

## CHAPTER-V OTHER TAX RECEIPTS

### A – STATE EXCISE

#### 5.1 Tax administration

The Additional Chief Secretary to the Government (Excise), is the administrative head of the Excise Department at the Government level. The Department is headed by the Excise Commissioner (EC). The Department is divided into three<sup>1</sup> zones, which are headed by the Joint Excise Commissioners (JEC), South, Central and North zone. The divisions at the district level are working under the Deputy Excise Commissioners (DEC). Besides, Excise Circle Inspectors (ECI) and Excise Inspectors (EI) under the control of the DEC of the respective districts are deputed to oversee collection of excise duties, licence fees, etc.

#### 5.2 Internal audit

The Internal Audit Wing (IAW) in the State Excise Department is monitored by the Excise Commissioner. The Wing consists of one Joint Commissioner of Excise assisted by one Assistant Excise Commissioner, three Superintendents, three Excise Inspectors and six Preventive Officers. The priority for internal audit is given to auditee districts in which more vehicles are seized and huge collectable arrears are pending.

Out of the total 311 units to be audited, the wing planned and audited 47 units during 2017-18. During the year, the Department cleared 1,119 paragraphs out of 2,838 paragraphs which was 39.43 *per cent* of the outstanding objections (June 2018).

#### 5.3 Results of audit

There are 69 auditable units in the State Excise Department. Out of these, 37 units were selected for audit during the year 2017-18. Scrutiny of the records of these units including those of retail licensees (366 licensees) disclosed 30 cases of non/short realisation of excise duty and license fee, interest on delayed payment and loss of excise duty on account of excess wastages of spirit/liquor/beer and other irregularities involving 20.30 crore (17 licensees- approximately five *per cent* of the licensees audited). These cases are illustrative only as these are based on the test check of records. Audit pointed out some of the similar omissions in the earlier years also. Not only do these irregularities persist, but they also remain undetected till the next audit is conducted. Government needed to improve the internal control system including strengthening of internal audit so that occurrences/recurrence of

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<sup>1</sup> South zone (Alappuzha, Kollam, Kottayam, Pathanamthitta and Thiruvananthapuram), Central zone (Ernakulam, Idukki, Palakkad and Thrissur) and North zone (Kannur, Kasargod, Kozhikode, Malappuram and Wayanad).

the lapses can be avoided. Underassessment of tax and other irregularities involving ₹ 20.30 crore in 30 cases which fall under the following categories are given in **Table - 5.1**.

**Table – 5.1**

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1	Non /short levy of Excise duty/License fee	6	4.79
2	Others	24	15.51
<b>Total</b>		<b>30</b>	<b>20.30</b>

During the course of the year, the Department accepted underassessment and other deficiencies involving ₹ 11.40 crore in 27 cases pointed out by Audit. An amount of ₹ 26.11 lakh pointed out during the year 2017-18 was realised in 10 cases.

The Department recovered an entire amount of ₹ five lakhs in one case as pointed by Audit. A few Audit observations involving ₹ 12.23 crore are mentioned in the succeeding paragraphs.

#### 5.4 Bottling of other State brands of IMFL in Kerala

As per conditions of licences issued under the Kerala Foreign Liquor (Compounding, Blending and Bottling) Rules (Bottling Rules), 1975 and the Kerala Distillery and Warehouse Rules (Distillery Rules), 1968, the bottling licensee shall not lease out, sub-rent or otherwise transfer the privileges granted to him without the prior permission of the EC. The Distillery Rules or Bottling Rules did not prescribe any provision for job work.

Out of the seven bottling units checked in the selected six districts<sup>2</sup>, five units<sup>3</sup> had undertaken the job work of blending and bottling of IMFL brands owned by other State distilleries. During the period from 2016-17 to 2017-18, in the five units, a total of 60.50 lakh cases of 108 brands of IMFL of other States were blended and bottled.

Audit observed that the job work of bottling of IMFL for other State distilleries was done without the previous sanction of EC under Bottling Rules and amounts to unauthorised transfer of privilege. Further, Audit found that the revenue mobilised through the brand registration fee<sup>4</sup> was ₹ 2.16 crore<sup>5</sup>. If the distilleries outside the State had manufactured the IMFL in their own distilleries and imported into Kerala, a revenue of ₹ 20.42 crore would have been realised as import fee at the rate of ₹ 33.75 per case.

A provision for additional licence fee or bottling fee for according sanction of transfer of privilege for other State brands in the Bottling Rules as in the rules of States like Madhya Pradesh and Uttar Pradesh would yield additional revenue.

Government stated (May 2019) that audit observation was noted for future guidance. Further progress in the matter is awaited (September 2019).

#### 5.5 Non-inclusion of import fee element in the purchase cost for levying excise duty

As per Section 18 of the Abkari Act, excise duty<sup>6</sup> at different rate is payable based on the purchase cost of different brands of Indian Made Foreign Liquor (IMFL) by the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited (KSBC), the sole wholesale licensee in the State. However, the purchase cost was not defined in the Abkari Act. According to the Kerala Value Added Tax Act, 2003 of the State, purchase price means the amount of valuable consideration paid or payable by a dealer for any purchase of taxable goods including any sum charged

<sup>2</sup> Ernakulam, Kannur, Kottayam, Palakkad, Thiruvananthapuram and Thrissur.

<sup>3</sup> M/s. Devicolam distilleries Pvt. Ltd, Ernakulam, M/s. Indo-Scottish Distilleries Ltd, Ernakulam, M/s. Empee Distilleries Ltd., Palakkad, M/s. Imperial Spirits Ltd, Palakkad, M/s. SDF Industries Limited, Thrissur.

<sup>4</sup> ₹ 2 lakh per brand as per Rule 3 of the Foreign Liquor (Registration of Brands) Rules, 1995.

<sup>5</sup> 108 brands x ₹ 2 lakh.

<sup>6</sup> The term excise duty means countervailing duty also.

for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Further as per the Excise Manual<sup>7</sup>, the point of levy of duty in the case of all imports into Kerala is the point of entry into Kerala.

During the year 2016-17 and 2017-18, 13,95,393 cases of IMFL were imported from outside the State and excise duty was realised on the basis of cost price which did not include the element of import fee of ₹ 32.40 per case in respect of 180 millilitre bottles and ₹ 33.75 in respect of bottles of other volumes that was paid by the FL-9 licensee i.e., warehouse of KSBC before importing the IMFL.

Thus, the import fee which is required to be paid by the KSBC, before importing IMFL from outside the State which forms an element of purchase cost was not included in the cost for calculating the excise duty. Absence of a precise definition of purchase cost thus led to loss of revenue of ₹ 4.72 crore for the years 2016-17 and 2017-18.

The issue was referred to Government (April 2019). Reply was not received (September 2019).

## **5.6 Non-disposal of Indian Made Foreign Liquor (IMFL) on the stoppage of production**

Rule 33A of the Foreign Liquor Rules stipulates that the EC may take steps to dispose of the liquor kept in any licensed premises in any manner as he deems fit in the event of any exigency warranting such action. The Kerala Foreign Liquor (Compounding, Blending and Bottling) Rules, 1975 do not prescribe a time limit for the licensee to remove the bottled liquor from the store room after it is bottled. The Excise Commissioner directed<sup>8</sup> (October 2016) the DECs to collect the data on the unsold IMFL kept in various distilleries/bottling units as the Hon'ble High Court quashed the demand of excise on the old unsold stock in a unit.

M/s. United Spirits Limited, Palakkad, a blending and bottling unit of IMFL stopped functioning from 5 November 2016. As on August 2018, 38,158 cases of *MC No.1 Celebration Matured XXX Rum* were lying in the store room for 25 months (July 2016 to August 2018). Further 3,722.44 litres of *Signature Whisky* and 82,552.75 litres of *MC No.1 Celebration Matured XXX Rum* were stored in the tank after completion of compounding and blending and before bottling. Even though the manufacturing unit stopped function from November 2016, no action was taken to sell or dispose of the closing stock of IMFL (August 2018).

The revenue due to the State exchequer in the form of excise duty on *MC No.1 Celebration Matured XXX Rum* and that of blended *MC No.1 Celebration Matured XXX Rum* and *Signature Whisky* works out to ₹ 3.96 crore as given in **Table - 5.2**.

