities and might not be able to make extensive commitments for "opening-up"; and

(ii) all private sports clubs which have their schemes approved by the HAB today have committed to open up their facilities far beyond the minimum of 50 hours with some exceeding 1,000 hours.

Audit noted the HAB's explanations, but is concerned with the relevance of including such a low minimum access requirement as a Special Condition in the PRLs, given that even the small clubs had committed to open up far more than 50 hours per month; and

(c) some of the "opening-up" hours under the clubs' approved schemes were for less popular sessions (e.g. sessions during lunch hours) or sessions of short durations (say, sessions of 2 hours). Example 8 is shown for illustration.

Example 8

Facilities opened up by one club

Facilities	"Opening-up" hours
1 lane of the swimming pool	May to October (daily 8 p.m. — 11 p.m.) November to April (daily 7 p.m. — 9 p.m.)
1 badminton court	**Weekdays (except public holidays) (11 a.m. — 2 p.m.)**
2 tennis courts	**Weekends & public holidays (12 noon — 2 p.m.) Weekdays (except public holidays) (11 a.m. to 2 p.m., plus 6 p.m. to 11 p.m. additionally for one specified NSA)**
1 table tennis table	**Daily (11 a.m. — 2 p.m.)**
1 golf practice bay	Daily (11 a.m. — 6 p.m.)
1 billiard table	Daily (10 a.m. — 2 p.m.)
1 bowling alley (2 lanes)	Daily (9 a.m. — 1 p.m.)

Audit comments

Audit noted that the "opening-up" hours of some facilities are mainly during lunch hours (see shaded rows above). Based on the club's quarterly reports submitted to the HAB, the club's reported usage of its tennis courts by Outside Bodies of 33 facility-hours in March 2013 was all related to use in the evening.

Source: Audit analysis of HAB records

3.29 It is recognised that the low reported usage by Outside Bodies of some of the private sports clubs' facilities could be due to the fact that the majority of the approved "opening-up" schemes have yet to be implemented. Nonetheless, Audit considers that the HAB needs to further step up publicity. For example, it should coordinate with the Education Bureau to encourage schools in the vicinity of the private sports clubs (e.g. the club in Example 8) to make more use of the clubs' facilities to promote sports development in schools. Audit also noted that a few private sports clubs had sometimes allowed charitable bodies to use the PRL site for fund-raising purposes (see para. 3.14). Such activities were allowed under the Special Conditions and would contribute to the welfare of the community.

Conflicts between the private sports clubs' "Members only" policy and the Government's "opening-up" objective

3.30 Some private sports clubs on PRL sites have invested substantial sums of money and efforts in building up their facilities, and members of some clubs have paid significant sums for entrance fees and monthly subscriptions. It is therefore quite natural that the clubs would give priority to their members.

3.31 The results of the HAB's surveys (see para. 3.6) also revealed that many clubs were reluctant to further open up their facilities for various reasons, including the limited capacity of their facilities and the heavy usage by their members. Some of the clubs' comments given in the HAB's surveys in 2010 and 2011 are shown below:

- The majority of the club members used the clubs' facilities on weekends. Some were already complaining about the waiting time in between games, e.g. tennis.

- The clubs had difficulties to allow outside bodies to use their facilities on weekends or public holidays due to heavy usage by members.

- The club would face significant difficulty, even if it were to comply with the current requisition requirement of up to 9 hours per week if these hours were fully utilised by outside parties. This situation would be exacerbated if the total monthly requisition hours were increased further. This was due to the limited human resources at the club and the increased need for club employees to be on hand to closely supervise and assist any eligible outside bodies and ensure mutually acceptable conduct and correct use of the club's facilities. To further increase this load would simply increase bottlenecks and lead to dissatisfaction from both club members and outside bodies.

- It would be difficult to further open up as a result of the limitation of facilities that would necessarily require the redeployment of in-house staff.

- It was extremely easy to damage the playing surface irreparably, if the wrong footwear was used or the delivery of the bowl was not correct. Unless specialised training was undertaken, it would be devastating to the greens, if novices were allowed to use them on an ad hoc basis.

- The club had difficulties to extend further the facility-hours.

3.32 Understandably, the clubs' "Members only" policy is in conflict with the Government's objective of opening up more clubs' facilities to non-members to better serve the public interest. In Audit's view, the situation in Hong Kong is somewhat unique. Based on research conducted by the HAB, Audit noted that private sports clubs in countries/cities abroad (such as Singapore, Japan, Sydney, New York and Toronto) generally do not enjoy free or nominal use of land or leasehold. As such, the clubs are free to set their entrance requirements, members' and non-members' usage fees, and the extent of usage of the clubs' facilities by Outside Bodies. However, given the historical development of the private sports clubs situated on land held under PRLs in Hong Kong, it is imperative that the Administration should conduct periodic comprehensive review of the Government's PRL policy, taking into account the needs and demands of different stakeholders, and strike a proper balance between the two conflicting objectives.

Other issues which may affect the implementation of the greater access requirement

3.33 The implementation of the approved "opening-up" schemes does not imply that the usage of the private sports clubs' sports facilities by Outside Bodies will necessarily increase. There are quite a number of factors which could discourage Outside Bodies from using the clubs' facilities. These include:

(a) ***The perception of exclusivity.*** This is something which may not be easy to overcome. Many people have the perception that the clubs are only accessible to rich or well-connected people;

(b) ***Limited capacity.*** As indicated by some of the clubs (see para. 3.31), the limited capacity of their facilities and available manpower cannot support the further or extensive opening up of their facilities;

(c) ***A requirement to make advance booking.*** For most private sports clubs, advance bookings (very often at least 21 to 30 days before use) are required, with reservation for a few clubs required to be made 1 to 3 months before the date of use. Although advance booking allows Outside Bodies the right of first call to book the facilities, the need to make advance booking under the laid-down booking procedures has rendered it less flexible for Outside Bodies to use the clubs' sports facilities on shorter notice; and

(d) ***The need to enhance publicity.*** According to the approved schemes, the clubs are required to publish the following information on their websites:

(i) facilities and time sessions available, fees and charges, and application requirements for use of facilities by Outside Bodies;

(ii) facilities and time sessions available, fees and charges, and application requirements for use of facilities by players or representative squads of NSAs;

(iii) application requirements for the staging of international events; and

(iv) details of the junior membership schemes.

Audit found that as at the end of September 2013, of the 20 approved schemes (see Table 2 in para. 3.20), some of the information in (i) to (iv) above was missing on the websites of some of the private sports clubs. In particular, many clubs only published the required information in English. The HAB needs to urge the relevant clubs to speed up with their publicity work, given that 13 of the 20 approved schemes will be effective once PRLs for these clubs are renewed.

PART 4: MONITORING OF COMPLIANCE WITH LEASE CONDITIONS

4.1 This PART examines the Government's monitoring of the private sports clubs' compliance with the Conditions of Grant in the PRLs.

Salient Conditions of Grant in the PRLs

4.2 A lease, be it a PTG or not, normally carries a large number of terms and conditions covering various areas, including user, development conditions, vehicular accesses, parking space requirements, etc. Some of these conditions are essentially governed by legislation and enforcement regimes administered outside the context of lease administration, involving other enforcement agents. An obvious example is building works which fall within the jurisdiction of the Buildings Department (BD) and are governed by the Buildings Ordinance (Cap. 123).

