

立法會
Legislative Council

LC Paper No. CB(1)1273/04-05
(These minutes have been seen
by the Administration)

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Panel on Economic Services

**Minutes of meeting held on
Wednesday, 16 March 2005, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Chin-shek, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KWONG Chi-kin
Hon TAM Heung-man

Members attending : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP

Member absent : Dr Hon LUI Ming-wah, JP

**Public Officers
attending**

: Agenda item IV

Ms Sandra LEE
Permanent Secretary for Economic Development and
Labour (Economic Development)

Ms Eva CHENG
Commissioner for Tourism

Mr Paul WONG
Acting Assistant Commissioner for Tourism

Mr YIP Sai-chor
Head of Civil Engineering Office
Civil Engineering and Development Department

Mr K M NG
General Manager (Operations)
Marine Department

Mr S T CHEUNG
Chief Safety Officer (Airport & Safety Regulation)
Civil Aviation Department

Agenda item V

Ms Sandra LEE
Permanent Secretary for Economic Development and
Labour (Economic Development)

Mr Wilson FUNG
Deputy Secretary for Economic Development and Labour
(Economic Development)

Mr Darryl CHAN
Principal Assistant Secretary for Economic Development
and Labour (Economic Development)

Mr Stephen KWOK
Assistant Director-General of Civil Aviation (Air Services)

Agenda item VI

Mr Stephen IP
Secretary for Economic Development and Labour

Ms Sandra LEE
Permanent Secretary for Economic Development and
Labour (Economic Development)

Ms Alice LAU
Acting Deputy Secretary for Economic Development and
Labour (Economic Development)

Mr S Y TSUI
Director of Marine

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Anita SIT
Senior Council Secretary (1)9

Miss Winnie CHENG
Legislative Assistant (1)5

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- I Confirmation of minutes and matters arising**
(LC Paper No. CB(1)1061/04-05 - Minutes of special meeting held
on 31 January 2005)

The minutes of the special meeting held on 31 January 2005 were confirmed.

- II Information papers issued since last meeting**
- (LC Paper No. CB(1)1022/04-05(01) - Tables and graphs showing the
import and retail prices of major
oil products from February 2003 to
January 2005 furnished by the
Census and Statistics Department
- LC Paper No. CB(1)1051/04-05(01) - Submission from a member of the
public providing views on the
collection of air passenger
departure tax by travel agents
- LC Paper No. CB(1)1051/05-06(02) - Submission from Tiglion Travel
Services Company Limited
providing views on the
requirement under the Travel
Agents Ordinance (Cap 218) that
membership of the Travel Industry
Council is a licensing condition for
local travel agents

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- LC Paper No. CB(1)1055/04-05(01) - Submission from Civic Exchange on Hong Kong Port – Master Plan 2020 and Concept Plan for Lantau
- LC Paper No. CB(1)1055/05-06(02) - Submission from Temple Chambers on Hong Kong Port – Master Plan 2020 and Concept Plan for Lantau)

2. Members noted the information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 25 April 2005

- (LC Paper No. CB(1)1062/04-05(01) - List of outstanding items for discussion
- LC Paper No. CB(1)1062/04-05(02) - List of follow-up actions)

3. Members agreed that the following items proposed by the Administration would be discussed at the next meeting scheduled for 25 April 2005:

- (a) Transport link in Tsim Sha Tsui East; and
- (b) Tourist district enhancement programme - the Peak

On item (a) above, the Clerk reported that to make way for the development of an open plaza at the Tsim Sha Tsui (TST) Star Ferry Pier, the Administration planned to relocate the existing public transport interchange (PTI) at the TST Star Ferry Pier to the Wing On Plaza Garden and improve the pedestrian links within the TST district. The subject had been discussed at a Panel meeting in the 2003-04 legislative session. Subsequent to the meeting, the Administration had informed the Panel that the Star Ferry had withdrawn their previous support for the relocation of the PTI. As such, the relevant funding proposal had not been put to the Public Works Subcommittee as originally scheduled. Now the Administration would like to brief the Panel on the latest position of the project at the coming meeting on 25 April 2005.

