

立法會

Legislative Council

LC Paper No. LS105/08-09

Paper for the Panel on Economic Development

At the meetings of the Panel on Economic Development held on 30 June and 4 July 2009, the Administration briefed members on the proposed expansion of Hong Kong Disneyland (HKD) after an in-principle agreement was reached between the Government of the Hong Kong Special Administrative Region (the Government) and the Walt Disney Company (WDC). At the meeting on 4 July 2009, the Legal Service Division (LSD) was requested to advise whether the Legislative Council (LegCo) is a third party to the agreement between the Government and WDC in respect of the proposed expansion of HKD. This paper sets out the views of LSD from two angles: (a) the agreement reached between the Government and WDC and (b) LegCo's role in the proposed expansion of HKD.

Agreement reached between the Government and the Walt Disney Company

2. The Government entered into an agreement with WDC to develop and operate HKD in December 1999. The Government and WDC, as parties to the agreement, are bound by the terms of the agreement. Under the common law doctrine of privity of contract, a contract cannot as a general rule confer rights or impose obligations arising under it on any person except the parties to it. When this doctrine is applied to the present case, LegCo is not a party to the above agreement reached between the Government and WDC.

3. According to the Administration, both the Government and WDC are not to disclose any commercially sensitive information including the gain or loss from the operation of HKD thus far because they are bound by the confidentiality provision in the agreement. The Government is therefore under a contractual obligation of confidence not to disclose such information without the consent of WDC.

4. Further, at common law, a duty of confidence arises when confidential information comes to the knowledge of a person in circumstances where he has notice or is held to have agreed that the information is confidential. It is a breach of confidence to use or disclose the confidential information without the consent of the person to whom the duty is owed. The person who uses or discloses such information may be sued by the other party. Thus, the Government is also under an obligation at common law not to disclose such confidential information without the consent of the other party.

5. Some members of the Panel consider that the information relating to the main operating and financial results of HKD (including park attendance and the key indicators of financial performance, i.e. income, expenditure and asset as well as investment gains/losses made) is essential to their consideration of approving the proposed expansion of HKD. However, the Administration claims that the requested information is commercially sensitive information, and thus could not be disclosed to

LegCo because of the confidentiality provision under the agreement reached between the Government and WDC.

6. Under Article 64 of the Basic Law, the Government is accountable to LegCo and it shall obtain approval from LegCo for public expenditure. The Government should recognize that accountability can only be achieved if adequate information is provided to LegCo and any claim of commercial confidentiality in information should be carefully considered and balanced against its constitutional duty to be accountable to LegCo. In these circumstances, members may wish to consider requesting the Administration to press for WDC's consent to disclosing the requested information to LegCo. If no such consent can be obtained, the Panel may consider obtaining an authorization by a resolution of LegCo to exercise the powers under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the production of the relevant information.

7. It is noted from paragraph 16 of the Administration's paper (LC Paper No. CB(1)2090/08-09(01) refers) that starting from 2008-2009, WDC has agreed to make annual disclosure of limited information, namely the main operating and financial results of HKD, including park attendance and key indicators of financial performance.

LegCo's role in the proposed expansion of Hong Kong Disneyland

8. The Capital Investment Fund (the Fund) was established on 1 April 1990 by a resolution made and passed by LegCo under section 29 of the Public Finance Ordinance (Cap. 2). Under paragraph 5(b) of the resolution, the Financial Secretary may expend moneys from the Fund for the purpose of financing loans, advances and investments to or in such persons as may be approved by the Finance Committee (FC), in accordance with such terms and conditions as may be specified by FC. On 26 November 1999, FC approved a commitment to inject HK\$3.25 billion as equity and to provide HK\$5.619 billion as a loan from the Fund to Hongkong International Theme Parks Limited (HKITP) to allow HKITP to proceed with the development and operation of HKD. Both the equity injection and loan drawdown had been completed.

9. The Administration has already given notice to the Clerk of FC to include the item of expansion of HKD in the agenda of the meeting to be held on 10 July 2009. This item invites Members to approve the conversion of the Government loan to equity in HKITP as part of the expansion and capital realignment plan of HKD.

10. In relation to the issues referred to in paragraph 1 above, it is quite clear that although LegCo is not a party to the agreement reached between the Government and WDC in the legal sense, it does have an important role to play in the proposed expansion of HKD as the Administration has to seek the approval of FC for the conversion of the Government loan to equity in HKITP.

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