4.3 Apart from the "opening-up" requirement discussed in PART 3, existing PRLs usually contain the following salient Conditions of Grant:

(a) ***User.*** The clubs should use the PRL sites for the recreational purposes defined in the Conditions of Grant, and should not use the PRL sites for any other purposes, including:

  (i) commercial purposes;

  (ii) commercial advertising; and

  (iii) residential purposes other than for persons employed on the land by the clubs;

(b) ***Restriction on redevelopment/new development of the lot.*** Except with the prior written consent of the Director of Lands, the clubs should not erect upon the lot any building or structure or make any extension to any existing buildings or structures thereon. The club should also submit to the Director of Lands for her approval the Master Plans for the

development of the lot and, except with the prior written consent of the Director of Lands, no amendment, alteration or variation should be made to the Master Plans (see para. 2.8(e)(i) and (ii)); and

(c) ***Alienation.*** The clubs should not assign, mortgage, charge, demise, underlet, part with the possession or otherwise dispose of the lot or any part thereof or any building or any interest therein or any part of any building thereon or enter into any agreement so to do.

4.4 PTGs at nil or nominal premium generally disallow commercial activities and subletting on sites. With regard to PRLs granted at nil or nominal premium to the private sports clubs, while the Government would require the clubs to make full use of the PRL sites to meet the purposes of the grants, it disallows the clubs to operate commercial profit-making activities or to sublet any part of their premises on the PRL sites to other individuals or organisations for such activities (see para. 4.3(a)(i) and (c)).

Audit findings

4.5 Against the above background, the following issues are examined in this PART:

(a) monitoring of compliance with Conditions of Grant (paras. 4.6 to 4.12);

(b) suspected non-compliances with Conditions of Grant (para. 4.13); and

(c) useful Conditions of Grant adopted in some PRLs, but not in others (paras. 4.14 and 4.15).

Monitoring of compliance with Conditions of Grant

4.6 Audit selected two major areas for examination in relation to the Government's monitoring of compliance with the Conditions of Grant. They are, namely inspections to ensure that the PRL site is used for intended purposes (paras. 4.7 to 4.10) and common breaches identified by the Lands D (paras. 4.11 and 4.12).

Inspections to ensure that the PRL site is used for intended purposes

4.7 PRLs were granted to private sports clubs to develop and operate sports and recreational activities. The clubs should not use the PRL sites for any other purposes, and compliance with the Conditions of Grant is a pre-requisite for renewal. Thus, the Administration should have established a mechanism to monitor the use of the PRL sites. Nonetheless, breaches for some of the Conditions of Grant are regulated by other enforcement authorities (see para. 4.2), but the Lands D would have to follow up such outstanding cases during the PRL renewal exercises by liaising with relevant enforcement authorities to make sure that they have been settled before the PRLs are renewed. For example, the follow-up of "unauthorised building works subject to removal orders" and "dangerous slopes subject to investigation and remedial works orders" in Examples 9 and 10 in paragraph 4.11 are within the jurisdiction of the BD.

4.8 As mentioned in paragraph 2.11, although the HAB is the policy bureau for the PRLs, the Conditions of Grant have not laid down the requirement for the HAB to approve the facilities to be provided on the PRL sites and to ensure that only a reasonable proportion of the land on the PRL sites was used for social and ancillary facilities. There is also no requirement that the HAB must satisfy itself that the developments on the site have continued to meet the permitted use of the grant before policy support is given for the renewal of the PRL. Audit further noted that the scope and responsibility for monitoring permitted use and conducting site inspections have not been clearly defined between the HAB and the Lands D. In this connection, Audit notes that the LegCo Panel passed a motion in June 2013 calling on the Administration to establish a monitoring and vetting mechanism for the approval and renewal of PRLs, so as to safeguard public interests.

4.9 In September 2013, the HAB informed Audit that as a policy bureau, it would not normally have the role of conducting regular on-site inspections to detect unauthorised building works or to ensure compliance with works-related orders, and would rely on the expertise of the professional departments. However, the HAB has indicated that it would monitor the lessees' compliance with the greater access requirements in PART 3 to allow Outside Bodies greater use of the lessees' sports facilities after their PRLs have been renewed.

4.10 Separately, no evidence is available showing that the Lands D had itself conducted regular site inspections to ensure that the land is being used for the intended purposes, i.e. in compliance with the user and related conditions of the PRL (see examples in para. 4.3). According to the Lands D's internal instructions, its staff are required to carry out inspections when they receive complaints/referrals or when the PRLs are due for renewal and submissions have to be made to the DLC. In other words, in cases where there were no complaints/referrals during the lease period, inspections would only be conducted at intervals of 15 years.

Common breaches identified by Lands D

4.11 During the current round of renewal exercise (conducted since 2010 or 2011), the Lands D identified common breaches of the Conditions of Grant in its site inspections. Such common breaches included:

- Unauthorised building works (e.g. Example 9)
- Slopes not properly maintained (e.g. Examples 10 and 11)
- Breaches of user restriction (e.g. one club in Example 13)
- Encroachment on Government land

Example 9

Unauthorised building works on one PRL site

1. A club was granted a PRL involving a site area of some 2 hectares for its members' use. According to the Conditions of Grant, except with the prior written approval of the Lands D, the club should not erect upon the lot any building or structure other than the existing buildings or structures erected thereon (see para. 4.3(b)). The Conditions of Grant also stated that the area that might be built within the lot should not exceed 528.6 m^2.

2. The PRL expired in June 2012. During the current round of PRL renewals, the Lands D conducted site inspections in June 2011 and May 2013 respectively. The site inspections revealed that:

(a) ***1st inspection.*** the total built-over area on the PRL site had reached about 1,730 m^2, which had well exceeded the permitted built-over area as stated in the Conditions of Grant by some 1,200 m^2; and

(b) ***2nd inspection.*** 17 structures found on the site were not covered by any approved building plans.

3. The Lands D issued a warning letter in June 2012 and another in April 2013 requiring the club to remove the unauthorised building works. At a meeting in July 2013, the DLC decided that the PRL could be renewed subject to, among other things, the removal of all the unauthorised building works as confirmed by the BD. After consulting the BD, the Lands D considered that 16 of the 17 structures mentioned in paragraph 2(b) above were unauthorised building works under lease. As at September 2013, these 16 structures had neither been approved by the BD (under the Buildings Ordinance) nor the Lands D as required under the Conditions of Grant.

Source: Lands D records

Example 10

Long outstanding Dangerous Hillside Order not rectified

1. One PRL granted to a club was served with a Dangerous Hillside Order (DH Order) by the BD in 1999 under section 27A of the Buildings Ordinance. In 2005, the club applied to surrender the slope in question which was applied for grant by way of lot extension and STT by the adjoining lot owner. The applications were processed by the Lands D until mid-2008 when the applications were withdrawn. In July 2010, the Lands D urged the club to complete the slope maintenance work before the expiry of the lease in December 2011. As at July 2013, the PRL was still under "hold-over" arrangement pending renewal.

2. For the purpose of processing the lease renewal, the Lands D staff carried out a site inspection in June 2012. Subsequent to the site inspection, the Lands D issued a warning letter to the club against the breaches, as follows: (a) the Land Register indicated that a slope within the lot was subject to an outstanding DH Order issued by the BD; and (b) an unauthorised structure was found to have been erected on the lot without the prior written approval of the Lands D. The club was urged to rectify the situation.