IV Progress Update on Hong Kong Disneyland

- (LC Paper No. CB(1)1062/04-05(03) - Information paper provided by the Administration
- LC Paper No. CB(1)1063/04-05 - Background brief on Hong Kong Disneyland prepared by the Secretariat)

4. The Commissioner for Tourism (CT) briefed members on the progress of the Hong Kong Disneyland (HKD) project. She highlighted that construction and preparatory work for opening such as transport arrangement, promotion, recruitment, etc. was progressing well. The response to the HKD Hotel Reservation Hotline launched on 15 February 2005 had also been very positive. As regards the

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establishment of a Prohibited Anchorage Area (PAA) and a Air Intrusion Limitation Zone (AILZ), CT advised that the Legislative Council passed the two relevant pieces of subsidiary legislation in June 2000 to establish the PAA and AILZ respectively to ensure public safety. The subsidiary legislation had expressly provided that the PAA and AILZ should come into effect on a date to be appointed later, having regard to the progress of the HKD project. Now that the HKD was targeted to open on 12 September 2005, the Administration considered it appropriate to appoint the commencement date of the PAA and AILZ to be 16 August 2005. This would tie in well with the comprehensive testing and adjustment period for the theme park and all supporting facilities before the opening.

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5. Mr SIN Chung-kai requested the Administration to provide details on the up-to-date financial position of the HKD project.

6. Mr Jeffrey LAM said that Hong Kong people and prospective visitors to Hong Kong were very much looking forward to the opening of HKD. Noting that two PTIs, one at Sunny Bay and the other at Penny's Bay, were scheduled for completion in April 2005, he asked what measures would be put in place to facilitate visitors' access to the theme park from the PTIs. He also asked what measures would be taken to ensure smooth operation of the Disneyland Resort Line (DRL) which was targeted for completion in July 2005.

7. Miss TAM Heung-man enquired what measures had been and would be put in place to ensure the smooth operation of the theme park and the supporting facilities on the day of the opening and throughout the initial operating period.

8. CT advised that to ensure operational readiness of the theme park, the Government had set up a Disneyland Readiness Committee (DRC) to coordinate the work of departments and organizations concerned in preparation for the opening. Such work covered transport, site management and security, emergency response, communications and promotion, permits and licences and opening events and arrangements. All work was on schedule. In respect of transport, the Task Group on Transport under DRC would put in place suitable transport arrangements to facilitate visitors to go to the HKD. Testing of transport facilities, including the DRL, would be carried out during the comprehensive testing period to ensure their smooth operation on opening.

9. In reply to Mr Jeffrey LAM's question about the service schedules of DRL and other transport modes, CT advised that the schedules would take into account the operating hours of the theme park, including the timing of the fireworks display.

10. In reply to Mr WONG Ting-kwong's enquiry, CT advised that the fares for the DRL had not been decided.

11. Noting that fishing vessels would be allowed to operate within the PAA, as long as they did not anchor therein, Mr Fred LI sought clarification on how far the activities of vessels would be restricted in the PAA. He also asked whether the PAA

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was a popular fishing spot. Pointing out that some visitors would be interested to watch the fireworks display in the HKD on pleasure vessels, Mr LI asked how such activities would be regulated in the PAA.

12. CT said that the public pier near the HKD would be opened on 16 August 2005. If a large number of vessels were to anchor in this area, this could pose risk to high-speed ferries plying to/from the Discovery Bay and those using the public pier. The establishment of the PAA was to ensure safety and effective control of marine traffic in the specified area adjacent to HKD. She remarked that visitors could also watch the fireworks in other locations in Penny's Bay, not just on a vessel. According to the Marine Department (MD), the PAA was not a popular fishing spot.

13. The Chairman remarked that a pleasure vessel normally found it easier to navigate through anchored vessels which had fixed positions than vessels drifting on the waters. He thus queried whether allowing a number of vessels to enter and operate within the PAA might also pose danger, if not greater danger, to the marine traffic.

