



REPUBLIC OF MAURITIUS

NATIONAL AUDIT OFFICE

PERFORMANCE AUDIT REPORT

MANAGING ARREARS OF REVENUE

Ministry of Finance and Economic Development

SEPTEMBER 2019

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PREFACE

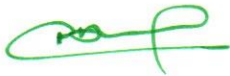
Section 110 of the Constitution gives the authority to the Director of Audit to audit and report on public accounts of Mauritius, all courts of law, all authorities and officers of the Government.

Section 16(1A) of the Finance and Audit Act also requires the Director of Audit to carry out Performance Audit and report on the extent to which a Ministry, Department, or Division is applying its resources and carrying out its operations economically, efficiently and effectively.

I am pleased to submit to the Honourable Prime Minister and Minister of Finance and Economic Development, and through him to the National Assembly, the Performance Audit Report on 'Managing Arrears of Revenue' – Ministry of Finance and Economic Development.

The Report contains findings of the audit, conclusions and recommendations that have focused mainly on the effectiveness of the role of Ministry of Finance and Economic Development to ensure that the mechanisms for managing Arrears of Revenue at Ministry of Housing and Lands, Registrar General's Department and Corporate and Business Registration Department were appropriate, and whether their practices and procedures for accounting Arrears of Revenue, as well as the debt recovery and monitoring mechanisms to maximise collection of Government Revenue were effective. The audited entities were given the opportunity to comment on the Report and confirm its contents.

I take this opportunity to express my sincere thanks to all the staff who worked on the report. Without their contribution and commitment, the submission of this Report would not have been possible. I also acknowledge the cooperation and collaboration of the Accounting Officers of the audited entities and their staff.



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CONTENTS

	Page
ABBREVIATIONS AND ACRONYMS	iii
EXECUTIVE SUMMARY	1
CHAPTER ONE – INTRODUCTION	
1.1 Background	7
1.2 Motivation	7
1.3 Audit Objective	7
1.4 Audit Design	8
1.5 Audit Scope	8
1.6 Audit Methodology	8
1.7 Methods of Data Collection	8
1.8 Sampling	9
1.9 Assessment Criteria	9
1.10 Data Validation Process	10
1.11 Structure of the Report	10
CHAPTER TWO – DESCRIPTION OF THE AUDIT AREA	
2.1 Introduction	11
2.2 Arrears of Revenue in Ministries and Departments	11
2.3 Roles and Responsibilities of Ministry of Finance and Economic Development	11
2.4 Other Bodies falling under the Purview of Ministry of Finance and Economic Development	13
2.5 Audit Committee of Ministry of Finance and Economic Development	13
2.6 Implementation of International Public Sector Accounting Standards	14
2.7 Recognition and Measurement of Arrears of Revenue	14
CHAPTER THREE – FINDINGS	
3.1 Oversight Role of Ministry of Finance and Economic Development on Arrears of Revenue	19
3.2 Recognition and Measurement of Arrears of Revenue	22
3.3 Completeness and Accuracy of Arrears of Revenue	24
3.4 Recovery Mechanisms of Arrears of Revenue	29
3.5 Monitoring Mechanisms of Arrears of Revenue	34

Continued

CONTENTS (*CONTINUED*)

CHAPTER FOUR - CONCLUSION	39
CHAPTER FIVE - RECOMMENDATIONS	
5.1 Ministry of Finance and Economic Development	41
5.2 Corporate and Business Registration Department	41
5.3 Ministry of Housing and Lands	42
5.4 Registrar General's Department	42

ABBREVIATIONS AND ACRONYMS

AGO	Attorney General's Office
ARC	Assessment Review Committee
CBRD	Corporate and Business Registration Department
CBRIS	Companies and Businesses Registration Integrated System
DPP	Director of Public Prosecutions
FMM	Financial Management Manual
FM Kit	Financial Management Kit
GBL	Global Business Licenses
ICC	Internal Control Cadre
IPSAS	International Public Sector Accounting Standards
LOI	Letter of Intent
LOR	Letter of Reservation
MeRP	Mauritius e-Registry Project
MoFED	Ministry of Finance and Economic Development
MHL	Ministry of Housing and Lands
NAO	National Audit Office
RGD	Registrar General's Department

EXECUTIVE SUMMARY

Collecting revenue is a crucial function of Government. The main sources of revenue are from Taxes, Proceeds from Borrowings, and from other sources, such as Property Income, and Sales of Goods and Services. Ministries and Departments have been facing several challenges in collecting all revenues. As at 30 June 2018, the total uncollected revenue by them, as per Treasury records, amounted to some Rs 4,500 million.

Although there are several mechanisms to ensure that all revenues are collected promptly, there has been an accumulation of Arrears of Revenue at the Ministry of Housing and Lands (MHL), Registrar General's Department (RGD) and Corporate and Business Registration Department (CBRD) reaching some Rs 1,349 million as at end of June 2018. Furthermore, past Audit Reports of the National Audit Office (NAO) highlighted shortcomings in their debt recovery mechanisms.

This Performance Audit has been carried out in the context of Government's objective to prepare its financial statements in compliance with International Public Sector Accounting Standards by 2022-23. It assessed the effectiveness of the role of Ministry of Finance and Economic Development (MoFED) to ensure that the mechanisms for managing Arrears of Revenue at CBRD, RGD and MHL were appropriate. The audit also assessed whether the practices and procedures of the three Government entities for accounting Arrears of Revenue, as well as their debt recovery and monitoring mechanisms to maximise collection of Government Revenue were effective.

Key Findings

(a) Oversight Role of Ministry of Finance and Economic Development on Arrears of Revenue

One of the roles of MoFED is to ensure that Ministries and Departments are managing appropriately their arrears with a view to maximising collection of their revenue. Shortcomings, as elaborated below, in some of the mechanisms put in place by MoFED did not help it to fulfil its role effectively.

(i) Internal Audit Activities

- According to Financial Instructions, the Director, Internal Control is required to prepare and submit to the Financial Secretary an Annual Internal Audit Report highlighting major findings, including those that relate to Arrears of Revenue. As from 2014, the Internal Control Cadre (ICC) did not appropriately inform the Financial Secretary of the major findings relating to Arrears of Revenue that would allow him to initiate corrective measures.
- As at end of January 2019, CBRD was still awaiting the advice from the Director, Internal Control to write off debts, submitted to him in November 2018. For the half year ended 30 June 2017, the advice for write off was received more than five months after. Due to delay in providing the advice, Arrears of Revenue were unnecessarily overstated.

- At MHL, in March 2018, ICC advised the Ministry to seek the approval of MoFED to write off those Arrears of Revenue of less than Rs 5,000 owed by 6,431 lessees, as the administrative costs of handling these debts could be higher than recovering them. As of January 2019, no action had yet been taken.

MoFED replied that according to Financial Instructions, authority for write off rests with the Accounting Officer.

(ii) Follow up of Arrears of Revenue

MoFED has an Audit Committee to follow up, among others, issues pertaining to Arrears of Revenue at Departments falling under its aegis. Recommendations made by the Committee in February and April 2018 were not implemented as of December 2018. For Ministries and Departments not falling under its aegis, there was no appropriate mechanism enabling MoFED to monitor the progress of actions being taken to address issues raised by the Director of Audit and Internal Control Unit.

(iii) Reporting on Arrears of Revenue

The total Arrears of Revenue as of the end of each financial year is disclosed in the Statement of Arrears of Revenue (Statement N) of the Annual Statements of the Treasury. At RGD, amounts under dispute which have been referred to the Objection Unit and the Assessment Review Committee totalling some Rs 490 million were excluded from the disclosure. The recoverability of the Rs 490 million was not assessed.

(b) Recognition and Measurement of Arrears of Revenue

Issues relating to recognition and measurement of Arrears of Revenue are as follows:

(i) Corporate and Business Registration Department - Composition Fees not Recognised as Arrears of Revenue

A person who has not paid its Registration Fees after one month of the date of reminder issued and/or who has failed to file its annual return or financial statements as required by the Companies Act, and within 30 days of the date of reminder may have the offence compounded. At CBRD, the unpaid Composition Fees were not accounted for as Arrears of Revenue.

(ii) Ministry of Housing and Lands - Rental Due from Lease Agreements not Signed

According to advice from the Attorney General's Office, the validity and effectiveness of a lease is subject to a deed drawn up and signed by both the Ministry and the lessee. In the absence thereof, should the Ministry be able to provide evidence that the land had been occupied and used, indemnity can be charged. From a sample of 16 'lessees' to whom Letters of Intent for Industrial Leases were issued, six of them had not signed their deeds/ lease agreements, but the sum of some Rs 91.7 million owed by them as of 30 June 2018 was included in total Arrears of Revenue. Further, the Ministry could not ascertain whether the plots of land were occupied so as to charge indemnity for use and occupation.

MHL replied that necessary action is being initiated to tag lessees where deeds have not been signed in the system so as to exclude them in the Return of Arrears of Revenue.

(c) Completeness and Accuracy of Arrears of Revenue

Issues regarding the effectiveness of the practices and procedures to ensure completeness and accuracy of Arrears of Revenue are described below.

(i) Corporate and Business Registration Department - Reports showing Real Time Information

There were limitations in the Companies and Businesses Registration Integration System (CBRIS). Arrears contracted during 2017-18 amounted to some Rs 19.5 million. The correctness of the figure could not be ascertained as historical records to support it was not available at CBRD. The Information System could only generate real time information. In addition, a sum of Rs 9.4 million, which was purported to represent collections pertaining to 2017-18 from all types of entities, was a balancing figure.

(ii) Registrar General's Department - Figures included in the Return of Arrears of Revenue

In the Return of Arrears of Revenue submitted to Treasury, there were arithmetical errors, inconsistencies and discrepancies in the figures contained therein. The figures were also not supported by appropriate records. For the period January to June 2018, Arrears of Revenue for Land Transfer Tax were wrongly stated as Rs 161.7 million instead of Rs 154.8 million.

(iii) Ministry of Housing and Lands

➤ *New Arrears and Collections*

Details to substantiate new Arrears of Revenue of some Rs 652 million and Collections totalling Rs 386 million for financial year 2017-18 pertaining to Campement Site Leases Rental, Campement Site Leases Premium, and Other Land Leases were not available at the Ministry. Moreover, the collections of Rs 386 million were not analysed into amounts collected for the current and previous periods. Thus, the debts recovery rate of previous periods could not be assessed.

➤ *Cost Sharing Mechanism*

With a view to regularising leases of State Lands with no infrastructural facilities, in the Budget Speech 2016-17, Government proposed that rent would become payable after finalisation of a cost sharing mechanism to enable the promoters to start construction works. However, this proposal was not followed by Financial Regulations. As at 30 June 2018, some Rs 210 million, representing sum not yet paid by those lessees/promoters were included in total arrears. MHL could not ascertain the recoverability of the amount due.

MHL informed that Regulation has been made under the State Lands Act in February 2019.

(d) Recovery Mechanisms of Arrears of Revenue

Issues regarding the effectiveness of the recovery mechanisms to maximise Government revenue are:

(i) Corporate and Business Registration Department - Assessment of Measures Taken

The Registrar took several actions, including imposition of higher fees after the due date, compounding of offences, and removal of a company from the Register with regard to non-payment of the annual Registration Fees, and the non-filing of returns. The effectiveness of the actions to recover the Arrears of Revenue was not assessed by CBRD.

(ii) Ministry of Housing and Lands - Debt Recovery Unit

A Debt Recovery Unit was set up at MHL in February 2015. To ensure its proper functioning, the Ministry had to prepare relevant guidelines for debt recovery. However, as of December 2018, this Unit was not yet operational, and the relevant guidelines were still not prepared by MHL.