3. The follow-up of an DH Order is essentially the responsibility of the BD. At the DLC meeting held in February 2013, the BD informed the DLC that the club had been served with the DH Order since 1999, but there was no rectification. The BD planned to start the slope remedial works in May 2013 and to recover the cost (estimated to be about $6 million) from the club on completion. The works were expected to take 16 months to complete. The DLC decided to defer the renewal of the PRL pending the club's compliance with the DH Order and settlement of the BD's costs of carrying out the remedial works.

Source: Lands D/HAB records

4.12 As mentioned earlier, the Lands D had identified common breaches in its inspections conducted during the current round of renewal exercise. To rectify the breaches, the Lands D had required the private sports clubs concerned to submit timetables informing the Administration as to when the breaches would be rectified (see Example 11). The "hold-over" period would not be extended or the PRL would

not be renewed if the club failed to rectify the breaches according to the timetable or within a reasonable period of time.

Example 11

Slope remedial works would not be completed until May 2014

1. A club was granted a PRL involving a site area of some 6 hectares for use by its members. The PRL expired in June 2012. Two DH Orders were served by the BD on the lot in 2008. At the DLC meeting held in November 2012, the club was reminded to expedite the slope remedial works.

2. The BD has instituted prosecution proceedings pursuant to the DH Orders. In June 2013, the Lands D reminded the club to take immediate action on the rectification works before the Government processed the renewal. The club then submitted an action plan to the Lands D with target to complete the slope remedial works by May 2014. The Lands D consulted the BD which had no adverse comments on the action plan. In September 2013, the BD informed the Lands D that consent for commencement of slope remedial works for one of the DH Orders was issued. The PRL is meanwhile under further "hold-over" arrangement.

Source: Lands D records

Suspected non-compliances with Conditions of Grant

4.13 Without regular site inspections of the land under the PRLs by either the HAB or the Lands D, the Government had not been able to timely detect non-compliance with the Conditions of Grant. Such suspected non-compliances which Audit noted included the following:

- Breaches and possible breaches of user restriction and alienation (e.g. Examples 12 and 13)
- Development plans not approved (e.g. Example 14)
- Green fee for the use of a golf course not approved (e.g. Example 15)

Example 12

Breaches and possible breaches of user restriction and alienation

I. ***Suspected commercial activities/subletting on PRL sites***

1. As mentioned in PART 2, in order to cater for the diverse needs of their members, some private sports clubs have provided various types of non-sports facilities on the land under the PRLs. These include restaurants, bars, sports/gift shops, massage/sauna/karaoke rooms and barber shops. It is probable that the clubs might not be able to operate the wide variety of facilities and services by themselves, and have outsourced the management/operation of such services to third parties.

2. Based on enquiries in July 2013 with a sample of 14 private sports clubs (with the assistance of the Lands D), supplemented by business registration and company search conducted by Audit, it was found that:

(a) in 11 clubs, some 20 social and ancillary facilities (including 10 restaurants, a bar, sports shops, barber shops, massage rooms, a foot reflexology shop, a beauty salon and a gymnasium) were provided by third parties (13 facilities were run by private profit-making companies and the remaining 7 by sole traders or partnership). Some of these third parties had used the clubs' addresses for business registration;

(b) in their audited accounts, some of these clubs reported, as operating income, revenue items such as "restaurant income", "amount received from caterers", "licence fee income", "commission from caterers", "commission income from beauty salon" and "licence fee from catering company", etc. with revenues reaching the highest of $18 million (gross) or $4 million (net) for F&B services provided by third parties. One club reported a property tax provision arising from licensing of property in its audited accounts;

(c) for one club, the operator of a Chinese restaurant was disclosed in the club's audited accounts as a company which was related to one of the club's executive committee members. It was also reported in the audited accounts that the club's income from the restaurant was "based on the higher of a fixed sum or contingent amount based on the sales of the restaurant"; and

Example 12 (Cont'd)

(d) some of the restaurants and a bar of the private sports clubs accept patronage by the public. In particular, the restaurant/bar of two private sports clubs has published advertisements, together with booking forms, on the website of the restaurant/bar.

Audit comments

3. It is not certain whether the above business run by the third parties on the PRL sites has constituted commercial activities or subletting, which are not allowed under the Conditions of Grant (see para. 4.3(a)(i) and (c)).

4. Audit considers that the HAB and the Lands D need to follow up on such activities on the PRL sites, and ascertain whether these activities were contemplated in the Conditions of Grant. Given that Audit's enquiries have covered only a selected number of clubs, the HAB and the Lands D need to conduct similar checks (with the scope expanded, where appropriate) of other clubs on the PRL sites and determine the full extent and propriety of such practices.

5. Audit noted that in the case of one PRL granted to Club 9 (not within the sample of 14 clubs examined in para. 2 above), a lease modification was made in 1986, on payment by the Club of an additional premium, to allow the Club to sublet a portion of the building area on the PRL site to a bank for providing banking services.

II. ***Hosting of wedding banquets/dining functions on one PRL site***

6. The Conditions of Grant disallowed clubs to use the PRL sites for commercial purposes. Following a media report in May 2013 about the use by one club for hosting on the PRL site wedding banquets/dining functions for members of the public, the Lands D conducted an enquiry and found that:

(a) the club had participated in wedding exhibitions for a number of years; and

Example 12 (Cont'd)

(b) the club had hosted some 90 wedding banquets for the public on the PRL site in the past five years. The public would be charged an additional service fee.

7. In September 2013, the Lands D was informed by the club that the latter had ceased to accept public bookings for wedding banquets. In early October 2013, the Lands D informed the club that allowing parties other than those permitted under the PRL to host wedding banquets on the PRL site constituted a breach of the Conditions of Grant.

III. ***Leasing of boat storage/mooring spaces on one PRL site to government departments***

8. According to the Lands D's records, one club has leased out a mooring space for a monthly hiring fee since November 2010 to one government department for berthing a patrol vessel, and has for long been leasing out a boat storage space to another government department for a monthly hiring fee for storing a speedboat.

9. Audit is concerned about the propriety of the club's practice of letting out spaces on the PRL site to government departments. In response to Audit's enquiries and at the Lands D's request, the two government departments had provided the Lands D with their agreements entered with the club. As at September 2013, the Lands D was seeking legal advice to confirm if the agreements were in breach of the Conditions of Grant.

Source: HAB/Lands D records and Audit research

Example 13

Installation of radio base stations on PRL sites without Lands D's approval

1. According to a Practice Note issued by the Lands D in 2002, the installation of a radio base station in any buildings held under leases which should not be used for commercial purpose (e.g. PRL) would be in breach of the Conditions of Grant, since such installation and equipment are considered to be commercial in nature. In such circumstances, a waiver is required to cover such radio base station.

2. Audit noted that at least two private sports clubs had installed radio base stations on rooftops of their club buildings on the PRL sites. However, the two clubs had not applied for any waiver in accordance with the Practice Note issued by the Lands D and the Guidance Note issued by the then Office of the Telecommunications Authority (now the Office of the Communications Authority — OFCA) (Note 1).

3. For one of the two clubs, the Lands D identified such installations only in its inspection in June 2012 when preparing for the current round of PRL renewals, although it had been copied in 2008 and 2009 with the applications submitted by the mobile service operators to OFCA for the installations. Upon receipt of copies of the applications to OFCA, the Lands D had reminded the operators to follow the Lands D's Practice Note in applying for waivers but did not receive such waiver applications from the operators, nor notices from OFCA that their approval had been given. Based on an examination of the club's audited accounts, Audit noted that the club had granted the right to the mobile service operators since 2001 to install and maintain radio frequency equipment on its premises and had received licence fee income every year since then. Subsequent to the inspection in June 2012, the Lands D issued a warning letter to the club requesting it to rectify the breaches. In January 2013, the Lands D conducted another site inspection and found that all radio base stations had been removed.