14. Ms Miriam LAU pointed out that a large number of vessels carrying people to watch the fireworks display might congregate in the PAA at the time of the fireworks display at HKD each day. She was concerned that allowing a large number of vessels drifting within the PAA whilst the Discovery Bay ferries were plying at high speed through the area would give rise to safety problems. She asked if the Administration would consider designating a specific anchorage area outside the navigation waterways of the Discovery Bay ferries for the stay of pleasure vessels during the fireworks display period.

15. CT noted the proposal and said that the Administration would review the situation after the opening of the HKD. She said that prior to submitting the subsidiary legislation to the Legislative Council, the relevant advisory committees had been consulted and agreed that the PAA and AILZ would enhance public safety.

16. In response to the Chairman and Ms Miriam LAU, the General Manager (Operations), Marine Department (GM(O)), advised that a vessel in operation was much more flexible than an anchored one and thus could respond promptly to the changing marine traffic condition. Besides, anchored vessels would occupy more water area and anchor chains might foul the propellers and cause obstruction to the movement of other vessels. In consideration of these and other relevant factors, the Administration came to the conclusion that from the safety angle, vessels would not be permitted to anchor at any places in the waters of the PAA but they would have the right of passage into and through the PAA. In reply to Ms Miriam LAU's enquiry, GM(O) confirmed that the Provisional Local Vessels Advisory Committee had been consulted and had expressed support for the proposal to establish the PAA.

17. Mr CHAN Kam-lam said that under normal marine conditions, there should be no need for pleasure vessels and other small vessels to anchor during their stay in the area adjacent to the HKD. He however expressed the same concern as Ms Miriam

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LAU and urged the Administration to make proper arrangements to control the marine traffic during the fireworks display period.

18. The Permanent Secretary for Economic Development and Labour (Economic Development) (PS/EDL) assured members that the Marine Department would closely monitor the marine traffic in the PAA and the waters nearby before the opening and during the initial opening period.

19. In reply to the enquiries of Mr Howard YOUNG and Mr WONG Ting-kwong about the reservation situation of the HKD hotels, CT advised that the market response had been very encouraging, especially bookings for weekends and festive periods. The two hotels in the HKD had in total some 1 000 rooms. So far, over 10 000 bookings had been placed which were mainly made by local customers. As for overseas visitors, the Hongkong International Theme Parks Limited (HKITP) was discussing with overseas agents to provide travel packages to potential visitors. This was part of HKITP's wider marketing strategy.

20. Mr KWONG Chi-kin was concerned about the number of jobs created by the construction and operation of HKD. In reply to Mr KWONG's enquiry about the types of jobs offered by HKITP, CT advised that of the estimated 18 400 jobs to be created on opening, about 5 000 would be offered directly by HKITP. Other job opportunities included those created by other supporting services provided for the theme park. The majority of the jobs would be frontline and mid-level ones. A small portion would be management jobs.

21. On Mr KWONG's concern about the future employment prospect of the workers now being employed for the construction works of the theme park and the associated Government's works, the Head of Civil Engineering Office, Civil Engineering and Development Department (HCEO/CEDD), said that as in the case of other workers in the construction industry, upon completion of the construction works, the workers would need to seek other jobs. Some of these workers could secure employment through the jobs created by the various Government projects in the pipeline.

22. Referring to the one-month comprehensive testing and adjustment period, Mr CHAN Kam-lam sought details on how the testing would be conducted. CT advised that all facilities within the theme park and the supporting facilities including transport facilities would be comprehensively tested for fine-tuning and adjustment during that period. HKITP would also take this opportunity to train its staff through real operation. To facilitate this and the adjustment process, the number of invited visitors during the testing period would gradually build up to a level close to the theme park's designed capacity.

23. Mr CHAN Kam-lam suggested that the Administration took the opportunity of the testing period to provide the elderly and the underprivileged groups in the community an enjoyable visit to the theme park. CT said that various groups would be invited to visit the theme park during the testing period, e.g. the travel trade and the

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underprivileged groups. The Administration and HKITP were working out the details.

