

立法會
Legislative Council

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seen by the Administration)

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Establishment Subcommittee of the Finance Committee

Minutes of the 2nd meeting
held in Conference Room A of Legislative Council Building
on Wednesday, 17 January 2007, at 9:30 am

Members present:

Hon LI Fung-ying, BBS, JP (Chairman)
Hon WONG Kwok-hing, MH (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, SBS,S.B.St.J., JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon Abraham SHEK Lai-him, JP
Hon MA Lik, GBS, JP
Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

Public Officers attending:

Miss Amy TSE, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)
Miss Jennifer MAK, JP	Deputy Secretary for the Civil Service
Miss AU King-chi, JP	Commissioner for Tourism
Miss Patricia SO	Economic Development and Labour Bureau Assistant Commissioner for Tourism Economic Development and Labour Bureau

Clerk in attendance:

Ms Debbie YAU

Senior Council Secretary (1)1

Staff in attendance:

Ms Pauline NG

Assistant Secretary General 1

Ms Guy YIP

Council Secretary (1)1

Ms Alice CHEUNG

Senior Legislative Assistant (1)1

Mr Frankie WOO

Legislative Assistant (1)2

Action

The Chairman drew members' attention to two information papers provided by the Administration before the meeting; namely, Papers Nos. ECI(2006-07)8 and ECI(2006-07)9 which provided respectively an update on the overall directorate establishment position and changes in directorate establishment approved since 2002. According to the Administration, there would be a net increase of one supernumerary post after this meeting if the proposal to be considered at the meeting was endorsed.

EC(2006-07)12 Proposed creation of one supernumerary post of Administrative Officer Staff Grade C (D2) in the Tourism Commission under the Economic Development Branch of Economic Development and Labour Bureau of Government Secretariat for a period of two years with effect from 1 April 2007 to head a dedicated team to take forward the cruise terminal project

2. The Chairman informed members that the Panel on Economic Services (ES Panel) was consulted on the proposal at the meeting on 27 November 2006.

Proposed period for the supernumerary post

3. Mr James TIEN stressed that Members of the Liberal Party (LP) were in support of the proposed development of new cruise terminal facilities in Kai Tak. However, as the cruise terminal was only one part of the Kai Tak Development and it was not certain if the proposed supernumerary Administrative Officer Staff Grade C (AOSGC) post would also look after other components of the Kai Tak Development such as the Tourism Node adjacent to the cruise terminal, he enquired how Bureaux and Departments (B/Ds) would seek staffing resources for the development of these other components.

4. Mr James TIEN also noted that the proposed supernumerary post to take forward the development of the new terminal facilities would last for a period of two

years. According to the proposal, the need for retaining the post would be reviewed at the end of the two-year period, and if initial works progressed smoothly, the remaining work could be absorbed by the existing staff of Tourism Commission (TC). Mr TIEN also pointed out that it was not uncommon that the Administration put up proposals to create supernumerary posts for two years and then sought extension of the posts. Given that the development of a cruise terminal from planning to commissioning would normally stretch over some eight to ten years, he questioned if it was realistic to create the AOSGC post for just two years. He hoped that the Administration would provide a realistic picture of how long the post would be needed, instead of requiring the Finance Committee to approve a two-year period now and then to approve extensions afterwards. Mr TIEN indicated that Members of LP might not support any such extensions of supernumerary posts.

5. In response, the Commissioner for Tourism (C for Tourism) said that she was not aware of any request for additional staff from B/Ds throughout the revision of Kai Tak Development Plan when the Panel on Planning, Lands and Works (PLW Panel) was briefed on the subject. She believed that B/Ds would first deploy their existing resources to implement the various components of the Kai Tak Development project. It was not feasible to do so in the case of developing the cruise terminal facilities as there was a need to achieve the target for commissioning the first berth of the cruise terminal in 2012. TC was working under an extremely tight timetable. It therefore proposed to set up a dedicated team, to be headed by the proposed supernumerary post, with a view to completing the preparatory work, including obtaining the necessary approvals according to statutory requirements, for the construction to commence by early 2009. If everything proceeded as planned, TC and other relevant B/Ds from then on would monitor the development of the cruise terminal facilities according to their respective purview with deployment of existing resources. For the prudent deployment of public resources, the Administration had therefore proposed to create the supernumerary AOSGC post for two years.