Example 13 (Cont'd)

4. For another club, the Lands D did not identify such installations in its site inspections to prepare for the current round of PRL renewal, although it had been copied with eight applications to OFCA from different mobile service operators between 2006 and 2012. The Lands D had not followed up the absence of waiver applications from the operators (Note 2). Based on an examination of the club's audited accounts for the year ended 30 June 2012, the club received licence fee income for such installations on the rooftop of the club's premises. In early September 2013, the Lands D advised the club that the latter had committed a breach of the Conditions of Grant and demanded the club to rectify the breach. As at October 2013, the Lands D was still following up with the club.

Source: Lands D records

Note 1: Since 2009, OFCA has operated a "One-stop application procedure" to regulate the installation of radio base stations. According to a Guidance Note issued by OFCA, mobile service operators should declare that the radio base stations are in all respect in compliance with the requirements of relevant government departments including the Lands D in terms of the relevant lease conditions, or they may confirm that they have submitted the necessary temporary waiver applications to the Lands D. The Lands D is responsible for processing the temporary waiver applications when received from the applicants. The OFCA's licence, if issued, will be revoked if the application for the temporary waiver is unsuccessful.

Note 2: In early October 2013, the Lands D informed Audit that it would not seek to verify, upon receiving copies of applications submitted by the mobile service operators to OFCA, if each case would involve a waiver application, but would rely on the operators' observance of the self-declaration system under the Guidance Note issued by OFCA. The Lands D would also process waiver applications when received and would also check sample cases selected by OFCA.

Example 14

Development plans for one PRL site not yet approved by Lands D

1. According to the Conditions of Grant for one PRL, the club was required to submit master plans to the Lands D for approval and, except with the latter's prior written consent, the club should not make any amendments, alterations or variations to the plans (see para. 2.8(e)(ii)).

2. The master plans were submitted to the Lands D in 1995 before the club proceeded with redevelopment of the PRL site. The Lands D indicated that the plans were acceptable in principle subject to, inter-alia, the club resolving an issue over the possible future use of part of the lot for a public project. The issue however remained unresolved while the club continued to submit a number of building plans thereafter. The building plans, although approved by the BD under the Buildings Ordinance, were rejected by the Lands D for the reason that the master plans, which should precede the consideration of the building plans, had not been approved. As at August 2013, the master plans and all building plans submitted by the club since 1995 had not been approved.

3. Although the Lands D had rejected the building plans, the club still proceeded with the building works. Two more F&B outlets, an indoor bowling alley and a children playroom were erected on the PRL site in 2006 without the approval of the Lands D.

4. In September 2013, the Lands D informed Audit that the hurdle affecting the approval of the master plans had been removed (i.e. with the issue over the possible future use of the lot for a public project in paragraph 2 above having been resolved), and it would process the master plans and building plans as soon as possible, in consultation with the HAB.

Source: Lands D records

Example 15

Public use of golf courses on one PRL site

1. In July 1974, ExCo endorsed the granting of one PRL to a club with conditions on the public use of its golf course. In accordance with ExCo's directions, Conditions of Grant were included in the lease stipulating that the club should permit local visitors to use the golf course on the PRL site on weekdays (except public holidays), subject to:

(a) ***Green fees for local visitors.*** Payment of such green fee as might be approved from time to time by the then Secretary for the New Territories (responsibility taken over by the Director of Lands since 1982) and such fee should be comparable to the fees charged by another specified club; and

(b) ***An overall limit of 10% of playing capacity for public use.*** A 10% ceiling of the playing capacity of the golf courses within the lot for the day, but with no limit in the case of persons aged 25 years or under, who might play more often *[The Conditions of Grant have separately contained provisions to govern bookings for use by eligible outside bodies of the club's facilities, including the golf courses, through the CAs, as discussed in PART 3 of this Report]*.

Audit findings

2. Notwithstanding the inclusion of the lease conditions in paragraph 1(a) and (b) above, the Lands D had not, in consultation with the HAB, worked out with the club the procedures to be adopted for approving the green fees to be charged by the club on local visitors, ways to publicise the availability of public access to the golf courses, the booking procedures and the reporting of usage statistics for local visitors.

3. In relation to the lease condition in paragraph 1(a) above, the club had not submitted any green fee proposal for the Lands D's approval for its executive nine golf course. As regards the 18-hole golf course, the club submitted its last green fee proposal in 1994. As a result, the approved green fee remained at $1,000 as approved by the Lands D in 1994. However, in April 2010, in exchange of correspondence on PRL renewal, the club informed the HAB and the Lands D that it charged local visitors at a green fee of $1,800 for the 18-hole golf course from September to May ($1,600 from June to August). In response to the Lands D's enquiry made in September 2013, the club replied that it had not been able to find evidence that submissions for green fee proposal had been made after 1994. The club admitted that the omission was not intentional.

Example 15 (Cont'd)

4. As regards the lease condition in paragraph 1(b) above, Audit noted that the Lands D had not taken any measures to ensure that the club complied with the lease condition. The Lands D only made enquiries in May 2010 when it received a media enquiry on the club's appropriateness of restricting the use of its golf courses to golf players with "handicap card" under the lease conditions. Although legal advice had been sought, the Lands D did not timely follow up, after the media enquiry, to ascertain if the club had complied with the lease condition.

5. Not until mid-September 2013 did the Lands D request the club to provide, among others, evidence to support its compliance with the condition in paragraph 1(b) above, e.g. evidence on: (a) its booking procedures; (b) its statistics of usage by local visitors (different from the usage statistics by Outside Bodies under the approved "opening-up" scheme); and (c) the playing capacity per day of its two golf courses. In the same month, the club provided the Lands D with some of the above information.

6. As at mid-October 2013, the Lands D was still examining the club's information. According to the HAB, the Lands D can consult the HAB on the results of its examination if it requires a steer from a sports policy angle.

Source: Lands D/HAB records

Useful Conditions of Grant adopted in some PRLs, but not in others

4.14 Audit noted in this review that some of the existing PRLs contained useful Conditions of Grant which would facilitate the effective implementation of the Government's policy on PRLs. However, similar conditions were not found in other existing PRLs. Examples include:

(a) Although it is the Government's land policy that PTGs at nominal or concessionary premium should only be made to non-profit-making bodies, and the 1969 and 1979 policy decisions have required that applications for PRLs should only be considered for non-profit-making bodies, Audit found that only a few PRLs have contained explicit provisions to require the lessees to be non-profit-making bodies.

(b) The lessee, having obtained the grant of the lot by private treaty and at nil premium, shall adopt a non-discriminatory membership policy (only explicitly provided in two PRLs — Note).

(c) The grantee shall permit the public to use the golf courses within the lot on every day other than Saturdays, Sundays and public holidays (only adopted in one PRL).

(d) For the avoidance of doubt, it is agreed that for the purpose of this Agreement, (a list of recreational activities) shall be regarded as activities usually associated with the club (only adopted in one PRL).

(e) No debentures issued by the grantee shall be assigned or transferred in any way other than by inheritance only to his or her wife or husband or son or daughter etc, provided that a debenture holder may surrender his debenture to the grantee for such consideration as the grantee shall decide (only adopted in one PRL under the instructions of ExCo).

(f) The lessee shall not alter or add to its M&As in force at the date of this Agreement, without first having obtained the consent in writing of the Director of Lands (not found in seven prevailing PRLs).