24. In reply to Miss CHAN Yuen-han's enquiry about the over 500 Cultural Representatives recruited by HKITP, CT advised that the 500 Cultural Representatives were receiving on-the-job training at the Walt Disney World in Florida, the United States. Upon successful completion of the programme and return to Hong Kong, they would be offered permanent positions at HKD. As they would have on-hand experience and a better understanding of Disney's service culture, HKITP expected them to become the core staff of the theme park.

25. Miss CHAN Yuen-han opined that local tour guides should be allowed to provide tour guide service inside HKD. She understood that local tour guides were very willing to attend relevant training courses and cooperate with the theme park management in this regard. They were however awaiting positive response from the theme park management.

26. CT said that she understood that HKITP was still discussing with the travel trade the group tour arrangements. But whether tour guide service would be required in the theme park should be left to the theme park operator to decide. In response to the Chairman, she confirmed that HKITP would be responsible for the day-to-day management of the theme park. Miss CHAN observed that there was a demand for tour guide service in various theme parks around the world. She urged that local tour guides and other potential new entrants to the trade should be given the opportunities to provide their service inside the theme park.

27. In reply to Ir Dr Raymond HO's enquiry about the progress of the decommissioning of the former Cheoy Lee Shipyard, HCEO/CEDD advised that the last consignment of the residues generated from the thermal desorption of soils contaminated with dioxins would be delivered to the Chemical Waste Treatment Centre at Tsing Yi on 22 March 2005. Upon incineration, the whole decommissioning exercise would then be completed. The total volume of soils contaminated with dioxins found at the site was about 30 000 cubic metres as originally estimated. The expenditure for the decommissioning works was slightly below budget at around \$300 million.

28. Ir Dr Raymond HO enquired about the progress of the landscaping works under Government works and the contract terms governing the remedial works in case of damages to the plants due to inclement weather and pests. HCEO/CEDD advised that it had been stipulated in the works contracts that all landscaping works should be substantially completed by mid April 2005. A one-year establishment period for the landscaping works had been specified in the contracts. Hence, the contractors were responsible for the remedial works when there were damages resulted from inclement weather and pests.

29. Pointing out that the number of tourist visits to Hong Kong had reached some 20 million per year, Mr SIN Chung-kai asked whether the Administration had started

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to plan for the Phase 2 of the HKD or other tourism projects making use of the undeveloped site adjacent to the Phase 1 site of the HKD.

30. CT said that under the Project Agreement, HKITP had an Option to buy the site immediately to the east of the Phase 1 site for Phase 2 development. The Option was initially valid for 20 years from signature. The Administration had had some informal discussions with HKITP on the matter. Whilst both parties were interested in the Phase 2 development, the current focus was on the preparation of a smooth opening of the Phase 1 of HKD.

Visit to Hong Kong Disneyland

31. The Chairman said that pursuant to the relevant decision at the last meeting on 28 February 2005, a circular had been issued to members inviting them to indicate their availability for the visit to HKD on two possible dates, i.e. 8 and 15 April 2005. As a greater number of members had indicated their availability for 15 April 2005, the visit would thus be conducted on that date from 10:15 am to 1:15 pm. He said that the Clerk would issue a separate notice to members on the arrangements shortly.

(Post-meeting note: The notice on the visit was issued vide LC Paper No. CB(1)1126/04-05 dated 17 March 2005.)

V Amendment to the Civil Aviation Ordinance to release certain aircraft owners from strict liability
(LC Paper No. CB(1)1062/04-05(04) - Information paper provided by the Administration)

32. PS/EDL said that the proposed amendment to the Civil Aviation Ordinance to release certain aircraft owners from strict liability was initiated by the aircraft financiers and airlines, and was conducive to strengthening the international aviation hub status of Hong Kong. The Deputy Secretary for Economic Development and Labour (Economic Development) (DS/EDL) briefed members on the proposed legislative amendment as set out in the Administration's information paper.

33. In reply to the Chairman's enquiry about the relevant practices in other jurisdictions, DS/EDL advised that in many other common law jurisdictions such as the United Kingdom (UK), New Zealand and Australia as well as in Mainland China and the United States, there were statutory provisions to exempt aircraft owners from strict liability in relation to loss or damage suffered by third parties caused by aircraft owned but not managed by them. The proposed 14-day qualifying period was consistent with the Civil Aviation (Births, Deaths and Missing Persons) Regulations (Cap. 173A), under which an aircraft owner was exempted from certain legal responsibilities when the aircraft concerned had been leased out for that same period. The same qualifying period was also adopted in the relevant UK legislation governing aircraft strict liability.

