

provided by DTZ to Dr Kenneth YEANG. He could not explain the discrepancies between them, as he had not received a copy of the submission documents of the Entry Concerned. Nevertheless, Mr CHIU confirmed to the Select Committee that about 90% of the land value information provided by Mr WONG Kim-bon in his letter of 18 September 2001 to Mr LIANG and copied to Mr POON had been included in the Entry Concerned but some typing and obvious basic information errors could be spotted. For instance, the estimated "*capital value of the hotel (average)*" provided in Mr WONG's letter was HK\$5 million per room but it was HK\$5,000 per room in the Entry Concerned. Mr CHIU "*felt very regretful*" over the inclusion of DTZ's land value information in the Entry Concerned without prior notice to DTZ, and found such obvious basic errors "*unacceptable*" as DTZ's consent to the use of its information had never been sought.

## **Part II - Mr LEUNG Chun-ying's awareness or unawareness of DTZ's association with Entry Concerned before the adjudication of entries**

3.36 As mentioned in paragraphs 2.77 and 2.78 in Chapter 2, according to Mr Eric JOHNSON, before the start of the Jury meeting in the morning of 28 February 2002, Mr LEUNG Chun-ying was told that DTZ was named as property advisors in an entry, and this relationship was not reflected in Mr LEUNG Chun-ying's declaration form submitted to Mr Eric JOHNSON on 25 February 2002. Mr LEUNG Chun-ying told Mr John TSANG and the Jury then that he was unaware of the association of DTZ

with the Entry Concerned. This part examines whether and how far Mr LEUNG Chun-ying was aware of the association of DTZ with the Entry Concerned before the adjudication of entries.

Immediate actions taken by Mr LEUNG Chun-ying upon discovery of DTZ's association with the Entry Concerned

3.37 According to Mr LEUNG Chun-ying, he was not aware of DTZ's association with an entry before the Jury had completed its voting process. He "*was informed of this well after 10:00 am on 28 February 2002*". He then telephoned Mr CHIU Kam-kuen. He asked Mr CHIU if DTZ had done any job relating to WKR. Mr CHIU recalled that Mr LEUNG Chun-ying sounded "*agitated*" ("勞氣") in their telephone conversation. Mr CHIU told Mr LEUNG Chun-ying that Mr WONG Kim-bon had prepared a letter to Mr Kenneth POON of DLS providing land value indications relating to WKR. As DTZ had only provided certain information to DLS and had not received any response from anyone afterwards, the matter had been considered concluded. Mr LEUNG Chun-ying told the Select Committee that his tone was "*hasty*" ("急促") when he spoke to Mr CHIU over the phone in the morning of 28 February 2002. At that time, he was just told that DTZ had been listed as a property advisor in an entry and he was very surprised at the matter and therefore anxious to understand the nature of DTZ's involvement before explaining it to the Chairman of the Jury. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"In comparison with my usual manner towards my colleagues, my tone on that day was relatively hasty. At that time, the Jury was holding a meeting and to my great surprise, I was suddenly informed that DTZ had been listed as a property advisor in an entry. I was asked to make a phone call to Mr TSANG who told me that my colleagues had been involved. This was the first time that I came to know about the case. I made a phone call to that colleague in order to find out the nature of the matter very quickly because I had to report the matter to the Chairman of the Jury. At that time, I was anxious to understand the nature of the matter."*

3.38 After a brief telephone conversation with Mr CHIU Kam-kuen, Mr LEUNG Chun-ying talked with Mr WONG Kim-bon over the phone who gave similar information to Mr LEUNG Chun-ying. Mr LEUNG Chun-ying asked Mr WONG to deliver the file containing all the correspondence and reference documents relating to WKR to his office at Jardine House in Central for his review. The Select Committee notes that the file delivered to Mr LEUNG Chun-ying comprised eight documents, viz. the seven letters mentioned in paragraphs 3.23 to 3.28 above (Appendix 3(j) which enclosed a copy of the Area Schedule for the West Kowloon Waterfront Reclamation, and Appendices 3(k), 3(l), 3(m), 3(n), 3(o) and 3(p)) and a copy of draft concept drawings in **Appendix 3(q)**. Mr Ronald LIANG confirmed to the Select Committee that the aforesaid draft concept drawings were similar to that of the Entry Concerned. The Select Committee further notes that the aforesaid file did not contain a copy of Mr Kenneth POON's letter dated 11 September 2001 to LWK, which

was copied to Mr CHIU Kam-kuen and stated that Mr LEUNG Chun-ying was a member of the Jury (Appendix 3 (i)); nor did it contain a copy of the attachment (i.e. Dr Kenneth YEANG's letter of 7 September 2001) to Mr POON's cover letter of 19 September 2001.

