

Part V – Disqualification of the Entry Concerned and subsequent actions taken in relation to Mr LEUNG Chun-ying's declarations

2.70 Checking the identities of winners was the next task for the Organiser after the Jury had finalised its provisional list of winning entries. In the evening of 27 February 2002, Mr Eric JOHNSON returned to his office to check the identities of the winning entrants for vetting eligibility purposes and spotted that a company which appeared to be associated with Mr LEUNG Chun-ying was listed as a project team member of an entry (i.e. the Entry Concerned) on the provisional list of winning entries. This part provides an account of how the Organiser and the Jury, in particular Mr LEUNG Chun-ying, responded to the situation and why a decision was made by the Jury to disqualify the Entry Concerned, as well as the subsequent actions taken in relation to Mr LEUNG Chun-ying's declarations.

Discovery of the association of the Entry Concerned with Mr LEUNG Chun-ying's company

2.71 As described in paragraph 2.69 above, the Jury finalised the provisional list of the five winning entries on 27 February 2002. In that evening, Mr Eric JOHNSON opened the sealed envelopes submitted by the entrants on the provisional list of winning entries. He saw that one of these entrants had listed DTZ as one of its project team members. He associated this reference with Mr LEUNG Chun-ying, as PLB had all

along been corresponding with Mr LEUNG Chun-ying at his DTZ address. He then reviewed the set of declaration forms submitted by members of the Jury, which he did not find time to do so before that evening. He noticed from Mr LEUNG Chun-ying's declaration form that the name of the entrant concerned had not been declared in either item (b) or (e) of the form (Appendix 2(q)). Mr LEUNG Chun-ying had declared in the form that "*I am not a director or major shareholder of any company*". Mr JOHNSON told the Select Committee that on the face of it, there was an undeclared conflict of interests. He intended to report the finding to Mr John TSANG, then SPL, but Mr TSANG had left the office.

2.72 In the morning of 28 February 2002, Mr Eric JOHNSON reported the finding to Mr John TSANG. The Select Committee notes Mr JOHNSON's report of the finding to Mr TSANG as mentioned in paragraph 37 of his written statement submitted to the Select Committee on 17 March 2012 :

"I reported the matter to him first thing the next morning on Thursday, 28 February. I cannot recall exactly what Mr TSANG said at the time, but he treated the matter as serious and if I recall correctly, tried to reach Mr LEUNG by telephone but was unable to reach him at the first attempt..."

2.73 At the hearing on 17 March 2012, a member of the Select Committee asked Mr Eric JOHNSON why he reported the finding to Mr John TSANG first thing in the morning of 28 February 2002. Mr JOHNSON's response was as follows :

"I saw it as my duty. In fact, I recognised myself that this was a potentially serious issue for the Jury, and I needed to inform Mr TSANG. I think it did not matter who the Jury member concerned was, I still would have gone in to inform him, and because this was obviously a potentially serious matter."

2.74 At the hearing on 17 March 2012, in relation to Mr John TSANG's response to the finding of Mr Eric JOHNSON, a member of the Select Committee asked the following question (English translation) :

"...if I can confirm, you considered the just mentioned omission to declare by Mr LEUNG Chun-ying a serious matter?"

Mr TSANG responded as follows (English translation):

"This is a fact."

Mr TSANG also told the Select Committee that he considered that the matter should be resolved by the Jury, and therefore did not report the matter to more senior officers.

2.75 In relation to the finding concerned, Mr John TSANG responded at the hearing on 3 April 2012 as follows (English translation) :

"In relation to whether the matter was serious, this was mentioned by Mr Eric JOHNSON in his statement. At the time, I thought the matter should be dealt with expeditiously, as it was on 28th, and there would be an announcement in the afternoon. We therefore needed to deal with the matter expeditiously...I think I did not say, "regard the matter as serious""

"The fact is Mr LEUNG claimed that he was not a director or major shareholder of any company; that is the fact, the fact that I am referring to"

"I did not think it was serious, and did not think it was not serious"

2.76 Regarding Mr John TSANG's response above, Mr Eric JOHNSON advised at the hearing on 3 April 2012 that :

"When I mentioned the word "serious", it was in paragraph 37 of my first witness statement when I said that Mr John TSANG treated the matter as serious. I did not refer to the matter actually being serious in my own view. I said that Mr TSANG treated the matter as serious. And, when I referred to the matter, I talked about the two documents, the one which had been completed by the entrant, read with Mr LEUNG's declaration. The two things together comprised the whole matter. And I felt that this had to be shown to Mr

TSANG. And, as I say, he treated it as something serious. He was not dismissive about it or anything like that. He treated it as serious. "