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<sup>7</sup> Para No. 6 of Chapter VIII.

<sup>8</sup> Letter No. XC3-12897/16 dated 18 October 2016.

Table – 5.2

(In ₹)

Name of brand	Mc No.1 Celebration Matured XXX Rum				Signature Whisky
Volume	1000 ml	750 ml	500 ml	180 ml	1000 ml
No. of cases	7,580 + 9,172 <sup>9</sup>	8,942	18,815	2,821	413 <sup>9</sup>
Excise duty <sup>10</sup>	803.72	867.35	818.38	819.22	1,599.75
Excise Duty leviable	1,34,63,917.44	77,55,843.70	1,53,97,819.70	23,11,019.62	6,60,696.75
<b>Total Excise duty</b>					<b>3,95,89,297</b>

A provision in the Bottling Rules fixing a time limit for removal of bottled liquor from the unit as in the rules<sup>11</sup> of the States of Odisha and Rajasthan would protect revenue. In the absence of such a provision in the Act/Rules, the Department was not able to take timely action in non-realisation of revenue and ensure disposal of stock of IMFL. Further, any mishappening due to use of liquor in closed unit cannot be ruled out.

Government stated (May 2019) that the audit observation was noted for future guidance and action is being taken to recover the amount in respect of the stock and dispose the same. Further progress in the matter is awaited (September 2019).

### **5.7 Non-identification of individuals/institutions who are required to take licence for spirituous preparations**

Any medicinal or toilet preparation containing alcohol, whether self-generated or otherwise or any intoxicating drug is a spirituous preparation vide definition 3(k) of the Kerala Spirituous Preparations (Control) Rules, 1969. According to Section 15 of Abkari Act, no liquor or intoxicating drug shall be sold without licence issued by the EC. Rule 11 of the Kerala Spirituous Preparation (Control) Rules 1969 prescribes licence in Form SP VI (for wholesale) and SP VII (for retail sale) for allopathic medicinal preparations, homoeopathic preparations and preparations coming under the indigenous system of medicines, and licence fee is recoverable as detailed in **Table - 5.3**.

<sup>9</sup> Excise Duty on IMFL stored in tank was calculated as if it was sold in cases (i.e. nine litre units) containing bottles of 1000 ml volume. (i.e. No. of cases = total litres/9).

<sup>10</sup> Excise duty per case taken from the price list of KSBC warehouses w.e.f. 1 October 2016.

<sup>11</sup> Under Rule 39(1) of the Board's Excise Rule (BER), 1965 of the Odisha State a licensee should remove the bottled liquor within three months. Similar provision is envisaged in Rule 7 of the Rajasthan Distilleries Rules, 1976.

**Table - 5.3**

Licence Form	Licence fee
Wholesale licence in Form SP VI	₹ 5,000 for a year or part thereof
Retail licence in Form SP VII for Homoeopathic & Ayurvedic preparations	₹ 1,000 for a year or part thereof
Retail licence in Form SP VII for Allopathic preparations	₹ 300 for a year or part thereof

Audit examined the licence issue register of the six selected offices<sup>12</sup> of DECs for the period 2017-18 and noticed that 157 persons have taken the licence as detailed in **Table-5.4**. However, from the data obtained from the Office of the Drugs Controller in the six districts, Audit noticed that 11,855 persons had not taken licences from the Excise department for the trading of spirituous preparations, but were engaged in the trade. This resulted in loss of revenue in the form of licence fee of ₹ 2.35 crore<sup>13</sup> per year.

**Table - 5.4**

District	Allopathy - Retail		Allopathy-Wholesale		Homoeopathy - Wholesale		Homoeopathy - Retail	
	Total no. of shops	No. of shops for which licence issued	Total no. of shops	No of shops for which licence issued	Total no. of shops	No. of shops for which licence issued	Total no. of shops	No. of shops for which licence issued
Ernakulam	1,620	3	1,282	2	56	9	56	5
Kannur	791	0	472	0	34	0	64	0
Kottayam	814	0	375	0	35	16	46	12
Palakkad	1,065	3	374	3	17	1	17	2
Thrissur	1,483	0	826	1	35	2	35	3
Thiruvananthapuram	1,731	66	745	27	18	0	21	2
<b>Total</b>	<b>7,504</b>	<b>72</b>	<b>4,074</b>	<b>33</b>	<b>195</b>	<b>28</b>	<b>239</b>	<b>24</b>

[Total No. of shops- 12,012; Total Licences issued – 157].

Source: Details from Controller of Drugs, Kerala as on 1 September 2018 and licence issue register at DECs.

Audit observed that the licences are issued only to those who approached for licences and no system existed in the Department for identifying the persons engaged in the trade of spirituous preparation by conducting survey or by collecting data available with other licensing agencies such as Office of the Drugs Controller functioning under Health department/ Directorate of Homoeopathy, etc. There is no provision in the Rules to invoke any action against the persons who have not taken licences. The issue still persists despite being pointed out in previous Audit Report for the year ended March 2016.

<sup>12</sup> Ernakulam, Kannur, Kottayam, Palakkad, Thiruvananthapuram and Thrissur.

<sup>13</sup>  $(7,432 \times ₹ 300) + (4,041 \times ₹ 5,000) + (167 \times ₹ 5,000) + (215 \times ₹ 1,000) = ₹ 2,34,84,600.$

The issue was referred to Government (April 2019). Reply was not received (September 2019).

### **5.8 Unauthorised reconstitution of Board of Directors of companies/ firms holding Foreign Liquor licences**

Under Rule 19(iii) of Foreign Liquor Rules, reconstitution of partnership/directors of a company may be allowed on payment of ₹ one lakh. As per Section 67(2) read with 67(3) of Abkari Act, as amended in 2014, the Excise Commissioner (EC) may impose a fine of ₹ three lakh each on any person or persons holding a licence or permit for violation by reconstitution, alteration or modification without the permission of the EC of any deed on the strength of which any licence is granted and the EC may regularise such irregular reconstitution on payment of fine and application from the licensee.

Audit cross verified the data on reconstitution of Board of Directors of companies in Excise Division Offices in selected districts<sup>14</sup> between March 2016 and March 2018 with the data in the Website of Ministry of Corporate Affairs, Government of India. Audit observed that 20 companies, who had neither applied for permission nor regularisation of reconstitution, had modified/reconstituted Board of Directors on 30 occasions by addition/deletion of directors/partners as given in **Appendix XVIII**. Absence of mechanism in the Department to identify the unauthorised reconstitution resulted in non-realisation of revenue.

Non-imposition of fine for unauthorised reconstitution and non-collection of fee for regularisation resulted in non-realisation of revenue of ₹ 1.20 crore<sup>15</sup> from 20 companies during the period 2016-17 and 2017-18.

The issue was referred to Government (April 2019). Reply was not received (September 2019).

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<sup>14</sup> Ernakulam, Kannur, Kottayam, Palakkad, Thiruvananthapuram and Thrissur.

<sup>15</sup> 30 occasions at the rate of rupees four lakh each (fee of rupees one lakh each and fine of rupees three lakh each).

## B – STAMP DUTY AND REGISTRATION FEES

### 5.9 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act, 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the Rules framed thereunder as applicable in Kerala and are administered at the Government level by the Secretary to Government, Taxes Department. The Inspector General of Registration (IGR) is the head of the Registration Department. He is assisted by the District Registrars (DR) and Sub-Registrars (SR).

### 5.10 Internal audit

The IGR, Kerala monitors the functioning of the IAW of the Registration Department. The District Registrar (Audit) and team conduct audit in the districts. The auditee offices are selected after giving special preference to those offices where the Registering Officer is due to retire shortly which itself is a risk analysis aimed at avoiding revenue loss. During 2017-18, IAW audited 294 units out of 303 units planned for audit and pointed out 1,902 observations. During the year 2017-18, 1,822 audit observations could be cleared out of the 5,323 outstanding observations (August 2018).