3.39 According to Mr CHIU Kam-kuen and Mr WONG Kim-bon, prior to their telephone conversation with Mr LEUNG Chun-ying in the morning of 28 February 2002, they did not know that Mr LEUNG Chun-ying was a member of the Jury. They had not informed Mr LEUNG Chun-ying of DLS's request for DTZ's land value indications. According to Mr WONG, Mr LEUNG Chun-ying seldom came to the office of the Valuation Department. The directors and associate directors of the Valuation Department took charge of all valuation jobs and they reported to Mr CHIU. Mr WONG had not copied his correspondences with Mr Kenneth POON in September 2001 concerning the land valuation to Mr LEUNG Chun-ying. Both Mr CHIU and Mr WONG advised the Select Committee that they had never read the Competition rules or the submission documents of the Entry Concerned.

3.40 Mr LEUNG Chun-ying told the Select Committee that he did not remember whether he had informed, either formally or informally, Mr CHIU Kam-kuen or colleagues at DTZ of his appointment as a member of the Jury, given that the Jury was not a standing committee and its adjudication work lasted for three days only. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"The issue is two-fold. First of all, had I ever informed, either formally or informally, my colleagues that I had been appointed a member of the Jury for the Competition? ... The Jury took three days to complete its work and it was not a standing committee. For me, it was not a particularly important appointment, nor was it a long-term appointment. I therefore cannot remember whether I had mentioned to my colleagues my appointment by the Government as a member of the Jury. As to whether my colleagues had ever asked me when they read the newspapers, or whether we had ever talked about it in casual chats or during meal breaks or when we took a ride together, I really had no recollection about it."*

#### Practice of checking conflict of interests by Mr LEUNG Chun-ying

3.41 According to Mr LEUNG Chun-ying, the checking of conflict of interests or potential conflict of interests had all along been conducted through a checking of the Book located in the Quarry Bay DTZ office. At the hearing on 21 April 2012, he told the Select Committee that *"it had all along been our practice to check the Book to verify whether there were conflicts of interests or potential conflicts of interests"*.

3.42 The Select Committee notes that pursuant to the Organiser's request for completing the declaration form and in accordance with his practice for checking against potential conflict of interests at the time, Mr LEUNG Chun-ying telephoned a staff member of the Quarry Bay DTZ office ("the Staff Member Concerned") between 21 and 23 February 2002

to check whether DTZ had recently done or had been doing any jobs in relation to WKR. The Staff Member Concerned had called back later to confirm that there was no such record in the Book indicating that DTZ had been retained and/or in the process of carrying out work for retained clients in relation to WKR.

3.43 According to Mr LEUNG Chun-ying, there was no designated staff member in the Quarry Bay DTZ office to conduct conflict searches for him at the time. At the hearing on 20 March 2012, in response to a member's question about whether the Staff Member Concerned was above a certain rank, Mr LEUNG Chun-ying confirmed and advised that (English translation) :

*"this colleague, apart from being quite senior in rank and having served in the company for a long time, should be someone I knew and I would make a phone call to him/her directly. As for other junior or new colleagues, I might not even remember their names and would not ask them to do the conflict search for me over the phone."*

3.44 When asked at the hearing on 20 March 2012 about the number of the aforesaid staff members who might conduct conflict searches for him at the time, Mr LEUNG Chun-ying advised as follows (English translation) :

*"There were more than 10 such senior staff members."*

3.45 However, at the hearing on 21 April 2012, when asked again whether the Staff Member Concerned was senior or junior in rank, Mr LEUNG Chun-ying responded as follows (English translation) :

*"As far as I can remember, I have read the verbatim transcripts of the LegCo hearing. It seems that I had said that he/she should be a staff member with long years of service. Why was it that he/she should be a staff member with long years of service? As I said at the previous hearing, if a staff member had worked in our company for a long time, I would know him/her and would call him/her for assistance. What I have said just now did not mean that the staff member whom I called was not a staff member with long years of service or of a high rank but a junior one. What I have said was that I was looking for a staff member to do the job, instead of ... Even if you got a junior staff member (e.g. a search clerk who was mainly responsible for carrying out land searches at the Land Registry) to do the job, it could not be regarded as an imprudent act. I am not trying to repudiate what I said at the previous hearing, and I am not saying that I called a junior staff member to do the job. I remember that the Hon Andrew CHENG had asked me at the previous hearing about the number of such staff members in that department. I said that there were over ten such staff members."*

