

LCQ19: Trading funds

Following is a question by the Hon Dennis Kwok and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr Joseph Chan, in the Legislative Council today (January 15):

Question:

The Court of Final Appeal has pointed out, in a judgment on a judicial review case concerning the Office of the Communications Authority Trading Fund (OFCATF) handed down on December 27, 2017, that the objectives for the establishment of a trading fund under the Trading Funds Ordinance (Cap. 430) are directed to self-funding from income generated by the trading fund. As such, the authorities erred by wrongly construing Cap. 430 as permitting the inclusion in OFCATF's budgets projections for notional tax or dividends to be treated as surplus funds to be transferred to the general revenue. Moreover, as the Telecommunications Ordinance (Cap. 106) does not authorize recovery in excess of cost by the authorities, any incidental profits made in OFCATF's operation cannot be a "distributable profit" transferable into the general revenue under Cap. 430. With effect from the date on which the judgment was handed down, the five trading funds established by the Government under Cap. 430 (namely OFCATF, the Companies Registry Trading Fund, the Electrical and Mechanical Services Trading Fund, the Land Registry Trading Fund and the Post Office Trading Fund) are no longer required to pay notional profits tax and dividends to the Government. In this connection, will the Government inform this Council:

(1) of the reasonable rate of return on the fixed assets as determined by the Financial Secretary (FS) for each of the trading funds in each of the past three financial years;

(2) whether, in the light of the aforesaid judgement, (i) FS has adjusted the reasonable rates of return that he has determined for the various trading funds, and (ii) the relevant fees and operational arrangements of the various trading funds have been adjusted; if so, of the details; if not, the reasons for that; and

(3) whether it will consider ploughing the proceeds received as notional profits tax and dividends from the various trading funds before December 27, 2017, together with interests, back to the respective trading funds; if so, of the timetable and the amounts involved; if not, the reasons for that?

Reply:

President,

Our reply to the Hon Dennis Kwok's question is as follows:

Trading funds are distinct accounting entities established under the

Trading Funds Ordinance (Cap. 430) (TFO). While remaining as part of the Government, they have been given greater financial and operational flexibilities for the provision of government services. The objectives of establishing trading funds are to improve the quality of government services and enhance responsiveness to customer demands.

The judgment handed down by Court of Final Appeal (CFA) in December 2017 held that the Government erred in construing the TFO as permitting the inclusion of projections for notional profits tax or dividends in the budgets of the Office of the Communications Authority Trading Fund (OFCATF). On the other hand, the CFA judgment recognised that a reasonable return on fixed assets employed as determined by the Financial Secretary under section 6(6)(c) of TFO (target rate of return) is consistent with cost recovery as it was designed to remove any government subsidy by requiring payment for fixed assets provided by Government. Therefore the target rate of return is in conformity with the law.

The target rates of return are reviewed every five years and the last review was completed in 2016-17. The prevailing target rates of return are valid from 2017-18 to 2021-22. The target rates of return of the trading funds for the past three financial years are as follows:

Trading fund	2016-17	2017-18	2018-19
Land Registry Trading Fund	6.9%	5.9%	5.9%
Companies Registry Trading Fund	6.7%	5.7%	5.7%
OFCATF	6.7%	5.5%	5.5%
Post Office Trading Fund	5.9%	2.6%	2.6%
Electrical and Mechanical Services Trading Fund	7.8%	6.4%	6.4%

In the light of the CFA judgment, the Government revised the financial management policies of the trading funds in which the trading funds no longer take into account notional profits tax and dividend in preparing their budgets. They are only required to transfer the target rate of return to the Government and they are also advised to review their fees and charges as appropriate.

OFCATF has effected a fee reduction on some of its licences in January 2019 after conducting a fee review in 2018.

The Government will continue to monitor the trading funds to ensure they adhere to the revised financial arrangements.