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

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.