

政府總部
民政事務局

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6 May 2011

Ms Miranda HON
Clerk to Public Accounts Committee
Legislative Council
8/F, Murray Road Multi-storey Carpark Building
Hong Kong
(Fax No.: 2840 0716)

Dear Ms Hon,

**Public Hearing on
Hong Kong 2009 East Asian Games (Chapter 5)**

At the first public hearing held yesterday, a Member asked if the 2009 East Asian Games (Hong Kong) Limited had received written advice from its legal advisor on its proposal to make donations to the athletes' funds. We would like to confirm that the legal advisor had set out her opinion in an e-mail dated 23 April 2010. With the legal advisor's consent, a copy of her opinion is enclosed for the reference of the Public Accounts Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Benjamin Mok'.

(Benjamin Mok)
for Secretary for Home Affairs

c.c. Director of Leisure and Cultural Services (Fax No.: 2606 1824)
Secretary for Financial Services and the Treasury (Fax No.: 2147 5239)
Director of Audit (Fax No.: 2583 9063)

-----Original Message-----

From: [REDACTED]
Sent: Friday, April 23, 2010 11:11 AM
To: 'esclee@lcsd.gov.hk'
Subject: EAG Company Surplus Funds

Dear Eva,

Questions raised in what way the Company can deal with its surplus funds after conclusion of the Games.

Upon further review of the Memorandum and Articles of Association of the EAG Company, I would like to advise that :

1. Clause 4(1) of the Memorandum provides that the income and property of the Company SHALL BE applied SOLELY towards the promotion of the objects of the Company set out in Clause 3 of the Memorandum.

2. All the objects stated in Clause 3 relate directly to the Games, save the following provisions :

(a) Clause 3(4) : To promote the exchange of information, experience, international understanding and goodwill so as to educate the sports community in the organization of major international sports events;....

(b) Clause 3(3)* : To subscribe or guarantee money for charitable/religious or educational objects, and to promote, contribute to or assist financially or otherwise any fund for any charitable purposes.

Before the winding up of the Company, the Company may therefore apply its property and income to the above objects according. However, since the Company is bound by the Tripartite Agreement to use its funding towards the Games, I doubt whether the Company can use the income and property towards the above objects if they are not related to the Games, unless the Government agrees to its doing so.

3. Further, **upon winding up of the Company**, it may also transfer its property and income to another institution provided that :

(1) All the company's debts and liabilities have been satisfied fully;

(2) the receiving institution has similar object to Company;

(3) the receiving institution has the same or greater degree of restriction as is imposed on the Company under Clause 4 of the Memorandum in relation to the distribution of its income and property amongst its members;

(4) such institutions shall be determined by the Members of the Company.

(Clause 7 of the Memorandum refers)

4. However, the EAG Company is bound by the Tripartite Agreement to use the funding for the Games and to refund the surplus to the Government. Such "surplus" is in a sense a liability of the Company owed to the Government as a creditor. If however, the Government waives or concludes that the Company is not required to pay such "surplus" to the Government, the Company may transfer the surplus in accordance with Clause 7 of the Memorandum.

5. To conclude, the Company is bound to use its income and property solely for the objects of the Company and in accordance with its Memorandum. Such memorandum may be amended by the Members of the Company. The Company is also bound by its obligations towards the Government under the Tripartite Agreement, such obligations however may be released if the Government agrees.

Should you have any questions, please feel free to let me know.

Regards,

A solid black rectangular box used to redact a signature.

[Remarks : * As confirmed by the Legal Advisor, this clause should read as Clause 3(13).]