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34. Mr CHAN Kam-lam enquired about the effects of aircraft subletting on the entitlement of the aircraft owner for exemption from the strict liability under the proposed legislative amendment. DS/EDL replied that irrespective of whether there was any subletting involved, to qualify for the exemption, the aircraft owner had to fulfill the following criteria at the time of the incident causing the loss or damage –

- (a) the aircraft was bona fide demised, let or hired out for a period exceeding 14 days; and
- (b) no member of the crew of the aircraft was in the employment of such owner.

He added that the proposed legislative amendment would not have the effect of releasing airlines, as the parties having management of the aircraft, from their legal liabilities in respect of third parties.

35. In reply to Mr CHAN Kam-lam's queries about the proposed 14-day qualifying period, DS/EDL said that whilst the qualifying period varied among different jurisdictions, the proposed 14-day qualifying period was similar to the relevant legislation in UK and consistent with another piece of local legislation on civil aviation as mentioned earlier on. He further said that there was no hard and fast rule in defining the proposed 14-day qualifying period. It was however important that the proposed qualifying period should be consistent with the existing legislation governing matters of a similar nature.

36. In reply to the Chairman's enquiry about the extent of consultation on the proposed legislative amendment, DS/EDL advised that the Administration had conducted two rounds of consultation with the Aviation Advisory Board, local airlines and the financial services industry. They were first consulted on the objective and the framework of the proposed legislative amendment and then on the draft text of the proposed amendment. They had expressed support for the proposed amendment in both rounds of consultation.

37. Mr SIN Chung-kai asked whether the issues arising from the existing legislation in question could be addressed through private contracts between aircraft owners and airlines. DS/EDL said that whilst it was feasible to make contractual arrangements to facilitate aircraft owners to seek indemnity from airlines against any loss or costs they suffered, such indemnity did not offer sufficient protection against the strict liability under the law. Given that the common practice adopted in other jurisdictions was to release aircraft owners from the strict liability provided that certain prescribed conditions were fulfilled, if Hong Kong did not update its legal framework to provide similar protection for aircraft owners, financiers would be less interested in conducting their aircraft financing business in Hong Kong and/or would tend to impose higher lease rates or stricter restrictions in the leasing arrangements for Hong Kong airlines. These would not be conducive to maintaining Hong Kong's aviation hub status. Amending the legislation to update the legal framework was a preferred approach and was in line with international practice.

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38. Mr SIN Chung-kai enquired about the legal implications in the case that an aircraft owner and an airline, in entering into an aircraft lease contract, agreed on certain contract terms which were at variance with the legislative provisions (amended as presently proposed) governing the aircraft owner's strict liability. For example, a shorter or longer qualifying period for the exemption was stipulated in the contract. DS/EDL responded that insofar as the legal protection for third parties was concerned, such contractual arrangements would not affect their right to take action to recover the loss or damage caused to them by aircraft from the aircraft owner and/or airline concerned as provided under the laws.

39. Mr Howard YOUNG said that the aviation sector in general supported the proposed legislative amendment as the legislative amendment could improve the legal framework for aircraft financing and leasing business. He was not aware of any concern expressed by the sector about the proposed 14-day qualifying period.

40. Mr Ronny TONG said that he had not undertaken civil litigation on aviation or shipping matters for over 10 years. When he undertook such cases some 10 years ago, he understood that under common law, the question of an aircraft owner's liability in relation to loss or damage suffered by third parties caused by his aircraft hinged not so much on the duration of lease as the extent of the aircraft owner's involvement in the management of the aircraft. For example, an aircraft owner who was responsible for the maintenance and repair of the aircraft, even in a bare plane charter situation, still had liability.

