

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

A. Introduction

The Audit Commission ("Audit") conducted a review of how the Government has managed the 32 private recreational leases ("PRLs") granted to 27 private sports clubs at nil or nominal premium.

Background

2. 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 PRLs.

3. The Home Affairs Bureau ("HAB") is the Government's policy bureau for overseeing PRLs. The Lands Department ("Lands D"), as the Government land agent, supports the HAB in administering the PRLs. As at 31 March 2013, 69 PRLs were granted to private sports clubs, social and welfare organizations, uniformed groups, national sports associations ("NSAs") and civil servants' associations. Of the 69 PRLs, 51 PRLs had expired in 2011 or 2012, including 23 PRLs held by private sports clubs. By granting PRLs at nil or nominal premium to private sports clubs and other organizations, the Administration is in effect providing them with financial subsidies in terms of premium foregone for the whole term of the lease.

4. The Committee held two public hearings on 23 and 25 November 2013 to receive evidence on the findings and observations of the Director of Audit's Report ("the Audit Report").

Declaration of interests

5. At the beginning of the Committee's first and second public hearings held on 23 and 25 November 2013:

- **Hon Abraham SHEK Lai-him** declared that he was a member of Hong Kong Country Club, Hong Kong Football Club, Hong Kong Golf Club, Hong Kong Jockey Club ("HKJC") and Royal Hong Kong Yacht Club;

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- **Hon Paul TSE Wai-chun** declared that he was a member of HKJC, Scout Association of Hong Kong and South China Athletic Association ("SCAA");
- **Hon Alan LEONG Kah-kit** declared that he was a member of HKJC;
- **Hon NG Leung-sing** declared that he was a member of HKJC and Craigenower Cricket Club ("CCC");
- **Hon CHAN Hak-kan** declared that he was a member of HKJC;
- **Hon Kenneth LEUNG** declared that he was a member of the Ladies Recreation Club and CCC; and
- **Mr David SUN Tak-kei, Director of Audit**, declared that he was a member of HKJC, SCAA and Clearwater Bay Golf and Country Club.

Opening statement by the Secretary for Home Affairs

6. **Mr TSANG Tak-sing, Secretary for Home Affairs**, made an opening statement at the beginning of the Committee's first public hearing held on 23 November 2013, the summary of which is as follows:

- in July 1997, the newly established Hong Kong Special Administrative Region ("HKSAR") Government decided that PRLs could be extended by 15 years upon expiry and the decision received public support;
- before renewing PRLs that expired in 2011 or 2012, the HAB had conducted a detailed study taking various factors into consideration, including legal advice, public interest, the demand for and supply of sports facilities, the investments that private sports clubs had made over the years and the expectation of their members. The HAB recognized the contributions of private sports clubs and had decided to renew their leases for another 15 years. In granting these renewals, the Administration had made clear to the lessees that:
 - (a) there should be no expectation that their leases would be further renewed upon expiry on the same terms and conditions as contained in the leases as so extended; and

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- (b) they should agree with the HAB a scheme to open up their sports facilities to outside bodies and the agreed "opening-up" scheme would be part of the new lease conditions;
- as always, before supporting the renewal of any specific land lease, the Administration made sure that the land was not planned for any public purposes. In addition, there was a condition specified in the lease that the Government had the right to resume the concerned lot for a public purpose as long as the lessee had been given appropriate prior notice;
 - to date, the Lands D had renewed 10 PRLs held by private sports clubs and four PRLs held by non-governmental organizations ("NGOs"). Some of these clubs provided sports facilities which were not readily available at government venues and contributed to the development of different types of sport in Hong Kong;
 - although the Government now provided more public sports facilities than it did in the past, there remained a strong demand for sports and recreational facilities in the community. By providing various facilities to over 140 000 members, private sports clubs had helped to relieve the pressure on the public sector. Some private sports clubs, after years of development, possessed sports facilities suitable for hosting major international sports events, which helped to attract international competitions to Hong Kong;
 - the HAB would continue to monitor the progress of the "opening-up" schemes, and follow up on cases with a relatively low degree of opening-up. For clubs which had not developed satisfactory opening-up schemes, the HAB and the Lands D would not agree to renewal of their leases;
 - the current Administration had been particularly concerned about land and housing supply since assuming office. It was against this background that the HAB initiated a comprehensive policy review of PRLs in September 2013. During the review, consideration would be given to different development objectives, the public interest on various fronts, long-term policy objectives for sports and recreation, other potential uses of and revenue from the concerned lots, facilities and supporting hardware of the private sports clubs, as well as the interests of the lessees, their members and staff. Apart from the HAB, other policy bureaux and departments such as the Development Bureau ("DEVB"), the Lands D, the Planning Department and the Rating and

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Valuation Department were taking part in the review. Given the extensive scope and complicated nature of the review, the HAB expected preliminary results to be available by the end of 2014; and

- he agreed with the various recommendations laid out in paragraphs 5.8 and 5.9 of the Audit Report. As for cases of suspected non-compliance with lease conditions mentioned in the Report, the Administration would follow up on a case-by-case basis.

The full text of the Secretary for Home Affairs' opening statement is in *Appendix 10*.

B. Government policy decisions in 1969 and 1979

Review of the PRL policy

7. According to paragraph 2.2 of the Audit Report, the existing Government policy on PRLs is largely based on principles endorsed by the Executive Council ("ExCo") over 30 years ago in 1979 (paragraphs 2.3 to 2.5 of the Audit Report refer). 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. No major policy revisions had since been made, except with the "greater access requirement" endorsed by ExCo in July 2011 requiring the lessees of renewed PRLs to further open up their sports facilities for use by eligible outside bodies¹.

8. The Committee enquired why no comprehensive policy review of the PRL policy had been made by the HAB since 1979, notwithstanding the increasing problem of land shortage in Hong Kong, and that the Administration had informed ExCo as early as 1969 that the Government would conduct comprehensive reviews of the PRL policy at suitable intervals as the public interest required and some Members of the Legislative Council ("LegCo") had made a number of suggestions on the PRL policy as early as 2002.

¹ Eligible outside bodies include schools, NGOs receiving subvention from the Social Welfare Department, uniformed groups and youth organizations receiving subvention from the HAB, and NSAs.

9. **Secretary for Home Affairs** explained that:

- to ensure Hong Kong's smooth transition to the People's Republic of China's sovereignty on 1 July 1997, all PRLs that had expired prior to 1 July 1997 were renewed for a term of 15 years basically on the same terms and conditions as in their previous leases;
- the HAB well understood the suggestions on the PRL policy made by some LegCo Members at the Council meetings and at the LegCo Panel on Home Affairs, the nature of which mainly centered on requiring the lessees to further open up their sports facilities for use by eligible outside bodies;
- in this regard, the HAB started to review the extent to which the private sports clubs could be more opened to eligible outside bodies in 2010. The HAB considered that although the private sports clubs had already provided some degree of access to eligible outside bodies², there was scope for them to allow more access;
- 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 eligible outside bodies, i.e. the clubs were required to submit for the HAB's approval their "opening-up" schemes and to submit quarterly reports on usage under the approved schemes. Under the approved "opening-up" schemes in the recently renewed PRLs, lessees were required to open up their facilities to the use of eligible outside bodies to 50 hours per month or more; and
- as the lease conditions for the current PRLs were drawn up over 15 years ago, some of the lease conditions might be considered obsolete, such as prohibitions against people from eligible outside bodies using the toiletries provided in the changing rooms of private sports clubs. Such obsolete conditions had been removed from the currently renewed PRLs.

² As a Condition of Grant in all PRLs after 1979, a lessee when required to do so by a competent authority shall permit outside bodies to book its sports facilities for no more than three sessions of three hours each per week, provided that the use of the facilities "shall not be on a weekend or public holiday", i.e. the "3 x 3" access requirement. The competent authorities are the Secretary for the Civil Service, Secretary for Education, Secretary for Home Affairs, Director of Social Welfare and Director of Leisure and Cultural Services.

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10. On how the present policy review of PRL differed from the past policy reviews of the same, **Secretary for Home Affairs** responded that:

- the breadth and depth of the current review were greater than those of the past reviews of the PRL, having regard to the fact that increasing land and housing supply was one of the top policy objectives of the current Administration. The HAB would take account of factors such as sports development needs, land use considerations, the overall utilization of the sites, the interests of PRL lessees and their members and the wider public interest when formulating the way forward for the PRL policy; and
- there was much room for the HAB to introduce changes to the existing PRL policy, as the lessees had been explicitly advised that there should be no expectation that their leases would be further renewed when they next expired, and that even if the leases were renewed, they might not be renewed at nominal premium or on the same terms and conditions as before.