### 5.11 Results of audit

Out of the total 328 offices in the Registration Department, 82 offices including 77 SROs were test checked during 2017-18. A total of 10,26,512 number of documents were registered in the 77 SROs out of which 34,000 number of documents were test checked during 2017-18. Non/short levy of stamp duty and registration fee and other irregularities amounting to ₹ 33.58 crore were detected in 126 cases, which fall under the following categories as given in **Table-5.5**

Table – 5.5

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Performance Audit on functioning of OPEN PEARL in Registration Department	1	-
2	Undervaluation of documents	68	2.22
3	Other lapses	57	31.36
<b>Total</b>		<b>126</b>	<b>33.58</b>

During the course of the year, the Department accepted under-valuation and other deficiencies involving ₹ 1.77 crore in 54 cases. An amount of ₹ 39.65 lakh pointed out in 52 cases was realised during the year 2017-18.

In case of a draft paragraph, involving ₹ 2.49 lakh, the Department recovered the entire amount. A Performance Audit (PA) on functioning of OPEN PEARL in Registration Department and a few illustrative cases involving ₹ 12.42 crore are given in the following paragraphs.



## **5.12 Performance Audit on Functioning of OPEN PEARL in Registration Department**

### **Highlights**

- Inordinate delay in achievement of goals due to lack of organisational and management controls over the project and the absence of User Requirement Specification, Service Level Agreements, Government order and detailed project proposal.

*(Paragraph 5.12.7.1)*

- Absence of Business Continuity Plan/Disaster Recovery Plan and failure to test and restore backed up data.

*(Paragraph 5.12.7.2)*

- Delay in completion of the registration process of documents due to additional work of data entry and validation of the data in addition to the preparation of document on stamped or e-stamped paper and its verification.

*(Paragraph 5.12.7.3)*

- Maintenance of soft copy of e-stamp, absence of password protection, facility to take unrestricted printouts renders e-stamps insecure. There are no provisions for capturing serial numbers of e-stamps used for registration and purchase of additional e-stamp in case the e-stamps purchased are found to be insufficient.

*(Paragraph 5.12.7.4)*

- Non-reduction of workload despite computerisation due to manual maintenance of accounts, revenue statements, reconciliation statement of the remittances, manual preparation and delivery of certified copies, list certificates and marriage certificates.

*(Paragraph 5.12.8.1)*

- Incomplete and/or incorrect data in the database resulted in generation of incorrect Management Information System (MIS) reports and control registers.

*(Paragraph 5.12.8.4)*

- Out of the 26 deficiencies pointed out in the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Kerala for the year ended 31 March 2009 (Volume I), 20 issues were taken care of in the OPEN PEARL. However, six issues viz., delay in project completion and non-achievement of objectives, non-validation of current data, generation of incorrect/defective reports, non-existence of Business Continuity Plan (BCP)/Disaster Recovery Plan (DRP), deficiencies in Internal Control are still persisting.

*(Paragraph 5.12.9)*

### **5.12.1 Introduction**

The Registration Department (RD) renders specific services to the citizens such as registration of documents (deeds relating to movable and immovable properties such as Sale, Partition, Lease, Will etc.), chitties, societies, firms, non-trading companies, marriage and issue of marriage certificates, encumbrance certificates, certified copy of registered documents and list certificates of registered documents.

Computerisation of the RD was one of the major e-governance initiatives undertaken by the State Government. The PEARL (Package for Effective Administration of Registration Laws) application, developed by National Informatics Centre (NIC) was implemented by the RD during 2000 to 2009 at a cost of ₹ 24.41 crore. As the application was not completed as intended and the project got stuck at the development stage, the Government appointed<sup>16</sup> a High-Level Technical Committee (HLTC) for thorough evaluation and to decide on the future course of action pertaining to the computerisation programme in the Department. The Committee in its meetings held in July 2009 and September 2009 decided to redesign the PEARL application, migrate to a web application and to build a central database. The work was entrusted to NIC in 2009 and the activities relating to registration of documents, marriage and issue of certificates were computerised as OPEN PEARL (Open Source Based Package for Effective Administration of Registration Laws) application, an e-governance project. The Application was implemented in all the 315 Sub Registrar Offices (SRO) in the State between August 2012 and May 2017 and an amount of ₹ 42.20 crore<sup>17</sup> was incurred on the project during 2009-10 to 2017-18.

### **5.12.2 Organisational structure**

The Secretary (Taxes), Government of Kerala is in charge of the Department at the Government level and the Inspector General of Registration (IGR) Kerala, is the head of the Department. There are four zonal offices, 14 District Registrar Offices (DROs) and 315 SROs in the State which are headed by Deputy IGR, District Registrars (DR) and Sub Registrars (SR) respectively.

### **5.12.3 Audit objectives**

The objectives of the Performance Audit (PA) were to assess whether:

- the initiative of e-governance enhanced the efficiency of the Department in delivery of services and augmentation of revenue;
- the people of Kerala reaped the benefits of e-governance through computerisation of registration and allied activities;

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<sup>16</sup> Vide GO(Rt) No.405/09/TD dated 2 May 2009 of Taxes (E) Department.

<sup>17</sup> Hardware - ₹ 1.89 crore, application development - ₹ 1.15 crore, man power and training - ₹ 3.55 crore, networking - ₹ 32.27 crore and bandwidth - ₹ 3.34 crore.

- the OPEN PEARL addressed the weaknesses in the earlier system (PEARL).

#### 5.12.4 Audit criteria

The evaluation was done with reference to the following sources of criteria:

- The Registration Act, 1908;
- Registration Rules (Kerala);
- Kerala Stamp Act, 1959 (KS Act);
- The Kerala Stamp Rules, 1960;
- Indian Registration (filing of True copies) Rules, 1967;
- Registration Manual;
- Kerala State Right to Service Act, 2012;
- Transfer of Registry Rules, 1966;
- Project Proposal of the OPEN PEARL and
- Relevant orders and circulars issued by the Government.

#### 5.12.5 Scope and methodology of Audit

The PA was conducted during May 2018 to August 2018, covering the period from 2013-14 to 2017-18 by selecting four<sup>18</sup> out of 14 DROs. In the 315 SROs under 14 DROs, 49,75,478 documents were registered during the period covered in Audit of which 12,21,224 documents (25 per cent) were registered in the 88 SROs under the selected four DROs. Sixteen<sup>19</sup> SROs i.e. four SROs from each DRO were selected using stratified random sampling method in IDEA. Out of 2,77,339 documents (23 per cent) registered in the selected 16 SROs during the audit period 37,915 documents were test checked by audit. In addition, 14,332 Encumbrance Certificates processed during March 2018 in the selected SROs were also test checked.

Audit was conducted through test-check of records in the Taxes (E) Department, Secretariat of Government of Kerala; Office of the IGR, Kerala; selected DROs and SROs; analysis of the OPEN PEARL database using SQL<sup>20</sup> queries and CAATs<sup>21</sup> and obtaining replies/confirmation of the extracted data.

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<sup>18</sup> Idukki, Palakkad, Pathanamthitta and Thiruvananthapuram.

<sup>19</sup> Kadapra, Kattakkada, Kattappana, Kazhakuttom, Kozhinjampara, Mannarkkad, Navayikulam, Pathanamthitta, Palakkad, Pandalam, Parli, Pattom, Peermade, Perunad, Thodupuzha and Udumbanchola.

<sup>20</sup> Structured Query Language.

<sup>21</sup> Computer Assisted Audit Techniques.

An Entry Conference was conducted on 23 May 2018 with the Secretary, Taxes Department, Government of Kerala, in which the audit objectives, scope and criteria for the PA were discussed. An Exit Conference was also conducted on 14 November 2018 with the Secretary, Taxes Department and the audit findings were discussed in detail.

#### **5.12.6 Acknowledgement**

Indian Audit and Accounts Department acknowledges the co-operation and assistance extended by the Secretary (Taxes), Inspector General of Registration, district and field level functionaries of selected districts during the course of PA. Audit also acknowledges the receipt of replies from the Government to the issues pointed out in this report.

#### **Audit findings**

OPEN PEARL was implemented to address the short comings of the previous PEARL application and the objectives of the project were as detailed in **Appendix XIX**. Out of the 19 project objectives of OPEN PEARL, nine objectives viz. storing scanned copies of registered documents; maintaining data dictionary of various types of transactions and rates of stamp duty and registration fee; details of undervaluation cases; facility for e-stamping, e-payments; transfer of data for automatic transfer of registry in revenue records; providing standard format for document preparation; preparation of encumbrance certificates; automatic preparation of indexes, memos, various accounts, registers etc. were either fully or partially achieved. However, Audit noticed the following.