6. While appreciating that no additional manpower resources would be required for implementing the Kai Tak Development project, Mr James TIEN remained concerned about the coordination between the implementation of the cruise terminal and the overall development of the Kai Tak project. In particular, he failed to see how the cruise terminal which was located at the southern tip of Kai Tak site could be pursued without regard to the overall land disposal programme and procedures under the Kai Tak Development, as well as the Kai Tak Outline Zoning Plan (KTOZP) which was yet to be approved. In the circumstance, he could not see how the project could progress smoothly according to the schedule and that extension of the post would not be required.

7. C for Tourism explained that an exceptional fast-track programme had been adopted for the development of the cruise terminal. Referring to the Implementation Timeframe set out in Enclosure 3 to the paper (EC(2006-07)12), C for Tourism pointed out that tender could only be invited after the statutory planning approval for Kai Tak Development had been secured. She advised that prior to the gazettal of KTOZP on 24 November 2006, there was extensive support from

Legislative Council Members, the tourism industry and the general public for the development of a new cruise terminal at the Kai Tak site. To help expedite the subsequent tender exercise, the dedicated team would conduct a pre-tender consultation with the tourism industry and the cruise market in parallel with the statutory planning procedures for the Kai Tak Development aiming at finalizing the KTOZP by the fourth quarter of 2007. This pre-tender consultation would enable the Government to gauge market response and help define clearly the technical and operational parameters of the new cruise terminal to facilitate preparation of tender submissions by potential bidders. C for Tourism further said that the tender would be closed by the first quarter of 2008 upon the completion of the necessary statutory procedures under relevant Ordinances, such as the requirement to conduct an Environment Impact Assessment (EIA). After awarding the tender in the second quarter of 2008, the dedicated team would assist the successful bidder to obtain consent from the relevant authorities to commence works by early 2009. On the basis of the above work plan, it was anticipated that the proposed AOSGC post would be required for two years.

8. While stating no objection to the implementation of the cruise terminal project to enhance Hong Kong's tourism development, Dr KWOK Ka-ki stressed the need for the prudent deployment of public resources. He concurred that every establishment proposal should be examined on its own merits, but he was concerned about the recent trend of creating dedicated directorate posts to oversee construction projects, such as the present case and the Tamar Development Project. As cruise terminal was a part of the Kai Tak Development, he considered it not justified to create the proposed supernumerary post at this stage when the KTOZP had not yet been finalized. He considered that pre-tender consultation and preparation of tender document were routine business which could be absorbed by existing staff of TC. In this connection, Dr KWOK sought information on TC's staffing constraints and the capacity of its existing directorate staff.

9. In response, C for Tourism remarked that TC had critically examined the workload of its existing directorate staff and found that they were already at their full capacity and therefore could not absorb the duties of the proposed post without compromising the performance of their existing duties. Highlighting the complexity of the preparatory work, C for Tourism advised that the dedicated team would provide support to an inter-departmental committee (involving some 20 B/Ds) and two working groups established under this committee to focus on technical issues as well as tourism and other relevant policy issues. The team would also be required to liaise with various industries such as cruise, tourism, planning, construction and engineering etc.

10. Dr KWOK Ka-ki was unconvinced. He insisted that pre-tender consultation was a straight-forward task handled by various B/Ds as a matter of routine. He did not consider that the preparatory work for developing the cruise terminal fully justified the creation of the proposed post at this stage.

11. C for Tourism said that in view of the strong support from the tourism industry and the general public for the early development of the cruise terminal, TC

saw the merit of creating a dedicated team to oversee the project so that various tasks could be undertaken in parallel to ensure the timely commissioning of the first berth in 2012. She stressed that in the first year of its formation, one of the team's priority tasks would be to ensure the timely preparation of the tender document, assessment of the bids received and award of the tender. She stressed the significance of the pre-tender consultation as it would help ensure that the technical and operational parameters of the new cruise terminal set out in the tender document could best serve the needs of the market.