11. Responding to the Committee's enquiry as to the types of assistance which would be rendered by the Lands D to the HAB in the comprehensive review of the PRL policy, **Ms Bernadette LINN, Director of Lands**, said that such assistance should include making reference to other private treaty grants, such as those for private hospitals, in reviewing the conditions in the PRLs and providing advice from a planning and land use angle.

12. Noting that the policy review involved the participation of various policy bureaux and government departments ("B/Ds"), the Committee enquired whether there was a mechanism within the Government to resolve differences amongst B/Ds on a policy. **Mr Thomas CHAN, Deputy Secretary for Development (Planning and Lands)**, replied in the positive.

13. As to why the comprehensive review of the PRL policy was not initiated by the HAB shortly after the current Administration assumed office in July 2012, **Secretary for Home Affairs** explained that this was because the HAB had other pressing issues to handle then.

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14. In response to the Committee, **Secretary for Home Affairs** confirmed that:
- the comprehensive review of the PRL policy would not cover the renewal of the remaining 13 PRLs that expired in 2011 or 2012, but might impact on the renewal of PRLs that expired after 2014;
 - the HAB would consult the views of LegCo on the preliminary results of the comprehensive review of the PRL policy expected to be available by the end of 2014, before deciding on the way forward;
 - the comprehensive review of the PRL policy would begin in earnest once the formal renewal process for the PRLs that expired in 2011 or 2012 had been completed; and
 - the HAB would lead the comprehensive review of the PRL policy.

Renewal of PRLs

15. **Secretary for Home Affairs** advised that the Lands D renewed PRLs at nil or nominal premium on the basis of policy support given by HAB for a 15-year term. When considering whether or not to give policy support for the renewal of a PRL, the following basic criteria were adopted by the HAB:

- whether or not the site was required for a public purpose;
- whether or not there had been any significant breach of lease conditions; and
- whether or not the lessee had a non-discriminatory membership.

16. The Committee enquired whether private sports clubs located at a densely populated area would not have their PRLs renewed in future. **Secretary for Home Affairs** replied that this would not necessarily be the case, as the sports and recreational activities provided by private sports clubs could meet the strong demand for such facilities and help to relieve the pressure on public facilities.

17. The Committee further enquired whether the Administration would resume the land if a private sports club on PRL should fail to open up its sports facilities for use by eligible outside bodies.

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18. **Secretary for Home Affairs** responded that if a private sports club on land granted under PRL had never opened up its sports facilities for use by eligible outside bodies, the HAB would not support its application for PRL renewal. If the PRL of a private sports club was yet to be renewed, the HAB would see how such situation could be improved in the course of the comprehensive review of the PRL policy.

19. On whether private sports clubs had the recourse to appeal against the Administration's decision of not renewing their PRLs, **Secretary for Home Affairs** ensured the Committee that a fair, reasonable and legal approach had been and would continue to be adopted in processing applications for PRL renewal.

20. Responding to the Committee's enquiry as to whether it was discriminatory for a private sports club on PRL to charge high entry fees to join the club as members, **Secretary for Home Affairs** advised that the non-discriminatory membership policy adopted by private sports clubs on PRL for the admission of new members referred to any form of discrimination by race, religion, or sex or in the order in which applicants were given membership. The existing non-discriminatory membership policy would be considered in the context of the current comprehensive review of the PRL policy.

21. The Committee pointed out that although providing eligible outside bodies with greater access to private sports clubs on PRL was a major request from LegCo Members, the HAB did not address the motion passed by the LegCo Panel on Home Affairs on 8 July 2011 calling on the Government to, inter alia, 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.

22. **Secretary for Home Affairs** responded that the HAB had considered whether to continue to renew PRLs that had expired in 2011 or 2012 for 15 years, and concluded that this was appropriate for the following reasons:

- the process of renewing a PRL took two years or more. New leases took effect retrospectively from the date when the previous lease expired (rather than the date of signing a new lease). If the HAB were to renew leases for a short term of say, three years, the HAB would have to start the process of renewing leases that had expired in 2011 or 2012 in 2014

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and 2015 respectively. This would conflict with the timescale for and the conduct of the review of PRL policy and gave the HAB very little time in which to evaluate properly lessees' compliance with the new lease conditions and the extent to which this had helped further to promote sports and recreational opportunities for the community;

- in HAB's discussions with lessees, the majority of the lessees had advised that if their leases were renewed for fewer than 15 years, with the implication that following expiry the leases might not be further renewed, they would not be in a position to make any significant investment in the development and maintenance of their facilities or to recruit new members. This would have a deleterious effect on lessees' ability to provide sports and recreational opportunities to their members and the wider community under the enhanced "opening up" arrangements;
- several of the lessees had a history stretching back over 100 years, had thousands of members and had invested significant amounts in developing facilities. Accordingly, the HAB considered it fair to renew leases for 15 years (from the date of expiry of the current leases) to allow lessees to have sufficient time to prepare for possible major changes (which could include closing down) following the review of the policy on PRLs; and
- reducing significantly the length of the term of lease renewal would be a major policy change. The HAB considered it inadvisable to make such a change as an ad hoc decision in isolation without proper justification in the context of a comprehensive review of the PRL policy.

23. The Committee noted from paragraph 1.8 of the Audit Report that the main reasons for the Government to continue to renew PRLs were because 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. Private sports clubs on land held under PRLs also helped to attract overseas executives and professionals to work in Hong Kong and maintain Hong Kong's status as an international metropolis.

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24. At the request of the Committee, **Secretary for Home Affairs** provided the following responses after the public hearings (in *Appendices 11 and 12*):

- information to substantiate that the PRL policy served the policy objectives for sports development, i.e. promoting sports in the community, promoting elite sports development and promoting Hong Kong as a centre for international sports events;
- comparison between private sports clubs' sports facilities and those operated by the Leisure and Cultural Services Department ("LCSD") in meeting the policy objectives for sports development;
- information to substantiate that the sports and recreational facilities operated by the private sports clubs on PRL helped to significantly relieve the pressure on public facilities; and
- information to substantiate that the sports and recreational facilities operated by the private sports clubs on PRL helped to attract overseas executives and professionals to work in Hong Kong and maintain Hong Kong's status as an international metropolis.

25. Responding to the Committee's enquiry on the estimated cost of the Administration taking over the sports and recreational facilities run by private sports clubs on PRL, **Secretary for Home Affairs** said that it was currently not possible for the Administration to provide such information as the private sports clubs' facilities were built and operated in a manner different from publicly built and funded facilities. Furthermore, many clubs contained types of facility that were not currently operating by the LCSD. Nevertheless, the HAB planned to address this issue in the course of the comprehensive review of the PRL policy.

26. The Committee enquired whether the Government was bound by Article 121 of the Basic Law³ ("BL 121") to continue to renew PRLs at nil or nominal premium, albeit the grantees would continue to subject to Government rent at 3% of the rateable value a year.

³ BL121 provides that "As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged."

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27. **Director of Lands**, responded that:

- BL 121 sought to implement paragraphs 2 and 3 of Annex III to the Sino-British Joint Declaration ("JD") concerning the grant and renewal of leases during the period from 27 May 1985 (i.e. the date on which the JD came into force) to 30 June 1997;
- in respect of leases granted or renewed by the HKSAR Government during such period and which extended beyond 30 June 1997, the relevant JD provisions restricted the imposition of additional premium as from 1 July 1997 in order to address the lessees' concern that substantial additional premium might be imposed by the HKSAR Government after that date;
- such a restriction did not apply to the grant or renewal of leases, including PRLs, by the HKSAR Government after 30 June 1997; and
- the issue of granting and renewing PRLs at higher than nominal premium would be considered in the course of the comprehensive review of the PRL policy.

28. At the request of the Committee, **Secretary for Home Affairs** provided, after the public hearings, the Government rent paid by each private sports club on PRL each year since 1997 (in *Appendix 13*).

29. Noting that one of factors that the HAB considered in supporting an application for PRL renewal was the amount of money that had been spent by the club to develop and improve its facilities over the years, the Committee enquired whether the HAB had requested the club to provide information, such as its past accounts and records of money spent to develop and improve its facilities and the amount of money which the club intended to spend in future to further develop and improve its facilities, before giving support or otherwise to the application.