#### **5.12.7 Non-achievement of project objectives**

##### **Project Implementation**

##### **5.12.7.1 Inordinate delay in achievement of goals due to lack of organisational and management controls over the project**

Orders<sup>22</sup> laying down the broad procedure that should be observed for undertaking e-governance initiatives by various departments were issued by the Government of Kerala in 2009. As per the orders, detailed project proposal, User Requirement Specification (URS) and implementation plan were to be prepared and Service Level Agreements (SLAs) were to be entered into with various agencies.

On scrutiny of the records, Audit noticed the following deficiencies in the implementation of OPEN PEARL:

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<sup>22</sup> GO(P)No.24/2009/ITD dated 29 September 2009 Information Technology (B) Department, Government of Kerala.

- No detailed project proposal was prepared and only the financial proposal was prepared. Though this project was envisaged as a step ahead of the existing PEARL, no URS was prepared for this project. No Government order specifying the services to be rendered after completion of the project was issued by the Administrative Department.
- While entrusting the work to NIC, no Service Level Agreements (SLA) were entered into specifying the scope of work and deliverables with time schedule. An amount of ₹ 5.15 lakh was handed over to NIC in March 2011 for preparation and documentation of flow chart, user manual etc. However, the documents were not yet delivered by NIC even after seven years (September 2018).
- It took about three years for development/migration from the existing PEARL to OPEN PEARL and another four years for its implementation in 315 SROs. Even after six years since the implementation of OPEN PEARL and incurring ₹ 42.20 crore<sup>23</sup>, the software development was not completed and handed over to the Department.

In the absence of specified documents and yardsticks mentioned above, the progress of the project could not be monitored leading to inordinate delay in development and implementation of the application.

The Government stated (February 2019) that necessary arrangements would be made with the NIC and Registration Department officials to have the SLA and ensure timely completion of the project. Further progress is awaited (September 2019).

**Recommendation: Steps may be taken to prepare the URS, enter into SLAs, fix timelines, and ensure handing over the project to the Department along with proper documentation.**

#### **5.12.7.2 Backup and Business Continuity and Disaster Recovery plans**

Business Continuity Plan (BCP) and Disaster Recovery Plan (DRP) are essential to ensure that the organization/Department can resume its business in the event of a disaster leading to non-availability of data or information. With this in mind the Government of Kerala ordered<sup>24</sup> that regular back up, restoration and testing of the backup are to be done by the System Administrator or the IT Manager of the departments as part of the BCP.

OPEN PEARL is a mission critical system accessed by around 1,000 officials at a point of time and is also accessed by other stakeholders round the clock. The Application is implemented in all the 315 SROs in the State and the data is

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<sup>23</sup> ₹ 42.20 crore for the period 2009-10 to 2017-18.

<sup>24</sup> GO(MS) No.10/2010/ITD dated 5 March 2010 issued by Information Technology (B) Department.

centralised by co-locating the server at State Data Centre (SDC)-2, Thiruvananthapuram with live streaming and replication to another server co-located at SDC-1 Thiruvananthapuram.

During audit, it was noticed that registration and other allied activities of the Department came to a stand still for two days and three days during the year 2015 and 2017 respectively due to hard disk failure and server issues of the primary server at State Data Centre (SDC-2). The Department could not resume the work immediately by uplinking the backup server at SDC-1.

During the Performance Audit, Audit requested data dump of OPEN PEARL in March 2018. Though the department made earnest attempts from 7 April 2018, the data dump could be furnished to Audit only after 43 days since data dumping from the backup server at SDC-1 failed many times and the dump could be taken only by copying the data from the primary server to another backup server at SDC-1.

Audit found that despite the system failure in 2015 and 2017

- BCP and DRP were not documented and
- no periodical testing or restoration of the backed-up data was done by the Department as directed by the Government.

The Government stated (February 2019) that steps are initiated for creating suitable disaster recovery plan and servers are being installed as part of the business continuity plan. Further progress in the matters was not received (September 2019).

**Recommendation: Necessary steps may be taken to prepare and document BCP/DRP and provision may be made to uplink the backup server.**

### **Delivery of services**

#### **5.12.7.3 Delay in completion of the registration process of documents**

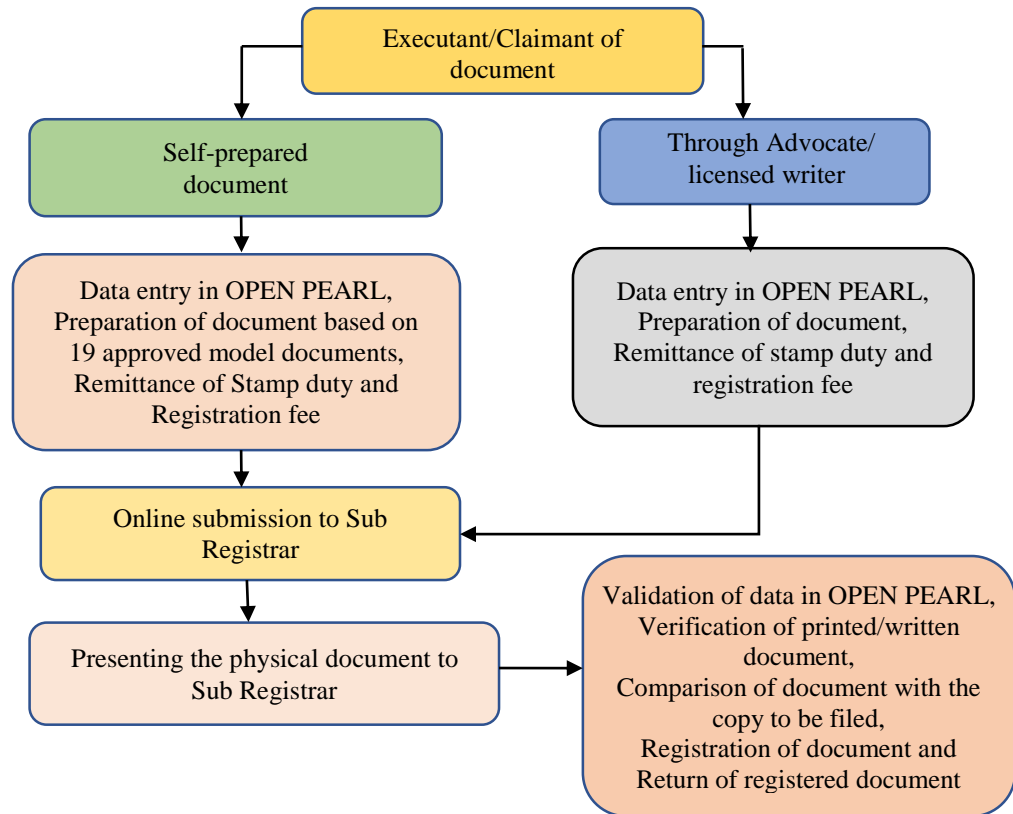
As per notification<sup>25</sup> issued under Section 3 of the Kerala State Right to Service Act, 2012, registered documents are to be returned by the SR to the public on the same day or within a maximum of three days from the date of registration. OPENPEARL envisaged preparation of documents to be registered as electronic<sup>26</sup> documents and retrieval of the registered document in electronic form by the public within one hour after completion of the registration process.

After the introduction of OPEN PEARL, the registration process is as detailed in the chart below:

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<sup>25</sup> No. E1.24510/2011 dated 14 December 2012 (GO (Rt) No. 402/2012/P&ARD dated 20 November 2012).

<sup>26</sup> An electronic document is a document in electronic form which is intended to be used either in electronic form or as printed output.



On an examination of the OPEN PEARL application, database, connected records and the register of return of registered documents of the selected 16 SROs Audit noticed delay in the process of registration and return of registered documents as detailed below:

- There was no provision for delivery of electronic documents. Out of the 19 model documents approved by the Government, only two electronic documents viz., sale deed and settlement deed could be prepared electronically. However, the facility for preparation of these electronic documents has not been extended to the public/stakeholders till date. The public has to manually prepare and submit the documents for registration on stamped or e-stamped paper causing delay in the registration process.

Though the facility of preparing documents by the executants/claimants themselves, based on the model documents, was introduced in the Department in July 2016, only 789 out of 14.38 lakh executants/claimants had prepared their documents on paper from July 2016 to March 2018.