2.77 The Select Committee notes from Mr LEUNG Chun-ying that he was asked by Mr Bosco FUNG to call Mr John TSANG in the morning of 28 February 2002. He was told by Mr TSANG that DTZ was named as property advisors by one of the entrants of the Competition. Mr LEUNG Chun-ying told Mr TSANG that he was not aware of that. Mr TSANG advised him to ask Mr Eric JOHNSON, who then told Mr LEUNG Chun-ying that Mr CHIU Kam-kuen was one of the DTZ personnel named in the Entry Concerned. Mr LEUNG Chun-ying immediately called Mr CHIU and asked him why DTZ was involved in the Competition. Mr CHIU then referred him to Mr WONG Kim-bon, who was also named in the Entry Concerned and was the person undertaking the task relating to the Competition. Mr LEUNG Chun-ying had a brief discussion over the phone with Mr WONG and asked Mr WONG to send him the file containing all the correspondence and reference documents on the task undertaken by Mr WONG in relation to the Competition.

Disqualification of the Entry Concerned

2.78 Mr Eric JOHNSON told the Select Committee that as far as he could recall, before the start of the Jury meeting at 9:30 am on 28 February 2002, he had informed Lord ROTHSCHILD that a company

apparently closely linked with Mr LEUNG Chun-ying was among the participants in one of the winning entries and this relationship was not reflected in Mr LEUNG Chun-ying's declaration form. Lord ROTHSCHILD had taken him and Mr LEUNG Chun-ying aside for a short discussion outside the meeting. According to Mr JOHNSON, Lord ROTHSCHILD had sought elaboration from Mr LEUNG Chun-ying as to how the apparent conflict of interests had arisen and Mr LEUNG Chun-ying, in turn, explained that he also found it difficult to understand how the situation could have arisen. The three of them then returned to the Jury meeting room.

2.79 According to Mr Eric JOHNSON, at the invitation of Lord ROTHSCHILD, Mr LEUNG Chun-ying explained to the Jury that he had difficulty in understanding how the situation of the apparent conflict of interests could have arisen. The local members of the Jury recalled that Mr LEUNG Chun-ying told them that he was unaware of the association of his company with the Entry Concerned. The members of the Jury were generally surprised at such a situation as any entrant would not have included a company which was associated with a member of the Jury as its team member. By such inclusion, the entrant was making itself ineligible as a result of the ineligibility provision in paragraph 16 of the General Conditions of the Competition Document. Mrs Selina CHOW informed the Select Committee that her reaction at that time was more a kind of "*hard to believe*" as Mr LEUNG Chun-ying, being an experienced participant in public service, should not have overlooked the important duty to declare his interest. Prof Patrick LAU regarded the matter as very unfortunate as it had led to the disqualification of an entrant. Prof

CHANG Hsin-kang, on the other hand, recalled that the matter was not viewed to be that significant at the time.

2.80 According to the local members of the Jury, upon knowing the association of Mr LEUNG Chun-ying's company with the Entry Concerned, their immediate concern was how to deal with the Entry Concerned. The Jury very quickly came to a consensus view that the Entry Concerned should be disqualified. Mrs Selina CHOW told the Select Committee that the disqualification of the Entry Concerned had been the best and only solution available. Mr Nicholas BROOKE considered that there had been no alternative but to disqualify the Entry Concerned. Prof Patrick LAU recalled that he had felt sorry about the disqualification of the Entry Concerned but had considered it necessary to take such a decision given the ineligibility provision in the Competition Document. The local members of the Jury had different recollections as to whether Mr LEUNG Chun-ying had participated in the making of the disqualification decision but Mr LEUNG Chun-ying confirmed that he was present when the decision was made and he raised no objection to the disqualification decision by the Jury. After the disqualification of the Entry Concerned, Mr LEUNG Chun-ying continued to participate in the Jury meeting. Lord ROTHSCHILD reminded members of the Jury, following the disqualification of the Entry Concerned, that the matter of the disqualification should be kept confidential.

Actions taken in relation to Mr LEUNG Chun-ying's declarations

2.81 The Select Committee notes from the evidence that at the Jury meeting in the morning of 28 February 2002, Mr LEUNG Chun-ying undertook at the Jury meeting to provide information to Mr Eric JOHNSON regarding the role of DTZ in the Entry Concerned. The Jury did not have any further discussion on matters relating to Mr LEUNG Chun-ying's declarations at the meeting.