Note: As explained by the Lands D, according to the 1979 Report, in order to enforce the principle of adopting a non-discriminatory membership policy (see para. 2.5(c)), private sports clubs on PRL sites were required to change their M&As to meet the criterion. Because all clubs were expected to have complied with the criterion, the 1979 Special Conditions did not include a condition on the non-discriminatory membership policy.

4.15 It is noted that some of the above Conditions of Grant might not have been included in the 1979 Special Conditions as endorsed by ExCo (see para. 2.5(g)), but have been adopted in some of the PRLs subsequently entered into by the Administration due to changes in circumstances. With a view to enhancing the effective implementation of the Government's policy on PRLs in the future, Audit considers that the HAB needs to critically review, in collaboration with the Lands D, the existing PRLs and improve the Conditions of Grant in the long term, taking into account the audit findings in paragraph 4.14.

PART 5: WAY FORWARD

5.1 This PART examines the progress of the current round of PRL renewals and challenges ahead, and makes audit recommendations on the way forward.

Progress of current round of PRL renewals

5.2 As mentioned in paragraph 1.12, 23 PRLs granted to private sports clubs had expired in 2011 or 2012. As at 30 September 2013, 16 of them were still under "hold-over" arrangement pending renewal. In June 2013, the HAB informed the LegCo Panel that in line with the prevailing PRL policy, the Administration was renewing the PRLs for a 15-year term, subject to compliance with conditions including:

(a) the site not being required for a public purpose;

(b) there being no significant breach of lease conditions;

(c) the lessee having a non-discriminatory membership policy; and

(d) the HAB having approved the "opening-up" scheme submitted by the lessee for fulfilling the greater access requirement (as discussed in PART 3).

5.3 In this renewal exercise, the Lands D is responsible for checking the compliance with the two conditions in paragraph 5.2(a) and (b) and will consult the HAB on some breaches as necessary, e.g. in connection with breaches of user or alienation restriction, whereas the HAB is responsible for confirming the two conditions in paragraph 5.2(c) and (d). As at 30 September 2013, the progress on renewals of the 23 PRLs was as follows:

(a) seven PRLs held by private sports clubs had been renewed with all four conditions in paragraph 5.2 having been met; and

(b) of the remaining 16 PRLs:

(i) the HAB confirmed for 13 PRLs that it was not aware of any alteration made to the M&As by the relevant private sports clubs in such a way that would contravene the non-discriminatory membership requirement (i.e. condition (c) in para. 5.2);

(ii) the HAB had approved the "opening-up" schemes submitted (i.e. condition (d) in para. 5.2) for 13 PRLs and given policy support for their renewal; and

(iii) for all 16 PRLs, the Lands D had satisfied through consultation with various B/Ds that the PRL sites were not required for other public uses (i.e. condition (a) in para. 5.2). These B/Ds included the following:

- HAB
- District Offices of the Home Affairs Department
- Plan D
- Highways Department
- Water Supplies Department
- Transport Department
- Civil Engineering and Development Department
- Drainage Services Department
- BD, etc.

For 13 PRLs, renewals had in principle been approved by the DLC for no significant breach of lease conditions (i.e. condition (b) in para. 5.2).

Audit findings

5.4 Audit has the following observations on the current round of PRL renewals:

Way forward

(a) ***A more coordinated approach is called for when assessing the need for public purposes.*** When considering whether a particular PRL should be renewed, the Lands D has been taking a coordinating role and would ask the relevant government departments (see para. 5.3(b)(iii)) whether "the site is required for a public purpose". In most cases, the government departments would reply individually that they had no comment/objection. In the case of the Plan D, it would usually indicate that there was currently no known development proposal affecting the PRL site and the use of the site for recreational purposes was permitted as the subject lot was zoned "Other Specified Uses" on the approved Outline Zoning Plan (Note 27). Audit considers that such an approach adopted to assess whether the PRL site would be required for a public purpose is too fragmented. As pointed out in the 2013 Policy Address, land shortage has seriously stifled social and economic development in Hong Kong, and the Government is committed to increasing the supply of land in the short, medium and long terms. Given the changes in circumstances, Audit considers that a more coordinated approach is required in future to assess whether the PRL sites are or will be required for public purposes. It would appear that the HAB, as the responsible policy bureau for PRLs, needs to work collaboratively with the Development Bureau (as the policy bureau for land use planning), the Lands D and other relevant government departments to assess whether the PRLs due for renewal should be renewed;

(b) ***Upholding a non-discriminatory membership policy.*** The 1979 Government policy prescribes that renewal of existing PRLs should be subject to the club adopting a non-discriminatory membership policy. Among the 13 PRLs in paragraph 5.3(b)(i) of which the HAB had confirmed to the Lands D that it was not aware of any alteration since last renewal having been made to the M&As by the relevant private sports clubs in such a way that would contravene the non-discriminatory membership policy requirement (see para. 2.5(c)), Audit noted that the M&As of one club contained provisions that might call into question its adherence to the non-discriminatory membership policy. In this case, the

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Note 27: *An Outline Zoning Plan is a statutory plan prepared by the Town Planning Board under the Town Planning Ordinance (Cap. 131). It is a statutory plan that shows or makes provision for a number of matters including the land-use zonings, streets, railways and other main communications within planning scheme areas of the Outline Zoning Plan.*

M&As of the club provides that "all persons of Chinese descent shall be eligible for membership". The HAB holds the view, based on legal advice, that the club did not contravene the non-discriminatory membership requirement. Nonetheless, Audit considers that the HAB should review whether the current practice of only assessing alterations that have been made to the M&As since the last renewals is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement as a condition of PRL renewals;

(c) ***Need to closely monitor progress of PRL renewal.*** As at 30 September 2013, only 7 expired PRLs held by private sports clubs had been renewed and the remaining 16 expired leases were still at different stages of processing for renewals (see para. 5.3(b));

(d) ***Need to resolve the issue that part of the PRL site has overlapped with a Country Park.*** Audit found in the case of one PRL, about half of the site was situated in a Country Park (see Example 16 at Appendix D). Whilst the PRL site is used for shooting practices by members of the club, the portion of the site within the Country Park is accessible to the public. There is a need to resolve the issue that part of the PRL site has overlapped with the Country Park; and

(e) ***Need to review the current status of one PRL which had been held over for 17 years.*** Among the 32 PRLs that still existed as at 31 March 2013 (see para. 1.3(a)), one PRL had already expired since 1996 (some 17 years ago). It was currently under "hold-over" arrangement on quarterly basis subject to the same terms and conditions of the lease which expired in 1996 (including the payment of Government rent at $61 a year). In view of the prolonged "hold-over" period, Audit considers that the HAB/Lands D should review the current status of the PRL and critically consider whether the existing "hold-over" arrangement should continue.

Long-term review

5.5 In June 2013, the HAB informed the LegCo Panel that the Administration had begun to prepare for a comprehensive review of the PRL policy, and would take into account such factors as sports development needs, land use considerations, the overall utilisation of the sites, the interests of the lessees (including the private sports club) and their members, and the wider public interest when formulating the way forward for the policy. More recently, the HAB indicated that it had started the review process in early September 2013.