12. Mr Patrick LAU recalled that the Government had conducted an Expression of Interest (EOI) exercise for the new cruise terminal in 2005. He enquired about the staffing arrangement in conducting the EOI exercise and how far the information obtained from the EOI exercise could be released to prospective bidders for preparation of their bids in the upcoming tender exercise.

13. In response, C for Tourism advised that the Administration had briefed the ES Panel on the findings of the EOI exercise at its meeting on 27 November 2006. As the nature of work involved in supporting the EOI was less complicated than that for the pre-tender consultation and the tender exercise, no special arrangement had been made to provide staff to service the EOI.

14. Mr WONG Ting-kwong said that Members of the Democratic Alliance for the Betterment and Progress of Hong Kong were in support of the staffing proposal. Given the complexity of the work involved in overseeing the development of a new cruise terminal, he did not consider it desirable for the responsibility to be absorbed by existing staff in TC. On the duration of the proposed post, Mr WONG expressed concern about the continuity in monitoring the progress of the project if the post would not be retained at the end of the two-year period in March 2009.

15. Ir Dr Raymond HO expressed support for the development of the new cruise terminal as it could help alleviate the unemployment/underemployment problem in the construction industry. He shared the view that the responsibility of implementing and overseeing the project should be entrusted to a dedicated team. Given the complexity of the tasks which involved both Government B/Ds, public and private sectors, Ir Dr HO pointed out that the dedicated team, in particular its leader, must ensure smooth cooperation and coordination among all parties concerned to avoid slippages. While appreciating TC's proposal to develop the new cruise terminal within a tight timeframe, Ir Dr HO advised that some leeway should be allowed in the schedules as it often took longer time than expected to obtain the necessary support from relevant B/Ds and authorities. In addition, the tender document and the contract should be drawn up in a water-tight manner so as to avoid liquidated damages, which could be so substantial as to exceed the value of the tender. As such, Ir Dr HO supported the Administration's proposal to create the supernumerary AOSGC post to head the dedicated team. The incumbent should provide strategic direction to team members and oversee all aspects of the team's work. Moreover, he considered it inappropriate for the Administration to undertake to dissolve the dedicated team at the end of the two-year period as the implementation progress might lag behind the schedule, in particular when there

were still uncertainties surrounding the overall Kai Tak Development. In fact, the Administration should consider the need to retain the proposed post further to monitor the progress of works in the construction phase.

16. Mr CHEUNG Man-kwong stated that Members of the Democratic Party (DP) were in support of the staffing proposal and they considered that timely commissioning of the new cruise terminal project would be of benefit to Hong Kong's overall economy and to the tourism industry in particular. DP Members, however, had doubt on the practicability of the proposed implementation timeframe. Mr CHEUNG shared the view that it was not necessary for the Administration to undertake not to extend the proposed post after the end of the two-year period. Instead, the Administration should make it clear that the supernumerary post would be retained if considered necessary. Members would scrutinize every proposal to extend supernumerary post with due care based on merits and justifications. Mr SIN Chung-kai added that it was reasonable to provide flexibility on the duration of the proposed post with a view to implementing the cruise terminal project smoothly.

17. Mr Abraham SHEK held the view that given the scale of the project, the proposed post might be required for more than two years. Under the circumstances, a two-year post subject to further extension would be a more realistic arrangement as the incumbent, being well-versed about the project parameters in the tender document, could play a key role in monitoring the progress of works during the construction phase.

18. Acknowledging members' concern, C for Tourism clarified that the proposed creation of the supernumerary AOSGC post for two years was made on the basis that the statutory procedures for KTOZP and EIA, which were beyond TC's control, could be completed by end of 2007 and early 2008 respectively. If the initial construction works progressed smoothly, continuous monitoring of the remaining implementation programme beyond March 2009 could be absorbed by the existing resources of TC and relevant B/Ds. Otherwise, the Administration was prepared to review the need for retaining the proposed post at the end of the two-year period.

19. Appreciating the Administration's response, Ir Dr Raymond HO called on the Administration to exercise prudence in selecting a suitable person who was highly experienced in undertaking works projects to fill the proposed post so that the incumbent could take on his/her duties immediately upon appointment.