- The executant/claimant had to repeatedly enter his personal details into the system at the time of registration of each new document.
- Full details relating to the document were to be entered in the system in addition to the preparation of the document on a stamped paper.

- Though there was a provision in the database for entering the ready for issue date, the details were not recorded in the database of all test checked SROs except SRO Perunadu and SRO Pattom.

Out of the 16 selected SROs, in the case of 15 SROs (except SRO Perunadu), date of return of the registered documents to the executants/claimants was not recorded in the database and out of the above 15, in the case of six SROs it was neither recorded in the database nor recorded in the manual issue register maintained by the SROs as detailed in the **Appendix XX**. Out of the 6,319 documents registered during March 2018 in 16 selected SROs, the date of return was neither recorded in the OPEN PEARL database nor in the manual issue register in the case of 2,842 (**Appendix XX**) documents registered in six SROs.<sup>27</sup> Out of the remaining 3,477 documents registered in the remaining 10 SROs (including SRO, Perunadu where issue date is available in database), in nine SROs the date of return was not recorded in the manual issue register in case of 1,505 documents. In the case of the remaining 1,972 documents in the 10 SROs, only 231 (12 per cent) documents were issued within three days. In the case of the balance 1,741 documents (88 per cent), the executants/claimant received back the registered document with endorsements of the SR after a delay ranging from one day to 70 days from the date of registration as detailed in **Appendix XX**.

After the implementation of OPEN PEARL, despite providing e-stamping and e-payment<sup>28</sup> facility, there is delay in the registration process due to absence of provision for delivery of electronic documents, additional work of data entry and validation of the data in addition to the preparation of documents on stamped or e-stamped paper and their verification.

Thus, the objective of preparation of electronic documents and return of documents within three days was not achieved by the project and deprived the people of the benefit of faster registration as envisaged in the objective.

The Government stated (February 2019) that the existing system of preparing documents in descriptive mode is not allowing the facility to prepare and deliver documents electronically. The facility to prepare electronic documents for settlement and sale would be introduced by making necessary amendments in rules and changes in the software. It was decided to make available digitally signed documents, system generated endorsement and registration certificates so as to avoid delay in returning the documents after the registration. The facility for populating the personal details based on Aadhar would be explored. Further compliance in the matter is awaited (September 2019).

The reply was not tenable as preparation and delivery of documents in electronic form was the objective of the OPEN PEARL as declared by the High-Level

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<sup>27</sup> Kazhakkuttom, Palakkad, Pattom, Pathanamthitta, Pandalam and Thodupuzha.

<sup>28</sup> Electronic payment made by means of credit card, debit card, internet banking etc.



Technical Committee and the system of preparing documents in descriptive mode was continuing since the pre-PEARL era.

**Recommendation: Provision may be made in OPEN PEARL for population of personal details of each individual based on the unique identity such as Aadhar, etc., and generate printable electronic documents.**

#### 5.12.7.4 Inadequacies in e-stamping mechanism

The Government accorded approval<sup>29</sup> for implementation of e-stamping<sup>30</sup> in the State (February 2016) which was introduced with effect from 24 May 2017. As per the Kerala Stamp (Amendment) Rules 2017<sup>31</sup>, documents chargeable with stamp duty of above one lakh rupees shall be stamped with e-stamp only. The facility of e-stamping is not available at present (October 2018) for instruments which are chargeable with a stamp duty of one lakh rupees or less.

On an analysis of the e-stamping mechanism, Audit noticed that:

- the soft copy of the e-stamp which was a *pdf* file can be copied on to any media including removable media such as pen drive, etc. The chances of duplicate copies being created cannot be ruled out.
- the *pdf* file can be opened without any password and any number of copies of e-stamped paper can be printed before and even after the registration of a document and its defacement<sup>32</sup>, using the soft copy of the e-stamp, rendering it highly insecure.

Thus, delivery of e-stamps as *pdf* file facilitates unrestricted printouts of e-stamp by its holder/payee. This can result in use of the e-stamps for execution of various documents using the print outs of the same e-stamp, the existence of which cannot be detected unless the documents are registered with any Registrar. An unregistered document executed on a stamped paper can be admitted as evidence in any proceedings of a Criminal Court as per proviso (d) to Section 34 of the KS Act, 1959.

- there was no provision for purchase of additional e-stamp in case the e-stamps purchased are found to be insufficient.

The stamp duty in lieu of the additional e-stamps required was either remitted directly into the treasury or through e-payment and the additional stamp duty paid was recorded as an endorsement in the document. Lack of provision for purchase of additional e-stamps led to non-exhibition of the total stamps used for registration of a document.

<sup>29</sup> Vide GO (MS)No.19/2016/TD dated 9 February 2016.

<sup>30</sup> E-stamp means an electronically generated impression of stamp on a paper to denote the payment of stamp duty.

<sup>31</sup> Vide SRO No.182/2017, GO(P) No. 23/2017/TD dated 7 April 2017.

<sup>32</sup> For preventing registration of another document using the e-stamp.

- serial numbers of the e-stamps used in the registered documents were not recorded in the master tables of the OPEN PEARL database. These details were available only in the PEARL\_PUBLIC database<sup>33</sup>, the records of which were not to be maintained permanently. This can result in re-use of the same e-stamp again.
- In respect of 718 out of the 6,149 documents registered during March 2018 in 15 SROs (i.e. except Perunadu SRO), stamp duty of ₹ 0.93 lakh was paid in excess of the legitimate amount by the executant/claimant (**Appendix XXI**) since stamp paper of exact denomination was not available.

The Government stated (February 2019) that security measures like One Time Password (OTP) based printing of e-stamps are being considered. Provision would be made in the system to capture the serial numbers of the e-stamps, names of both parties and purpose of the document would be incorporated in the e-stamp to prevent misuse of multiple copies. Further progress in the matter is awaited (September 2019).

**Recommendation: Printing of e-stamps be permitted online only and number of prints may be restricted to one. Provision may be made for issue of revised e-stamp in cases where additional stamps are required. Provision for recording the serial number of the e-stamp has to be made in OPEN PEARL.**

#### **5.12.7.5 Non-integration of the Fair Value of Land application with the OPEN PEARL**

Fair value of each piece of land under a survey number or its subdivision in the State is available in the Fair Value of Land (FVL) application maintained by the Registration Department which can be accessed by the public through the Web.

In the OPEN PEARL application there is a provision to select the fair value of the land from the FVL application or to enter the fair value into the system by the user during online submission of the details of the document to be registered.

In this connection Audit noticed that:

- the FVL application was not integrated with the OPEN PEARL application;
- the executant/claimant had to manually enter the details (after ascertaining the fair value from the FVL application or from the Fair Value Register) and the SR had to manually verify the correctness of the fair value of the land applied for the purpose of computation/ascertainment of the correctness of the stamp duty and registration fee;

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<sup>33</sup> PEARL\_PUBLIC database contains data which were initially entered by the stakeholders while making application for registration. When the registration is done by SR, these data (except serial no. of the e-stamp) are transferred/copied to the relevant fields of the OPEN PEARL database. Thus, data in PEARL\_PUBLIC database are of temporary nature.

- reporting of undervaluation (as per Section 45(B) of the KS Act) has to be done through manual intervention in the application.

Because of non-integration of the FVL application, automatic determination and verification of stamp duty, registration fee and reporting of undervaluation could not be done by the OPEN PEARL application.

The Government stated (February 2019) that the fair value of land application is being migrated to the latest technology and necessary modification would be done in OPEN PEARL to integrate it with this. Further progress is awaited (September 2019).

**Recommendation: Steps may be taken to integrate the fair value of land application with OPEN PEARL.**

#### **5.12.7.6 Failure to carryout automatic transfer of registry.**

The OPEN PEARL envisaged automatic transfer of registry after the registration of the document by the Sub-Registrar (SR) through integration with the Revenue Land Information System (ReLIS)<sup>34</sup>.

As per Rule 3 (a)(vi) of the Transfer of Registry Rules, 1966, the applications for transfer of registry are to be forwarded to *Tahsildars*/Village Officers by the Registering Officer.

On analysis of the OPEN PEARL application, Audit noticed that while transferring the application and data of the registered document by the SR to the *Tahsildar*/Village Officer, application fee alone was collected and the transferor or transferee (executant or claimant) had to again approach the Taluk Office/Village Office for remitting the fees for transfer of registry.