2.82 On 11 March 2002, Mr LEUNG Chun-ying sent a letter to Mr Eric JOHNSON regarding the role of DTZ associated with him in respect of the Entry Concerned in **Appendix 2(w)**. In the letter, Mr LEUNG Chun-ying reiterated that he had not been aware of DTZ being named as "Property Advisors" in one of the entrants in the Competition before completion of the Jury's voting process, and he had only been informed of this after 10:00 am on 28 February 2002. Mr LEUNG Chun-ying also provided a sequence of events relating to DTZ's contacts with DLS and LWK, which were two of the project team members of the Entry Concerned. Mr LEUNG Chun-ying stated in the letter that "*[t]here has been no agreement or understanding between DTZ and Davis Langdon & Seah or anyone else for any future role or fees in respect of this exercise. Neither was there any indication or promise of future work if the entrant wins the competition*". Mr LEUNG Chun-ying also stated that "*[t]o complete my declaration, I attach a full list of companies in the DTZ Group, in which DTZ Debenham Tie Leung is the main operating company*", and "*I am a shareholder and Managing Director of DTZ Debenham Tie Leung*".

2.83 On 23 March 2002, Mr Eric JOHNSON replied to Mr LEUNG Chun-ying in writing that he would inform Lord ROTHSCHILD that Mr LEUNG Chun-ying had provided "*the supplementary declaration agreed upon when the matter was discussed on 28 February 2002*".

2.84 On 15 May 2002, Mr Eric JOHNSON wrote to Lord ROTHSCHILD informing him, among others, that a member of the Jury (without mentioning the name of Mr LEUNG Chun-ying) had provided him with information "*stating his position as a shareholder and managing director of the company concerned, the names of other companies in which the company concerned is the main operating company and the names of other companies of which he is a director or major shareholder*". In the letter, Mr JOHNSON also stated that "*the member concerned did not request reconsideration of any of the decisions taken by the Jury*". Mr JOHNSON considered that "*no further action need be taken in connection with this matter*". On 27 May 2002, Lord ROTHSCHILD replied to Mr JOHNSON stating that "*it was good to hear that no further action was needed on the conflict of interest declaration point*". Mr JOHNSON told the Select Committee that this correspondence was purely within the context of the Jury and what Lord ROTHSCHILD might or might not have been able to do in his capacity as Chairman.

2.85 On 30 May 2002, with Lord ROTHSCHILD's authorisation, Mr LI Ho-kin of PLB circulated the draft Report of the Jury ("draft Report") to members of the Jury, including Mr LEUNG Chun-ying, for review. The Select Committee notes paragraph 19 of the draft Report,

which stated that "*[D]uring its consideration of the 161 submissions, the Jury, taking into account the recommendations of the Technical Panel and the Professional Advisor, as appropriate, disqualified a total of 13 entries for failing to meet the competition requirements in specific non-technical respects.*" The Select Committee notes that the aforesaid 13 entries comprised the 12 entries recommended by the Technical Panel for disqualification and the Entry Concerned disqualified by the Jury at its meeting on 28 February 2002.

2.86 On 17 June 2002, Mr LI Ho-kin informed Mr LEUNG Chun-ying, among others, of PLB's wish to receive his comments on the draft Report by 19 June 2002. On 8 July 2002, in response to Mr LEUNG Chun-ying's enquiry about the comments on the draft Report received from other members of the Jury, Mr Eric JOHNSON informed Mr LEUNG Chun-ying that PLB had received replies from four members of the Jury to the effect that they found the draft in order while Mr Nicholas BROOKE suggested amendment relating to the introduction of the draft Report. On 19 August 2002, Mr JOHNSON informed Mr LEUNG Chun-ying again of the replies received from three more members of the Jury to the effect that they found the draft Report in order, and reminded him to provide his reply. On the same day, Mr LEUNG Chun-ying wrote to Mr JOHNSON stating that he had no comments on the draft Report. On 27 August 2002, Mr JOHNSON informed Lord ROTHSCHILD that he had recast paragraphs 1 and 2 of the draft Report in accordance with Mr BROOKE's suggestion and amended a few paragraphs for greater accuracy. On 10 September 2002, Lord ROTHSCHILD approved for the publication of the Report of the Jury,

which included paragraph 19 of the draft Report to which no amendments had been made by members of the Jury or the Organiser. Paragraph 19 was as follows :

"During its consideration of the 161 submissions, the Jury, taking into account the recommendations of the Technical Panel and the Professional Advisor, as appropriate, disqualified a total of 13 entries for failing to meet the competition requirements in specific non-technical respects."