Challenges ahead

5.6 Audit welcomes the HAB's efforts to start the comprehensive review of the PRL policy, and would suggest that the HAB should take into account the findings and recommendations in this Audit Report in its forthcoming policy review. Given that a few PRLs will expire in the forthcoming years (see para. 2.30), the HAB needs to complete its review in a timely manner so that the Government's new policy directions on PRLs would be in place before the expiration of the PRLs. Given that the review will touch on land policy matters, Audit considers that the review should be done in collaboration with the Development Bureau, the Lands D as well as other relevant B/Ds. Furthermore, because this audit review covers only the 32 PRLs granted to 27 private sports clubs (see para. 1.17), the HAB needs to ascertain, in its forthcoming policy review, whether the Administration is facing similar problems and challenges ahead with PRLs granted to NGOs and other organisations (see para. 1.3(b) to (e)).

5.7 Audit notes the following challenges ahead, which the Administration needs to address in its forthcoming comprehensive policy review:

- PRLs have a long development history. While lands held under PRLs are in public ownership and land today is precious and scarce in Hong Kong, consideration should be given to the fact that the private sports clubs have contributed to promoting sports development in Hong Kong and have invested substantial sums in building up the infrastructure and facilities. As mentioned in paragraph 3.32, the situation in Hong Kong is somewhat unique and it is imperative that the Administration should take into account the changing needs and demands of different stakeholders in its forthcoming review of the Government's PRL policy.

- The last comprehensive PRL policy review was conducted in 1979. Over the past few decades, Hong Kong has undergone significant changes on its economic, social and community fronts. It would appear that in its forthcoming PRL policy review, the Administration needs to set out the key principles to be adopted for the renewal of existing PRLs and the granting of new PRLs in future, with a view that public interest will be better served.

Audit recommendations

5.8 **Audit has *recommended* that the Secretary for Home Affairs, as the bureau responsible for PRL policy, should, in collaboration with the Secretary for Development and the Director of Lands, as well as other relevant B/Ds, take into account the audit observations and recommendations in this Audit Report in his forthcoming PRL policy review. In particular, the Secretary should:**

(a) **work out a timetable for the policy review, so that new policy directions on PRLs would be in place before the expiration of a number of PRLs (see paras. 2.30 and 5.6);**

(b) **take into account the needs and demands of different stakeholders (namely, the interests of the private sports clubs on PRLs and their members, and the wider public interest) and strike a proper balance between different objectives (see paras. 3.32 and 5.5 to 5.7);**

(c) **set out key principles to be adopted for the renewal of existing PRLs and the granting of new PRLs in future, with a view that public interest will be better served (see para. 5.7); and**

(d) **conduct a similar review of the 37 PRLs granted to NGOs and other organisations in paragraph 1.3(b) to (e) to ascertain if the Administration is facing similar problems and challenges ahead with these PRLs (see paras. 1.19 and 5.6).**

5.9 **More specifically, Audit has *recommended* that the Secretary for Home Affairs and, where appropriate, the Director of Lands should, in collaboration with other relevant B/Ds (such as the BD and the Plan D):**

PART 2: Government policy decisions in 1969 and 1979

(a) **examine individual PRLs on a case-by-case basis and consider how they should be revised/refined in the light of changes in circumstances, taking into account the key principles set in the forthcoming policy review on PRLs (see paras. 2.9(a), 2.12 and 2.29);**

(b) **set up an effective mechanism to monitor the use of PRL sites, including the requirement to approve the developments on the PRL sites and the conduct of regular site inspections under the enforcement regimes of the HAB/Lands D (see paras. 2.11 and 4.7 to 4.10);**

(c) **draw up planning standards to help assess how PRL sites should in future be reasonably apportioned among sports and non-sports facilities to meet the purpose of the PRLs (see para. 2.12);**

(d) **keep the clubs' membership and their use of the PRL sites under regular review (see para. 2.17);**

(e) **step up controls to ensure that in future, commitments made to ExCo relating to PRL policy are properly followed through for implementation (see para. 2.17);**

(f) **in future cases of sufficient importance, seek the advice of ExCo before granting the PRL (see para. 2.24);**

PART 3: Implementation of the "opening-up" requirement

(g) **keep the approved "opening-up" schemes for individual private sports clubs under regular review and monitor the scheme usage by Outside Bodies (see para. 3.21);**

(h) **closely monitor how the club mentioned in paragraph 3.22 (i.e. the club in Example 3) would implement its proposed "opening-up" scheme on the PRL before approval is granted;**

(i) **issue detailed guidelines to help private sports clubs report the scheme usage in their quarterly reports submitted to the HAB (see para. 3.24);**

(j) **set up a proper mechanism to verify the reported usage of the clubs' sports facilities by Outside Bodies (see para. 3.24);**

(k) **continue stepping up publicity on the clubs' facilities available for use by Outside Bodies and coordinating with the Education Bureau to encourage schools in the vicinity of the clubs to make more use of the clubs' facilities (see paras. 3.26 and 3.29);**

(l) **take note of the obstacles ahead which might discourage Outside Bodies from using the clubs' facilities and take steps to overcome them as far as possible (see para. 3.33);**

PART 4: Monitoring of compliance with lease conditions

(m) **follow up the irregularities/suspected non-compliances with Conditions of Grant reported in Examples 9 to 15 (see paras. 4.11 to 4.13);**

(n) **conduct checks on the suspected commercial/subletting cases identified in Example 12 in paragraph 4.13, with scope expanded where appropriate, to other private sports clubs holding PRLs, and determine the full extent and propriety of such practices;**

(o) **critically review the existing PRLs and improve the Conditions of Grant in the long term, taking into account the useful Special Conditions identified in some of the existing PRLs which may help effective implementation of the Government's policy on PRLs (see paras. 4.14 and 4.15);**

PART 5: Way forward

(p) **work collaboratively with the Secretary for Development and Heads of other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (see para. 5.4(a));**

(q) **review whether the current practice of only assessing alterations that have been made to the M&As since the last renewals is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement (see para. 5.4(b));**

(r) **monitor the progress of the renewals for the 16 expired PRLs mentioned in paragraph 5.4(c), including those clubs which had submitted timetables for rectifying breaches on PRLs in paragraphs 4.11 and 4.12;**

(s) **resolve the issue that part of the PRL site has overlapped with the Country Park in Example 16 (see para. 5.4(d)); and**

(t) **review the current status of the PRL mentioned in paragraph 5.4(e) which had expired since 1996, but was still under "hold-over" arrangement on quarterly basis, and critically consider whether the existing "hold-over" arrangement should continue.**

Response from the Administration

5.10 The Secretary for Home Affairs generally accepts the audit recommendations. He has said that:

In general

(a) in addressing issues related to PRLs, it is necessary to understand clearly the respective roles of the B/Ds with an interest in this matter. For its part, the HAB is responsible for the policy on the grant and renewal of PRLs, in the context of its overall responsibility for sports development policy. There are other issues that have a bearing on PRLs, but which are beyond the purview of the HAB, such as the wider land use policy considerations that govern the award of PTGs (of which PRLs are one example). The land authority accordingly handles such issues, such as the land resumption clauses in the PRLs, without the need to consult the HAB. Furthermore, as a policy bureau, the HAB relies on the relevant executive department, which in the case of PRLs is primarily the Lands D to administer the grant and renewal of the leases and enforce the lease conditions in consultation with the relevant B/Ds as appropriate. The executive department can (and does) approach the policy bureau if it considers that there is a need to seek a broader policy steer on issues relating to PRL administration;

(b) apart from the respective roles of different B/Ds with regard to PRL policy and enforcement of the lease conditions as delineated in (a) above, the Lands D, as the land authority, has been playing a coordinating role in the renewal of PRLs, including confirming whether or not PRL sites are required or will be required for a public purpose. It is not the HAB's place to comment on the renewal or grant of PRLs from a planning and land use policy angle;