MHL informed that the Debt Recovery Unit has been reconstituted since February 2019.

(e) Monitoring Mechanisms

Issues regarding the effectiveness of the monitoring mechanisms are as follows:

(i) Corporate Business and Registration Department - Companies under Receivership

The records of a sample of 120 companies that had not paid their Registration Fees for the period 1999 to 2010 and owing some Rs 8 million were examined. Of the 120 records examined, 52 companies owing some Rs 4.3 million went into receivership either in the 1990's or early 2000's. CBRD has started procedure for the removal of these companies since 2013. However, as at December 2018, the removal of these companies had not been finalised.

(ii) Registrar General's Department - Allowed Cases

The Land (Duties and Taxes) Act provides that where any objection for amount claimed is not dealt with within the specified period, it is considered to have been allowed by the Registrar. From July 2015 to May 2018, 260 cases for amounts claimed totalling some Rs 19.9 million lodged at the Objection Unit were not dealt within the prescribed period, and thus had been allowed by RGD. This represented loss of Government Revenue.

MoFED replied that the Valuation Department has been invited to follow up closely to ensure that hearings at the Objection Unit are dealt within the prescribed time.

(iii) Ministry of Housing and Lands - Issue of Notices or Claims

Notices of Claims are issued by post to all lessees who owe more than Rs 500. The undelivered Notices of Claim are sent to the Registry for filing in respective lessees' files

in order to arrange for site visits by the Survey Section. For financial year 2017-18, the Finance Section could not produce information on the number of undelivered Notices of Claims sent to the Survey Section for follow up.

MHL informed that since February 2019, undelivered claims are put in files and forwarded to the Survey Section to obtain the exact address, and fresh claims are then issued.

Conclusion

The non-adoption of some of the practices, as well as the non-compliance with some of the procedures did not allow MoFED to take timely corrective action for maximising collection from arrears, and to fulfil its role effectively. For Ministries, such as MHL, and Departments other than those under its aegis, MoFED did not have a proper mechanism to oversee follow up on arrears.

At CBRD, RGD and MHL, the Arrears of Revenue have not been properly accounted for as some of the practices adopted and procedures followed have not been effective. The shortcomings identified in the procedures, practices, and in their respective Information Systems have not been adequately addressed to ascertain completeness and accuracy of Arrears of Revenue. The monitoring and recovery mechanisms have not been sufficient to maximise collection from arrears.

Key Recommendations

Ministry of Finance and Economic Development

MoFED may consider the setting up of a Central Monitoring Unit to oversee the management of Arrears of Revenue in Government entities, and which could be assigned, among others, the responsibilities to:

- Ensure that a consolidated report on issues raised by the ICC, including on Arrears of Revenue at Ministries and Departments, as required by Financial Instructions is submitted to the Financial Secretary. This would allow him to initiate timely corrective measures.
- Ensure that the recommendations of the Audit Committee to RGD are considered and implemented promptly or explore other options to address issues relating to Arrears of Revenue. For Ministries and Departments not falling under its aegis, it should monitor the progress of measures being taken to address issues raised by the Director of Audit and Internal Control Units.
- Ascertain that the advice for write off of arrears from the Director, Internal Control is provided within an agreed time frame. It should also assist Ministries and Departments in assuring that the figures for arrears submitted to the Treasury are complete and accurate. An assessment of the recoverability of the amounts under dispute at all Ministries and Departments should also be carried out and appropriately accounted for. With regard to setting an agreed time frame, MoFED replied that it is agreeable provided the Director, Internal Control is given all information and evidences required.

- Ensure that the recommendations made to CBRD, RGD and MHL as listed below are implemented.

Corporate and Business Registration Department

CBRD should speed up the procedures for removal of companies under receivership. The limitations of CBRIS should be addressed promptly. The unpaid Composition Fees should be included in the Arrears of Revenue figures. The Enforcement Section should ensure that there is a proper and timely follow-up of all undelivered reminders.

Ministry of Housing and Lands

In view of the current inconsistent manner Arrears of Revenue are recognised and measured, MHL, in consultation with MoFED, will have to come up with the appropriate accounting policy. The Debt Recovery Unit which has been reported to have been re-constituted should be made operational to support management of debt.

Registrar General's Department

- RGD should, in consultation with MoFED, assess the recoverability of the amounts still under dispute, and inform Treasury accordingly. It should also ensure that figures submitted to Treasury are correct.
- Transferor and transferee should be required to inform RGD promptly of any change in address. RGD should also consider liaising with relevant authorities to follow up the untraceable debtors.

CHAPTER ONE

INTRODUCTION

This Chapter provides the background of the subject matter and describes the approach used to conduct this Performance Audit.

1.1 Background

Collecting revenue is a crucial function of Government. In Mauritius, the system of public finance provides for the raising of funds, mainly through Taxes, Proceeds from Borrowings, and from other sources, such as Property Income, and Sales of Goods and Services. Although Government has put in place a management framework to ensure that all revenues are collected promptly in compliance with the existing legal framework, Ministries and Departments have been facing several challenges, resulting in an accumulation of arrears over the years. The total uncollected revenues as per Returns of Arrears of Revenue at 30 June 2018 submitted to Treasury by the Mauritius Revenue Authority, the Judiciary and Ministries and Departments stood at some Rs 6,750 million, Rs 46 million and Rs 4,500 million respectively.

1.2 Motivation

Every year, the Ministry of Finance and Economic Development (MoFED), through its Budget Circulars, requests revenue collecting Ministries and Departments to closely monitor their respective Arrears of Revenue. Yet, from 30 June 2017 to 30 June 2018, Arrears of Revenue for Ministries and Departments have increased from Rs 3,800 million to Rs 4,500 million. Furthermore, past Audit Reports of the National Audit Office (NAO) highlighted shortcomings in the debt recovery mechanisms at several Ministries and Departments.

As from financial year 2022-23, Government will prepare its financial statements in compliance with International Public Sector Accounting Standards (IPSAS), and revenue and arrears will be accounted for using the accrual basis. Hence, it is important to ascertain whether revenue collecting Ministries and Departments have the appropriate mechanism to ensure completeness and accuracy of their arrears and their prompt recovery.

It was against this background that NAO carried out this Performance Audit on 'Managing Arrears of Revenue'.

1.3 Audit Objective

The audit assessed the effectiveness of the role of MoFED to ensure that the mechanisms for managing Arrears of Revenue at the selected Ministry and Departments were appropriate. It also assessed whether their practices and procedures for accounting Arrears of Revenue, as well as the debt recovery and monitoring mechanisms to maximise collection of Government Revenue were effective.

1.4 Audit Design

The audit objective is further detailed by the audit questions and audit scope as described below:

- Was the role of MoFED effective in ensuring that the mechanisms for managing Arrears of Revenue at the selected Ministry and Departments were appropriate?
- Were the practices and procedures adopted by the selected Ministry and Departments effective in ensuring that Arrears of Revenue were correctly accounted for?
- Did the selected Ministry and Departments have effective monitoring and recovery mechanisms to maximise collection of revenue?

1.5 Audit Scope

This audit focused on the role of MoFED in ensuring that the mechanisms for managing Arrears of Revenue at the Registrar General's Department (RGD) and the Corporate and Business Registration Department (CBRD) falling under its aegis, and the Ministry of Housing and Lands (MHL) were appropriate. These Departments and Ministry were selected as their arrears related to amounts owed by members of the public and private entities and their significance on total arrears of Ministries and Departments, excluding those of Treasury.

The relevant procedures and practices with regard to the recognition and measurement of arrears to ascertain their completeness and accuracy at these Government entities were examined. The audit covered the period 1 July 2017 to 30 June 2018. However, data from July 2015 to June 2018 has been taken to get a better insight on the evolution of the arrears figures. The Report includes status of initiatives on managing Arrears of Revenue up to January 2019.

1.6 Audit Methodology

The audit was conducted in accordance with the requirements of the NAO Performance Audit Manual, which is based on International Standards of Supreme Audit Institutions. Different methodologies were used to understand the audit area, along with obtaining sufficient, relevant and reliable audit evidence that support the conclusions and recommendations.

1.7 Methods of Data Collection

Data was collected mainly from files and documents reviewed and interviews. Financial information was extracted from the different Information Systems of the selected entities. The data from the Treasury Accounting System for the financial years 2015-16 to 2017-18 was analysed to identify trend in the Arrears of Revenue at the selected Ministry and Departments.

1.7.1 Documents Reviewed

Information relating to policies, guidelines, regulations, processes, systems, procedures and practices was collected through review of files and documents at MoFED, MHL, CBRD and RGD. Financial information was extracted from the Annual Reports of the Accountant General and MoFED so as to confirm information obtained from other sources. Regulations, relevant Acts and Financial Instructions pertaining to revenue were consulted. Several documents relating to revenue collection and arrears at the selected Ministry and Departments were also scrutinised.

1.7.2 Personnel Interviewed

The team interviewed key personnel at middle and senior management levels at MoFED and the selected Ministry and Departments with a view to understanding the revenue procedures and practices, including debt recovery processes. Interviews were also conducted to confirm the information obtained from the documents reviewed and for providing more explanations where information was not available in the reviewed documents.

1.8 Sampling

At CBRD, the cumulated Arrears of Revenue at 30 June 2018 with respect to Domestic Companies and Global Business Licences (GBLs) stood at some Rs 38.8 million and Rs 26.8 million respectively, and represented some 84 per cent of its total arrears. Arrears pertaining to Partnerships and Foundations were excluded.

At RGD, the audit focused on Arrears of Revenue relating to Registration Duty, Land Transfer Tax and Leasehold Right Tax as they accounted for some 89 per cent of the total arrears of the Department as at 30 June 2018. Arrears relating to Capital Gains Tax and Campement Tax were excluded.

At MHL, the Arrears of Revenue pertaining to Campement Site Leases Premium and Rental, and Industrial Site Leases were selected for examination as they accounted for 96 per cent of the total arrears of the Ministry as at 30 June 2018. Arrears of the ex-Central Housing Authority were excluded.

1.9 Assessment Criteria

Assessment Criteria are the standards to be met by the audited entities. These were used as a basis for evaluating the evidence collected, developing audit findings and reaching conclusions on the audit objective. They were extracted from the following sources:

- Companies Act;
- State Land Act;
- Land (Duties and Taxes) Act;

- Finance and Audit Act;
- Financial Instructions from MoFED;
- Relevant sections of Financial Management Manual (FMM), Financial Management Kit (FM Kit), Notes of Meetings of Audit Committees at CBRD and RGD;
- Extracts from Lease Agreements.

Details on the other assessment criteria used are in the relevant Sections in this Report.

1.10 Data Validation Process

Management of the selected Ministry and Departments was provided with the audit criteria to confirm their relevance, accuracy and suitability. Draft Performance Audit Report/ Management Letters were then issued to MoFED and the selected Ministry and Departments for them to take cognisance of the findings, conclusion, followed by practicable recommendations.

1.11 Structure of the Report

The remaining part of the Report covers the following:

- Chapter Two presents the audit area, roles and responsibilities of key players and other stakeholders involved in managing Arrears of Revenue;
- Chapter Three presents the audit findings based on the audit questions;
- Chapter Four provides audit conclusion; and
- Chapter Five outlines the recommendations based on the audit findings and conclusion.