Non-collection of fees for transfer of registry by the Department through OPEN PEARL resulted in non-achievement of the objective of automatic transfer of registry.

The Government stated (February 2019) that collection of the fee for Transfer of registry would be considered.

**Recommendation: Provision may be made in OPEN PEARL to collect the fee for transfer of registry and the Government may take steps for updating data in ReLIS database to enable automatic transfer of registry.**

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<sup>34</sup> ReLIS is a Web-based application for the Revenue Department which is integrated with the OPEN PEARL application of the Registration Department to attain the aim of online mutation and management of Land Records. It aims to facilitate a guaranteed conclusive title to immovable properties in the State.

#### **5.12.7.7 Delay in issue of encumbrance certificates and non-provisioning for online issue of other certificates**

As per notification<sup>35</sup> issued under Section 3 of the Kerala State Right to Service Act, 2012, encumbrance certificate and list certificate (both issued under Rule 168 of the Registration Rules (Kerala)) are to be issued by the SR to the public within a maximum of seven days from the date of application even if the details are not available in the system and certified copies (as per Section 57 of the Registration Act, 1908) are to be issued within two days from the date of application.

Presently, the submission of applications for encumbrance certificate, list certificate, certified copy and marriage registration can be made online by the applicants by remitting the required fee online.

OPEN PEARL project envisaged the issue of these certificates online.

On scrutiny of the OPEN PEARL database and the Register of various certificates in respect of the selected 16 SROs it was noticed that:

- digitally signed certificate was issued online in the case of encumbrance certificate only. But out of 14,332 encumbrance certificate applications received during March 2018, encumbrance certificates were not issued within the time limit of seven days from the date of application in 1,620 (11 *per cent*) cases. The delay in issue ranged from one to 112 days as detailed in the **Appendix XXII**;
- due to non-validation of legacy data/non-entry of details of documents registered during pre-computerised period, manual intervention is required for verification of encumbrance in case of list certificate and encumbrance certificate.
- there was no provision for online issue of list certificates, certified copies and marriage certificates.

The Government stated (February 2019) that sanction was accorded to SROs to digitise the previously registered documents and to capture the metadata information so as to facilitate online issue of digitally signed encumbrance certificates, list certificates and certified copies. Further compliance in the matter is awaited (September 2019).

**Recommendation: Steps may be taken for entry and/or validation of details of documents registered in earlier years in OPEN PEARL. Provision may be made in the OPEN PEARL to issue digitally signed list certificates, certified copies and marriage certificates.**

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<sup>35</sup> No. E1.24510/2011 dated 14 December 2012 (GO (Rt) No. 402/2012/P&ARD dated 20 November 2012).

### 5.12.8 Failure to improve efficiency and reduction of workload

#### 5.12.8.1 Non-reduction of workload of the Department despite computerisation.

One of the objectives of the OPEN PEARL project was to increase the efficiency in the delivery of services and to reduce the work load of the Department.

Audit however noticed that:

- there was delay in completion of registration process of documents (paragraph 5.12.7.3);
- certified copy, list certificate and marriage certificate were prepared and delivered manually (paragraph 5.12.7.7);
- accounts and revenue statements are still maintained manually (paragraph 5.12.8.3) and
- Fees/amounts relating to encumbrance certificate, certified copy, list certificate, undervaluation etc., are still received in cash in the SROs in addition to e-payment or e-treasury remittance<sup>36</sup>.

Even after six years since the implementation of OPEN PEARL the system has not been made optimal for achievement of enhanced efficiency of departmental operations.

The Government stated (February 2019) that the manual system can be dispensed with only after verifying the accuracy of the database and after streamlining the entire system.

The reply is not convincing since the Department has not made any effort to tally the daily totals of the manual registers or accounts with the system generated accounts or registers and to make necessary provisions/changes in the Application even after a lapse of six years from development of the Application.

**Recommendation: Steps may be taken to dispense with the manual accounts after ensuring the accuracy of generated accounts and to prepare annual revenue collection statements and monthly reconciliation statements online.**

#### 5.12.8.2 Non-elimination of hardcopies of registered documents

As per Section 52(1)(c) of the Registration Act, 1908 and Rule 4 and 6(i) of the Indian Registration (Filing of True Copies) Rules, 1967 every document admitted for registration shall be accompanied by a true copy of the document prepared in

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<sup>36</sup> Payment made into treasury in cash by using system generated challan.

paper supplied by the Government and is to be filed in the appropriate register by the Registering Officer.

As done earlier, the original document and its true copy are prepared on paper in the OPEN PEARL environment also. A scanned copy of the registered document is prepared and sent to the Revenue Department for transfer of registry purpose and the scanned digital copy is stored in the database. There is provision for preparation of electronic documents of sale and settlement deeds, which can be extended to 17 more approved model documents as discussed in para 5.12.7.3.

On an analysis of the database and records, Audit found that:

- existing scanned digital copies available in the database were not retrieved and tested periodically to ascertain their availability and delivery.
- no legal enablement was made for the use of the electronic document for registration and filing of electronic/digital copy for office copy purpose by amending Rule 4 and Rule 6(i) of the Indian Registration (Filing of the True Copies) Rules, 1967.

This led to maintenance of manual copies of the registered documents, thereby resulting in duplication of work and avoidable use of stationery.

The Government stated (February 2019) that filing sheets would be resized to A4 instead of the existing A3 size and print copy of the scanned registered document attested by the scribes would be kept.

The reply is not tenable since this would also result in maintenance of the manual copies of registered documents and duplication of work.

**Recommendation: Necessary legal enablement for keeping the copies of registered documents in digital format may be made.**

### **5.12.8.3 Non-provisioning for projection of revenue**

OPEN PEARL envisaged a provision for projection and achievement in collection of revenue by the Department from time to time.

On scrutiny of the Application it was noticed that a monthly revenue collection statement alone was generated by the Application. There was no provision in OPEN PEARL for generation of a report for watching the periodical revenue collection against the target or projection of the revenue expected over a period of time.

In the absence of the above, the Department has to manually prepare the statements for monitoring the quarterly, half yearly and annual revenue collection in the SROs and trend analysis statements. Non- generation of system generated comparative revenue statements based on readily available figures deprived the Department the benefits of computerisation.

The Government stated (February 2019) that a comprehensive Management Information system would be introduced in the system in consultation with NIC.

**Recommendation: Necessary provision may be made in the OPEN PEARL to generate revenue collection statement and trend analysis statement for over a period of time.**

#### **5.12.8.4 Generation of incorrect accounts and registers due to erroneous data**

OPEN PEARL envisages system generated registers of account A to H (detailed in **Appendix XXIII**) to replace the manual registers as required in para 315 of the Registration Manual (Volume I). The revenue collection shown in the account A, B, C, D and H are reflected in the cash book and the cash book would be incorrect to the extent if the system generated account registers are incorrect.

On an analysis of the OPEN PEARL database in respect of the selected 16 SROs, Audit noticed the following deficiencies in the database and errors in the generated accounts:

- the system generated register of account A (Form No. 60) was incorrect due to incomplete database details such as document value, stamp duty and registration fee, etc., in the *maccount* table of the database. Out of document value of ₹ 15,880.44 crore, stamp duty of ₹ 731.73 crore, registration fee of ₹ 1,167.73 crore in 2,77,339 documents registered in the selected 16 SROs during 2013-14 to 2017-18, the document value of ₹ 622.21 crore, stamp duty of ₹ 31.95 crore and registration fee of ₹ 13.19 crore realised in 23,442 documents relating to the period upto 2016-17 (detailed in **Appendix XXIV**) were missing in the database though the details were available in the manual Account A register;
- the system generated register of account A was incorrect due to duplicate or triplicate database entries and/or incorrect document value, stamp duty and registration fee, etc., in the *maccount* table of the database. There was net overstatement in document value of ₹ 657.07 crore, stamp duty of ₹ 14.09 crore and registration fee of ₹ 5.80 crore in the *maccount* table and consequently in the system generated register of account A in respect of 8,154 documents, out of 2,32,987 documents registered during 2013-14 to 2017-18 in 13 SROs, as detailed in **Appendix XXV**;
- there were differences between the amounts in the system generated registers of accounts A, B, C, and D and manual registers of accounts A, B and C and D account receipts issued during the test checked month of March 2018 (detailed in **Appendix XXVI**), though the application was implemented in the test checked SROs between August 2012 and February 2016. The differences were due to non-accountal and/or incorrect accountal of registration fee, sale proceeds of copying sheet, GST realised on sale of copying sheet in the manual accounts or generated accounts, duplicate entries in cash book relating to amounts received in the office, etc.