(c) the relevant CAs (including the Education Bureau) do not have any comments on the Audit Report and accept the audit recommendations on areas relating to them as CAs;

More specifically

(d) regarding the audit recommendations in paragraph 5.8(a) to (d), the HAB:

(i) accepts the audit recommendation in (a) and is reviewing the timetable for the policy review;

(ii) accepts the audit recommendation in (b) and aims to strike a balance between the needs of different sectors of the community;

(iii) accepts the audit recommendation in (c) in principle, subject to further legal advice; and

(iv) accepts the audit recommendation in (d) and will seek the required manpower to enable the HAB to follow up on this recommendation; and

(e) regarding the audit recommendations in paragraph 5.9(a) to (t), the HAB:

(i) accepts the audit recommendation in (a) and will examine the PRLs on a case-by-case basis, in consultation with the Lands D on practices adopted in other PTGs, and consider the audit recommendation in (a) as appropriate;

(ii) accepts the audit recommendation in (b) and will work with the Lands D to follow up on the audit recommendation in (b);

(iii) accepts the audit recommendation in (c). It may take some time to reach a satisfactory conclusion and the HAB understands that Audit appreciates the difficulties involved;

(iv) accepts the audit recommendations in (d) to (o) in anticipation that the Lands D will follow up on (m) and (n) as appropriate, seek legal advice on (o) and consult the HAB when required. Regarding the audit recommendation in (e), the HAB is currently putting in place an electronic database system to monitor the implementation of the greater access requirement;

(v) accepts the audit recommendation in (p) on the understanding that the implementation of (p) will require formal collaboration from the Development Bureau. The HAB has the policy responsibility for sports development matters and how these affect the PRL policy, but is not in a position to assess the needs of individual PRL sites for "public purposes";

(vi) accepts the audit recommendation in (q) and will review whether the current practice of only assessing alterations that have been made to the M&As since the last renewal of the PRL in question is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement;

(vii) accepts the audit recommendation in (r). The HAB has already approved the schemes for greater access for most of the 16 expired PRLs. The Lands D will follow up on the lease renewal process and consult the HAB as required; and

(viii) generally accepts the audit recommendations in (s) and (t). It is understood that the Lands D will follow up as appropriate and consult the HAB when required.

5.11 The Director of Lands has said that:

(a) regarding the audit recommendations in paragraph 5.8, the Lands D stands ready to contribute to the HAB's forthcoming PRL policy review and will support the HAB in implementing policy decisions arising from the review; and

(b) regarding the audit recommendations in paragraph 5.9(a) to (f) and (m) to (t), the Lands D:

(i) stands ready to contribute to the review in (a) above and will support the HAB in implementing policy decisions arising from the review;

(ii) regarding the audit recommendation in (b), will work with the HAB and other enforcement regimes in examining how best to monitor the uses of land under PRLs. The Lands D will invite the HAB to input in the monitoring and control aspects of lease provisions within its purview;

(iii) regarding the audit recommendation in (c), may include the planning standards, once drawn up by the HAB and subject to the HAB's intention, into the PRLs when the next opportunity arises and/or use the standards in the Government's consideration of any proposals from the clubs and in lease enforcement as appropriate;

(iv) regarding the audit recommendation in (m), will continue to follow up on individual cases of irregularities/suspected non-compliances with Conditions of Grant identified in Examples 9 to 15 in conjunction with the HAB and other B/Ds as appropriate, on the basis that the Lands D will stand by its position with regard to breaches under other statutory enforcement regimes (see para. 4.7);

(v) regarding the audit recommendation in (n), will follow up on identified/suspected commercial/subletting cases in consultation with the HAB and seek legal advice as appropriate;

(vi) will consider the audit recommendation in (o) in conjunction with the HAB;

(vii) regarding the audit recommendation in (p), will stand ready to implement policy decisions on the renewal or otherwise of individual PRLs;

(viii) accepts the audit recommendation in (r) and is working along this direction; and

(ix) will consider the audit recommendations in (s) and (t) in conjunction with other relevant B/Ds. Nonetheless, the Lands D considers that in Example 16 at Appendix D, the land exchange in 2000 was properly granted under due process and with the agreement of relevant departments, including the AFCD as the Country Park Authority, and there was no violation of policy or rules in making this grant.

5.12 The Secretary for Development has said that the Development Bureau stands ready to contribute to the HAB's forthcoming PRL policy review as recommended in paragraph 5.8, and has no fundamental problems with the audit observations and recommendation in paragraphs 5.4(a) and 5.9(p).

Appendix A
(paras. 1.3(a) and 2.14 refer)

32 PRLs granted to private sports clubs

Lessee	PRL	District	Approximate PRL area (Note 1) (hectares)	No. of members (latest known position — Note 2)
Club 1	1	Eastern	1.9	5,000
	9	Sai Kung	1.2	
	13	Southern	0.3	
Club 2	2	Kowloon City	0.9	2,164
Club 3	3		0.6	1,495
Club 4	4		0.6	680
Club 5	5	North	170.6	2,498
	11	Southern	6.7	
Club 6	6	Sai Kung	129.0	2,479
Club 7	7		2.0	1,064
Club 8	8		1.4	969
Club 9	10	Sha Tin	68.2	28,625
	16	Wan Chai	9.2	
Club 10	12	Southern	2.1	2,500
Club 11	14	Southern	0.2	1,214
Club 12	15	Tsuen Wan	6.5	447
Club 13	17	Wan Chai	3.2	49,593
	28	Yau Tsim Mong	0.5	
Club 14	18	Wan Chai	3.0	3,109
Club 15	19		1.8	2,352

Lessee	**PRL**	**District**	**Approximate PRL area (Note 1) (hectares)**	**No. of members (latest known position — Note 2)**
Club 16	20	Wan Chai	1.6	3,393
Club 17	21		1.3	2,914
Club 18	22		1.2	216 (not counting 2,047 dining members)
Club 19	23		1.2	558
Club 20	24		0.5	1,844
Club 21	25	Yau Tsim Mong	2.5	2,102
Club 22	26		2.4	685
Club 23	27		0.7	499
Club 24	29		0.4	330
Club 25	30		0.3	147
Club 26	31		0.2	981
Club 27	32	Yuen Long	3.5	192
		Total	425.7	118,050

Source: HAB records and company search

Note 1: In addition to the granting of PRLs, some of the private sports clubs were also provided with short-term tenancies to operate their club activities.

Note 2: For most of the private sports clubs, membership information was based on latest annual returns/audited accounts they submitted to the Companies Registry. For a few others which had not filed such information with the Companies Registry, their membership information provided to the HAB was used.

Appendix B
(para. 2.23 refers)

Key events leading to the granting of a new PRL in 1999 (August 1996 to September 1999)

Item	Date	Event
(a)	12 August 1996	A Club applied to the Lands D for a PRL to cover "the whole of the land now occupied" by the Club in the North District.
(b)	7 March 1997	The Lands D indicated to the then PELB that should the PRL be granted, the constraints imposed by the golf courses would be a very firm one for the period of the lease (21 years).
(c)	15 March 1997	In response to item (b) above, the PELB pointed out that there seemed to be no intention of developing on a large scale the surrounding land.
(d)	29 July 1997	The Lands D requested the HAB and the then BCSB to consider and advise whether they support the granting of a PRL to the Club.
(e)	15 August 1997	The BCSB sought clarifications on a number of points, including: (i) whether the site in question was considered to be in urban or rural of the New Territories; (ii) the individual merits of the Club's application; and (iii) whether there would be any financial implications for the Government if the STT was converted into a PRL.
(f)	5 September 1997	In response to item (e) above, the Plan D indicated that the site should fall within the New Territories rural areas.