CHAPTER TWO

DESCRIPTION OF THE AUDIT AREA

This Chapter describes the audit area, the roles and responsibilities of key players and other stakeholders involved in managing Arrears of Revenue

2.1 Introduction

In this Chapter, the regulatory framework governing Arrears of Revenue at the selected Ministry and Government Departments are outlined. The objectives, roles and responsibilities of MoFED, MHL, RGD and CBRD are described. Key aspects of the procedures and practices in recognising and measuring Arrears of Revenue, and the recovery and monitoring mechanisms to ensure maximum collection of the revenue are also described.

2.2 Arrears of Revenue in Ministries and Departments

Funds raised by Government are paid into the Consolidated Fund. Receipts take the form of revenue raised under the relevant Revenue Laws, grants received, loans raised or deposits. The various Revenue Laws define in specific terms the rate and scale of the relevant duty or tax leviable, as well as the circumstances under which payments become due. Revenue-collecting Ministries and Departments are charged with the responsibility for assessment, claim, collection and accounting. When these amounts due are not paid to Government within the period prescribed in their respective laws, this results in arrears. Over the years, there has been an accumulation of these Arrears of Revenue reaching some Rs 1,349 million as at end of June 2018 for the three selected Government Entities. Owing to the increasing trend and significance of arrears, their efficient and effective management has become an important function for Government.

There are several stakeholders involved in the management of arrears. Their roles and responsibilities are described below:

2.3 Roles and Responsibilities of Ministry of Finance and Economic Development

According to its Mission Statement, MoFED has to optimise revenue mobilisation. Hence, one of its key responsibilities is to ensure financial soundness of Government's economic policies and the proper control of revenue and expenditure. The Financial Secretary, as Accounting Officer, has the responsibility to ensure that the functions of MoFED are carried out economically, efficiently and effectively, and its objectives duly achieved.

The key functions of MoFED include the following:

- Prepare the annual Budget Estimates in collaboration with Ministries and Departments;

- Provide support, through Sector Ministry Support Team, to Ministries and Departments in the formulation of their strategic plan, preparation, planning, execution and monitoring of their Performance Based Estimates;
- Monitor the performance of Mauritius Revenue Authority and other major revenue collecting Departments;
- Provide support to Ministries and Departments for effective and efficient Financial Operations, Procurement and Supply and Internal Audit activities;
- Issue of Financial Instructions.

To fulfil its key functions, MoFED is assisted by several key Public Officers. It delegates its financial powers to Accounting Officers of Ministries and Government Departments. Their duties, roles and responsibilities in the revenue collection process are defined in the FMM and the FM Kit, where relevant and are described below:

2.3.1 Duties and Responsibilities of key Public Officers in relation to Financial Management

Accounting Officers

The Accounting Officer is an officer designated under the Finance and Audit Act by the Minister to whom the responsibility for the subject of finance is assigned, and who is charged with the duty of controlling expenditure on any service in respect of which public funds have been appropriated, and collecting revenue, and paying that revenue into public funds. The Accounting Officer is the officer who is answerable to the Public Accounts Committee.

Director Financial Operations

The Director Financial Operations is responsible for providing advice and guidance to the Financial Secretary and other Accounting Officers on financial operations, thereby providing better support in the implementation of Government policies and programmes. The Director Financial Operations is responsible, amongst others, to keep and maintain a database of write off cases (irrecoverable arrears of revenue, thefts, losses and advances) approved by Accounting Officers to enable MoFED to oversee the efficiency and effectiveness of the write off system and recovery of arrears and to prepare draft Financial Instructions, as and when required, for approval by the Financial Secretary.

The role and responsibilities of other key players in relation to management of Arrears of Revenue, and the duties of relevant officers in the revenue collection process are described below.

2.4 Other Bodies falling under the Purview of Ministry of Finance and Economic Development

2.4.1 Internal Control Cadre

The Internal Control Cadre (ICC) operates under the aegis of MoFED. Officers of the ICC are posted in the Internal Control Units of Ministries and Departments. These Units report directly to the Accounting Officers of each Ministry and Department. Their main objective is to provide independent and objective assurance on the design and effectiveness of controls in place to manage the key risks areas in the achievement of Government's objectives through recommendations to improve governance, risk management and control processes.

In respect of management of Arrears of Revenue, ICC's responsibilities, amongst others, are to identify key risks and strengthen internal control mechanisms through carrying out efficient and effective internal auditing in revenue collecting Ministries and Departments. In addition, with regard to writing off of Arrears of Revenue, its role is spelt out in Financial Instructions No. 1 of 2013, which, amongst others, is to verify cases of write off referred to it by Accounting Officers.

2.4.2 Treasury - Accountant General

FM Kit provides definition of the roles and responsibilities of the Accountant General. The latter has the responsibility to advise the Financial Secretary and other Accounting Officers on matters relating to Government accounting, and the management of Government cash flows.

According to the Finance and Audit Act, the Accountant General shall, within six months of the close of every fiscal year, sign and submit to the Director of Audit statements, including a Statement of Arrears of Revenue (Statement N).

2.4.3 Valuation Department

The main role of the Valuation Department is to tender professional valuation advice to Ministries and Departments and Parastatal Bodies on matters relating to real estate, and lease rentals.

2.5 Audit Committee of Ministry of Finance and Economic Development

MoFED has an Audit Committee whose mandate includes monitoring progress on actions being taken by Accounting Officers of Ministries and Departments to address issues raised, including Arrears of Revenue, in the Reports of the Director of Audit and of the Internal Control Unit. The Audit Committee is an integral element of public accountability and governance, and plays a key role in ensuring compliance by Ministries and Departments with their legal and fiduciary responsibilities.

2.6 Implementation of International Public Sector Accounting Standards

Following Government's decision to prepare its Financial Statements in compliance with IPSAS based accrual accounting, the International Monetary Fund Regional Technical Assistance Centre for Southern Africa provided advice on major areas that would be affected by the move to accrual IPSAS and submitted a roadmap for implementation.

Hence, a Steering Committee and three Technical Working Groups were constituted. Since there was a need to work out standardised accounting policies for Budgetary Central Government, including those relating to Arrears of Revenue and for the whole public sector, as well as a standardised format of the Financial Statements, one of the Technical Working Groups constituted, chaired by the Accountant General, was assigned the responsibility to work on these issues.

2.7 Recognition and Measurement of Arrears of Revenue

The current Revenue Systems, along with the practices and procedures for the recognition and measurement of Arrears of Revenue at the selected Ministry and Departments are described below:

2.7.1 Corporate Business Registration Department

CBRD falls under the aegis of MoFED. It administers, amongst others, the Companies Act, the Business Registration Act, the Insolvency Act, the Limited Partnerships Act and the Foundations Act.

The main functions of CBRD include the incorporation, registration and striking off of Companies, the registration of documents that must be filed under the Companies Act, the enforcement of compliance with the legal requirements, the registration of businesses, the insolvency service and the provision of company information to the public and the collection of Annual Registration Fees.

Payment of Annual Registration Fee Domestic Companies

According to Section 355 of the Companies Act, the annual Registration Fee payable shall be in respect of every year and shall not be paid later than 20 January in that year. A higher rate is payable after 20 January. For unpaid Registration Fees, a list is extracted through the Companies and Businesses Registration Integrated System (CBRIS) and is forwarded to the Director of Public Prosecutions (DPP) to obtain his consent for compounding as prescribed under Section 342(a) of the Companies Act.

After obtaining DPP's consent, the Enforcement Section issues reminders to the defaulting companies addressed to the Director and the Registered Office of the respective companies. A delay of one month as from the date of the reminder is given to them to settle the annual Registration Fee and penalties, excluding Compounding Fees. Any payment after the 30-day period carries Compounding Fees. If the defaulting company is agreeable to compound the offence, an agreement is signed between the Registrar and the Debtor.

Payment of Fees For Companies holding Global Business Licence

A private company holding a Category 1 GBL and a public company pay an annual Registration Fee of Rs 3,000, and Rs 13,500 respectively, while, a company holding a Category 2 GBL pays a Registration Fee of US \$ 65 annually.

Late Filing and/or Failing to File Annual Return and Financial Statements/Summaries

Section 223 of the Companies Act stipulates that every company shall, once in every year, file with the Registrar for registration, an Annual Return, and it shall be filed within 28 days of the date of the annual general meeting. Following amendments in the Companies Act in 2008 and 2012, CBRD opted for compounding the offence for late filing and/or non-filing of Annual Returns.

Notice of Intention for Removal from Register of Companies

Section 309(1)(b) of the Companies Act provides that the Registrar shall remove a company from the Register of Companies where the company has ceased to carry on business, and there is no other reason for the company to continue in existence, or the company has failed to pay its Registration Fees, or the company has not filed its annual Return as required under Section 223(2).

2.7.2 Ministry of Housing and Lands

According to its Mission Statement, MHL manages and controls the development on State Lands, amongst others. In that respect, the control, management and allocation of State Lands have been assigned to the Survey Division of the Ministry.

Guidelines for Industrial Leases

It is the policy of Government to grant Industrial Leases of State Land to promote industrial development. These leases may be granted to an individual, a company or a society, and are generally for hotel development and tourism related projects, construction of bungalow complex, construction of offices and commercial complex, and construction of industrial buildings.

Policy Framework and Procedures for Application of State Lands Leases for Industrial and Commercial Purposes

Government approved a Policy Framework and Procedures for the Allocation of State Lands Leases formulated by MHL on 20 November 2015. Applications for Industrial Leases are, subject to land availability, examined by MHL in consultation with other Ministries and Authorities. The proposal is then referred to the Fast Track Committee, and subsequently, to the State Land Coordinating and Monitoring Committee before it is sent to the Minister to whom responsibility for the subject of land use is assigned for approval. A Letter of Reservation (LOR) is then issued to the applicant, valid for a period of 18 months.

Upon compliance with all the conditions of the LOR, a Letter of Intent (LOI) is issued to the applicant. The LOI includes conditions, such as obligation on the prospective lessee to

sign the deed within four months as from the date of acceptance of the LOI. If the prospective lessee fails to sign the lease agreement within four months, the Ministry will reserve the right to cancel the offer and to forfeit any deposit. Industrial leases are granted for a period not exceeding 60 years.

Payment of Rental for Industrial Site Leases

The rental, which is determined by the Valuation Department, has to be paid annually in advance on or before 31 July each year. According to Article 6 of the lease agreement, the annual rental is adjusted every three years by reference to the cumulative inflation rate based on the Consumer Price Index. Where any rent is not paid within the specified period, it is subject to interest at the legal rate as from the date it becomes due.

Cancellation of Industrial Site Leases

According to Article 13 of the lease agreement, a lease is cancelled where the rental has remained unpaid for more than three months, and a written notice sent by registered post to the lessee requiring him to pay the rent within the period specified in the written notice has not been complied with. A lease is also cancelled where the lessee fails to comply with any other obligations or conditions of the lease.

Guidelines for Campement Site Leases

Campement Site Leases are granted on Pas Geometriques and State Lands on coastal regions as per Section 10 of the Pas Geometriques Act. Most of them were granted in the sixties to individuals, associations and societies.

Campement Site Leases were granted for a period of 20 years with option for renewal for two consecutive periods of 20 years, with rent either agreed upon at the time of auction sale or as embodied in the lease agreement. In case the lessee exercises his option of renewal, the rent is either increased by 50 per cent or assessed by the Valuation Department. However, with the amendment of the Pas Geometriques Act, leases are now granted for a period not exceeding 60 years, with rent payable as per the Schedule attached to the Act.