*"Miss Tanya CHAN read out my answer just now. Let me read it out once again because she was relatively fast in reading it*

*out. When I answered Mr Andrew CHENG's question ... Mr Andrew CHENG asked: 'What was the rank of this person? He/She must be quite senior in rank so that he/she could do the checking for you. Was that the case?' I said, 'Yes.'*

*This colleague, apart from being quite senior in rank and having served in the company for a long time, should be someone I knew and I would make a phone call to him/her directly. As for other junior or new colleagues, I might not even remember their names and would not ask them to do the conflict search for me over the phone.*

*The last part of my answer aims to illustrate that ... the key point was whether I knew this person. I knew him/her, and I knew his/her name and his/her intercom number. I therefore made a phone call to this person who could help me to do the conflict search. Such a colleague should be someone I knew. We should have been working together for quite some time, and this person might have been promoted to a higher position gradually. Since this person should have worked in the company for a long time, I therefore knew him/her, and asked him/her to do the conflict search. That is what I meant.*

*In fact, if you really want to have this task done, as I said just now, a search clerk in a law firm or surveying company who is responsible for doing land searches at the Land Registry or District Offices will be able to do so."*

3.46 Mr LEUNG Chun-ying told the Select Committee that owing to the passage of time, he could not recall who the Staff Member Concerned was but could only recall that he had been informed of the result of the search before 25 February 2002. Mr CHIU Kam-kuen, Mr WONG Kim-bon, Mr Henry CHENG (who was also named in the Entry Concerned) and Miss Teresa NG told the Select Committee that they were not the Staff Member Concerned, and they did not know who the Staff Member Concerned was.

3.47 The Select Committee had requested Mr CHIU Kam-kuen and Mr LEUNG Chun-ying to make every effort to identify the Staff Member Concerned. Mr CHIU told the Select Committee that some staff members could not be located as they had left DTZ, while those still serving in DTZ could not recall who the Staff Member Concerned was. According to Mr LEUNG Chun-ying's written reply dated 17 April 2012 and formally submitted to the Select Committee at its open hearing on 21 April 2012, he had requested DTZ to provide a list of possible staff who might have conducted the conflict search for him between 21 and 23 February 2002 but as at 17 April 2012, he did not know whether these staff members (including former staff) had given consent to DTZ to provide their personal information to him; nor could he obtain their information through other channels. At the hearing on 21 April 2012, Mr LEUNG Chun-ying told the Select Committee that he could not locate the Staff Member Concerned.

3.48 Mr LEUNG Chun-ying also told the Select Committee that as the Staff Member Concerned had confirmed to him that there was no record in the Book indicating that DTZ had been retained and/or in the

process of carrying out work for retained clients in relation to WKR, he had therefore chosen items (a) and (c) in the declaration form (Appendix 2(q)) as mentioned in paragraphs 2.48 to 2.49 in Chapter 2, i.e.

*"(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition"; and*

*"(c) I am not a director or major shareholder of any company."*

In response to a question on the reasons for choosing items (a) and (c) above, Mr LEUNG Chun-ying advised the Select Committee that he considered that by choosing items (a) and (c), he was making a declaration of conflict of interests and not a general declaration of interest. Mr LEUNG Chun-ying's response at the hearing on 20 March 2012 was as follows (English translation) :

*"It was stated clearly in the form that it was about conflict of interests, rather than interests."*

*"These two concepts have all along been there. My understanding was that the declaration on this occasion was not a general declaration of interests, but a declaration of conflict of interests."*

3.49 According to Mr LEUNG Chun-ying, there was no omission in his declaration, and his directorship and chairmanship of DTZ were publicly known. He had nothing to hide. Nor was there any non-declaration. At the hearings on 20 March and 21 April 2012, Mr LEUNG Chun-ying told the Select Committee that (English translation):

*"[u]p until now, I do not want to say that there was omission in my declaration because I had actually made my declaration according to my understanding of the requirements in the form."*

*"I did not think that there was omission in my declaration. I had made my declaration according to my understanding of the requirements in the form."*

*"It was a well known fact that I was a director and shareholder of DTZ... and therefore there was no question of a cover-up or omission".*

3.50 In the view of Mr LEUNG Chun-ying, if there was a pre-meditated plan to cover up the involvement of DTZ in the Entry Concerned, the Entry Concerned would not have stated in its submission that DTZ was their property advisors. When asked whether the public would have a higher expectation on him as not only a member of the Jury but also the then Convenor of ExCo in making a declaration of interest as compared to other members of the Jury, Mr LEUNG Chun-ying considered that every

member of the Jury had an equal duty and the public had a common expectation on the 10 Jury members.