Item	Date	Event
(g)	8 September 1997	In response to (e) above, the Lands D indicated that: (i) the site should fall within the New Territories rural areas; (ii) the merits of the Club's application were that conversion to a PRL would enable the Government to collect increased rental and to get rid of the unfavourable clause to the Government in the old lease; and (iii) if at some future date within the 21-year term, the land or part of it was required for a public project, the Government could resume it under the PRL.
(h)	9 September 1997	The HAB supported the offer of a PRL to the Club.
(i)	13 September 1997	The BCSB supported the PRL proposal.
(j)	17 April 1998	The District Lands Conference approved the granting of a 21-year PRL to the Club.
(k)	18 May 1998	The Club made a request to the Lands D for modifying the Special Conditions including the one relating to the use of the lot for residential purposes.
(l)	1 December 1998	The Lands D sought the HAB's policy support for the modification of the Special Conditions relating to the use of the lot for residential purposes.
(m)	15 December 1998	In response to item (l) above, the HAB indicated that it had no objection from a recreation and sports angle.
(n)	1 September 1999	The PRL was granted to the Club.

Source: Records of the Lands D, the HAB and the Development Bureau

Appendix C
(para. 2.27 refers)

Events leading to recent Government decision for a comprehensive PRL policy review (November 2002 to June 2013)

Item	Date	Event
(a)	November 2002	An oral question was raised at a LegCo meeting about the grant of government land at a nominal land premium to private groups or organisations for use as clubs or clubhouses. The Administration was asked to review the criteria for granting land for sports and recreational uses. The Administration's response was given five years later in item (b) below.
(b)	April 2007	The Administration informed the LegCo Panel that a review of land grants or leases which were still in force would inevitably involve legal and financial issues. With competing priorities, the HAB had no plan to conduct a comprehensive review on the matter, and such leases which were due for renewal would be considered on a case-by-case basis taking into account all relevant factors.
(c)	June 2010	The HAB informed LegCo that as long as the policy principles (set in 1979) were strictly adhered to, the Administration would basically support the clubs' PRL renewal applications.
(d)	May 2011	The HAB briefed the LegCo Panel on the Government's initial conclusions of its review on the extent to which the private sports clubs could be more opened to eligible outside bodies. The HAB considered that although the private sports clubs had already provided some degree of access to outside bodies, there was scope for them to allow more access. Panel Members however expressed support for a policy review on PRLs by the Administration. One Member considered that the Administration should conduct a comprehensive policy review on PRLs. The Panel requested the Administration to revert back on the subject as soon as practicable.
(e)	July 2011	The HAB informed the LegCo Panel that the Administration would conduct a further review of the PRL policy upon the completion of the current lease renewal and the implementation of the "opening-up" arrangements. The LegCo Panel passed a motion calling on the Government, inter alia, to renew the PRLs for three to five years and to review the terms and conditions of the leases to allow greater access to the clubs' facilities by the general public before further renewing the PRLs.

Item	Date	Event
(f)	December 2011	The HAB informed LegCo that in the long run, it was worthwhile to conduct a full-scale review of the policy on PRLs. The HAB also reported for LegCo Members' information the survey results on usage of the clubs' facilities by Outside Bodies in the three years of 2008 to 2010.
(g)	2012	The HAB and the Lands D worked on the current round of PRL renewals, including making "hold-over" arrangements and negotiating with the clubs on opening up more of the clubs' sports facilities to Outside Bodies.
(h)	March 2013	The HAB informed LegCo that the forthcoming policy review, to be conducted after the current round of PRL renewals, would be a full-scale one, taking account of the Government's sports development policy, land use considerations, interests of the PRL lessees' members and the wider public interest.
(i)	June 2013	The HAB provided the LegCo Panel with an update on progress of renewing PRLs and outlined measures which it would take to improve the monitoring of facilities operated under such leases. The HAB informed the LegCo Panel that the forthcoming policy review would take account of factors such as sports development needs, land use considerations, the overall utilisation of the sites, the interests of PRL lessees and their members and the wider public interest when formulating the way forward for the policy. The LegCo Panel passed a motion calling on the Government to establish a monitoring and vetting mechanism for the approval and renewal of lands leased under PRLs, and further open up such lands for use by the public, so as to safeguard public interests.

Source: LegCo records

Appendix D
(para. 5.4(d) refers)

Example 16

Part of a PRL site situated in a Country Park

1. Audit found that some half (involving 3 hectares) of the land held under the PRL granted to a gun club was situated in a Country Park. Instead of erecting a fence to separate the PRL site from other parts of the Country Park, the club only erected warning signs to warn the public not to enter the PRL site as required under the lease condition. In the absence of proper fences erected to separate the PRL site from other areas of the Country Park, Audit is concerned that this may constitute a threat to the safety of the visitors of the Country Park.

2. According to the Lands D's records, the PRL was first granted to the club in 1961, i.e. before the gazettal of the current boundary of the Country Park in 1979. Since 1979, the PRL had been renewed twice (in 1986 and 1995 respectively) and an in-situ land exchange (with reduced site area) was made in 2000 to enlarge the safety buffer zone of the club's shooting range in order to fulfil the licensing safety requirement set by the Hong Kong Police Force. On all three occasions, the Lands D had consulted the relevant B/Ds (e.g. the Agriculture, Fisheries and Conservation Department (AFCD)), and no objections to the renewals of the PRL and the land exchange had been raised. As a result, the encroachment onto the Country Park had remained status quo for over 30 years.

3. During the current round of renewals, the Plan D proposed to regularise the boundary of the lot so that it would be demarcated outside the Country Park. Both the Plan D and the AFCD had the view that the PRL site should not overlap with the Country Park. The AFCD indicated in August 2012 that if it was not possible, due to safety reasons, to exclude the overlapped part of the PRL site from the Country Park, the lot boundary should be revised to minimise the encroachment onto the Country Park. The AFCD also suggested that a Special Condition should be included in the PRL to impose restriction on development and other activities within the Country Park area. However, the AFCD made no additional comment after the Hong Kong Police Force confirmed that revision of the lot boundary was inappropriate taking into account the latest licensing safety requirements. At the DLC meeting held in November 2012, the DLC decided to maintain the existing boundary of the PRL site and considered that it was not necessary to include a clause requiring the club to fence off the lot. As at September 2013, the PRL was still under "hold-over" arrangement.

Source: HAB/Lands D records

Appendix E

Acronyms and abbreviations

AFCD	Agriculture, Fisheries and Conservation Department
Audit	Audit Commission
B/Ds	Bureaux/departments
BCSB	Broadcasting, Culture and Sport Bureau
BD	Buildings Department
CA	Competent authority
CRS	Council for Recreation and Sport
DH Order	Dangerous Hillside Order
DLC	District Lands Conference
ExCo	Executive Council
F&B	Food and beverage
HAB	Home Affairs Bureau
Lands D	Lands Department
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
M&As	Memorandum and Articles of Association
m^2	Square metres
NGO	Non-governmental organisation
NSA	National sports association
OFCA	Office of the Communications Authority
Panel	Panel on Home Affairs
PELB	Planning, Environment and Lands Bureau
Plan D	Planning Department
PRL	Private recreational lease
PTG	Private treaty grant
STT	Short term tenancy