Payment of Campement Site Leases Rental and Campement Site Leases Premium

According to Article 6 of the lease agreement for Campement Site Leases, the lessee has to pay an annual rent, as determined by the Valuation Department, in advance on or before 31 July each year. The annual rent is adjusted every three years by reference to the cumulative inflation rate based on the Consumer Price Index during the three-year period, which should not exceed 15.7625 per cent in any case. As regards Campement Site Leases Premium, which is equally determined by the Valuation Department, it is payable in full at the time of signature of lease agreement or in five equal and consecutive yearly instalments.

In case of non-payment of any instalment of the premium or any annual rental within the specified date, the lease agreement provides that both are subject to interest at the legal rate from the date it becomes due.

Cancellation of Campement Leases

The lease agreement provides that a lease is cancelled, without the payment of any indemnity, where any instalment of the premium payable or any annual rental has remained unpaid for more than three months. A written notice is sent by registered post to the lessee requiring him to pay the outstanding amounts within the period specified in the written notice. Further, a lease may be cancelled if the lessee gives any incorrect or false information in relation to the lease, and also, if he fails to comply with terms and conditions of the agreement.

Recognition and Measurement of Arrears of Revenue for Campement Site and Industrial Site Leases

Where any rent or premium on the leases is not paid within the specified period, it is subject to interest at the legal rate as from the date it becomes due. Arrears of Revenue are recognised after the allowable payment dates and they are measured at cost plus interest.

2.7.3 Registrar General's Department

The RGD operates under the aegis of MoFED. It is the central agency for maintaining a repository of all documents that are registered, including those relating to immovable and movable property transactions. It also has the responsibility for collecting revenue in terms of taxes associated with the registration activities. The main functions of the RGD include follow up action after reassessment of values of immovable properties by the Valuation Department, as well as representation before the Objection Unit and the Assessment Review Committee (ARC).

Recognition and Measurement of Arrears of Revenue

Arrears of Revenue arise following re-assessment of immovable properties. The RGD is guided by the different Sections of the Land (Duties and Taxes) Act regarding the procedures for follow up by its Valuation Unit. The Unit is headed by one Assistant Registrar General. Requests for re-assessment are sent to the Valuation Department on a daily basis.

As per Section 28(6) of the Land (Duties and Taxes) Act, the Valuation Department has to advise the RGD of the open market value of the property within five months from the date of the initial registration of the deed of transfer. The process for claiming additional duties and taxes by the Unit starts after the reply from Valuation Department. If the reassessed value is the same as in the deed, the case is closed. In case the reassessed value is higher, notification letters are sent to the buyer and the seller in accordance with Section 28(2A).

The notice may also include a penalty levied in accordance with Section 35 of the Act. If the reassessed value is below 10 per cent of the deed value, no penalty is claimed. Where the difference is between 10 and 50 per cent of the specified value, the penalty rate is 20 per cent of the additional duties and taxes, and where the difference exceeds 50 per cent, the penalty rate is 50 per cent. The whole amount due has to be paid by the buyer and the seller within 28 days of the notice. In case of non-payment, it is accounted for as Arrears of Revenue.

Objection Unit

The Objection Unit consists of two representatives of the RGD, and a representative from the Valuation Department who acts as Chairperson. All cases of objections lodged at the Objection Unit must be dealt with within four months for those made as from 15 June 2015, as compared to six months for prior cases. Any failure by the Objection Unit to deal with an objection within the prescribed period is considered to have been allowed by the RGD.

Appeal to the Objection Unit

Section 28(3A) of the Act allows the buyer and the seller to appeal against a claim within 28 days of the notice. According to Section 28(3C) of the Act, each of them has to make a deposit of 10 per cent of the assessed additional duties and taxes to be eligible for the appeal. The responsibility to fix a meeting with the buyers and sellers is assigned to the Valuation Department. The Valuation Unit then convenes the buyers and the sellers for attending the meeting at the Objection Unit of the RGD. After deliberation, the reassessed value is either maintained or reduced.

If after deliberation by the Objection Unit, the buyer and the seller fail to pay the additional duties and taxes within 28 days of notice, this amount is also accounted for as Arrears of Revenue. The aggrieved parties may also request payment by instalments. In that case, an agreement is signed between the RGD and the aggrieved parties. Arrears of Revenue are recognised when the parties fail to abide by the terms and conditions of the agreement.

Assessment Review Committee

Section 28(4) of the Act allows the buyer and the seller to lodge written representations with the Clerk of the ARC in case no agreement is reached at the Objection Unit. Thereupon, the Valuation Unit sends a letter to the buyer and the seller informing them of the date they should attend the ARC for review of their claims. An officer from the RGD attends the ARC at each hearing. Once the value of the immovable property is determined by the ARC, the Valuation Unit issues a notice to the parties to settle any additional duties and taxes within 28 days of the notice.

If case of non-payment, the amount claimed is treated as Arrears of Revenue. However, if an agreement is reached, the parties are allowed reasonable time to settle their debts. Arrears of Revenue are recognised when the parties fail to make payments by the due dates. In all cases of non-payment of additional duties and taxes, there are inscriptions of privilege on property. These are not erased unless claims are settled.

Mauritius e-Registry Project

The Mauritius e-Registry Project (Me-RP) was developed by a foreign Company, and records on Arrears of Revenue after 19 April 2015 are kept in the System. The records pertaining to the period before 20 April 2015 are still kept on a manual system.

CHAPTER THREE

FINDINGS

This Chapter presents the audit findings on the effectiveness of the oversight role of the Ministry of Finance and Economic Development to ensure that the mechanisms for managing Arrears of Revenue at the selected Ministry and Departments were appropriate. It also describes the findings on whether the procedures and practices for accounting Arrears of Revenue, as well as the recovery and monitoring mechanisms to maximise collection of revenue were effective.

3.1 Oversight Role of Ministry of Finance and Economic Development on Arrears of Revenue

One of the roles of MoFED is to ensure that Ministries and Departments are managing appropriately their arrears with a view to maximising collection of their revenue. It fulfils its role in different ways, such as providing support for the effective and efficient Financial Operations, Internal Audit Activities and issuing Financial Instructions. It also uses its Audit Committee to address issues pertaining to arrears in Departments under its aegis. Other stakeholders and key personnel of the Ministry involved in the process include the Accountant General and the Director Financial Operations.

The effectiveness of the mechanisms put in place by MoFED was examined and issues arising are described below:

3.1.1 Internal Audit Activities - Internal Control Cadre

Reporting to Financial Secretary

At paragraph VI 3.26 of the Internal Audit Policy and Operations Manual and paragraph I.4.15 of FM Kit Vol. 1, it is mentioned that the Director, Internal Control is required to prepare and submit to the Financial Secretary an Annual Internal Audit Report highlighting major findings, including those that relate to Arrears of Revenue and recommendations. The Report should also include Accounting Officers' responses that allow him to gauge the adequacy of internal control and risk management systems in Ministries and Departments, and for initiating any necessary action.

In 2012 and 2013, the Annual Internal Audit Reports submitted were in line with requirements mentioned above. The 2012 Report contained a summary of the findings and recommendations for all Ministries and Departments audited. In the 2013 Report, findings were grouped, while as from 2014, the Reports contained only statistics on the achievements of the ICC and its performance throughout each financial year. Hence, the ICC did not appropriately inform the Financial Secretary of the major findings relating to Arrears of Revenue that would allow him to initiate corrective measures.

Advices on Cases for Write Off at CBRD

Debts written off at CBRD during 2017-18 amounted to some Rs 65.1 million. The Report 'List of Companies for Examination of Dues for Write Off', relating to Arrears of Revenue for the half year ended 30 June 2017, was submitted to the Director, Internal Control for his

advice on 13 October 2017. CBRD was advised to write off all the irrecoverable Arrears of Revenue as submitted in the List on 29 March 2018, that is, more than five months after.

As for irrecoverable arrears relating to 2017-18 for domestic companies and companies holding GBL, which amounted to some Rs 9.7 million and US \$ 71,700 respectively, CBRD submitted the list of debtors to the Director, Internal Control on 28 November 2018. However, as at end of January 2019, two months after, CBRD was still awaiting the advice of the Director, Internal Control. Due to delay to obtain the advice for the write off, Arrears of Revenue were unnecessarily overstated.

Approval for Write Off of Debts at Ministry of Housing and Lands

In March 2018, ICC pointed out that as at 31 December 2017, Arrears of Revenue at MHL amounted to some Rs 814 million which were owed by 9,461 lessees. This sum comprised some Rs 703 million pertaining to Other Land Leases, while the balance related to Ex-Central Housing Authority, Campement Site Leases Premium and Campement Site Lease Rentals. The figures were analyzed per range of values. The outcome indicated that 6,431 lessees owed less than Rs 5,000 for a total amount of some Rs 7.8 million. In that respect, ICC recommended that the approval of MoFED be sought to write off low value debts of less than Rs 5,000 as the administrative costs of handling these debts could be higher than recovering them. There was no indication as to whether the cost of debt recovery had been computed, and whether MHL had implemented the recommendation of ICC.

In its reply, MHL stated that approval of MoFED would be sought to convey relevant authority for the write off of arrears of less than Rs 5,000 which have remained unpaid for five years or more. However, MoFED stated that according to Financial Instructions, authority for write off rests with the Accounting Officer.

3.1.2 Audit Committee at Ministry of Finance and Economic Development

Follow-up on Arrears of Revenue

MoFED has an Audit Committee whose mandate includes monitoring progress on actions being taken to address issues raised in the Reports of the Director of Audit and the Internal Control Units. The Committee has met regularly and most of the issues pertaining to Arrears of Revenue raised in these Reports were discussed and recommendations were proposed. However, for Ministries and Departments not falling under the aegis of MoFED, such as MHL, there is no mechanism enabling it to monitor the progress being taken to address issues raised by the Director of Audit and Internal Control Units.

Recommendations of Audit Committee – Ministry of Finance and Economic Development

As for the Audit Committee at MoFED, the following two proposed recommendations regarding Arrears of Revenue were not implemented at December 2018.

(1) Recruitment of Attorney-at-Law at Registrar General's Department

To deal with the problem of increase in Arrears of Revenue, at the Audit Committee held in April 2018, the Registrar-General proposed the creation of a Recovery Unit to be headed by an Attorney-at-Law. The latter would speed up legal action for recovery. Bidding exercise for recruitment of an Attorney-at-Law was initiated, and the closing date for submission of bid was 29 May 2018. The exercise was expected to be completed by 30 June 2018. As of December 2018, the recruitment of the Attorney-at-Law was still pending.

In its reply, RGD stated that tender exercise to recruit an in-house Attorney-at-Law to head the Enforcement Unit has been carried out four times, and no recruitment has been possible.

(2) Development of Valuation Roll at Registrar General's Department

An analysis of the increase of value of property after reassessment was made. In a few cases, the increased in the reassessed value over the declared value was high. This was attributed to the absence of an established database of the prevailing market value of immovable properties.

During a meeting of the Audit Committee of RGD held on 6 February 2018, it was proposed to review the Land (Duties and Taxes) Act, and to come up with a mechanism requiring the transferee and the transferor to submit a Valuation Report. At an initial stage, the duties and taxes would be computed on the basis of the value as per the Report, until final confirmation was received from the Valuation Department. At another meeting of the Audit Committee held on 16 April 2018, it was proposed that the Valuation Department relaunched the process of updating the Valuation Roll. However, as of December 2018, none of the proposals had materialised.

In its reply, RGD stated that it was awaiting the development of the Valuation Roll by the Valuation Department. As regards Valuation Report as an annex to a deed, MoFED stated that the proposal was considered at time of budget preparation, but was not retained.