30. **Mrs Yolanda TONG, Chief Leisure Service Manager (Recreation & Sport)**, responded that the HAB had never checked or looked into the accounts of the lessees, as the main task of the HAB was to ensure that the PRL sites were used in a proper manner which could contribute to the promotion of sports development and the provision of recreational and sports facilities in Hong Kong. **Secretary for Home Affairs** supplemented that in the recent round of PRL renewals, all renewed

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leases were granted in recognition of the private sports clubs' continued ability to make contribution to the promotion of sports development and the provision of recreational and sports facilities in Hong Kong.

31. The Committee further noted that whilst the Administration would grant or renew a PRL for 15 years, there was a condition specified in the lease that the Government had the right to resume the concerned lot for public purpose as long as a 12 calendar months' prior notice was given to the lessee. The Committee queried whether this was contradictory from the standpoint of safeguarding public interest. **Secretary for Home Affairs** responded that there was no contradiction. In fact, there were cases whereby the Government had resumed part of the PRL site for a public project.

New lease conditions

32. Responding to the Committee's enquiry about the changes that had been made to the lease conditions of the renewed PRLs, **Director of Lands** advised that:

- the policy of PRLs had remained unchanged since 1979 until 2011, following the review started by the HAB in 2010. As such, there had been no change in the general conditions during that period. After the review, in renewing PRLs, the provision of greater access requirement to eligible outside bodies was amended. According to the new lease extension conditions, the lessees were required to submit for the HAB's approval their "opening-up" schemes and to submit quarterly reports on usage under the approved schemes;
- besides, a new condition was added (where the condition was not in the existing lease) that the lessees should not alter or add to its Memorandum and Articles of Associations ("M&As") without first having obtained the consent in writing of the Director of Lands; and
- some obsolete lease conditions had also been removed.

33. At the request of the Committee, **Director of Lands** provided, after the public hearings, a list of changes in general clauses in PRLs introduced for application across-the-board after the review completed in 2011 (excluding those relating to technical updating of clauses) (in *Appendix 14*).

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34. **Secretary for Home Affairs** advised that as PRLs were only granted to non-profit-making bodies, the HAB had requested lessees of PRLs that had expired in 2011 or 2012 to include a provision in their M&As that in the event of winding up, all monies must be donated to charitable organizations, if these lessees had not yet done so.

C. Implementation of the "opening-up" requirement

Criteria adopted by the HAB for approving the "opening-up" scheme

35. **Chief Leisure Service Manager (Recreation & Sport)** advised that to encourage PRL lessees to contribute more to the Government key objectives for sports development, the HAB had imposed more stringent requirements for lessees to further open up their facilities, including:

- to open up their sports facilities to eligible outside bodies for a minimum of 50 hours per month;
- to accept direct requests from eligible outside bodies without the need to go through a competent authority;
- to accord priority to eligible outside bodies, over their own members, for use of their sports facilities covered under the approved "opening-up" schemes;
- to charge eligible outside bodies fees for use of their sports facilities similar to those charged by the LCSD for use of similar sports facilities;
- to operate junior membership schemes⁴ to allow talented young athletes to join clubs at significantly reduced rates of entry;
- to allow NSAs to use their facilities for training or competition for a minimum of 10 hours per month; and
- where appropriate, to allow NSAs to use their facilities for hosting international events.

⁴ At present, some private sports clubs charge young people significantly reduced entry fees to join their clubs as junior members. This allows young athletes to use their facilities for training, and to gain competition experience by representing the clubs. When renewing the PRLs, private sports clubs are required to put in place junior membership schemes that allow young sportsmen and women below a certain age to join at significantly reduced rates of entry.

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Utilization of private sports clubs' sports facilities by eligible outside bodies

36. The Committee noted from Table 2 referred to in paragraph 3.20 of the Audit Report that the facility-hours⁵ used by eligible outside bodies in nine of the 19 private sports clubs in March 2013 were less than 10% of the facility-hours committed by the clubs for opening up their sports facilities for use by eligible outside bodies, including no usage recorded in four of these clubs. The Committee enquired why the usage of private sports clubs' facilities by eligible outside bodies was far below the clubs' committed "opening-up" facility-hours under the approved "opening-up" schemes.

37. **Secretary for Home Affairs** responded that the implementation of the approved "opening-up" schemes did not imply that the usage of the private sports clubs' sports facilities by eligible outside bodies would necessarily increase. There were quite a number of factors which could discourage eligible outside bodies from using the clubs' facilities. These included that some clubs tended to set aside more popular sessions, such as at weekends and public holidays, for their members. Nevertheless, the HAB would strive to come up with ways to improve usage of the private sports clubs by eligible outside bodies as recommended by Audit.

38. **Mr Jonathan McKINLEY, Deputy Secretary for Home Affairs (2)**, supplemented that:

- the information in Table 2 of the Audit Report was a snapshot of the usage of private sports clubs' sports facilities by eligible outside bodies in March 2013⁶. No private sports club was required by the lease to implement the new "opening-up" scheme, publicize such a scheme and file quarterly reports to the HAB in March 2013, as the first PRL renewal for a private sports club took effect in March 2013. That being the case, the HAB had urged all private sports clubs on PRLs that had expired in 2011 or 2012 to start opening up their sports facilities to eligible outside bodies in line with the greater access requirement and to step up publicity, even if their PRLs had not yet been renewed;

5 Under the approved "opening-up" schemes, 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.

6 As advised by HAB after the public hearings, the information in Table 2 of the Audit Report is extracted from returns provided by private sports clubs on PRLs between October 2012 and March 2013 on a voluntary basis.

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- although the number of facility-hours used by eligible outside bodies totalled 4 455 in March 2013 (representing 23.3% of the total monthly committed "opening-up" facility-hours), these figures were a great improvement over the past few years whereby only about 450 facility-hours were used by eligible outside bodies in a month as found in the surveys; and
- the HAB did not consider the March 2013 figures acceptable. The HAB would continue to step up efforts in various fronts to increase the usage of sports facilities at private sports clubs by eligible outside bodies.

39. The Committee queried whether the implementation of the "opening-up" requirement could genuinely provide greater access to eligible outside bodies to use the sports facilities operated by private clubs on PRL. Not only would such implementation create conflict between members of the clubs and eligible outside bodies, there appeared to be a serious mismatch between the demands of eligible outside bodies and the number of facility-hours committed by the clubs. In respect of the latter, a school would be discouraged from booking a certain club for holding competition if the club only committed a two-hour use of each of its sports facilities. Another example was that some clubs did not have the facilities to accommodate a large number of people.

40. **Chief Leisure Service Manager (Recreation & Sport)** responded that:

- although some clubs had limited facilities, there were other clubs which had extensive facilities to accommodate a large number of users at the same time. Hence, eligible outside bodies should book facilities from those clubs which could meet their sporting needs. In fact, a number of clubs were providing their facilities to schools and social organizations in conducting training or competition;
- for clubs which had extensive facilities, the HAB would not approve their "opening-up" schemes, if they only agreed to open up their facilities separately at different time periods; and
- there was a condition in the renewed PRLs allowing the Secretary for Home Affairs to impose new or revised requirement(s) on the lessees to further open up their facilities by giving a three-month prior notice.

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41. **Deputy Secretary for Home Affairs (2)** supplemented that although the renewed PRLs required the lessees to further open up their sports facilities to eligible outside bodies, the lessees could open up their sports facilities to other members of the public if they so wished. Having regard to the experience gained from the implementation of the "opening-up" requirement, the HAB would not rule out requiring the lessees to open up their sports facilities to other outside bodies or members of the public.

42. Responding to the Committee's enquiry on the measures taken by the HAB to increase the usage of private sports clubs' sports facilities by eligible outside bodies, **Chief Leisure Service Manager (Recreation & Sport)** advised that:

- when renewing the PRLs that had expired in 2011 or 2012, lessees were asked to provide the following information regarding their approved "opening up" schemes on their websites:
 - (a) facilities and time sessions available, fees and charges, and application requirements for use of facilities by eligible outside bodies;
 - (b) facilities and time sessions available, fees and charges, and application requirements for use of facilities by players or representative squads of NSAs;
 - (c) application requirements for the staging of international events; and
 - (d) details of the junior membership schemes.