20. Mr Patrick LAU was concerned about the feasibility of getting candidates with the right experience and calibre to fill the post which only lasted for two years, and whether the terms and conditions of the proposed post were sufficient to attract well qualified and experienced persons to apply for the job.

21. Taking note of members' concern, C for Tourism advised that the Administration would identify a suitable candidate from within the civil service for the proposed post. On the requirement for the proposed post, the incumbent should

be sufficiently senior with strong leadership and negotiation skills to coordinate some 20 B/Ds. He/she should possess proven administrative experience and be familiar with the government machinery. Therefore, the Administration planned to fill the proposed post through internal staffing deployment.

22. Mr Howard YOUNG said that the tourism industry welcomed the Administration's proposal to develop the new cruise terminal facilities which had been advocated by the industry for many years. He agreed that the project should be implemented by dedicated staff. On the duration of the proposed post, he opined that in the event that the preparatory work of the cruise terminal project could not be completed within two years, the continual monitoring of the project could be taken over by the existing staff in TC. Noting the Administration's intention to fill the proposed post through internal deployment, he highlighted that the unprecedented development of a tailor-made cruise terminal not only required the incumbent to carry out duties in the administrative and legal fields, but also to attend to the special needs of a cruise terminal. For example, in drawing up the tender document, reference should be made to the existing international cruise hubs, such as those in Athens, Miami and San Diego, to ensure that provision of essential supporting infrastructure of a cruise terminal, such as the customs, immigration and quarantine (CIQ) facilities, would be clearly specified.

23. In response, C for Tourism assured members that the Administration would make reference to the designs and operations of international cruise terminals in developing the new cruise terminal at Kai Tak. She said that as a total of 28 new cruise vessels had been in the pipeline for delivery in the next ten years, the development of the cruise terminal facilities would aim at meeting future needs of the cruise industry. The Administration would pay heed to suggestions on the best arrangement for a cruise terminal of international standing, such as the berthing of cruise vessels, loading and unloading of passengers, baggage and supplies, coach parking, provision of CIQ facilities and other logistical arrangements. In addition to drawing reference from international experience and seeking expert advice, the dedicated team would also consult various stakeholders during the pre-tender consultation exercise with a view to coming up a tender document which could ensure that the new cruise terminal facilities would meet future needs.

24. Mr Howard YOUNG reminded the Administration that in addition to the drafting capability of the new cruise terminal, efforts should also be made to lure cruise lines to homeport their vessels in Hong Kong so as to enable the territory to reap the maximum economic benefit from the project. He further pointed out that unlike CIQ facilities for port-of-call whereby immigration officers would be sent to the vessels' homeports to complete customs clearance, the CIQ facilities for making Hong Kong a homeport of cruise vessels should be designed to cope with the special travel pattern of the cruise passengers who would enter and re-enter the territory during their cruise trips.

25. C for Tourism shared member's view that rather than serving cruise vessels as a port-of-call, the objective of the project was to develop Hong Kong as a homeport for cruise lines which would begin and/or terminate their journeys in Hong

Kong thus enhancing passenger throughput, not only for the cruise terminal but also for other tourism and supporting infrastructures like the airport. When cruise passengers, such as those joining the fly-and-cruise packages, flied to Hong Kong to join the cruise trips, they would also make use of other infrastructural facilities and generate additional economic benefits to Hong Kong. She assured members that the Administration would put in place sufficient CIQ facilities at the cruise terminal to meet the special needs of cruise passengers.

