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PERFORMANCE & THEMATIC AUDIT REPORT

The Royal Audit Authority has the mandate and the responsibility to audit and report on the Economy, Efficiency and Effectiveness in the uses of public resources. These audits were primarily aimed at ascertaining the existing systems and procedures, identifying inadequacies in the systems impeding the effective

delivery of public services and recommending measures for improvements. Since such audits require more time and resources, the RAA had been very selective in choosing the topics for performance and thematic audits. Therefore, the topics have been selected based on the following criteria;

- i. Overall estimated audit impact;
- ii. Significance of the programme to the activities of the agency;
- iii. Financial materiality;
- iv. Visibility of the program/activity as reflected in its political sensitivity and national importance;
- v. Risk to good management;
- vi. Operating in a complex and uncertain environment;
- vii. Cross agencies and theme audit;
- viii. Public grievance on delivery of services.

During 2007, the Royal Audit Authority issued four performance and thematic audit reports on the following topics:

- ★ Land Administration and Management in Thimphu City Corporation;
- ★ Processing of Building Applications and Monitoring of related Construction Activities in Thimphu City Corporation;
- ★ Land Pooling Procedures in Thimphu City Corporation; and
- ★ Government Property Management System.

The significant findings and recommendations made in each report are presented below:

7.1 Land Administration and Management

The land administration and management audit was aimed at reviewing the existing system and procedures of the Thimphu City Corporation (TCC), identifying inadequacies and recommending measures for improvement relating to the administration and management of land

within the Thimphu municipal area. The system of administration and management of land in general was found to be inadequate and deficient impeding effective delivery of services by the TCC. Significant findings and recommendations were as summarised below:

7.1.1

Lack of clarity in the applicability of laws and absence of detailed rules & regulations, system and procedures had led to uncertainties and inconsistencies in processing and administering the land transfers, registration and management.

7.1.2

Contrary to the Land Act, the TCC had carried out the transfer of land falling under the Municipal area without the Court decisions. The TCC stated that the transfers were being made as per Section 69 of the Bhutan Municipal Act. Thus the TCC had been exercising judicial functions for which there was no proper judicial process being developed.

7.1.3

There were differences in landholdings as per the records of the DSLR and the TCC. 21 cases involving 492.608 decimal of excess areas of land occupied were found regularized by the TCC without proper documentation, investigation and reconciliation of the differences. Further, 4 cases involving excess occupied area of 33.859 decimals land in respect of land received under the Kasho and 3 cases with excess occupied area of 26.56 decimals land in the extended area of the TCC were found regularised irregularly. There were also cases of conversion of dry land to wet land and vice versa without proper documentation.

7.1.4

The provisions of the Land Act pertaining to the granting of substitute land and compensation against the private land acquired by the government were not followed consistently and equitably. While some affected land owners were provided with substitute land as well as cash compensation upon production of certificates of not having lands in other places, some were given only the cash compensation in spite of requesting for substitute lands. There were cases where substitute land was given despite having lands in other areas.

7.1.5

There were many cases where the TCC had not updated the *Thram* upon execution of land transfers and regularisations. Thus the *Thrams* did not reflect the updated position of landholdings. Moreover, there were glaring differences in the landholdings as recorded by the DSLR, and the TCC.

7.1.6

The rates of lease rent varied between 10 Chetrum per sft of leased area to Nu. 42.00 per sft without proper rationality for the variation. In some cases TCC had allowed the Government land to be occupied without signing the lease agreement. As a result lease rents were found not collected.

7.1.7

Supervision and monitoring mechanism over the processing and approval of land transfer cases were either absent or not adequate. Service delivery standards were not clearly defined and synchronised with daily activities of the division or units or at the level of individual employees responsible for the activities. There was no system of maintaining movement indicator of the officials having direct interface with the general public or clients so as to facilitate speedy delivery of services and avoid unnecessary inconveniences to the public. This had led to exercising undue discretion by the public officials, inactions and abnormal delays in the processing of applications for land transfers. Consequently, there were 455 pending land transfer cases pertaining to the period as back as 1992 with the Survey Section, Legal Unit taking as high as 1,214 days to execute an agreement after the approval for land transfer accorded by the Thrompon and the Land Management Section retaining applications as long as 404 days. On an average, in between June 2005 till March 2006, it took about 129 days as against stipulated time frame of 60 days in processing an application.