3.1.3 Compliance with Financial Instructions

In respect of Arrears of Revenue, at paragraph 23 of the Financial Instructions No.1 of 2013, it is stated that the Accounting Officer should also, with the assistance of Director Financial Operations, prepare and keep a Manual of Instructions setting out the procedures for the timely follow-up, recovery and enforcement of outstanding amounts. The time lag between the occurrence of an arrear and the enforcement action to recover it should be clearly spelt out.

However, at the selected Ministry and Departments, the requirement of paragraph 23 of the Financial Instructions was not complied with. Hence, the timely follow up, recovery and enforcement of outstanding amounts could not be ascertained. There was also no evidence that MoFED was aware of the non-compliance with the Financial Instructions.

3.1.4 Reporting on Arrears of Revenue

The FM Kit mentions that the Accountant-General is required under the Finance and Audit Act to submit to the Director of Audit, within six months of the close of every fiscal year, annual statements showing fully the financial position of Mauritius in respect of that fiscal year. These statements include a progress report on performance in respect of outcomes achieved and outputs delivered. The total Arrears of Revenue which is made up of recoverable amounts only as of the end of the fiscal year is disclosed in Statement of Arrears of Revenue (Statement N) of the Annual Statements of the Treasury.

At RGD, amounts under dispute and which have been referred to the Objection Unit and the ARC totalling some Rs 490 million were excluded from the disclosure. Also, no assessment on the recoverability of the Rs 490 million has been made. Details are as follows.

Section 28(3A) of the Land (Duties and Taxes) Act states that any person who is dissatisfied by a notice under Section 28(2b) of the Act, issued on or after 1 October 2008 may, within 28 days of the date of the notice, object to the notice by letter sent to the Registrar General by registered post. Section 28(3C) of the Act further states that the person making objection should specify the grounds of the objection, and at the same time pay 10 per cent of the amount of duty or tax, excluding penalty, claimed in the notice. 2,097 cases involving 3,837 transferors and transferees for additional duties and taxes of Rs 249.2 million lodged at the Objection Unit, during 2017-18 and 2,202 cases with claims totalling some Rs 238.9 million referred to ARC not dealt with as of January 2019 were not accounted for as arrears.

3.2 Recognition and Measurement of Arrears of Revenue

At the selected Ministry and Departments, different recognition and measurement practices for accounting Arrears of Revenue were adopted.

3.2.1 Corporate and Business Registration Department

Annual Registration Fee falls due on 1 January of each year, and payments are normally effected between 3 to 20 January. Arrears of Revenue are recognised as from 21 January, and they are measured at a higher rate which includes fines.

Composition Fees Not Recognised as Arrears of Revenue

Any person who has not paid its Registration Fee before the due date, and after one month of the date of reminder issued by the Enforcement Section may have the alternative to have the offence compounded. Likewise, a person who fails to file its annual return or financial statements as required by the Companies Act and within 30 days of the date of a reminder may also have the offence compounded. This applies also to companies that have been removed by the Registrar of Companies, but restored to the Register at a later stage. However, at CBRD, the unpaid Composition Fees are not accounted as Arrears of Revenue.

CBRD replied that prior to the change in the law for the introduction of payment of Composition Fees to the office, companies were prosecuted before Court, and upon conviction were sentenced to pay a fine. Those fines were not accounted in the office, but in the Court as an Item of Revenue.

3.2.2 Ministry of Housing and Lands

According to Article 6 of the lease agreements, the rental for Campement and Industrial Leases has to be paid annually, in advance, on or before 31 July each year. Campement Site Leases Premium is payable in full at the time of signature of lease agreement or in five equal and consecutive yearly instalments. Where any rent or premium is not paid within the specified period, Article 7 of the lease agreements provides that it is subject to interest at the legal rate as from the date it becomes due. Arrears of Revenue are recognised after 31 July and they are measured at cost plus interest.

Inconsistent Accounting Policy

MHL has adopted an inconsistent policy regarding the recognition and measurement of Arrears of Revenue. The cumulated arrears as at 30 June 2017 as reported to the Treasury stood at Rs 540 million instead of Rs 1,345 million as per MHL's records. The difference of Rs 805 million not recognised comprised Cancelled Leases (Rs 116 million), Arrears intended to be Written Off (Rs 437 million), amounts not paid relating to Lease Agreements not signed (Rs 241 million) and Amount due by Other Lessees (Rs 11 million). According to the Ministry, the difference was adjusted in financial year 2017-18.

In its reply, MHL stated that for financial year 2016-17, a return for the amount of Rs 540 million, representing the real debtors, and another one for cases which should not have been considered as debtors, such as cancelled leases, leases not signed, rental to be written off amounting to Rs 805 million were submitted to the Accountant General.

Rental due from Lease Agreements not Signed

For Industrial Leases, according to the Ministry, the obligation to pay rental arose as from the date on which LOI was issued to the prospective lessees, and any unpaid rental from that date was therefore recognised as Arrears of Revenue. This was in contradiction with the advices from the Attorney General's Office (AGO) which stated that 'what the Ministry claims to be rent is not rent as there has been no lease agreement drawn up, and that as per the LOI, the validity and effectiveness of the lease is subject to a deed being drawn up by the Ministry, signed by both parties to witness the agreement'. However, it also stated that 'should the Ministry be able to provide evidence that the land had been occupied and used since the LOI, indemnity can be charged for use and occupation'.

From a random sample of 16 lessees to whom LOI for the Industrial Leases was issued, six had not signed their deeds/lease agreements as at 30 June 2018. The amount owed as rental by these six lessees of some Rs 91.7 million was accounted as Arrears of Revenue. The Ministry could also not ascertain whether the plots of land allocated to these lessees were occupied so as to charge indemnity for use and occupation.

MHL replied that necessary action is being initiated to tag lessees where deeds have not been signed in the system so as to exclude them in the Return of Arrears of Revenue. These cases will be referred to the Lease Section to confirm whether the lands have been occupied before claiming indemnity charges.

Delay in Signing Lease Agreement

According to the Policy Framework, a lease granted for Industrial or Commercial purposes shall be for a period not exceeding 60 years, and the prospective lessee has to sign the deed within four months as from the date of acceptance of the LOI. If the lessee fails to sign the lease agreement within the four-month period, the Ministry reserves the right to cancel the offer and to forfeit any deposit.

Despite the existing clauses, cancellation of offers was exercised in few cases at the Ministry. Moreover, there was absence of constant monitoring by the Ministry to have the prospective lessees to sign the lease agreements after the prescribed period of four months. As such, lease rentals were forgone.

In its reply, MHL stated that if the prospective lessee fails to sign the lease agreement within the four-month period, the Ministry will issue a notice to the latter to do so within 14 days, failing which the offer is annulled and any deposit is forfeited. Moreover, necessary action is being taken by the Lease Section to ensure that Lease Agreements are drawn up within the four-month delay, and to issue the notice under Section 16 of the State Lands Act in case the deed is not signed within the period.

3.2.3 Registrar General's Department

Arrears of Revenue arise following reassessment of immovable properties. As per Section 28(6) of the Land (Duties and Taxes) Act, the Valuation Department has to advise the RGD of the open market value of the property within five months from the date of the initial registration of the deed of transfer. Where the reassessed value is higher, notification letters of the duties/ taxes and penalty payable are sent to the transferee and the transferor by registered post within seven months from the date of the initial registration of the deed.

Section 28(3A) of the Land (Duties and Taxes) Act allows the transferee and the transferor to appeal against the claim within 28 days of the notice at the Objection Unit. Arrears of Revenue are recognised after the value of property is determined by the Objection Unit.

Moreover, Section 28(4) allows the transferee and the transferor to lodge written representations at the ARC in case no agreement is reached at the Objection Unit. Once the value of the immovable property is determined by the ARC, a notice is issued to the parties to settle any additional duty and tax within 28 days of the notice. Arrears of Revenue are not recognised until the reassessed value is finalised at the Objection Unit or ARC. In case of non-payment, the amount claimed is accounted as Arrears of Revenue.

According to RGD, a debt arises only when the value is determined on which additional duty and tax can be levied legally.

3.3 Completeness and Accuracy of Arrears of Revenue

At the selected Ministry and Departments issues relating to completeness and accuracy of arrears are as follows.

3.3.1 Corporate and Business Registration Department

According to Financial Instructions No 1 of 2013 – ‘Losses, Arrears of Revenue, Write Off and Advances’ from MoFED, an Accounting Officer should ensure that a proper management information system is maintained to generate information on Arrears of Revenue on a quarterly basis. The system should be able to provide data on outstanding amounts by type of revenue, range, age, ratio of the amount recovered to total amount outstanding, and on the ratio of the number of officers assigned to recovery and enforcement to the number of debtors, etc, in order to facilitate the preparation of work programmes for recovery of arrears and enforcement thereof.

For the last three financial years 2015-16 to 2017-18, the Registrar of Companies complied with the requirements for the submission of the returns to the Financial Secretary and Accountant General by the due dates. However, CBRD could not ascertain the accuracy and completeness of the Arrears of Revenue figures, mainly due to some limitations of CBRIS.

Reports showing Real Time Information

Arrears contracted during 2017-18 amounted to some Rs 19.5 million. This figure was worked out by the Finance Section from information obtained in the Debtors Ageing Analysis (Detail) Report. However, the accuracy or correctness of the new debts that arose during 2017-18 could not be ascertained. CBRD could not provide a ‘List of Debtors Report’ to support the figure of Rs 19.5 million due to the absence of a backup system to provide historical records. On the other hand, CBRIS could only generate an updated version of the ‘List of Debtors Report’ showing the real time information.

Accounting of Overpayments of Fees

The ‘List of Debtors Report’ generated by CBRIS includes, information, such as the name of the defaulted entities, the amount they owed at a given point in time, any overpayments made by entities, as well as the total number of entities. Amount due to CBRD was a net figure as any overpayments were netted off. Thus, according to CBRD (Finance Section), the Arrears of Revenue figures for the last three financial years, namely 2015-16, 2016-17 and 2017-18 had been understated by some Rs 326,000, Rs 522,000 and Rs 746,000 respectively. Though the ‘List of Debtors Report’ did not quantify the amount netted off from the debtors’ figure, these overpayments as stated above were obtained from another report, namely, the ‘List of Debtors with Credit Balance Report’.

Inadequate Information in Miscellaneous Report

On the other hand, the Miscellaneous Report (Total Revenue collected for a Specified Period), generated by CBRIS, provides information on all payments made by different types of entities with respect to fees and fines and the mode of payments. However, according to Finance Section, the System did not cater for specific relevant information, such as whether payments relate to the current period or to previous years’ arrears. The sum of some Rs 9.4 million which represented collections pertaining to 2017-18 from all types of entities was, in fact, a balancing figure that had been worked out by the Finance Section.

CBRD stated that it would request the System Developer to address the above issues.

Differences between CBRIS Report and Treasury Accounting System Report

Payments of Registration Fees at CBRD can be made by cash, cheques and debit cards/credit cards at the Cashier's office. The Department also provides other alternatives for effecting on line payments and through Deposits Accounts, as well as bank transfers.

With respect to the different modes of payments, CBRD, on a monthly basis, has to reconcile figures from two records, namely, the CBRIS Report and the Treasury Accounting System Report to ensure the correctness and completeness of collections. However, for 2017-18, though a reconciliation exercise was carried out monthly, there were still differences between the two records, ranging from some Rs 2,000 to Rs 298,000, and CBRD could not provide explanations on these differences, and why they were not cleared. The accuracy of the Arrears of Revenue figure could therefore not be ascertained.

CBRD explained that double payments due to bottleneck in online payments, late loading of payments, and variation in exchange rates for payments in US Dollars have rendered reconciliation process quite complex.