41. DS/EDL said that under the present proposal, the lease period was one of the criteria for the aircraft owner to qualify for exemption from the strict liability. The management aspect was also an important factor. Under section 8(4) of the Civil Aviation Ordinance (Cap. 448), an "owner" in relation to an aircraft included the person having the management of the aircraft. The proposed legislative amendment was intended to provide exemption only for those aircraft owners who were not involved in the management of the aircraft concerned at all.

42. Mr Ronny TONG noted the Administration's explanation and said that as Members still had the opportunity to scrutinize the proposed legislative amendment after the relevant Bill was introduced into the Legislative Council, the issue could be further examined at the Bills Committee.

VI Public Cargo Working Area berths allocation arrangement

(LC Paper No. CB(1)1062/04-05(05) - Information paper provided by the Administration)

43. Acting Deputy Secretary for Economic Development and Labour (Economic Development) briefed members on the background to the existing Public Cargo Working Area (PCWA) berths allocation arrangement and the Administration's proposal to continue with the existing arrangement for re-allocating the PCWA

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berths –

- (a) by restricted tender to the existing operators for a period of 3 years; and
- (b) dispose of the unallocated berths after the exercise in (a) above by way of open tender.

44. Ms Miriam LAU said that she supported the Administration's proposal which had taken into account the special characteristics of the trade and provided a relatively open and fair arrangement for PCWA berth allocation. Indeed, since 1996, the management of PCWAs had undergone substantial reform. She referred to the recommendation of the Public Accounts Committee (PAC) on PCWAs in 1996 (recapitulated in Annex 1 of the Administration's information paper) and commented that the three objectives which PAC urged the Administration to achieve through devising a new system for the allocation of berthing spaces in PCWAs had already been achieved through the restricted tender system adopted in the previous two berth allocation exercises. She therefore questioned the need to further pursue an open tender arrangement. However, she highlighted that the present arrangement whereby the berths were allocated for a term of only three years was not conducive to the long term development of the trade as operators lacked the incentives to invest and upgrade their equipment to enhance productivity. She therefore urged the Administration to work out a long term scheme for PCWA berth allocation which could suitably cater for the special characteristics of the trade. She also commented that extending the tenure of the berth leases from three years to five years was worth further consideration.

45. The Secretary for Economic Development and Labour (SEDL) said that the most urgent task was to decide on the berth allocation arrangements for the next three years. In view of the suggestion made by Members and the existing PCWA operators, the Administration would conduct a comprehensive review on PCWA management, including the future arrangements for berth allocation. In the review, all relevant factors would be taken into account including the characteristics of PCWA operations and the future development of the Hong Kong port etc.

46. The Director of Marine (DM) concurred with Ms Miriam LAU that the objectives set out in PAC's recommendation in 1996 had been achieved. The Marine Department would collaborate with the Economic Development and Labour Bureau (EDLB) to carry out a comprehensive review of the management of PCWAs with a view to devising a long term strategy on the matter.

47. Mr SIN Chung-kai said that he was a member of the PAC at the time PAC examined the management of PCWA in 1996. He expressed support for the Administration's proposed arrangements for the next PCWA berth re-allocation exercise. He however opined that as Hong Kong upheld the principle of open and fair competition, the existing PCWA operators should prepare themselves for a fully open berth allocation system that might be put in place in the longer term. In this regard, he suggested that certain elements might be built into the allocation system, such as the introduction of performance indicators to determine the eligibility for an

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extended tenure, as incentives to enhance the productivity of the trade.

48. Mr KWONG Chi-kin expressed support for the Administration's proposal, which he considered was practical and reasonable having regard to the historical background and present-day circumstances of the trade. He agreed with the Administration that re-allocating the PCWA berths by a fully open tender exercise would result in displacement of existing operators from PCWAs and strongly affect the livelihood of the work force engaged in PCWA operations. He had made a visit to some PCWAs recently and found that the operations therein were very orderly. No irregular and unlawful activities were observed. He concurred with Ms Miriam LAU that the Administration should work out a long term scheme for PCWA berth allocation in consultation with the trade.

49. With regard to PAC's recommendation made in 1996, Mr KWONG suggested that if appropriate, PAC might revisit the matter taking into account the present-day circumstances and give further views to the Administration for consideration.