The cash book was incorrect to the extent the generated accounts were incorrect due to errors and omissions in the database as shown in **Table – 5.6**.

**Table – 5.6**

Name of accounts	Number of SROs with difference	Range of number of days in which difference found ( March 2018)	Range of net difference between cash book and system generated account (₹) <sup>37</sup>	Range of net difference between manual account and system generated account (₹) <sup>38</sup>
Account A	12	1 to 24	- 58,37,004 to 9,215	- 1,85,695 to 2,99,445
Account B	9	1 to 18	- 780 to 3,350	- 7,200 to 2,100
Account C	15	3 to 22	- 700 to 27,697	- 26,638 to 27,697
Account D	10	1 to 14	- 62,815 to 13,520	- 1,080 to 3,435

Sources: Cash book, manual and system generated registers of accounts A, B, C, D and D account receipts.

Incomplete and/or incorrect data in the database resulted in generation of incorrect MIS<sup>39</sup> reports and control registers. As the Department did not comply with the instructions<sup>40</sup> (such as tallying the generated accounts/registers with manual accounts/registers and the manual or generated receipts and ascertaining the correctness of the data entry) issued by the IGR for maintenance of the cash book and accounts mentioned above, the correctness of the system generated accounts which were to replace the manual registers, could not be ascertained over a period of time.

The Government stated (February 2019) that an internal audit would be conducted to identify the errors in database and necessary steps would be taken to rectify and reconcile the system generated accounts with the manual accounts. Further progress is awaited (September 2019).

**Recommendation: Action may be taken to rectify the duplicate and incorrect data entries in the database and tally the system generated accounts with the manual accounts. Steps may be taken to ultimately eliminate manual accounts.**

#### **5.12.8.5 Non-appendng of *Bhurekha* and Field Measurement Book**

The OPEN PEARL project proposal envisaged scanning and attaching of *Bhurekha* (RoR<sup>41</sup>) and Field Measurement Book (FMB<sup>42</sup>), issued by the Revenue Department, to the documents registered by the Registering Officer.

<sup>37</sup> Minus values indicate that system generated figures are more than cash book figures.

<sup>38</sup> Minus values indicate that system generated figures are more than manual register figures.

<sup>39</sup> Management Information System.

<sup>40</sup> Vide Circular No. IT3. /1345/2013 dated 13 November 2014.

<sup>41</sup> Record of Right - Document showing ownership, area and other details of land transacted/owned issued by Revenue department.

<sup>42</sup> Sketch of Land showing the location, borders, etc. of the land.



Audit found that no such provision was made in the OPEN PEARL application for fulfilling the above objective.

Non-appending of RoR and FMB resulted in registration of documents without verifying correctness of the information of the land transacted as per records of the Revenue Department, and failed to guarantee conclusive titles to the immovable properties transacted in the documents.

The Government stated (February 2019) that as and when the features or modules are put in place by the Revenue and Survey Departments in their applications, the same would be integrated with the OPEN PEARL as envisaged.

**Recommendation: Action may be taken to make available the RoR and FMB to the SR so as to enable him to append them to the documents registered.**

#### **5.12.8.6 Lack of provision for recording refund details of duties and fees**

Registrars and SRs may authorise refund of excess stamp duties, remitted penalties, fees and fines, etc., (levied on impounded documents etc.), which are ordered under Section 38 and 44 of the KS Act and Rule 207 and 209 of the Registration Rule (Kerala).

On an analysis of the OPEN PEARL application, Audit noticed that there was no provision for online submission of application for refund of duties and fees. The refunds authorised by the Registration Department were paid online by the Treasury Department. However, those refunds were not recorded in the Application against the original entries though the e-Treasury application<sup>43</sup> was already integrated with the OPEN PEARL.

Failure to record refunds in OPEN PEARL resulted in over statement of revenue statements generated by the application to the extent of refunds.

The Government stated (February 2019) that a revised work flow for refund of duties and fees is under consideration.

**Recommendation: Necessary steps may be taken to record the refund details against the original receipt entries in the OPEN PEARL.**

### **Internal control**

#### **5.12.8.7 Defective internal control mechanism**

The performance and achievement of targets of any department is mainly based on

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<sup>43</sup> Application of the Department of Treasuries where government transactions are accounted.

the strength of the internal control mechanism it has. Internal audit is an important component of the internal control mechanism.

In this connection Audit noticed that:

- no orders/guidelines were issued by the Government/IGR for conducting audit in the OPEN PEARL environment;
- audit module was also not provided in the OPEN PEARL database despite pointing out the requirement in the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Kerala for the year ended 31 March 2009 (Volume I);
- the correctness of the figures in various accounts and other reports generated in OPEN PEARL were not compared with the manual accounts maintained by the SROs.
- no access to the OPEN PEARL (except undervaluation reports generated in the system) has been given to the DRs to monitor the registration activities in the SROs under their control.

The correctness of the system generated accounts and registers with reference to the manual registers, correctness of the duties and fees realised could not be ascertained and the monitoring of the activities in the SROs by the district controlling officers could not be done in the absence of measure to conduct internal audit.

The Government stated (February 2019) that the observation regarding the issue of guidelines and instructions to the line staff for effective internal control mechanism is noted and the Department is planning to review the existing internal control mechanism including auditing in a computerised environment. Further compliance in the matter is awaited (September 2019).

**Recommendation: Necessary orders or guidelines may be issued by the Government/IGR for conducting internal audit in the OPEN PEARL environment. An audit module may also be provided in the application.**

#### **5.12.9 Failure to address the weaknesses in the earlier PEARL**

An Information technology review of 'Package for Effective Administration of Registration Laws (PEARL) in the Registration Department' was conducted in 2009 and included in the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Kerala for the year ended 31 March 2009 (Volume I). In the 18<sup>th</sup> Report of the Committee on Public Accounts (2011-14) presented to the State Legislature on 13 December 2012, the Registration Department, Kerala, stated that the deficiencies pointed out or recommendations made in the Report have been sorted out in OPEN PEARL.

Out of the 26 deficiencies pointed out in the report 20 issues were taken care of in the OPEN PEARL. The important issues raised in the report and which were addressed in the OPEN PEARL are as detailed below.

- The deficiencies regarding the sharing of password, unauthorized modification of data, editing of data by ordinary user were addressed by providing separate passwords for each user which are linked to the IP address assigned to the office. Request for corrections in the data are to be made to the IGR through the application itself along with a scanned copy of the registered document and the corrections are made at the IGR Office. Corrections relating to the system functions are made by the NIC only. User logs/ audit trail is provided in the application;
- Absence of electronic copy of the documents in the SROs were solved by keeping a scanned copy of each registered document in the database;
- Non-uniformity in data structure and backup procedure were rectified by keeping the data in a central server and taking the backup through live streaming and replication;
- Computation of incorrect stamp duty and use of obsolete master data were rectified through periodical updation of master table containing the rates of stamp duty and fees and by providing editing facility of the duty and the fees at the time of validation of the data by the SR;
- Non-validation of current data and existence of blank fields were taken care of by providing validation checks for the data before registration of the document;
- Re-entry of data for each module which resulted in mistakes and erosion of user-friendliness were avoided by use of the same data for different modules in a single process in OPEN PEARL;
- Scanners purchased for scanning registered documents which were lying idle are now put to use and the scanned copy is kept in the database.
- The equipments purchased for digital image printing is now put to use for taking photocopies of the documents which are to be issued as photocopies.

However, during the PA it was seen that the six deficiencies such as inordinate delay in completion of the project and non-achievement of objectives (paragraph 5.12.7.1), non-existence of Business Continuity Plan/Disaster Recovery Plan (paragraph 5.12.7.2), non-validation of current data, generation of incorrect/defective reports (paragraph 5.12.8.4), deficiencies in internal control (paragraph 5.12.8.7) which were pointed out in the previous Audit Report are persisting.