Such information would also be uploaded to the websites of the HAB and the competent authorities concerned;

- to date, 47 approved "opening-up" schemes had been uploaded to the websites of the HAB and the competent authorities concerned;
- competent authorities were also asked to advise eligible outside bodies directly of the availability of sports facilities for hire on the lessees' premises and to give detailed information on the approved "opening-up" schemes to these bodies;

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- detailed information on the approved "opening-up" schemes was also given to all of the 18 District Offices of the Home Affairs Department and the Sports Federation & Olympic Committee of Hong Kong, China for onwards transmission to their stakeholders;
- to make it easier for eligible outside bodies to book sports facilities run by private sports clubs, eligible outside bodies could now approach the clubs directly rather than having to go through a competent authority; and
- advertisements were placed in the print media to publicize the availability of sports facilities on premises operated under the PRLs.

43. At the request of the Committee, **Secretary for Home Affairs** provided, after the public hearings, details of the advertisements placed in the print media to publicize the availability of sports facilities on premises operated under the PRLs (in *Appendix 15*).

44. Responding to the Committee's enquiry as to whether NGOs which were not subvented by the Government could book sports facilities run by private sports clubs on PRL, **Chief Leisure Service Manager (Recreation & Sport)** said that:

- the HAB had all along been encouraging lessees of PRLs to open up their grounds and sports facilities to NGOs not falling within the definition of "eligible outside bodies", such as Mother's Choice and socially disadvantaged groups. As indicated in the quarterly reports submitted by private sports clubs on PRL, some of them had opened up their venues and facilities to organizations, which were not eligible outside bodies, at low cost; and
- if non-subvented NGOs would like to use the sports facilities run by private sports clubs, they should contact the clubs for hiring the use of their facilities.

45. According to 3.17 of the Audit Report, 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

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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. Noting the extremely low level of usage of private sports clubs' sports facilities by eligible outside bodies mentioned in paragraph 38 above, the Committee queried whether the Secretary for Home Affairs had failed to perform his duty for overseeing PRLs in supporting the renewal of 10 PRLs held by private sports clubs.

46. **Secretary for Home Affairs** disagreed that he had failed to perform his duty for overseeing PRLs in supporting the renewal of 10 PRLs held by private sports clubs for the following reasons:

- the extent of how the sports facilities of private sports clubs had been used by eligible outside bodies was only one of the factors in considering PRL renewals. Other factors included legal advice, the demand for and supply of sports facilities, the investments that private sports clubs had made over the years and the expectation of their members. In fact, most of the private sports clubs had opened up their sports facilities for use by eligible outside bodies at low cost under the "3 x 3" excess requirement and the number of usage hours had sometimes exceeded the said requirement;
- to his understanding, no LegCo Member had requested the Administration not to renew the PRLs that had expired in 2011 or 2012; and
- having regard to LegCo Members' views on private sports clubs with land granted under PRLs, the HAB had exercised due diligence by recommending the implementation of the "opening-up" requirement which was endorsed by ExCo in July 2011.

47. **Deputy Secretary for Home Affairs (2)** and **Chief Leisure Service Manager (Recreation & Sport)** supplemented that:

- as the "3 × 3" access requirement only required lessees to open up their sports facilities for use by eligible outside bodies for no more three sessions of three hours each week (except weekends and public holidays), the HAB therefore did not define how such requirement should be calculated;

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- despite the fact that there was no definition on how the "3 × 3" access requirement was to be calculated, there was quite considerable usage by eligible outside bodies since the implementation of the requirement in 1979 because many of these bodies applied to the clubs for hiring of their facilities, instead of applying via a competent authority or the HAB;
- it was difficult to have a clear picture of the extent to which the eligible outside bodies had used the private sports clubs' facilities under the "3 x 3" access requirement, as there was no condition in the lease requiring the clubs to keep records of such usage and the clubs generally did not keep good records of such usage; and
- with the implementation of the new "opening-up" requirement endorsed by ExCo in July 2011, coupled with the improved publicity mentioned in paragraph 42 above, usage of the sports facilities run by private sports clubs on PRL should be further improved. Under the new "opening-up" requirement, not only were lessees of PRLs that had expired in 2011 or 2012 required to submit for HAB's approval their "opening-up" schemes for use by eligible outside bodies at 50 hours per month or more (instead of the current condition of "no more than three sessions of three hours per week"), they were also required to submit quarterly reports, in a template form, to the HAB on usage under the approved "opening-up" schemes. The latter arrangement had 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 would become a lease condition when their PRLs had been renewed.

Monitoring of the approved "opening-up" schemes

48. **Chief Leisure Service Manager (Recreation & Sport)** advised that:

- in November 2011, the HAB began to invite lessees of PRLs that had expired in 2011 or 2012 to submit their proposed "opening-up" schemes for consideration and approval by the HAB;
- since October 2012, lessees of PRLs that had expired in 2011 or 2012 were asked to submit quarterly reports on the utilization of their sports facilities to the HAB. Information to be provided was as follows:

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- (a) use of facilities by eligible outside bodies, members of lessees and organizations other than eligible outside bodies;
 - (b) nature and details of use, for instance, date of use, name of user, nature of use and fee charged or waived; and
 - (c) cases where applications from eligible outside bodies to use the facilities had been rejected and the relevant details;
- lessees of PRLs that had expired in 2011 or 2012 had submitted their quarterly reports to the HAB, even if their PRLs had not yet been renewed; and
 - all competent authorities were also asked to submit the following information in their quarterly returns to the HAB:
 - (a) use of facilities by eligible outside bodies;
 - (b) nature and details of use, for instance, date of use and name of user; and
 - (c) results of applications from eligible outside bodies to use the facilities.

49. The Committee queried whether requiring lessees of PRLs that had expired in 2011 or 2012 to submit quarterly reports could ensure compliance with the approved "opening-up" schemes. The Committee noted from paragraph 3.23 of the Audit Report two examples of questionable usage by eligible outside bodies reported by clubs. One example, i.e. Example 6, was that a club reported that its facilities had been used by eligible outside bodies for 709 hours in March 2013. Audit however found that the 709 hours included four hours of the children's playground (which was not a type of sports facility included under the approved "opening-up" scheme) used by an NGO. Another example, i.e. Example 7, was that a club reported that its facilities had been used by eligible outside bodies for 97 hours in March 2013. Audit however found that the reported usage was related to usage by two private organizations, which were not eligible outside bodies.

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50. **Chief Leisure Service Manager (Recreation & Sport)** responded that:

- since November 2011, the HAB had been explaining to all 51 lessees of PRLs that had expired in 2011 or 2012, including the 23 lessees of PRLs held by private sports clubs, the further "opening-up" arrangement of the PRLs through the holding of three briefing sessions and other means, such as meetings and email;
- based on the quarterly reports received so far, the HAB noticed that some clubs still had difficulty in understanding what information should be provided in the reports. The HAB's preliminary view was that the clubs did not intentionally falsify the information to be provided in the quarterly reports;
- initial guidelines on reporting on the "opening-up" schemes were issued to private sports clubs in October 2012. The HAB had since received feedback from private sports clubs and plan was in hand to issue revised guidelines by mid-2014;
- if a lessee failed to submit quarterly reports in an accurate and timely manner, the HAB would in the first instance issue a warning letter. In cases of repeated or intentional failure to comply with the reporting requirement, the HAB would consider the case for enforcement action under the lease conditions. The HAB would consider in more detail the issues of penalties for breaching lease conditions in the context of the comprehensive PRL policy review; and
- 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.

51. The Committee considered that merely analyzing the quarterly reports submitted by lessees of PRLs might not be sufficient to ensure the accuracy of the reported usage.

52. **Chief Leisure Service Manager (Recreation & Sport)** advised that the HAB had started verifying the reported usage. The first renewal of a PRL by a private sports club took effect from March 2013, and the HAB was gathering

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experience in recording the reported usage. The HAB aimed to put in place a systemic approach in verifying the reported usage by mid-2014.

D. Monitoring of compliance with lease conditions

53. According to the 1968 and 1979 Review Reports endorsed by ExCo, the private sports clubs should only provide reasonable facilities to meet social functions and other recreational uses ancillary to the main objects. However, according to paragraph 2.9(b) of the Audit Report, such non-sports facilities on the PRL sites include restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, barber shops and private rooms, and the clubs very often earned significant revenues from operating, say, food and beverage services on the PRL sites which were granted to them at nil or nominal premium. The Committee considered that in the absence of a clearly-defined permitted use of the PRL sites, coupled with the absence of any planning standards for use amongst the various recreational, social and ancillary facilities, the clubs could operate a very wide range of sports and non-sports facilities on the PRL sites. Examples 1 and 2 referred to in paragraph 2.9 of the Audit Report were cases in point.