50. In response, SEDL said that upon completion of the Administration's comprehensive review, the Administration would forward its report to PAC with recommendations on the future arrangements for PCWA berth allocation. PAC might then consider whether it would give further views on the matter.

51. Mr Ronny TONG said that the cargo handling activities in PCWAs played a supplementary role in Hong Kong's cargo handling industry and provided some services which could not be provided at the container terminals at comparable costs. He considered it opportune to carry out a comprehensive review of the cargo handling industry in Hong Kong including PCWAs to formulate a long term policy and relevant strategies for the industry. Indeed, a long term policy with clear indication on the direction and pace of changes to be made in future could relieve the trade's anxiety about the uncertainties of the future arrangements for PCWAs. He also commented that Hong Kong's cargo handling industry was facing strong competition and one major weakness of the industry was the relatively high operating costs. In this connection, he made the following points –

- (a) Under the existing tender system for PCWA berth allocation, though being a restricted tender system, berths were allocated to the operators placing the highest bids. If Government's primary consideration was to promote the development of the cargo handling activities in PCWAs, the tender system would need to be revised to encourage PCWA operators to charge lower fees for their services. For example, the level of fees charged by PCWA operators should become an assessment criterion in the tender exercise. The Government revenue foregone due to this change might be compensated by the benefits brought about by the trade's development.
- (b) The three-year tenure under the existing berth leases did not provide incentives for the trade to invest and upgrade their equipment to enhance productivity. This in turn could not help lower the fees for the services

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in PCWAs.

- (c) In formulating the long term policy for the local cargo handling industry and PCWAs, the Administration should bear in mind the need to safeguard fair competition. Care should therefore be taken to prevent large corporations from monopolizing the industry.
- (d) The Administration should designate suitable sites for PCWAs and their ancillary facilities in its land use planning.

52. SEDL said that in view of the declining demand for PCWA berths, the Administration did not intend to designate additional PWCAs in the territory. On the matter of PCWA berth allocation, if the Administration's primary objective were to maximize Government revenue, the Administration would have adopted a fully open tender system. In fact, the Administration was aware that in so doing, the existing operators would be displaced by more competitive operators engaged in high volume long haul international voyages. Hence, the Administration had adopted a very practical approach in handling the matter. He took note of members' views and would take these into account in the comprehensive review.

53. On the concern that the existing tender system based on price bids would likely push up the operating costs of PWCA operators resulting in reduced viability of the trade and higher fees for the relevant services, DM advised that when setting the reserve prices at the first tender exercise in 1997, the Administration had consulted the then existing operators and taken into account their operating environment. Thereafter, the reserve prices were adjusted based on the Government Consumption Expenditure Deflators (GCED). In the tender exercise in 2000, the first round bidding prices were very close to the reserve prices. It was only at the second round open tender conducted for disposal of the unallocated berths that there were bidding prices significantly higher than the reserve prices.

54. Mr CHAN Kam-lam said that he had kept in view the development of PCWAs over the past 10 years or so, and considered that the reform that had been made to the management of PCWAs over the period had fulfilled the three objectives set out in the recommendation of PAC in 1996. The Administration should work out the long term arrangements having regard to the past experience, so that the trade did not have to be anxious about possible abrupt changes at every three-year interval. The Administration should also continue the past approach of maintaining a close dialogue with the trade. The reserve prices for the coming berth re-allocation exercise should be set at appropriate levels to ensure business viability. SEDL said that the Administration would adopt the approach as suggested by Mr CHAN.

55. Mr Fred LI said that he had met with the trade recently. Whilst the Democratic Party upheld the principle of open and fair competition, he appreciated the reasons for adopting the restricted tender approach for the next re-allocation of PCWA berths and the possible effects of fully opening up the tender system. He therefore would not object to continuing with the restricted tender system provided that there

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would be no collusion among the existing operators to manipulate the tender prices nor secret arrangements among the operators on the use of berths after the tender exercise.