Recommendations

Important recommendations made by the RAA included the following:

- ✍ The TCC should review the relevance and the applicability of the Land Act in the Municipal areas and obtain clarification from the authorities on the extent of its applicability to avoid ambiguities, inconsistencies and arbitrary decisions. There is also a need for greater autonomy to the TCC to enable it to operate as a body corporate as envisaged in the Bhutan Municipal Act 1999 (BMA) and as per the recommendation of the GG+ document.

- ✍ The TCC should develop detailed rules and regulations, systems and procedures as required under Section 69 of BMA 1999 to properly regulate land transfers, registration and management. The TCC should ensure timely updating of Thrams to reflect current landholdings. The Government should also review the rationality and legality of land transfer and regularisation cases.
- ✍ The TCC should maintain proper records of Government land leased out to private parties and proper inventory of Government landholdings within the Thimphu Municipal Area for better record, control and management of Government land.
- ✍ TCC should establish an effective supervision, monitoring and reporting system for promoting better accountability and transparency amongst those responsible for processing land transfer cases and administering urban land management and providing speedier services to the clients. The TCC should develop service delivery standards for each Division, Section and Unit including delineation of duties and responsibilities of officials and staff members for effective and efficient delivery of services.

7.2 Recording, Processing and Approval of Building Applications

The audit was aimed at reviewing the existing system and procedures, identifying inadequacies in the system and recommending measures for improvement relating to recording, processing and approval of building applications.

Significant audit findings on the review of the system of processing of building applications, compliance of Development Control Regulations 2004 and monitoring of building construction activities were as summarised below:

7.2.1

The Development Control Regulation (DCR) 2004, an important regulation of the TCC was approved to be implemented for a period of 18 months on a trial run in the 59th City Committee Minutes of Thimphu City Committee Meetings held on 28th September 2004 without formal approval or notification by the Government.

7.2.2

While the DCR 2004 clearly stipulated requirement of prior approval of the TCC as prerequisite for commencement of any construction activities, it also incorporated clause for regularisation of construction carried out without prior approval by paying penalty. These provisions were contradictory and incompatible providing scope for carrying out unauthorised construction activities.

7.2.3

There were no regulations prescribed in the DCR 2004 pertaining to the Heritage, Dzong, Environmental Conservation, Agriculture Environments and Traditional Village Precincts. As such, some building applications were not processed due to lack of above regulations leading to construction without approval from TCC.

7.2.4

As against the provisions of BMA 1999 and the DCR 2004, there were instances of institutional buildings being constructed without obtaining prior approvals of the TCC.

7.2.5

Construction of habitable attics in any type of building were not permitted as per the DCR 2004. However, in contravention to the DCR 2004, the records maintained by the TCC revealed that more than 160 buildings had unauthorised habitable attics constructed.

7.2.6

There were abnormal delays in clearing building applications with process time taken varying from 37 days to as high as 731 days. The TCC had taken 184 days on an average to accord the final approval for the construction from the date of receipt of application, which was more than double the prescribed timeframe of 90 days. The time taken in the Architectural Unit alone ranged from 18 days to 677 days.

7.2.7

In contravention to Section 2.8.9 of the DCR 2004, there were many instances of occupation of buildings without obtaining the Occupancy Certificates from the TCC for which the TCC had not initiated any action as stipulated in the DCR 2004.

7.2.8

There were 11 Local Area Plans (LAPs) under the Thimphu Municipality, out of which only two LAPs viz., Lungtenphu and Changzamtog were finalised. Unless the LAPs are finalised, normally no developmental activities are permitted as no demarcation would have been carried out. However, the TCC had granted 43 building permissions in the extended areas without finalising the LAPs.

7.2.9

In terms of Circular No. MoW&HS/CDB-2/2004-2005/924 dated 17 January 2005 of the Hon'ble Zhabtog Lyonpo, only architects were required to be registered with the Construction Development Board (CDB). No such requirements were prescribed for other engineers. Registration of architects who were civil servants was in contravention to the civil service rules and regulations.

7.2.10

Due to designation of different precincts and sub-precincts in the same zone, there were anomalies in the use of land and buildings in terms of number of floors, plot coverage, commercial and residential uses and construction of basement in slopping areas.

7.2.11

The TCC had irregularly allowed regularisation of deviations in construction of buildings pertaining to front set back, rear set back, side set back, plinth area and building coverage by levying penalty.