54. **Deputy Secretary for Home Affairs (2)** responded that:

- it was recommended in the 1968 and 1979 Review Reports endorsed by ExCo that a common sense approach should be adopted on the use of PRL sites for non-recreational purposes in that no fixed proportion could or should be laid down in respect of land used for recreational and ancillary purposes because circumstances surrounding individual clubs varied and depended on the nature of the clubs, their membership and other factors;
- in cases where the Lands D was in doubt as to whether the use of PRL sites for non-recreational purposes was reasonable, the HAB would give its views and would also seek legal guidance as to what might be considered a reasonable extent of ancillary facilities on a case-by-case basis;
- it had always been the policy of the HAB that it would not support an application for PRL renewal until the lessee had rectified any breaches of the lease conditions, including excessive provision of ancillary facilities on the site. For instance, the application for PRL renewal by

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the club referred to in Example 1 was still under "hold-over" arrangement, albeit the HAB approved its "opening-up" scheme; and

- in response to the audit recommendation, part of the comprehensive review of the PRL policy was to draw up a set of assessment guidelines to ensure reasonable apportionment of PRL sites.

55. **Director of Lands** supplemented that:

- whilst the existing PRLs did not clearly define the permitted recreational purposes for which the leases were granted, the Special Conditions to the PRLs did prohibit the use of land for non-recreational purposes such as holding meetings, rallies or assemblies of a political nature, for commercial purposes or for commercial advertising;
- to better enable Lands D staff to determine whether the apportionment of PRL sites used for recreational and ancillary facilities was reasonable, the Lands D would work with the HAB to develop a set of assessment guidelines to ensure reasonable apportionment of PRL site; and
- whether, and if so, how the existing lease conditions governing the use of the PRL sites should be more clearly defined would be considered in the context of the comprehensive review of the PRL policy. If implemented, such revised conditions would only impact the renewal of PRLs that expired after 2014.

56. According to paragraph 4.8 of the Audit Report, although the HAB is the policy bureau for PRLs, the Conditions of Grant have not laid down the requirement for the HAB to approve the facilities to be provided on PRL sites and to ensure that only a reasonable proportion of the land on 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. The Committee enquired about the existing delineation of responsibilities between the HAB and the Lands D in monitoring the compliance of lease conditions.

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57. **Secretary for Home Affairs** responded that:

- the HAB had working level exchanges with the Lands D on issues relating to the PRL policy, such as the opening-up of the sports facilities for use by eligible outside bodies and the use of the PRL sites for their intended purposes; and
- part of the comprehensive review of the PRL policy was to examine how the lease conditions in the existing PRLs could be made clearer to better delineate the scope and responsibility between the HAB and the Lands D in the monitoring of lease compliance.

58. **Deputy Secretary for Home Affairs (2)** supplemented that:

- as a policy bureau, the HAB was not equipped to conduct regular on-site inspections to identify unauthorized building works or verify compliance with works-related orders, and would rely on the expertise of the professional departments, such as the Lands D and the Buildings Department, to take the enforcement actions where warranted. If required, these professional departments would bring the matter to HAB's attention and seek clearer policy guidance where necessary;
- the HAB would closely monitor the usage of sports facilities on PRL sites, in particular with regard to the requirement to give greater access to eligible outside bodies in accordance with the approved "opening-up" schemes. Using the quarterly reports as a key monitoring tool, the HAB would follow up with lessees in cases of low utilization and would conduct random checks on the accuracy of the quarterly reports as appropriate; and
- the Administration would examine how the existing mechanism to monitor the use of PRL sites could be strengthened in the course of the comprehensive review of the PRL policy.

59. The Committee noted that 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 included one private sports club which had hired out boat storage/mooring spaces on the PRL site for monthly hiring fees to government departments (paragraph 8 of Example 12 in paragraph 4.13 of the Audit Report

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refers); and at least two private sports clubs which had installed radio base stations on the PRL sites and received licence fee income for such installations as reported in their audited accounts (Example 13 in paragraph 4.13 of the Audit Report refers).

60. **Director of Lands** advised that:

- under the existing arrangements, the Lands D did not conduct regular inspections to the PRL sites to ensure that the land was being used for the intended purpose. However, Lands D staff were required to carry out inspections when they received complaints/referrals or when the PRLs were due for renewal and submissions had to be made to the District Lands Conference; and
- the Lands D would work with the HAB on implementing a more rigorous inspection requirement to PRL sites to ensure that the lands were used in accordance with lease conditions. Opportunity would also be taken to better rationalize the respective scope and responsibility of the Lands D and the HAB in ensuring compliance of lease conditions by lessees.

61. **Director of Lands** further advised that:

- based on the information provided by the concerned government departments, the club as referred to in paragraph 8 in Example 12 had been requested to provide explanation of their arrangements with the departments concerned. The Lands D would follow up when a reply was received from the club; and
- as for the installation of radio base stations as referred to in Example 13, upon the Lands D's request, the club had recently provided relevant information including details of the club's licence agreement with each of the operators. Based on the information provided, the Lands D considered that the grantee concerned had breached the lease condition on restriction on alienation. A letter had been issued to the club demanding the club either to remove the radio base stations or to submit a waiver application; and if approved, would be subject to waiver fees to be imposed by the Lands D.

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62. The Committee noted from paragraph 2.10 of the Audit Report that 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. For example, the club in Example 3 mainly provided a barbecue area on the PRL site. The Committee enquired whether the Administration would take back the PRL sites if the sites were not used as intended.

63. **Deputy Secretary for Home Affairs (2)** responded that:

- in the recent round of PRL renewals, two PRLs held by organizations other than private sports clubs were not renewed because the sites were no longer being used for sports and recreational purposes; and
- the HAB had taken on board the audit recommendation to strengthen the co-ordination between the HAB and the DEVB when considering a PRL renewal to ensure whether the site in question should be taken back for a public purpose.

64. **Chief Leisure Service Manager (Recreation & Sport)** supplemented that the HAB was well aware of the case in Example 3 and discussion was being held with the lessee on how the site should be opened up for use by eligible outside bodies. If the "opening-up" scheme proposed by the lessee was not approved by the HAB, its application for renewal would not be supported by the HAB. Whilst the Administration had the right to take back the whole or part of the site referred to in Example 3 if the site was not being used or under-utilized, it was too early to exercise such right at this stage as the discussion with the lessee on the "opening-up" arrangement was still ongoing.

65. Noting that Lands D staff were required to carry out inspections to the PRL sites when the PRLs concerned were due for renewal, the Committee enquired whether the inspection also covered how the land was utilized for providing sports and recreational facilities.

66. **Director of Lands** explained that the main purpose of site inspection was to check whether the PRL sites were used as intended and whether there were additions and alterations to buildings and structures. However, incorporating the extent the land was used for its intended purposes in the inspection plan would be considered in the context of the comprehensive review of the PRL policy.

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67. According to paragraph 5.4(d) of the Audit Report, about one half of the land held under the PRL granted to a gun club is situated in a Country Park. The Committee noted that 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 parts of the Country Park, the Committee was concerned that this might constitute a threat to the safety of the visitors to Country Park.

68. **Director of Lands** responded that:

- the PRL was first granted to the gun club in 1961, i.e. before 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 ("HKPF"). On all three occasions, the Lands D had consulted the relevant B/Ds (e.g. the Agriculture, Fisheries and Conservation Department), 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; and
- the Lands D would continue to follow up with the relevant parties on the feasibility of erecting a fence to separate the PRL site from other parts of the Country Club. In so doing, due regard would be given to striking a balance between safeguarding public safety and not creating barrier for public access to the Country Park.

69. **Chief Leisure Service Manager (Recreation & Sport)** supplemented that the HAB would not give support to renew the PRL of the gun club, if the HKPF was not satisfied with the safety measures put in place to safeguard public safety.

70. The Committee noted from paragraph 2.20 of the Audit Report that in September 1999, a club 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 an old lease and a short term tenancy ("STT"), with the latter previously let out to the club at market rental. The Committee

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enquired about the justifications for subsuming the STT as part and parcel of the PRL, as by subsuming the STT into the PRL, the Government had foregone annual rentals of some \$0.8 million from the club.