56. SEDL said that he concurred with Mr Fred LI that there was a need to strike a balance. The possible problems that might arise under a restricted tender system as pointed out by Mr LI were also the concern of the Administration.

57. DM said that the Administration had not observed signs of collusion in the previous tender exercises. Some berths had not been allocated in the first round of restricted tender and these spaces were subsequently disposed of by open tender. If there had been collusion, all the berth spaces should have been allocated through restricted tender. In the first tender exercise in 1997, existing operators could not bid for more berths than the number they were occupying at that time. In the last tender exercise, operators were allowed to bid for as many berths as they wished. Thus, the last tender exercise was more competitive. As regards subletting of berths, he pointed out that as there were unallocated berths after the restricted tender, existing operators or new operators in need of berths could simply bid for the unallocated berths at the open tender stage instead of subletting.

58. Mr Fred LI asked whether the popularity of PCWAs varied and thus the berths of some PCWAs were not bidden for through restricted tender. DM said that at the last tender exercise in 2000, 16 berths were not bidden for and they were scattered in all except the Yau Ma Tei PCWA.

59. Miss TAM Heung-man said that she supported the Administration's proposal and asked how the Administration would ensure that the existing operators would not have to end their business as a result of paying high prices for the PCWA berths. She requested the Administration to take into account the long term operational viability of PCWA operators in its comprehensive review.

60. Mr Jeffrey LAM expressed support for the Administration's proposal. He said that since the PCWA operators were mainly small enterprises, the Administration should set the reserve prices for the PCWA berths at reasonable levels to ensure the continued availability of berths at reasonable prices for the trade.

61. SEDL took note of members' views and said that the Administration would take into account the prevailing operating environment of the trade in setting the reserve prices for PCWA berths.

62. Mr WONG Ting-kwong expressed support for the Administration's proposal and concurred with some other members' suggestion of extending the tenure of the berth leases for operators if feasible. He enquired about the possible displacement of operators in certain PCWAs in the near future and the reprovisioning arrangements for displaced operators.

63. DM advised that if there was any planned development at any existing PCWA(s), the Administration would consider arrangement for reprovisioning the

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operators concerned and this had been done before. In 2003, the Government closed the Wan Chai PCWA to make way for Central Reclamation Phase III. The Marine Department refurbished the closed Chai Wan PCWA and reprovisioned the displaced operators to the Chai Wan PCWA.

64. Mr Abraham SHEK said that The Alliance supported the Administration's proposal. With regard to PAC's recommendation in 1996, he said that it was incumbent upon the Administration to report its work on the matter to PAC over the past 10 years and make recommendations for the future arrangements. After examining the Administration's report, PAC would give its views as appropriate, and if PAC considered it necessary, it might request the Director of Audit to conduct further value-for-money assessment on the matter. Mr SHEK further said that he understood the trade's concern, but the Administration had the responsibility to protect Government revenue and Members should consider the matter from a broader perspective taking into account the overall market situation and public interest. The issue was how to strike a proper balance among the various relevant considerations.

65. Ms Miriam LAU said that she was delighted to note that maximization of Government revenue was not the Administration's primary consideration in the allocation of PCWA berths. She suggested that in conducting the comprehensive review, the Administration should also review the mechanism for determining the reserve prices, as the operating environment of the trade had undergone substantial changes. For instance, they charged \$300 per container in 1999. Nowadays, they only charged \$100 to \$200 per container, which revealed that the operating environment was getting more difficult. Moreover, the Administration should review the gate entrance fee of PCWAs for vehicles, on which the trade had strong views.

66. On the concern about other government charges at PCWAs, SEDL said that EDLB would collaborate with the Financial Services and Treasury Bureau in undertaking the comprehensive review. He also agreed to consider Ms Miriam LAU's suggestion regarding the mechanism for determining the reserve prices and see if any indicators were available to reflect the trade's operating environment.

67. The Chairman concluded that the Panel was in support of the Administration proposal in respect of the next PCWA berth re-allocation exercise. He urged the Administration to carry out the comprehensive review as soon as possible and duly consider the views expressed by members in the course of the review.

VII Any other business

68. There being no other business, the meeting ended at 12:35 pm.