The Government stated (February 2019) that non-compliance to the observations were due to the absence of proper project management plan and related

documentation. There was also no base to track the project progress, outputs, deliverables as per defined project plan.

The reply is not convincing as there was ample opportunity of around five years to rectify the shortfalls while introducing the new version namely OPEN PEARL

#### **5.12.10 Conclusion**

The OPEN PEARL was designed to improve the efficiency of the Department, decrease its workload, and provide better services to the public thereby overcoming the weaknesses of the earlier PEARL. However the system has not been optimised to achieve the objectives even after 9 years rendering the expenditure of Rs.42.20 crore unfruitful.

Computerisation of the registration process as OPEN PEARL resulted only in keeping data in a parallel system in addition to the existing manual system as it failed to:

- Ease the registration process: The OPEN PEARL registration process was more time consuming compared to the manual system.
- Reduce the work load of the department: Parallel maintenance of computerized and manual data consumed lot of time and manpower.
- Prepare the documents for registration electronically: Hardcopies were maintained and duplication of data entry increased work load.
- Deliver electronic certificates: except Encumbrance Certificate.
- Dispense with the manual accounts and registers: System generated ones were found to be incorrect and hence unreliable.

It was noticed that internal controls which were inbuilt in the manual system appear to have been dispensed with in OPEN PEARL, thereby compromising the security and the control over the issue and use of E stamps thereby exposing the system to high risk of fraud and misuse.

### **5.13 Loss of revenue due to non-registration of agreements entered into between flat/apartment owners and developers/builders**

**As per Section 17(1)(f) of the Registration Act, 1908 as amended by the Registration (Kerala Amendment) Act, 2012, all instruments purporting or operating to effect a contract for the sale of immovable property of the value of one hundred rupees and upwards shall be registered compulsorily if the property to which it relates is situated in the district where the Registration Act, 1908 is in force. The Registration fee fixed by the State Government under Section 78 (1) (a) of the Registration Act, 1908 is payable on registration of the instrument.**

M/s Tata Realty and Infrastructure Limited executed and registered 237 conveyance documents with various Apartment allottees in respect of the sales of flats/apartments in its TRITVAM Project. These instruments were registered in SRO, Ernakulam between December 2016 and December 2017 and registration fee of ₹ 11.06 crore was realised towards fees. Scrutiny of the sale/conveyance deeds of the flats/apartments revealed that the conveyance deeds were in pursuance of the apartment buyers agreement entered into between the purchasers and M/s Tata Realty and Infrastructure Limited. The apartment buyers agreements were executed on a stamp paper worth ₹ 100 and were not registered with the SRO even though it was a compulsorily registerable document under Section 17 (1) (f) of the Registration Act, 1908. The Sub registrar did not take steps to register the apartment buyers agreements resulting in loss of revenue of ₹ 11.06 crore as detailed in the **Appendix XXVII**.

On this being pointed out (November 2018), the Government replied (February 2019) that the 237 sale documents were registered as sale deeds and proper Registration fees were levied as notified by the Government. It was also stated that the Registering Officer was unable to impose registration fee on the unregistered sale agreements, as these were not presented for registration.

The Government reply is not sustainable as Section 17(1)(f) of the Registration Act, 1908 provides for compulsory registration of all instruments purporting or operating to effect a contract for the sale of immovable property of the value of one hundred rupees and upwards. As the existence of the sale agreements came to the notice of the Registering Officer at the time of registration of the sale documents, the Registering Officer being a Public Officer under Section 84 of the Registration Act, 1908 should have requested for information on the sale agreements and insisted for their registration. Further reply was not received (September 2019).

### **5.14 Short collection of revenue**

**Section 45A (1) of the Kerala Stamp Act (KS Act), 1959 stipulates that the registering officer shall, while registering an instrument transferring any land chargeable with duty, verify whether the value of the land or the consideration set forth in the instrument is the fair value of that land. As per Section 45B (1)**

of the KSA, 1959, if the Registering Officer, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon.

- **Due to misclassification of land**

Scrutiny of documents (December 2017) in SRO, Kalpetta revealed that 10 documents<sup>44</sup> were registered (November 2015) in which a piece of land at Kottapadi *desam* owned by Sri. N.P. Mohammed Haji and others was divided and transferred to 10 different purchasers. Fair value adopted for these documents was based on the classification “*plots without road access*”. In the previous document<sup>45</sup>, provision of a road was mentioned, but in the present documents, none of the boundaries in any document showed the existence of a road. Hence a joint physical inspection was conducted (January 2018) by the audit team along with the Sub Registrar and Revenue officials which revealed that all the ten plots transacted through the documents stated above had Panchayat road access. Further, from the records in Meppady *Panchayath* relating to construction of the above mentioned road, it was revealed that the road was completed in 2014 itself. Hence the classification of these plots should have been “*plots with PWD/Panchayat road access*” and fair value<sup>46</sup> adopted accordingly. Non adoption of the correct fair value due to misclassification of the property resulted in short collection of revenue of ₹ one crore as shown in **Appendix XXVIII**.

On this being pointed out (November 2018), the Government stated (April 2019) that the Inspector General of Registration has been instructed to impound the documents.

- **Due to misclassification by splitting up of property**

Scrutiny of documents (November 2017) in SRO, Taliparamba revealed that a sale deed<sup>47</sup> was executed on 5 February 2015 by Sri. V K Vijayan and others in favour of Managing Director, Superb Infra Developers (India) Pvt. Ltd. conveying 238.89 Ares of land<sup>48</sup> for a total consideration of ₹ 28.33 lakh at the rate of ₹ 0.12 lakh per Are stating that there was no road access. It was also observed that another sale deed<sup>49</sup> was executed on 16 February 2015 by Sri. V K Vijayan and others in favour of Managing Director, Superb Infra Developers (India) Pvt. Ltd. conveying 8.1

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<sup>44</sup> Doc Nos 3640 – 3649/2015.

<sup>45</sup> Doc No 387/2009.

<sup>46</sup> A5-54018/2010 dated 1 October 2010.

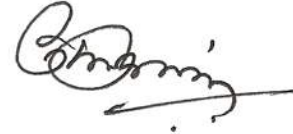
<sup>47</sup> Doc.No.525/2015 dated 10 February 2015.

<sup>48</sup> 189.90 Are of land in Re-survey No. 22/2 and 48.99 Are in Re-survey No.59/5 in Mookunnu *Desam* at Pariyaram village in Taliparamba *Taluk*.

<sup>49</sup> Doc. No. 612/2015 dated 16 February 2015.

Ares of land<sup>50</sup> for a total consideration of ₹ 20 lakh at the rate of ₹ 2.47 lakh per Are. The property has a boundary of a National Highway on the Southern side. Scrutiny of the two sale deeds revealed that the total of 198 Are of land (189.9 + 8.1) in Re-survey No.22/2 at Pariyaram village was a single plot having a boundary of National Highway on the southern side. Audit conducted a joint physical inspection along with the Sub-Registrar and Village Officer and confirmed that the two lands are a single plot having boundary of National Highway on the southern side. Thus a single plot of land was split and sold as two pieces in order to evade stamp duty. In both the cases, the executants and claimants were the same and the documents were registered within a week of each other. Considering the value taken for 8.1 ares of land for 189.9 ares of land, the splitting up of the property resulted in short collection of revenue of ₹ 35.71 lakh<sup>51</sup>.

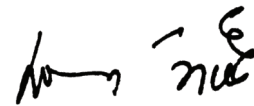
On this being pointed out (November 2018), Government stated (February 2019) that *suo motu* action was initiated and the assessee has paid ₹ 14.93 lakh towards registration fee. Further reply was not received (September 2019).



**Thiruvananthapuram,  
The**

**(K. P. ANAND)  
Accountant General  
(Economic and Revenue Sector Audit)  
Kerala**

**Countersigned**



**New Delhi,  
The**

**(RAJIV MEHRISHI)  
Comptroller and Auditor General of India**

<sup>50</sup> Re-Survey No. 22/2 in Mookunnu Desam at Pariyaram village in Taliparamba Taluk.

<sup>51</sup> Eight per cent of ₹ 4,46,36,755 (198 Are x ₹ 2,46,913 = ₹ 4,88,88,774 - ₹ 42,52,019 (189.90 Are x ₹ 11,859 + 8.1 Are x ₹ 2,46,913)).