71. **Director of Lands** responded that:

- the granting of the PRL to the club in September 1999 was to rationalize various land holdings held by the club, and the Lands D had obtained policy support from the HAB; and
- 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.

72. **Secretary for Home Affairs** agreed that in future cases involving large site area and/or peculiarities, the Administration should seek the advice of ExCo before granting the PRL.

E. Way forward

73. At the request of the Committee, **Secretary for Home Affairs** provided a timetable for taking forward the audit recommendations set out in paragraphs 5.8 and 5.9 of the Audit Report in *Appendix 16*.

F. Conclusions and recommendations

74. The Committee:

Overall comments

- notes that:
 - (a) for many years, owing to limited public recreational and sports facilities in Hong Kong, the Government has granted lands at nil or nominal premium to private sports clubs on "private recreational leases" ("PRLs") to develop sports and recreational

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facilities for use by their members. In granting land at nil or nominal premium under the PRL policy, the Government is in effect giving private sports clubs significant subsidies for the whole term of the lease;

- (b) private sports clubs on PRLs have become well established in Hong Kong after many years of development. Not only have they made contributions to the promotion of sports developments and supply of recreational and sports facilities in Hong Kong, they also help to attract overseas executives and professionals to work in Hong Kong and maintain Hong Kong's status as an international metropolis;
- (c) as at March 2013, 32 PRLs involving a total site area of some 430 hectares ("ha") were granted to 27 private sports clubs. These clubs have over 140 000 members, and they employ a total of over 6 200 full-time staff with a total annual operating expenditure of around \$5.7 billion;
- (d) the existing Government policy on PRLs is largely based on the recommendations of two Review Reports endorsed by the Executive Council ("ExCo") in 1969 and 1979 respectively;
- (e) based on the decision of ExCo in 1969, lessees of PRLs should open up their sports facilities for use by outside bodies when requested by the competent authorities (i.e. Directors/Heads of a few designated bureaux/departments ("B/Ds")). This policy was further elaborated by ExCo in 1979 to provide in the Special Conditions of the lease that the clubs should permit the use of the grounds and facilities by outside bodies for a maximum period of three sessions of three hours each per week ("3 x 3' access requirement"); and
- (f) to ensure Hong Kong's smooth transition to the People's Republic of China's sovereignty on 1 July 1997, all PRLs that expired prior to 1 July 1997 were renewed for a term of 15 years basically on the same terms and conditions as in their previous leases;

Review of the PRL policy

- finds it unacceptable and inexcusable that:
 - (a) the Home Affairs Bureau ("HAB") had failed to adequately pursue the policy decisions endorsed by ExCo in 1969 and 1979 on the need to clearly define the permitted recreational purpose in the PRLs and that the clubs should only provide reasonable facilities to meet social functions and other recreational uses ancillary to the main objects;
 - (b) with the permitted use of the PRL sites not having been clearly defined and planning standards not having been laid down on how the PRL site was to be apportioned for use amongst the various recreational, social and ancillary facilities, clubs can operate a very wide range of non-sports facilities, such as restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, and barber shops, on the PRL sites as illustrated in Examples 1 and 2 in the Director of Audit's Report ("Audit Report");
 - (c) although all PRLs contain a requirement for the clubs to open up their facilities for use by eligible outside bodies since 1979, there was inadequate publicity and consequently no usage had been arranged through the competent authorities over the years; and
 - (d) there was no clear definition of how the "3 x 3" access requirement was to be calculated nor had the requirement been enforced, for instance, no criteria or procedures had been laid down with the competent authorities for vetting applications from eligible outside bodies, and the private sports clubs were not required to regularly report the usage of their facilities by eligible outside bodies to facilitate monitoring;
- notes that:
 - (a) 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 submitting for the HAB's approval their scheme to open up their facilities to the use of outside bodies to 50 hours per month or more ("the opening-up schemes") and the submission of quarterly reports on usage under the approved schemes;

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- (b) the HAB only started to conduct a comprehensive review of the PRL policy in September 2013, although seven PRLs that expired in 2011 or 2012 had already been renewed by that time (with three more PRLs having been renewed between September 2013 and November 2013). The review will take account of factors such as sports development needs, land use considerations, the overall utilization of the sites, the interests of PRL lessees and their members and the wider public interest. The HAB expects to come up with a way forward for the policy by end 2014;
 - (c) to provide a consistent and equitable treatment of all PRL renewals that expired in 2011 or 2012, the comprehensive review of the PRL policy will not cover the current round of lease renewals of the remaining 13 PRLs that expired in 2011 or 2012; and
 - (d) in order that the outcome of the long-term review would not be prejudiced by the lease renewal exercise in (b) above, the PRL lessees would be advised that there should be no expectation that their leases would be further renewed upon expiry in 15 years, or that even if it would be further renewed, it might not continue to be renewed at nil or nominal premium or on the same terms and conditions as contained in the renewed leases;
- finds it unacceptable and inexcusable that the HAB planned to start to conduct a comprehensive review of the PRL policy only after it has completed the formal renewal process for the PRLs that expired in 2011 or 2012, despite the facts that:
- (a) ExCo was informed by the Administration in 1969 that the Government would review the PRL policy from time to time to ensure that public interest continued to be served;
 - (b) as early as 2002, questions urging the Administration to conduct a review of the PRL policy were raised by Legislative Council ("LegCo") Members at Council meetings and by the LegCo Panel on Home Affairs; and
 - (c) a motion, urging the Administration to renew PRLs for a shorter period of three to five years, pending completion of a review of the terms and conditions of the PRLs to allow greater access to the

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outside bodies, was passed by the LegCo Panel on Home Affairs on 8 July 2011;

- finds it unacceptable and inexcusable that the HAB's prolonged delay in conducting a comprehensive review of the PRL policy to ensure that the public interest is served and its lax attitude in taking forward the PRL policy of providing eligible outside bodies access to the private sports clubs' facilities have not only deprived eligible outside bodies from using the private sports clubs' facilities, such inadequacies have also shortchanged members of the private sports clubs who thought that their entrance fees and monthly subscriptions, some of which were significant sums, had bought them exclusive or priority use of the clubs' facilities;
- considers that whilst private sports clubs' contributions should be recognized and the right of their members to priority use of their facilities should be respected, the clubs should benefit the public by making available their facilities for use by non-members;
- urges that in renewing the PRLs for a 15-year term, the HAB should ensure that the following conditions of the prevailing PRL policy are met:
 - (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;

Implementation of the "opening-up" requirement

- finds it unacceptable and inexcusable that the implementation of the approved "opening-up" schemes:
 - (a) is merely a compromise to allow the private sports clubs to continue to exist and to convince the public that the clubs' repayment to society matches the resources they have enjoyed, having regard to the fact that the clubs' "Members only" policy is in essence in conflict with the Government's objective of opening

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up more of the clubs' facilities to non-members to better serve the public interest; and

- (b) does not imply that the usage of the private sports clubs' sports facilities by eligible outside bodies will necessarily increase, having regard to a number of factors which might discourage eligible outside bodies from using the clubs' facilities: private clubs are generally perceived to be for use by rich or well connected people; the limited scale and range of sports facilities of some clubs cannot support the further or extensive opening up of their facilities and the locations of some clubs are not easily accessible;
- urges the HAB to:
- (a) expeditiously come up with detailed guidelines to help private sports clubs report the scheme usage in their quarterly reports submitted to the HAB; and
 - (b) set up a proper mechanism to verify the reported usage of the clubs' sports facilities by outside bodies;

Monitoring of compliance with lease conditions

- finds it unacceptable and inexcusable that:
- (a) the Lands Department ("Lands D") would only conduct inspections on private sports clubs to ensure that the sites are being used for the intended purposes when it receives complaints/referrals or when the PRLs are due for renewal. 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; and
 - (b) 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 Grants as illustrated in the following examples in the Audit Report:
 - (i) in Example 12, one private sports club was found for hosting on the PRL site wedding banquets/dining functions for members of the public and another club was found to have

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leased storage/mooring spaces on the PRL site to government departments;

- (ii) in Example 13, one private sports club was found to have breached the lease condition on restriction on alienation by failing to first obtain a waiver from the Lands D before allowing the installation of radio base stations on the rooftop of the club's premises which was used for commercial purposes;
- (iii) in Example 14, master plans and building plans for one PRL granted to a private sports club had not been approved by the Lands D since 1995, but the club still proceeded with the building works; and
- (iv) in Example 15, the Lands D had not monitored one private sports club's compliance with one of the lease conditions to permit local visitors to use the golf course on weekdays (subject to an overall limit of 10% of its capacity);

- notes that:

- (a) the HAB and the Lands D have undertaken to clearly define the scope and responsibility between them in conducting inspections on PRL sites and to formulate plans on how such inspections should be conducted on a routine basis; and
- (b) to ensure the effectiveness of monitoring the use of the PRL sites, the Lands D has undertaken to, in collaboration with the HAB, draw up Practice Notes to help assess how PRL sites should in future be reasonably apportioned amongst sports and non-sports facilities to meet the purpose of the PRLs; and

- urges the HAB and the Lands D to expeditiously implement the aforesaid improvement measures to safeguard public interests.