Disposal of lands

26. Ms Margaret NG referred to the same question raised by Mr Alan LEONG and Mr Ronny TONG at the meetings of the PLW Panel and ES Panel respectively about the legal basis for Government's proposal of granting a 50-year lease for the operation of the cruise terminal facilities. Notwithstanding that some members of the public had considered the 50-year duration excessively long from an economic perspective, Ms NG considered that the fundamental issue of a land grant with a term extending beyond 30 June 2047 ought to be resolved as it would affect the property rights of many people in Hong Kong. Members of the Civic Party (CP) were gravely concerned about the legality of Government's disposal of land for a period to extend beyond 2047 as according to Article 5 of the Basic Law (BL), the capitalist system and way of life in Hong Kong should remain unchanged for 50 years. As socialist system was practised in the People's Republic of China, it could not be assumed that the common law jurisdiction, where the right of private ownership of property was protected, would continue to be practised in Hong Kong afterwards. She therefore doubted whether Hong Kong Special Administrative Region Government (HKSARG) had the right to dispose of land for the operation of the new cruise terminal facilities or for other developments beyond 2047. In view of the far-reaching implications of the land rights beyond 2047, Members of CP had discussed related issues with the Administration on the day before the meeting, i.e. 16 January 2007. During the meeting, CP Members were given to understand that according to the 1997 HKSARG Policy Statement promulgated on 15 July 1997, new leases of land granted should be for a term of 50 years from the date of grant. In this connection, Ms NG sought clarification on the legal basis underpinning the 1997 HKSARG Policy Statement.

27. Taking note of the member's concern, C for Tourism referred to the written reply (LC Paper No CB(1)503/06-07(01)) prepared by the Housing, Planning and Lands Bureau (HPLB) in response to the same question raised by Mr Alan LEONG at the meeting of the PLW Panel on 14 November 2006. According to HPLB, it was legally in order for HKSARG to grant land leases with terms extending beyond 2047. She elaborated that pursuant to Article 7 of BL, HKSARG should be responsible for the management, use and development of the land within the HKSAR and for their lease or grant to individuals, legal persons or organizations for use or development. The 1997 HKSARG Policy Statement also set out that new leases of land granted should be for a term of 50 years from the date of grant. According to the legal advice sought in this regard, the granting of land leases after 1 July 1997 for a term of 50 years was in conformity with the existing legislative framework. C for Tourism informed members that during the discussion with CP

Members on 16 January 2007, HPLB had undertaken to provide a written response to address the views and concerns expressed by CP Members. In view of this, she suggested that the issues of grating land leases after 30 June 1997 be referred to the PLW Panel for further discussion.

Admin

28. Ms Margaret NG requested the Administration to provide a formal written reply setting out the legal basis of HKSARG's right in granting land leases with term extending beyond 30 June 2047. She queried that as BL had only conferred HKSAR a constitutional status up to 30 June 2047, it could not assume that it had the authority to determine the term of a new land grant which extended beyond that date unless such authority was granted by the Central Government or acknowledged by the Central Government as legally in order under BL. Ms NG sought clarification whether there had been any communication with the Central Government which was relevant to the Administration's Policy Statement that the HKSARG might grant or lease land for a term which extended beyond 2047.

29. Echoing Ms NG's view, Mr WONG Ting-kwong concurred that the issues of land rights were of paramount importance to all property owners in Hong Kong. He said that even if the Administration could not provide a detailed reply at the meeting, it should duly follow up the matter with Members afterward.

30. C for Tourism explained that as matters relating to land disposal was under the purview of HPLB which was fully aware of CP Members' concerns, she undertook to reflect member's views expressed at the meeting to HPLB for its detailed written response to be provided shortly and for its follow up at the future meetings of the PLW Panel.

31. Mr MA Lik also expressed concern about the HKSARG's authority in granting 50-year land leases, in particular shortly before June 2047. He considered that Article 5, i.e. the capitalist system practised in Hong Kong should remain unchanged for 50 years, was a proviso for the right conferred to HKSARG in disposal of land pursuant to Article 7 of BL. Mr MA recalled that when the Administration put forward the proposal to grant land lease for 50 years, with a right to renew for a further 50 years, for developing Hong Kong Disneyland (HKD) for Members' consideration in 1999, he had questioned the legality for granting the land lease with such a term. Although it was reported in a print media report a few days later that according to a government source, it was legally in order for HKSARG to grant land leases with term extending beyond 30 June 2047 as it was not evident from BL that all new grants of land should expire on that date. Mr MA however held a different view and considered that the rights of a government should be expressly provided for in the laws. He was worried that if HKSARG's existing land policy in granting leases with terms extending beyond 30 June 2047 were subsequently found to be legally incorrect, it might face enormous number of claims for damages and bring about tremendous economic losses for Hong Kong. As such, it was essential for the Government to resolve the issues and put things beyond doubt. Mr MA considered that as the issues involved went beyond the scope of work of the Economic Development and Labour Bureau (which oversaw the development of the cruise terminal) and HPLB (which dealt with lands matters), the

Chief Executive or his delegate should take step to obtain the Central Government's authorization that HKSARG could grant land leases to end beyond 2047. Mr MA requested the Administration to report in writing the work taken in this regard.