Changes in the Turnover Threshold of Private Companies

Section 355(1) of the Companies Act stipulates that there shall be paid to the Registrar, in respect of the matters set out in the Second Column of Part I and Part II of the Twelfth Schedule, such fees as may be prescribed.

With a view to providing meaningful support at all levels to small enterprises, Government, in 2015, took several measures, and one amongst them was the reduction of the annual Registration Fee payable by small private companies with turnover not exceeding Rs 10 million, from Rs 2,500 to Rs 500.

At CBRD, claims were raised as from mid-December of each year, and as from January 2016, the Registration Fees payable were based on the turnover figure as stated in the financial summaries of the penultimate financial year. Some private companies informed the Department about changes in their turnover figures through declaration forms, and fees were adjusted accordingly after being verified by CBRD.

Consequently, some entities were required to pay additional fees, and in other cases, CBRD had to refund money as their turnover was less as compared to the penultimate year. However, the remaining private companies whose turnover changed during the previous year, and which did not declare the change in their turnovers paid their Registration Fees based on the penultimate turnover figures. Hence, Registration Fees, as well as the Arrears of Revenue figure could be inaccurate.

CBRD could neither quantify the number of entities involved and the fees adjusted, as there was no report on the list of companies with changing turnovers. Though the system catered for providing information on companies with changing turnover in the Fees Monitoring Module, the latter was not functional.

CBRD informed that it would request the System Developer to generate a report for all adjustments that should be done in fees payable.

Filing of Winding-Up Resolutions from 15 to 31 December

According to Section 355(5) of the Companies Act, where a company has ceased to carry on business and in respect of which a winding-up resolution or striking-off procedure or a dissolution procedure, as the case may be, has been initiated, no Registration Fee shall be required to be paid as from the year immediately following the year in which the resolution, or the notice for striking-off, has been filed or issued with the Registrar.

From 15 to 31 December each year, the Registrar received several requests from shareholders or Board of Directors for the removal of their companies from the Register on any grounds specified in Section 309(2) of the Companies Act. However, the Finance Section was not informed of such cases on a timely basis by the Registration and Monitoring and/or from the Global (Category 1 and 2) Sections. Hence, the Arrears of Revenue figure as at 30 June of each of the three financial years reviewed were not accurate.

In its reply, CBRD stated that since January 2019, a report containing list of companies for which shareholders' resolution has been filed in December 2018 has been sent to the Finance Section to cancel Registration Fee generated by CBRIS in December 2018.

Defunct Companies Appearing in List of Arrears

The procedures for writing off debts of some companies were not initiated on a timely basis at the level of CBRD. As such, these companies still appeared as debtors in the list of arrears at 30 June 2018, despite the fact that they had already been removed from the Register, and some as far back as September 2014.

CBRD replied that these companies were registered as domestic foreign companies. The report available in CBRIS could not be run and the matter had been reported to the System Developer for necessary action.

3.3.2 Ministry of Housing and Lands

New Arrears - Rs 652 million

New Arrears of Revenue for the financial year 2017-18 for Campement Site Leases Rental, Campement Site Leases Premium, and Other Land Leases amounted to some Rs 652 million. This figure was worked out by the Finance Section before submission to the Treasury. With a view to ensuring the completeness and accuracy of the sum, a report regarding new debts contracted during that period was requested from the Finance Section in January 2019. However, the Revenue System did not cater for the provision of any information relating to previous periods. The System can only provide real time information as of the date of processing the request. Further, a backup was not kept at MHL to support the figure of Rs 652 million.

Collections - Rs 386 million

Amounts shown as collections for Campement Site Leases Premium (Rs 4.8 million), Campement Site Leases Rental (Rs 13.1 million), and Other Land Leases (Rs 367.2 million) were balancing figures which had been worked out by the Finance Section. No records

were kept to substantiate the validity of these figures. Hence, the completeness and accuracy of arrears could not be ascertained. Moreover, the total collections was not analysed into amounts collected for the current and previous periods. Thus, the rate of debts recovery for the previous periods could not be assessed.

MHL stated that it was holding working sessions with the System Developer to improve the reporting of arrears of rental.

Cost Sharing Mechanism

According to the Budget Speech 2016-17, Government proposed that for State Lands which did not have vehicular access allowing construction of works to start, rent would become payable when the lands were serviced with infrastructures. Moreover, rent already paid by lessees in those regions would be offset against future rental liability. In that respect, the Ministry was finalising with lessees a cost sharing mechanism in some regions to connect these sites with infrastructural facilities to enable promoters to start construction works. However, this proposal in the Budget Speech was not followed by Financial Regulations. As a consequence, MHL could not ascertain the recoverability of the amount of Rs 210 million, representing sum not yet paid by those lessees and included in total arrears as at 30 June 2018.

MHL informed that Regulation has been made under the State Lands Act in February 2019, authorising the Ministry not to claim rent in respect of portions of land having no vehicular access. An application for write off of arrears amounting to some Rs 225.3 million has been processed and forwarded to the Director, Internal Control for verification on 3 April 2019.

3.3.3 Registrar General's Department

Records on Arrears of Revenue prior to 20 April 2015 were kept manually, whereas arrears arising thereafter were recorded in the Me-RP. RGD did not ensure that the total Arrears of Revenue as submitted to the Treasury was accurate and complete. There were arithmetical errors, inconsistencies and discrepancies in figures included in the Return of Arrears of Revenue. Most of the figures in the Return were not supported by appropriate schedules.

Land Transfer Tax - Arithmetical Error

There was an arithmetical error in the returns of Arrears of Revenue for the period January to June 2018 as submitted to the Treasury. Arrears of Revenue for Land Transfer Tax were wrongly stated at Rs 161.7 million instead of Rs 154.8 million. The 'Adjustment' figure of Rs 34.4 million was wrongly reported as Rs 27.5 million, resulting in an overstatement of the arrears by Rs 6.9 million.

RGD informed that there was a wrong posting which has been remedied.

Registration Duty/Land Transfer Tax/ Leasehold Rights Tax - New Arrears for Cases after 19 April 2015

There were inconsistencies in accounting for new arrears in the Returns of Arrears of Revenue submitted to the Treasury. In the Return pertaining to period July to

December 2017, new arrears were stated at their gross amount, that is before deducting payments, while the total arrears for period January to June 2018 was accounted for at their net amount (after deducting amount collected).

For example, for Registration Duty, new arrears for July to December 2017 of Rs 24.2 million were stated at their gross amounts, that is before deducting amounts collected of Rs 2.1 million, while new arrears for period January to June 2018 amounting to Rs 38.3 million were accounted after deduction of amounts collected of Rs 3.2 million.

Registration Duty/Land Transfer Tax/ Leasehold Rights Tax – ‘Adjustments’ for Cases prior to 20 April 2015 - (January to June 2018)

There were differences between the amounts representing ‘Adjustments’ with regard to cases prior to 20 April 2015 as stated in the Returns of Arrears of Revenue and the Manual Worksheet. For example, for Land Transfer Tax, an amount of some Rs 3.3 million was reported as ‘Adjustments’ in the Return of Arrears of Revenue, whereas in the Manual Worksheet, it amounted to some Rs 233,000.

Registration Duty/Land Transfer Tax/ Leasehold Rights Tax – ‘Adjustments’ for Cases after 19 April 2015

There were also differences between the amount representing ‘Adjustments’ with regard to cases after 19 April 2015 as stated in the Returns of Arrears of Revenue and the report from Me-RP. For example, for Registration Duty, the ‘Adjustment’ figures for the periods July to December 2017 and January to June 2018 as per the Returns of Arrears of Revenue were Rs 1.8 million and Rs 22.8 million respectively, while as per the Me-RP Schedules, they were Rs 7.5 million and Rs 3.9 million respectively.

Registration Duty/Land Transfer Tax/ Leasehold Rights Tax Write off for Cases after 19 April 2015

No details were available in respect of the amounts of Registration Duty (Rs 3.8 million), Land Transfer Tax (Rs 3.7 million) and Leasehold Rights Tax (Rs 1.5 million) for period January to June 2018 written off, and reported in the Return of Arrears of Revenue as at 30 June 2018.

In its reply, RGD stated that the Me-RP dashboard is dynamic. The System Developer has been requested to do needful. RGD was expecting to implement an enhancement which would solve the issue.

3.4 Recovery Mechanisms of Arrears of Revenue

During the period under review, the selected Ministry and Departments used several debt recovery mechanisms to maximise collection of revenue. Their effectiveness is elaborated below.

3.4.1 Corporate and Business Registration Department

The Companies Act empowers the Registrar to take appropriate actions to ensure that all

companies incorporated or registered with the Registrar comply with the Act with respect to payment of the annual Registration Fee, and the filing of annual report. These actions include imposition of higher fees after the due date which is on or about 20 January, compounding of offences, and removal of a company from the Register. The effectiveness of the actions taken to recover the Arrears of Revenue by the Department was assessed. The outcomes are as follows:

Payment of Higher Fees (Fees and Fines) after the Due Date

The first measure taken by the Registrar against an entity which failed to pay the Registration Fees within the due date is the imposition of a higher fee which comprised the Registration Fee and a fine which represents 50 per cent of the Fee. Thus, all entities are required to pay higher fees as from 21 January. Fines collected for the last three financial years according to CBRIS were around Rs 17 million.

The effectiveness of imposing higher fees on those entities which paid the Registration Fee after the due date was not measured to determine whether the higher fees which include the element of fines, acted as a deterrent or not. Information, such as number of claims generated and the Registration Fees collectible could have been used as a basis of comparison with the number of entities that effected payments and fees collected within the due date. The result of this analysis could have given an indication on the proportion of companies which paid their fees and those which did not pay within the due date.

Compounding of Offences

Pursuant to Section 341 of the Companies Act, any person who fails to pay the Registration Fee under Section 355, shall commit an offence and shall, on conviction, be liable to a fine not exceeding Rs 200,000. Section 329(4) of the Companies Act further stipulates that where a person is convicted for an offence of failure to pay the Registration Fee under Section 355, he shall, in addition to any fine imposed, be ordered by the Court to pay the Registration Fee or to file the annual return, as the case may be, within such time as the Court may determine. Previously, cases were referred to the DPP for judicial actions. However, the process for prosecution was lengthy and time consuming, and as a result, the Arrears of Revenue at CBRD remained on the high side.

With a view to streamlining the process and recovering the Arrears of Revenue within a reasonable time, the Companies Act was amended in 2008 and 2012 to empower the Registrar with the consent of the DPP, to compound an offence committed by a person under the Companies Act. For the last two years, the Registrar referred some 44,000 cases to the DPP with respect to the two types of offences.

Impact of Compounding of Offence for Non-Payment of Registration Fees 2018

From 26 February to 4 May 2018, the Enforcement Section issued 9,338 letters/ reminders prior to compounding of offences to domestic companies that failed to pay Registration Fees for 2018. The Global Section also issued reminders to 1,727 management companies and registered agents.

The response rate for domestic companies within the following month, that is, as at 21 June 2018 was around 65 per cent. Out of 9,338 companies to which reminders were

sent, 6,113 responded positively. Of these 6,113 companies, 791, which represented about 13 per cent agreed to go for compounding of their offences, while the remaining 5,322, which represented about 87 per cent opted to pay their Registration Fees with respective fines within one month from the date of the letter/reminder.

Regarding the companies holding GBL, the response rate at 21 June 2018 was relatively low. Out of 1,727 companies to which letters/reminders were issued, only 509 companies that represented some 29 per cent responded positively. Of these 509 companies, 59, representing around 12 per cent, opted for compounding their offences, while the remaining 450 companies, representing 88 per cent, paid the Registration Fees with respective fines within one month from the date of the letter/reminder.