Specific comments

75. The Committee:

Government policy decisions in 1969 and 1979

- notes that:

- (a) as at 31 March 2013, there were 69 PRLs which included 32 PRLs granted to 27 private sports clubs, with four of them holding two or more PRLs each. Of these 32 PRLs, 23 PRLs had expired in 2011 or 2012, but none of them had been renewed in early March 2013. However, as at November 2013, 10 PRLs had been renewed with the remaining 13 PRLs still under "hold-over" arrangement;
- (b) 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. The Lands D supports the HAB in administering the PRLs; and
- (c) the existing PRL policy was primarily established based on the recommendations of two Review Reports, one issued in 1968 and another in 1979, both of which were endorsed by ExCo in 1969 and 1979 respectively, including the adoption of the "Special Conditions for Recreation Club Grants" ("the 1979 Special Conditions") as attached to the 1979 Report;

- finds it unacceptable and inexcusable that:

- (a) no comprehensive policy review of the PRL policy had been conducted since 1979, notwithstanding the increasing problem of land shortage in Hong Kong in recent years, and that the Administration had informed ExCo as early as 1969 that the Government would conduct comprehensive reviews of the PRL policy at suitable intervals as the public interest required and some LegCo Members had made a number of suggestions on the PRL policy as early as 2002;
- (b) the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been

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adequately pursued for implementation. In particular, despite the fact that 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, Audit Commission ("Audit") has found that today, 16 of the 32 PRLs are still granted to private sports clubs for use as a "Recreation Club", a "Sports and Recreation Club", a "Country Club" or a "Community Centre". Although the 1968 Report stated that confining the use of the grounds to purposes defined in the Memorandum and Articles of Association ("M&As") of the clubs had certain weaknesses as a means of control and would render the Government's control ineffective, Audit found that 14 of the 32 PRLs are permitted to use the PRL sites for such other purposes as defined in the clubs' M&As;

- (c) notwithstanding that the 1968 Report and 1979 Report had recommended that the private sports clubs should only provide reasonable facilities to meet social functions and other recreational uses ancillary to the main objects, it transpired that owing to the absence of a clearly-defined permitted use of the PRL sites in (b) 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 private sports clubs today are providing multifarious types of sports and non-sports facilities on the PRL sites. Such non-sports facilities include restaurants, bars, mahjong rooms, massage/sauna rooms, food reflexology rooms, barber shops and private rooms, and the clubs' revenues generated from operating some of these non-sports facilities, particularly from food and beverage operations, were very often significant;
- (d) although the Lands D is empowered to approve developments on PRL sites, yet because of the absence of a clearly-defined permitted use of the PRL sites and the absence of any planning standards to guide on how the PRL site was to be apportioned, it was noted that Lands D staff had difficulties in assessing whether the developments on the PRL site had met the Government's intended purpose and whether the apportionment of land for use amongst various sports and non-sports facilities was reasonable;

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- (e) an effective mechanism is not in place within the Government to monitor the use of the PRL sites. Unlike private treaty grants ("PTGs") for other purposes (such as PTGs granted for the development of private hospitals), no lease requirement is laid down for the HAB as the policy bureau to approve the facilities to be provided on the PRL sites; and
 - (f) whilst many of the private sports clubs are providing various types of sports and non-sports facilities on the PRL sites, there are clubs which are not making effective use of the PRL sites. For example, the club in Example 3 referred to in paragraph 2.10 of the Audit Report is occupying a site area of over one ha by the seaside in the New Territories, but the PRL site was mainly used by club members for barbecue only. Similarly, the club in Example 4 referred to in paragraph 2.10 of the Audit Report is also occupying a site area of over one ha in the urban areas, but has only some 200 members and its sports facilities either have low usage or have been closed for repair;
- finds it unacceptable and inexcusable that, in the absence of an effective mechanism in place for monitoring the use of the PRL sites, the 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, albeit some are not making effective use of the PRL sites;
 - finds it unacceptable and inexcusable that:
 - (a) notwithstanding that the 1968 Report stated that the private sports clubs ought to expand their membership and increase the extent of the use to which their grounds were put, today, as shown in Table 1 in paragraph 2.14 of the Audit Report, some of the clubs still have limited numbers of members, with some even recording a reduction in their membership;
 - (b) although the 1968 Report stated that the Government should review the clubs' membership and ground usage from time to time to ensure that public interest was served, 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. The reduction in the numbers of membership for some of the clubs on the PRL sites is also a cause for concern;

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- (c) some of the 1969 and 1979 policy decisions as endorsed by ExCo had not been properly followed through for implementation;
 - (d) in the case of the Club which is occupying a PRL site of over 100 ha in the New Territories, its number of members had declined since year 2000, but maintained at 2 500 since then for many years. As at 30 September 2013, the Club had some 3 300 debenture holders, but only 2 500 members, which means that some 800 debenture holders might have ceased to be members. Among the 2 500 members, some are not active as they have informed the Club of their desire to surrender their debentures, but might have to wait as long as 20 years before they can surrender their debentures. Some of the Club's facilities have low usage (e.g. 10% for its executive nine golf course); and
 - (e) the advice of ExCo was not sought when the Administration granted a new 21-year PRL involving a site area of some 170 ha in the North District to one Club in September 1999 to replace an old lease and a short term tenancy of 11 ha, with the latter previously let out to the Club at market rental, and to allow the Club to use the PRL site for residential purposes for club members and their families and guests which was deviated from the 1979 Special Conditions, as endorsed by ExCo, in that the lessees (including 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";
- finds it unacceptable and inexcusable that, without the approval of ExCo, the HAB gave its policy support to the granting of the PRL to the Club in (e) above and to the deviations from the 1979 Special Conditions without any further elaborations of how they were justified from a recreation and sport angle, and that the Lands D kept to the accommodation provision previously included in the old lease without including the 1979 Special Condition which requires the lessee to submit Master Plans for any developments on the PRL site to the Director of Lands for approval;
 - expresses serious dismay and finds it unacceptable that, amidst the current environment when land is precious and scarce in Hong Kong, the HAB continued to adopt a lax approach in overseeing PRLs;

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- notes that the HAB has initiated a comprehensive policy review of PRLs in September 2013. During the review, consideration would be given to different development objectives, the public interest on various fronts, long-term policy objectives for sports and recreation, other potential uses of and revenue from the concerned lots, facilities and supporting hardware of the private sports clubs, as well as the interests of the lessees, their members and staff. Apart from the HAB, other policy bureaux and departments such as the Development Bureau ("DEVB"), the Lands D, the Planning Department and the Rating and Valuation Department are taking part in the review. Given the extensive scope and complicated nature of the review, the HAB expects preliminary results to be available by the end of 2014;

Implementation of the "opening-up" requirement

- notes that:
 - (a) 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 competent authorities;
 - (b) in July 2011, ExCo endorsed that the existing 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 eligible outside bodies which include schools, non-governmental organisations receiving recurrent subvention from the HAB and the Social Welfare Department, national sports associations and Government B/Ds;
 - (c) according to the more recent Special Conditions in the lease, 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; and
 - (d) although many of the PRLs had not yet been renewed, the HAB had approved the "opening-up" schemes for 20 of 23 PRLs which were in the process of renewal. In June 2013, the HAB also urged the clubs to start opening up their sports facilities to eligible outside bodies in line with the greater access requirement and to