32. Sharing his view, Mr KWONG Chi-kin agreed that the issue at stake was a question of constitutional arrangement for HKSARG after 30 June 2047. In his opinion, there should be a time limit for HKSARG to exercise its right in the management, use and development of land pursuant to Article 7 of the BL which should not be read in isolation. He considered that HKSARG should only exercise rights that had been expressly authorized by BL. As the Central Government had a stake on Hong Kong's affairs beyond 2047, Mr KWONG sought clarification on whether there was any evidence to show that HKSARG's current policy of granting land leases to end beyond 2047 was authorized by the Central Government or acknowledged by it as legally in order under the BL. If such evidence was not available, he agreed with Mr MA Lik that it was necessary to obtain such an authorization from the Central Government. This could certainly help boost private sectors' confidence to invest in the development of Hong Kong's infrastructures as they could continue operation beyond 2047. As the issues were constitutional in nature and went beyond the purview of HPLB, Mr KWONG considered that the Secretary for Justice/Department of Justice (DoJ) and the relevant authorities should study the issues carefully especially in the light of the relevant Articles of BL. He stressed that the Administration should provide a legal justification in writing for its right to grant 50-year land leases extending beyond 30 June 2047.

33. Mr Howard YOUNG considered that the issues of land grant should be viewed from a macro perspective and be dealt with by DoJ through exchanges between senior officials in Hong Kong and the Mainland. Albeit Article 5 of BL had provided that the capitalist system practised in Hong Kong should remain unchanged for 50 years, he recalled that before the Handover, a Mainland leader had opined that given the presence of a general consensus, the capitalist system might continue after 2047. Moreover, as he noticed that the Mainland authorities also granted land leases for private use for 50 or 70 years, there might not have much difference between the land rights under the Mainland and Hong Kong in future. Nevertheless, in view that the land issues had in the 80's given rise to mortgage crises, he urged that senior officials be involved to clarify HKSARG's rights to grant land leases with term extending beyond 2047.

34. C for Tourism stressed that the Administration took the issues of land grant seriously. She informed members that in addition to HPLB, representatives from DoJ had also attended the discussion with CP Members on 16 January 2007. Both DoJ and HPLB were fully aware of members' concerns and were preparing a written response for Members' information. She re-iterated that members' views and concerns expressed at the meeting would be relayed to DoJ and HPLB.

35. The Chairman requested the Administration to provide the written response for timely perusal by members before the item was considered by the Finance Committee on 9 February 2007.

36. Ms Margaret NG highlighted the inadequacies of the Administration's written reply (LC Paper No. CB(1)503/06-07(01)) in response to Mr Alan LEONG's question. She remarked that in preparing its written response, the Administration should also make reference to the land leases provisions in Articles 120 to 123 of BL, in particular to Article 121 which had prescribed conditions for leases expiring not later than 30 June 2047. In view that the rights to manage lands of Hong Kong might be exercised by different authorities before and after 30 June 2047, the Administration should also detail in its written response whether there were specific conditions specified in land leases that such leases were subject to after 2047. For example, for a 50-year land lease granted in 2007, the lessee was granted by HKSARG a 40-year lease plus a 10-year right by other relevant authorities to use the land. She hoped that the Administration could study the issues with due care and prepare its written reply prudently with a view to reassuring owners who had acquired their properties developed on lands granted after June 1997. C for Tourism undertook to follow up the issues with HPLB.

Admin

(Post-meeting note: The written response provided by the Administration clarifying queries raised by members at the meeting was circulated to all Members on 7 February 2007 vide ESC12/06-07.)

37. The item was voted on and endorsed.
38. The Subcommittee was adjourned at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
8 February 2007