Impact of Compounding of Offence for Failure to File Annual Returns and Financial Statements/Summaries

Pursuant to Section 223(1) and (2) of the Companies Act, every company shall, once in every year, file with the Registrar for registration, an annual return. In addition, Section 215(6) provides that every company required to file with the Registrar financial statements and the Auditor's Report, shall, at the same time, file a copy of the annual report required to be sent to shareholders.

Following the amendment of the Companies Act in 2008 and 2012, CBRD also opted to compound the offence for failure to file annual returns and financial statements. In 2017 and 2018, some 21,000 cases of companies that had failed to file their annual returns or file their return late were referred to the DPP for his consent for compounding the offence.

In 2018, the Enforcement Section issued letters/ reminders to 9,004 companies. At end of November 2018, 2,345 representing 26 per cent responded positively, that is, they were agreeable to compound their offences, and paid the appropriate Composition Fees accordingly. Of the 2,345 companies, 2,264, representing around 97 per cent opted for late filing, while the other 81 companies, representing three per cent, opted for non-filing of annual returns and/or financial statements. The remaining 6,659 companies, representing 74 per cent, did not respond to the letters/reminders.

Likewise, in 2017, letters/ reminders were issued to 7,810 defaulting companies. As at 28 November 2017, 1,699 companies, representing around 22 per cent agreed for compounding their offences, while the remaining 6,111 representing 78 per cent did not respond to the letters/reminders issued to them.

Removal of Companies from the Register of Companies

Another measure taken by the Registrar with respect to those entities that failed to pay their Registration Fees within the due date and did not agree for the compounding of their offences is to remove them from the Register of Companies. Section 309 (b) of the Companies Act empowers the Registrar to remove a company from the Register if she is satisfied that the company has failed to pay its Registration Fees, and the company has not filed its annual return as required under Section 223(2). For the three financial years 2015-16, 2016-17 and 2017-18, procedures for the removal of some 20,700 companies were initiated.

With regard to companies which failed to pay Registration Fees for 2018, according to records, the Insolvency Section started the procedure for removal from the Register by issuing notices to 3,988 of these companies from 11 June to 8 August 2018 under Sections 309(4) and 310 of the Companies Act.

As at 29 January 2019, of the 3,988 companies to which the Insolvency Section issued notices, the removal of 699 companies, representing some 18 per cent was finalised. The removal of 641 others, representing 16 per cent was aborted, as these companies agreed to have their offences compounded following the issue of notice of removal by CBRD. However, the effectiveness of the measure of removal of companies from the Register could not be assessed, as the removal of 2,648 companies, representing 66 per cent was still in progress at end of January 2019.

As far as companies holding GBLs were concerned, the Global Section undertook the process of removal of companies from the Register. This Section initiated the procedure by issuing notices to defaulting companies. Unlike the Insolvency Section, the number of notices and the dates they were issued were not available at the Global Section. Also, the Global Section could not provide further precise details on the status of those companies to which notices were issued, that is, the number of companies whose winding up process was aborted due to their subsequent payment of Registration Fees, fines and Composition Fees, or the number of companies whose winding up process was in progress due to objections or the number of companies whose winding up process was finalised.

Regarding companies which failed to file their annual reports or/and financial statements, the Enforcement Section took the necessary actions at their level for compounding. For 4,962 companies which did not opt for compounding, their cases were referred to the Insolvency Section. However, the latter did not initiate action for their removal from the Register.

3.4.2 Ministry of Housing and Lands

Debt Recovery Unit

A Debt Recovery Unit was set up in February 2015. It had the responsibility for the issue of first and second reminders, and ultimately, a letter of 'Payment Facilities'. In case there was no response, a list of debtors was drawn by the Unit for submission to administration. The latter was liaising with the AGO to initiate legal action, in line with State Debt Recovery Act.

To ensure the proper functioning of the Unit, the Ministry had to prepare Guidelines requiring reporting on a weekly basis, with an aged analysis of arrears they had been chasing for debt recovery, including a list of debtors which they intend to chase in the following week. However, as of December 2018, the Debt Recovery Unit was no longer operational. The number of cases where notice had been served in accordance with the provisions of the lease agreement to recoup unpaid rent during its existence, as well as the number of cases referred to AGO to initiate legal action for recovery of debts, was not known. Moreover, Guidelines setting out the procedures for the timely follow up, recovery and enforcement of outstanding amounts were not prepared by MHL.

MHL informed that the Debt Recovery Unit has been reconstituted since February 2019.

3.4.3 Registrar General's Department

Contrainte

A Contrainte is a legal action taken against a debtor for non-payment of any amount due before the procedures for seizure starts. Debtors are expected to pay the amount owed by them. A Judge's Order permits the seizure of a movable or immovable property, and its sale, if a person does not comply with the Contrainte or does not appeal against it within 10 days of the notice. During the 2016-17 and 2017-18, 194 and 96 cases involving some Rs 9.6 million and Rs 18.5 million respectively were processed.

Out of the 194 Contrainte processed during 2016-17, Judge Orders were received in respect of 116 cases for claims totalling some Rs 5.5 million. For these 116 cases, only some Rs 350,000 were recovered. In none of the remaining cases, the procedure for seizure was initiated. In the other 78 cases for claims totalling some Rs 4.2 million, Judge Orders were not obtained, and the status of the cases was not finalised. A few cases have been sent to AGO as far back as October 2016.

For 2017-18, of 96 cases of Contrainte, Judge Orders were received in respect of 26 cases for claims totalling some Rs 2.3 million. As at October 2018, only some Rs 90,000 were collected. As for the remaining 70 cases which were referred to the AGO from February to August 2018 involving some Rs 16.2 million, Judge Orders had not yet been finalised.

During a meeting of the Audit Committee on 16 February 2018, it was highlighted that RGD has been sending reminders as the only tool for debt recovery. It has the power to seizure at the final stage, but it has never used it on humanitarian ground. As soon as the value of the land is reassessed, the RGD has the privilege over the land, and it can prevent the owner who has not settled the amount of taxes from transacting on it. However, the law does not prevent land development. The Audit Committee agreed that additional forms of sanctions should be put in place to encourage payment. There is a need to work out a policy measure to compel owners to settle their debts in respect of duties and taxes before they develop their land.

RGD replied that a policy decision needs to be taken whether to proceed with seizure of properties - the last resort for recovery.

Arrears Payment Scheme

An Arrears Payment Scheme was introduced in 2014 to motivate long outstanding debtors to settle their debts. It involved waiving of the applicable penalty at time of payment. The Scheme was also implemented in 2017. Any persons owing RGD as at that date were allowed to settle the amount due free of penalty provided they effect the payment on or before 31 May 2018. Those who had cases pending before the Objection Unit or the ARC could remove their case and settle the amount free of penalty.

Some 7,800 letters were sent to debtors to recover the amount due by them in respect of Registration Duty, Land Transfer Tax and Leasehold Rights Tax. Some Rs 33.6 million were collected, and some Rs 20.6 million remitted. However, no information was made available on the amount claimed with regard to the 7,800 letters sent to debtors. In the absence thereof, it was difficult to ascertain the efficiency of the Scheme.

In its reply, MoFED stated that several policy measures have been taken to minimise arrears and speed up their collection at RGD. These included:

- In 2018-19, an additional 5 per cent (that is, a total of 15 per cent) of the assessed additional duties and taxes is payable prior to a representation being made to ARC to prevent frivolous objections.
- As from 2018-19, the penalty rate was halved.
- To encourage prompt payment, interest of 0.5 per cent per month to apply on the amount of tax or duty up to a maximum of 50 per cent of the unpaid amount.
- As from 2019-20, no claim for additional duty or tax is issued for an amount of less than Rs 5,000 following reassessment of value of an immovable property.

3.5 Monitoring Mechanisms of Arrears of Revenue

The selected Ministry and Departments used several mechanisms to monitor Arrears of Revenue. Their effectiveness are elaborated below.

3.5.1 Corporate Business and Registration Department

The records relating to Arrears of Revenue of a sample of 120 companies that have not paid their Registration Fees and respective fines to CBRD were examined. These debtors, relating to the period covering 1999 to 2010 stood at some Rs 8 million. In December 2018, most of these companies were still on the Register, and some have appeared as debtors in the Return of Arrears of Revenue for some 20 years. Other issues arising from the examination of the records on arrears from CBRIS are described below:

Companies under Receivership

Of the 120 records of companies examined, 52 of the companies, that is 43 per cent, were in receivership. The amount due by them was some Rs 4.3 million, and represented almost 54 per cent of the amount due by the 120 companies. Most of them went into receivership either in the 1990's or early 2000's.

CBRD started procedure for the removal of these companies under the Section 309(1)(b) of the Companies Act since 2013. Subsequently, they were not required to pay their annual Registration Fee as provided in Section 355(5) of the Act. However, as at December 2018, the removal of these companies had not been finalised. For example, Companies C9652 and C9480 which went into receivership since May 1999, and owed an amount of Rs 95,000 each since then, still appeared in the Return of Arrears of Revenue at 31 December 2018.

Objections for Removal of Companies

Some companies which failed to pay their Registration Fees and respective fines to CBRD started the procedure for dissolution under Section 290 of the Companies Act some 17 years back or even earlier. However, they remained on the Register, as well as on the list of

debtors as at 30 June 2018, despite there was no indication that the Registrar had received any objection for their removal. For example, Companies C11697 and C12878 owed amounts of Rs 128,000 and Rs 44,000 respectively pertaining to the period 1999 and onwards. However, no prompt action was taken by CBRD to finalise the removal of these companies from the Register though there was no indication that objections were delivered to the Registrar. As at December 2018, the process of winding up of some of these companies was completed.

Objections Delivered before 2009

In 2016, Section 312 of the Companies Act was amended through the Finance (Miscellaneous Provisions) Act No 18 of 2016, and it stipulates that where an objection delivered before 1 July 2009 has not been withdrawn, the objection shall not be entertained and shall be deemed to have lapsed unless proof of the grounds of objection is filed with the Registrar within a period of six weeks from the commencement of this Section. If the proof is not submitted within that period, the Registrar shall remove the company from the Register.

According to CBRIS, several companies to which objections were delivered before 2009 were still on the Register and appeared as debtors as at 30 June 2018. In some cases, CBRD contacted the persons who delivered the objections with a view to knowing their stand towards the objections they raised several years back. However, since September 2016¹, there was no evidence that necessary actions were taken by CBRD for those companies for which no proof of the ground of objections was submitted within the specified period of six weeks.

Absence of Follow-Up on Undelivered Reminders

After obtaining DPP's consent for compounding the offences, the Enforcement Section issued letters to the defaulting companies on two different addresses - one was sent to the Director of the entity concerned, and the other one to the registered office of the company. By doing so, CBRD ensured that defaulting companies were reminded that they had failed to pay the Registration Fees as stipulated in Section 355 of the Companies Act, and that it would be taking actions accordingly.

Regarding the non-payment of Registration Fees for 2018, 11,194 letters/reminders were issued to entities², while 9,004 letters were issued to entities for non-filing of financial statements/summaries and annual reports. According to the Enforcement Section, on average 300 to 400 letters were issued on a daily basis. However, in both cases, several letters/reminders returned undelivered to CBRD. The Enforcement Section could neither quantify the number of letters that returned undelivered nor did a follow-up on those undelivered letters. In other words, no further actions were taken by CBRD to inform those entities that legal actions would be taken against them.