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step up publicity even if their PRLs had not yet been renewed. Apart from the 10 PRLs which had been renewed and for which quarterly reporting of usage by eligible outside bodies is required as a lease condition, clubs for 13 PRLs did submit quarterly usage reports on a voluntary basis;

- notes that the HAB has started verifying the reported usage. The first renewal of a PRL by a private sports club took effect from March 2013, and the HAB is gathering experience in recording the reported usage. The HAB aimed to put in place a systemic approach in verifying the reported usage by mid-2014;
- finds it unacceptable and inexcusable that:
 - (a) in the past 13 years, the competent authorities had not regularly disseminated information about the availability of the clubs' facilities to eligible outside bodies and had not received any enquiries or requests from eligible outside bodies for using the private sports clubs' facilities. Not until mid-2012 did the HAB begin to publicize that eligible outside bodies might contact the clubs direct to book their sports and recreational facilities during designated time slots for sporting use;
 - (b) notwithstanding that the "3 × 3" access requirement has been effective since 1979, 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 there had not been any clarifications or enforcement of the "3 × 3" access requirement; and
 - (c) a snapshot of the actual usage in March 2013 for the 20 approved "opening-up" schemes, based on the clubs' quarterly reports, shows that in most cases, the actual usage was far below the committed "opening-up" hours, as reported in Table 2 in paragraph 3.20 of the Audit Report, indicating that the HAB needs to continue stepping up its efforts to urge the clubs to promote the availability of their sports facilities;
- urges the HAB to step up its efforts to remind the clubs to promote the availability of their sports facilities;

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Monitoring of compliance with lease conditions

- notes that existing PRLs contain various salient Conditions of Grant which govern user restrictions, restrictions on redevelopment/new development of the site, restrictions on alienation and subletting on the PRL sites, some of which are regulated by other enforcement authorities (such as the Buildings Department). The Lands D however has a role to follow up such outstanding cases during the PRL renewal exercises by liaising with relevant enforcement authorities to ensure that they have been settled before the PRLs are renewed;
- finds it unacceptable and inexcusable that:
 - (a) neither the HAB nor the Lands D had conducted regular site inspections to ensure that land granted under PRL is being used for the intended purposes and is in compliance with the user and related conditions of the PRL;
 - (b) the scope and responsibility for monitoring permitted use and conducting site inspections have not been clearly defined between the HAB and the Lands D;
 - (c) during the current round of renewal exercise, the Lands D identified common breaches of the Condition of Grant in its site inspections and such common breaches included unauthorised buildings works, slopes not properly maintained, breaches of user restriction and encroachment on Government land; and
 - (d) 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:

Suspected commercial activities/subletting on PRLs

- (i) many of the social and ancillary facilities of the private sports clubs, such as restaurants, a bar, sports shops, barber shops, massage rooms, a foot reflexology shop, a beauty salon and a gymnasium, were provided by profit-making third parties;

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- (ii) significant revenues for food and beverage services provided by third parties were sometimes reported in the audited accounts of the clubs;

Hosting of wedding banquets/dining functions on one PRL site

- (iii) one private sports club had hosted some 90 wedding banquets for the public on the PRL site in the past five years;

Leasing of spaces on one PRL site to government departments

- (iv) one private sports club had hired out boat storage/mooring spaces on the PRL site for monthly hiring fees to two government departments;

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

- (v) at least two private sports clubs had installed radio base stations on the PRL sites and received licence fee income for such installations as reported in their audited accounts;

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

- (vi) master plans and building plans for one PRL granted to a private sports club had not been approved by Lands D since 1995, but the club still proceeded with the building works; and

Public use of golf course on one PRL site

- (vii) green fees and fee revisions for public use of the golf courses on one PRL site had not always been approved by Lands D in accordance with the Conditions of Grant, and Lands D did not follow up with the club's omissions to submit the green fee proposal after 1994. In addition, Lands D had not taken steps to publicise the availability of public access to the golf courses and taken any measures to ensure that the club complied with the Conditions of Grant for allowing public use of the golf courses, up to a 10% ceiling of the club's playing capacity per day;

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- urges the Administration to establish a proper monitoring mechanism over PRLs to ensure the clubs' compliance with the Conditions of Grant and to safeguard public interest, including exploring the development of a set of guidelines on PRL conditions and rules which the clubs are expected to observe;
- urges the HAB to critically review the existing PRLs and improve the Conditions of Grant in the long term, taking into account the useful Conditions of Grant identified by Audit;
- notes that:
 - (a) the HAB will work with the Lands D and other Government departments to ensure that PRL sites are used in accordance with lease conditions;
 - (b) the HAB and the Lands D have undertaken to clearly define the scope and responsibility between them in conducting inspections on PRL sites and to formulate plans on how such inspections should be conducted on a routine basis; and
 - (c) to ensure the effectiveness of monitoring the use of the PRL sites, the Lands D has undertaken to, in collaboration with the HAB, draw up Practice Notes to help assess how PRL sites should in future be reasonably apportioned amongst sports and non-sports facilities to meet the purpose of the PRLs;

Way forward

- notes that:
 - (a) in the current round of PRL renewals, the existing PRLs would be renewed subject to their compliance with various criteria, namely the site not being required for a public purpose, there being no significant breach of lease conditions, the lessee having a non-discriminatory membership policy and the HAB having approved the "opening-up" scheme for the club to fulfil the greater access requirement;
 - (b) as at November 2013, 13 PRLs granted to private sports clubs were under "hold-over" arrangement and were at different stages

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of processing for renewal and they will have to be renewed primarily based on the 1979 policy decisions;

- (c) when considering whether a particular PRL should be renewed, the Lands D has been taking a co-ordinating role and would ask the relevant government departments (such as the Planning Department, the Buildings Department, the Highways Department, the Transport Department, etc) whether "the site is required for a public purpose", and in most cases, the latter would reply individually that they had no comment/objection. According to paragraph 5.4(a) of the Audit Report, such an approach to assess whether the PRL site would be required for a public purpose is too fragmented and a more coordinated approach is required in future to assess whether the PRL sites are or will be required for public purposes;
 - (d) the DEVB, as the policy bureau for land use planning, has agreed to support the HAB in the forthcoming PRL policy review and in assessing whether any of the PRLs due for renewal should be renewed; and
 - (e) for over 30 years, about half of the PRL site (involving three ha) granted to a gun club for shooting practices by the club members was situated in a Country Park, but the PRL site was not fenced off to separate it from other areas of the Country Park;
- urges the Secretary for Home Affairs to follow up on Example 16 referred to in paragraph 5.4(d) of the Audit Report which may constitute a threat to the safety of the visitors of the Country Park if the PRL site is allowed to continue overlapping with the Country Park;
 - notes that the HAB has agreed to:
 - (a) work in collaboration with the DEVB, the Lands D and other relevant B/Ds to complete its comprehensive review of the PRL policy by the end of 2014;
 - (b) take into account, in the forthcoming PRL policy review, the needs and demands of different stakeholders (namely, the interests of the private sports clubs on the PRLs and their members, and the wider public interest), and the audit observations and recommendations in the Audit Report;

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- (c) set up an effective mechanism to monitor the use of PRL sites, including the requirement to approve the developments on the PRL sites, drawing 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 and keeping the clubs' membership and their use of the PRL sites under regular review; and
 - (d) conduct a similar review of the 37 PRLs granted to non-governmental organizations and other organizations as mentioned in paragraph 1.3(b) to (e) of the Audit Report to ascertain if the Administration is facing similar problems and challenges ahead with these PRLs;
- notes that:
- (a) the Secretary for Home Affairs has accepted the audit recommendations in paragraphs 5.8 and 5.9 of the Audit Report, including that in future cases of sufficient importance, seek the advice of ExCo before granting the PRL;
 - (b) the Secretary for Development and the Director of Lands stand ready to contribute to the HAB's forthcoming PRL policy review;
 - (c) the Lands D will support the HAB in implementing policy decisions arising from the review and will work with the HAB in examining how best to monitor the uses of land under PRLs; and
 - (d) the Lands D will continue to follow up individual cases of irregularities/suspected non-compliances with Conditions of Grant identified in the Audit Report in conjunction with the HAB and other B/Ds as appropriate.

Follow-up action

76. The Committee wishes to be kept informed of the progress made in implementing the various audit recommendations; the effectiveness of the enhanced systems and procedures for coordinating, monitoring and regulating direct land grants made to private sports clubs at nil or nominal premium; and the results of the comprehensive review of the PRL policy.