2.87 According to Mr Eric JOHNSON, the individual reasons for disqualification of the 13 entries were not elaborated in paragraph 19 of the Report of the Jury on disqualification of entries because they were considered to be governed by the provisions of paragraph 33 of the General Conditions of the Competition Document, which provided for the assessment process to be carried out in strict confidence. In keeping with these provisions, entrants which were disqualified were not notified of the reasons for their disqualification. Paragraph 35 of the General Conditions of the Competition Document only provided for the winning entrants to be notified.

2.88 The Select Committee notes that local members of the Jury raised no objection to paragraph 19 of the Report of the Jury. Mrs Selina CHOW told the Select Committee that the Jury had not discussed whether the individual reasons for disqualification of the 13 entries should be elaborated. She considered that paragraph 19 had provided a general description of the Jury's disqualification decisions on 13 entries.

The description in that paragraph might not be detailed and precise but was not factually wrong. Prof Patrick LAU considered it reasonable to adopt a general approach to the presentation of the Jury's disqualification decisions, having regard to the need to safeguard the confidentiality of the assessment details under paragraph 33 of the General Conditions of the Competition Document. Prof CHANG Hsin-kang considered the description in paragraph 19 correct, as there had been various reasons leading to the disqualification of the 13 entries and it might not be feasible to categorise these reasons clearly in the Report of the Jury.

Mr LEUNG Chun-ying's letter of 9 June 2003 to the ExCo Secretariat

2.89 On 9 June 2003, Mr LEUNG Chun-ying sent a letter in **Appendix 2(x)** to the ExCo Secretariat in respect of the *"Invitation of Proposals for the Development of the West Kowloon Cultural District"*. Mr LEUNG Chun-ying declared in the letter that he was a member of the Jury for the Competition and *"one of the entrants of the competition named DTZ Debenham Tie Leung (DTZ) as "Property Advisers". This entrant was not one of the winners"*.

2.90 After receipt of the letter of 9 June 2003 from Mr LEUNG Chun-ying, the Clerk to ExCo issued a letter in **Appendix 2(y)** to Mr LEUNG Chun-ying on 21 June 2003 reminding him to declare interest when the information paper entitled *"Progress Report on Development of the West Kowloon Cultural District"* was discussed at the ExCo meeting on 24 June 2003. The Clerk to ExCo advised Mr LEUNG Chun-ying to make declarations as mentioned in paragraph 2.89 above.

No record of deliberations on the adjudication process

2.91 The Select Committee notes that throughout the adjudication process, no minutes were taken of the Jury's discussions in the adjudication process, including the discussions leading to the making of the disqualification decision. According to Mr Eric JOHNSON, the Government had appointed an independent Jury of distinguished persons who were entrusted with the responsibility to adjudicate entries with impartiality and integrity. It was in keeping with such an arrangement that the Jury should be able to conduct its deliberations in closed session and its verdict should be respected. Paragraphs 32 and 33 of the General Conditions of the Competition Document provided that the decision of the Jury would be final and the assessment process would be carried out in strict confidence respectively. Accordingly, there was no expectation that the discussions in the Jury on the adjudication of entries and related matters would be minuted. He had not been asked or advised by any member of the Jury, the Professional Advisor or within the Administration to minute the Jury's discussions. Mr John TSANG also told the Select Committee that according to his understanding, there were normally no detailed records of the jury's discussions in the adjudication process of similar international competitions. Nevertheless, there were written records on the voting results in each round of adjudication of the entries for the Competition.

2.92 Regarding the lack of appeal mechanism against the Jury's decision, Mr Eric JOHNSON told the Select Committee that the provision of no appeal against the Jury's decision as stated in paragraph

32 of the General Conditions of the Competition Document was rooted in international practice. According to Mr Bosco FUNG, it would be impractical for the Organiser to put in place an appeal mechanism for a design competition, especially when the competition results needed to be announced by a certain date. The appeals lodged by the affected entrants could be indefinite, as the adjudication of entries by the Jury would usually involve subjective judgements.

Part VI - Observations

The Organiser's approach to handling conflict of interests

2.93 The Select Committee notes that as the Competition was positioned as a large-scale international competition, which was the first of its kind in Hong Kong, the Organiser made reference to international practices and adopted the arrangements for anonymity of submission materials and participants and confidentiality of the assessment process as provided in the General Conditions of the Competition Document. The Competition Document also provided for ineligibility of certain persons and companies for the Competition because of conflict of interests. The Select Committee observes that with the anonymity, confidentiality and ineligibility provisions included and the names of members of the Technical Panel and of the Jury shown in the Competition Document, the Organiser relied on the prospective participants to check whether they had a relationship with any member of the Technical Panel and of the Jury so that a participant who was ineligible because of the ineligibility