Recommendations:

Significant recommendations made by the RAA were as summarized below:

- ✍ The DCR 2004 should be reviewed and updated based on feedbacks received and experience gained during the trial period for rendering it practicable, relevant and effective, besides issuing proper notification for its effective implementation.
- ✍ The TCC should review contradictory provisions in the DCR 2004 which stipulate the requirement of prior approval of TCC for construction as well as allowed regularisation of constructions without its prior approval. The TCC must ensure that no construction activities are permitted without its prior approval.
- ✍ The DCR 2004 should incorporate detailed regulations in respect of the heritage, dzong, environmental conservation, forest environments, agriculture environments and traditional village precincts which are not incorporated.
- ✍ Lack of detailed procedures in processing building applications has caused delays. To address these problems and ensure effective delivery of services the TCC should establish time bound process and sub processes clearly

delineating functions and responsibilities of individuals within various divisions and sections in a systemised manner for better accountability and speedy delivery of services.

- ✍ Lack of adequate and strict monitoring would result in unauthorized constructions, deviations, encroachment and other non-compliances. The monitoring Units should be adequately mandated and equipped to enable them to strictly enforce the regulations and to be held accountable for non-compliances in their respective zones of responsibility.
- ✍ Registration of civil servants holding architectural engineering degree with the CDB for preparing architectural designs and drawings and participating in the bids is not consistent with the BCSR that specifically prohibits civil servants engaging in any business activities. The Government should review and revise the related notification to render it consistent with the BCSR.
- ✍ Presently only the architectural engineers are required to be registered with the CDB. This needs to be reviewed and revised to include the registration of civil and electrical engineers.
- ✍ For speedier processing of applications and promoting greater transparency, the TCC should study the feasibility and practicability of instituting a system of on-line processing of applications.

7.3 Land Pooling Mechanism

The review of the administration and the management of Land Pooling System within the three (3) Local Area Plans viz. Changzamtog, Taba and Lungtenphu was primarily aimed at ascertaining and evaluating the adequacies of the system and procedures in ensuring effective implementation of Land Pooling policies and delivery of services.

Despite associated difficulties and complexities involved in implementation of the land pooling policy particularly convincing the affected land owners of the potential benefits accruing from it, the TCC had been able to make some notable progress in certain key areas.

- ✍ The TCC was able to secure consensus of many land owners in general to surrender a portion of their landholding as a part of Land Pooling mechanism despite lack of legal authority.
- ✍ In line with the Structural Plan 2002-2027, the TCC had developed ten Local Area Plans (LAPs) for the implementation of the land pooling mechanism. As of date 8 LAPs were finalised and under implementation.

Significant deficiencies and lapses observed on the review of land pooling system were as summarised below:

7.3.1

There was ambiguity in the requirement of minimum plot size. As per the DCR 2004, the minimum land requirement before pooling is 13 decimals. Contrary to the provision, the Land Pooling Manual stipulates that “the owner is unlikely to agree to contribute any of her/his land if the plot is only just enough to accommodate a simple house”. As such, defining the minimum plot size of 13 decimals would not only lead to uncertainties and inconsistencies in the applicability of provisions but would also impede the effective implementation of Land Pooling Mechanism.

7.3.2

No specific timeframe or regulations for implementation of all the Local Area Plans (LAPs) were framed and documented. Absence of properly defined timeframe and regulations impeded the finalisation and effective implementation of LAPs. As observed some of the LAPs were yet to be finalised leading to delays in the implementation and inconveniences to the public.

7.3.3

While 8 Local Area Plans (LAPs) out of 10 laps were finalised in February 2003 its implementation had been delayed. Lack of adequate co-operation from plot owners, absence of proper legal mandates for land pooling and indecisiveness in enforcing decisions led to non-implementation of plans.

7.3.4

In some instances the TCC had applied land pooling percentage on the occupied area instead of registered area especially in the Changzamtog LAP. As the owners did not have the legal right to ownership on the excess occupied area, application of standard pooling percentage on the occupied area was not appropriate. Further, it indicated that by applying land pooling percentage on the occupied area, the TCC was indirectly regularising the excess land.

7.3.5

The TCC had allotted government land to the Bhutan Power Corporation Ltd. for the installation of transmission houses free of cost without proper approval. Allotment of government land to the corporations free of cost had no legal authority.

7.3.6

There were many instances of landholdings where the TCC had allotted same *thram* numbers as well as plot numbers. Thus landholdings of different individuals having same *thram* number and plot number within the same area were confusing thereby giving rise to uncertainties and possible future complications.