¹The Finance (Miscellaneous Provisions) Act No 18 of 2016 (Gazette No 79 of 7 September 2016)

² Entities include domestic companies, companies holding GBL, Sociétés Commerciales, Foundations and Limited Partnership.

3.5.2 Registrar General's Department

The Valuation Unit of RGD is responsible for monitoring and to follow up cases sent for reassessment at the Valuation Department. It is also responsible for claiming additional duties and taxes that may arise after the reassessment exercise, and thereafter for cases referred before the Objection Unit and ARC.

Cases Re-assessed by Valuation Department

Section 28(2b) of the Land (Duties and Taxes) Act states that where the Registrar General is dissatisfied with the value mentioned in any deed of transfer or any other deed witnessing the transfer of any property, he may by notice in writing, make an assessment of the value of the property being transferred stating the amount of duty or tax. According to Section 28(6) of the Act, the Valuation Department shall, not more than five months from the date of registration of the deed of transfer, advise the Registrar General of the open market value of the property as at the date of registration

In that respect, 14,466 cases out of a total of 16,271 concerning registration of immovable property of declared value of some Rs 46 billion during period January 2017 to June 2018 were referred to the Valuation Department for reassessment. As of December 2018, of these 14,466 cases, the values as per the deed of transfers were correct in 10,539 cases, and were not subject to reassessment. Reply was still awaited for 114 cases from the Valuation Department. For the remaining 3,813 cases, the values were increased and were subject to payment of additional Registration Duty and Land Transfer Tax.

Of the 114 cases pending at the Valuation Department, in three cases, RGD was not advised on the open market value of the property within the period of five months as per the provisions of the Land (Duties and Taxes) Act. A proper follow up on the cases pending at Valuation Department was missing.

RGD replied that reminders are sent to the Valuation Department regarding cases which are reaching expiry of five months and which are overdue for reassessment.

Status of the 3,813 Cases with Increased Reassessed Values

As per Section 28(2A) of the Land (Duties and Taxes) Act, a notice shall be in a form approved by the Registrar General, give the basis of the assessment and be forwarded to the transferee and the transferor, and if there are several, to any of them, by registered post within seven months from the date of the initial registration of the deed.

In accordance with Section 28(3) of the Act, where the Registrar General has given written notice, the person to whom the notice has been given shall pay any duty or tax specified therein within 28 days of the date of the notice, and as per Section 28(3A) of the Act, any person who is dissatisfied by the notice may, within 28 days of the date of the notice, object to the notice by letter sent to the Registrar General by registered post.

Of the 3,813 cases reassessed during the period January 2017 to June 2018, the values of 1,513 cases were not produced, and it was not known whether a notice for payment of additional duties and taxes was issued. For the remaining 2,300 cases reassessed,

appropriate action as per the provisions of the Land (Duties and Taxes) Act was taken by RGD.

Commissioner of Police

Undelivered notices of claims are referred to the Commissioner of Police to trace the whereabouts of the debtor. He then reverts back to the RGD with the results of his enquiry, stating whether the debtor is deceased, untraceable, has moved or is abroad.

During 2017-18, 277 cases of undelivered notices for a total debt amount of some Rs 11.2 million were referred to the Commissioner of Police. 85 of these cases were reported untraceable and notice of claims for additional duties/taxes for these cases totalling some Rs 4 million was not accounted as arrears as per the policy of RGD. The risk of not recovering these arrears was high.

According to the RGD, the amount claimed to untraceable debtors could not be accounted as arrears because the value has yet to be determined. The debtors still have a right for objection.

Allowed Cases

Section 28(3D) of the Act states that any objections made on or after 1 June 2015 should be dealt with by the Objection Unit within four months, while cases lodged prior to 1 June 2015 were to be dealt with within six months. Further, Section 28(3DA) of the Act provides that where the objection is not dealt with within the specified period, it is considered to have been allowed by the Registrar. As per Section 28(4C) of the Act, any amount of tax/duty paid in excess should be refunded to the transferor/ transferee, together with interest at the legal rate, free of income tax, from the date the payment is effected to the Registrar General.

From July 2015 to May 2018, 260 cases with claims totalling some Rs 19.9 million lodged at the Objection Unit were not dealt within the prescribed period, and thus had been allowed by the RGD. This represented loss of Government Revenue. As a result of the allowed cases, as of May 2018, RGD had refunded some Rs 1.4 million, representing the deposits and interests.

RGD replied that the Objection Unit is chaired by a representative of the Chief Government Valuer, and the responsibility for fixing cases to be heard lies with him. As such, the RGD has no control on that issue.

Assessment Review Committee

Any person who is aggrieved by the decision of the Objection Unit is provided with the option to have recourse to the ARC for consideration as per Section 28(4) of the Land (Duties and Taxes) Act. The ARC is an independent body, without any legal restriction and deadline to hear any representation, manages its own scheduled list of cases and sends the outcome of the hearing to the RGD.

From July 2017 to June 2018, 317 cases with claims totalling Rs 32.3 million were considered at the ARC. However, the time lag from the registration of deed at the RGD to the determination of value by the ARC was long, in some cases, more than two years.

RGD stated that ARC, being an independent body, without any legal restriction and deadline to hear any representation, manages its own scheduled list of cases and sends the outcome of the hearing to this office. RGD has no control on the time lag for determination of value by ARC.

3.5.3 Ministry of Housing and Lands

Issue of Notices or Claims

Notices of Claims are issued by post to all lessees who owe more than Rs 500. The undelivered Notices of Claim are sent to the Registry for filing in respective lessees' files in order to arrange for site visits by the Survey Section. For financial year 2017-18, the Finance Section could not produce information on the number of undelivered Notices of Claims sent to the Survey Section for follow up.

MHL informed that since February 2019, undelivered claims are put in files and forwarded to the Survey Section to obtain the exact address, and fresh claims are then issued.

CHAPTER FOUR

CONCLUSION

This Chapter concludes against the audit objective based upon analysis and findings supported by audit evidence as elaborated in the previous Chapter.

Managing Arrears of Revenue remains a challenge for Government. MoFED has a major role in ensuring that the mechanisms for managing Arrears of Revenue at Ministries and Departments are appropriate. It assists and supports them by issuing Circulars and Financial Instructions, prescribing among others, the practices and procedures to be followed in managing their arrears. Limitations in these mechanisms, and the non-adoption of some of the practices, as well as the non-compliance with some of the procedures did not allow MoFED to take timely corrective action for maximising collection from arrears, and to fulfil its role effectively.

There has not been sufficient compliance with Financial Instructions and FM Kit's requirements for ICC to report to the Financial Secretary on issues relating to arrears. For RGD, there is no proper follow up on some of recommendations made by the Audit Committee of MoFED to minimise arrears. The recoverability of significant arrears at RGD arising from additional duties and taxes referred to the Objection Unit and ARC has neither been assessed nor properly disclosed. For Ministries and Departments not falling under the aegis of MoFED, such as MHL, there is no proper mechanism enabling it to oversee management of arrears arising thereat.

At the selected Ministry and Departments, the Arrears of Revenue have not been properly accounted for. There are inconsistencies in their recognition and measurement. At MHL, some lessees still holding LOI and who have not yet signed their agreement have their unpaid rentals accounted as arrears. At CBRD, unpaid Composition Fees have not been recognised as Arrears of Revenue.

Shortcomings in the different Information Systems along with weaknesses in the procedures and practices at the selected Ministry and Departments have not been adequately addressed to ascertain completeness and accuracy of Arrears of Revenue. Several discrepancies in the reported figures of arrears have also been noted.

Though the selected Ministry and Departments have monitoring and recovery mechanisms, these have not been sufficient to maximise collection from the arrears.

CHAPTER FIVE

RECOMMENDATIONS

This Chapter presents the recommendations based on the findings and conclusion.

5.1 Ministry of Finance and Economic Development

MoFED may consider the setting up of a Central Monitoring Unit to oversee the management of Arrears of Revenue in Government entities and which, could be assigned, among others, the responsibilities to:

- Ensure that the ICC submits a consolidated report on significant issues at Ministries and Departments, including Arrears of Revenue, raised by its Internal Control Units to the Financial Secretary as required by FM Kit. This would allow the latter to initiate timely corrective measures.
- For Ministries and Departments not falling under its aegis, monitor the progress of measures being taken to address issues raised by the Director of Audit and Internal Control Units. It should also ensure that all the requirements relating to arrears are complied with for ascertaining the timely follow up, recovery and enforcement of outstanding amounts.
- Ensure that the recommendation of the Audit Committee to RGD, regarding the development of the Valuation Rolls is considered and implemented promptly or explore other options to address issues relating to Arrears of Revenue.
- Ascertain that the advice for write off of arrears from the Director, Internal Control is provided within an agreed time frame.

MoFED replied that it is agreeable for setting a timeframe provided the Director, Internal Control is given all information and evidences required.

- Assist Ministries and Departments in assuring that the figures for arrears submitted to the Treasury are complete and accurate. An assessment of the recoverability of the amounts under dispute at all Ministries and Departments should also be carried out, and appropriately accounted for.
- Ensure that the recommendations made to the selected Ministry and Departments as listed below are implemented.

5.2 Corporate and Business Registration Department

- CBRD should take prompt action to clear any differences between CBRIS Report and Treasury Accounting System Reports.
- CBRD should assess the recoverability of long outstanding Arrears of Revenue. Companies for which objections for removal have lapsed, and those for which no proof

of objections has been delivered should be removed from the Register promptly.

- The limitations of CBRIS should be addressed promptly.
- The unpaid Composition Fees should be included in the Arrears of Revenue figures.
- CBRD should ensure that all entities declare any changes in turnover before paying their annual Registration Fees.
- CBRD should ensure that instructions are given on a timely basis to account for Registration Fees for companies that have filed the winding-up resolution or notice for striking-off with the Registrar. CBRIS should be enhanced to flag all companies filing such type of resolutions or notices. It should also speed up the procedures for removing companies under receivership.
- The Enforcement Section of CBRD should ensure that a proper follow-up of all undelivered reminders is done on a timely basis.

5.3 Ministry of Housing and Lands

- In view of the current inconsistent manner Arrears of Revenue are recognised and measured, MHL, in consultation with MoFED, will have to come up with the appropriate accounting policy.
- The Debt Recovery Unit which has been reported to have been re-constituted should be made operational to support management of debt.
- Constant monitoring is required for all cases of arrears. Debtors have to be chased promptly. Management should consider it a priority to clear the majority of long outstanding debts, and also implementing the recommendations of ICC for the writing off of the low value debts.
- The Ministry should follow up all those cases where lease agreements have not been signed within the prescribed four-month period.

5.4 Registrar General's Department

- RGD should in consultation with MoFED assess the recoverability of the amounts still under dispute, and inform Treasury accordingly. Furthermore, it should ensure that figures submitted to Treasury are correct.
- A proper monitoring system should be set up to ensure that cases lodged before the Objection Unit are heard within the prescribed time. Hence, there should be proper coordination between RGD and the Valuation Department to minimise loss of Government money. Furthermore, procedures should be established where the RGD works in close collaboration with the ARC for follow up and monitoring of statuses of all outstanding cases.

MoFED replied that with regard to time barred cases, the Valuation Department has been invited to follow up closely to ensure that hearings at the Objection Unit are dealt within the prescribed time, and if not possible, on high value cases.

- Transferor and transferee should be required to inform RGD of any change in address. RGD should also consider liaising with the Passport and Immigration Office, the Civil Status Office, the Electoral Commissioner's Office, the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development and other relevant authorities for these cases.

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