Recommendations

Significant recommendations made by the RAA were as below:

- ✍ The TCC should review and seek clear cut mandate on the adoption and implementation of the land pooling mechanism within the LAPs to avoid future complications and facilitate efficient and effective delivery of services.
- ✍ The TCC should review the provisions of both the DCR and the Land Pooling Manual relating to the minimum plot size to avoid ambiguities, inconsistencies and arbitrary decisions and actions.
- ✍ The TCC should develop appropriate timeframe for the implementation of the LAPs as well as the land pooling systems for facilitating proper monitoring and faster implementation of the plans. Such timeframes would help establish benchmarks and deadlines for proper implementation of plans and programmes. It is not necessary to have legal mandates for establishing timeframes.
- ✍ The TCC should review the application of land pooling percentage on the occupied area instead of the registered area as the Land Act do not permit right of ownership on the excess area occupied.
- ✍ The TCC should review the present system of allotment of vacant government land to the Corporations free of cost. Although TCC maintained that since there are few other similar cases, the actual registration will be done only after verifying all the land occupied by different organisations. However, since such cases are agency specific, the RAA is of the opinion that there is no need to wait till that time. Besides it is also not certain whether there will be an end to such transactions. In the process, government loses the revenue.

- ✍ Appropriate system should be evolved to facilitate better control over allotment of *thram* and plot numbers in future.
- ✍ The TCC should create greater awareness of land pooling amongst the stakeholders.

According to the TCC, the land pooling had become legally permissible with the revised Land Act, 2007 and many of minor lapses pointed out by the RAA would be taken care of by the Land Pooling Manual which is being drafted by the TCC.

7.4 Government Property Management System

The audit of the Government Property Management System was conducted with the overall objective of ascertaining economy, efficiency and effectiveness in the management of Government properties with particular emphasis on land, building and vehicles. Though the Ministry of Finance in the proper management of Government properties has taken several measures, the review revealed certain weaknesses and shortcomings in the overall property management system of the government as summarised below:

7.4.1

There was lack of up-to-date inventory of government property at the agency level as well as the centralised inventory record with the Department of National Property (DNP). As a result, the total value of property held by Government at any point of time was not known and hence not reported in the Annual Financial Statements.

7.4.2

In spite of the instruction issued by the Ministry of Finance, ministries and agencies had not completed registration of land occupied by them in their name. Out of the 10 ministries where records on the area of land were available and verified, 516.37 acres was registered and 214.25 acres was not registered.

7.4.3

One of the major weaknesses of the Government property management system was the non-compliance of Property Management Manual and other directives issued by the Government by various agencies.

7.4.4

There were some cases of sale of Government buildings to private individuals. The disposal of any Government property to any individual rests solely with His Majesty the King. Besides, Government buildings and its periphery were not demarcated from

“Disposal of any government property to any individual rests solely with His Majesty the King”.

- HRH Ashi Sonam Choden Wangchuck, 1975

private land thereby increasing the risk of encroachment by either party which could lead to future complications. It reflected negligence on the part of individuals concerned and agencies in the management of government properties.

7.4.5

The government did not have proper system of ascertaining useful economic lives of assets and optimal asset replacement cycle particularly relevant for the pool vehicles. In absence of such system, vehicles had been used far beyond their useful economic lives. Prolonged use of such assets beyond their useful economic lives could not only be expensive in maintenance but also pose risk to the lives of the users.

Recommendations

With a view to streamline and strengthen the property management systems and procedures, the following recommendations were made:

- ✍ The Ministry of Finance should pursue with other ministries and agencies in getting the required information on Government property and look into the possibility of incorporating the value of Government assets in the Annual Financial Statements. All ministries and government agencies should co-operate with the DNP by providing details of the assets for maintaining the central inventory and regular updating of the records on the government properties.
- ✍ All the ministries and agencies should strictly comply with the PMM. The Ministry of Finance should monitor the compliance to the PMM 2001 by other ministries and agencies.
- ✍ The Ministry of Finance, Ministry of Works and Human Settlement and the National Land Commission should work together and speed up the

pending registration of land in the names of the occupying ministries and agencies.

- ✍ Other than His Majesty the King, no one has the authority to sell or grant government property to private individuals. The Government should investigate all such cases and register those properties in the government inventory of assets. The ministries and agencies must ensure that all Government properties are properly demarcated from the private land and the Ministry of Finance could issue an order to that effect.

- ✍ The Government should come out with optimal replacement cycle for the assets especially for Government pool vehicles. Such systems will not only fetch better prices while disposing off but will also reduce the running and maintenance cost of the vehicles.