3.51 According to Mr CHIU Kam-kuen, it was the practice for DTZ staff to conduct conflict searches by checking the Book. Since DTZ's provision of land value information concerning WKR to DLS was merely an exchange of professional advice without fee, it was not recorded in the Book which only recorded fee-charging jobs undertaken by DTZ each of which was given a Valuation Job number. As far as WKR was concerned, DTZ did not receive any formal instruction from any party entrusting or appointing DTZ to provide land valuation information, and DTZ had not entered into any formal and contractual relationship with any parties. The Book did not record no-fee work, irrespective of the estimated values involved and the extent of the work done. At the time, DTZ did not have a formal record on no-fee enquiries.

3.52 Mr LEUNG Chun-ying told the Select Committee that he had been aware that the Book only recorded fee-paying transactions. This practice remained unchanged, even though the Book had been computerized. At the hearing on 21 April 2012, Mr LEUNG Chun-ying pointed out that (English translation) :

*"Some time prior to my departure, "the Book" had already been computerized, but its nature remained unchanged, meaning that only fee-paying jobs were recorded in the relevant computer files. These fee-paying jobs were the targets of our conflict search."*

3.53 In the view of Mr LEUNG Chun-ying, it was proper for Mr CHIU Kam-kuen not to have recorded DTZ's provision of land value information concerning WKR to DLS in the Book. It was a general practice followed by estate surveying companies of various sizes in Hong Kong and other places, including Insignia Brooke to which Mr Nicholas BROOKE was a consultant at the time, that conflict searches had all along been conducted with reference to the records of fee-charging work only and no-fee work was outside the scope of checking. The relevant views expressed by Mr LEUNG Chun-ying at the hearing on 21 April 2012 are set out below (English translation) :

*"As everyone can see from Mr Nicholas BROOKE's statement, he had likewise conducted his conflict search through the Accounts Department of Insignia Brooke, an estate surveying company to which Mr Nicholas BROOKE was a consultant. Insignia Brooke was in the same discipline as DTZ. Why was it that the conflict search had to be conducted with the aid of the Accounts Department? That is because the conflict search had to be done upon fee-paying jobs. In other words, all fee-paying jobs invariably fell within the scope of conflict search whereas jobs (to be) undertaken free of charge would not warrant our checking. I do not believe that DTZ was alone in following such a practice. Insignia Brooke, a company to which Mr Nicholas BROOKE (also a Jury member) was a consultant, as well as other estate surveying companies of various sizes, likewise adopted this practice."*

*"He (Mr CHIU) was correct in doing so and this was in line with the practice adopted by DTZ as well as the entire industry at the time."*

3.54 Mr LEUNG Chun-ying also told the Select Committee that should conflict checks cover each and every no-fee enquiry or job and those which had yet to be undertaken, many surveying companies would not be able to operate. His response at the hearing on 21 April 2012 was as follows (English translation) :

*"Some clients will just make telephone enquiries over the phone in respect of certain properties and they may eventually decide to commission another surveying company to undertake the job. No fees will be charged for such telephone enquiries. If a company, after answering these telephone enquiries free-of-charge, cannot undertake any jobs in relation to the properties in question from other clients, for the sake of precluding the possibility of a conflict of interests, then, in my view, many surveying companies probably would be unable to operate."*

#### No follow-up action taken in relation to the inclusion of DTZ in the Project Team

3.55 The Select Committee asked Mr LEUNG Chun-ying whether he or DTZ had taken any action in relation to the inclusion of DTZ as a member of the Project Team of the Entry Concerned without DTZ's consent. According to Mr LEUNG Chun-ying, no follow-up action was

considered necessary at the time because there was a confidentiality requirement imposed on the Jury regarding the adjudication of the entries and the Entry Concerned had been disqualified. It was inappropriate for him to follow up the matter with DLS, LWK or Hamzah & Yeang. Follow-up action, if any, should be taken by the Organiser. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"First of all, confidentiality requirements were in place for us and the Jury. Secondly, the entry concerned had already been disqualified. I did not see any need for me to take any follow-up action. All along, I had no direct contact with DLS over the matter. Neither had I been in any contact with the two architecture firms concerned in relation to any other matters. I also considered it inappropriate for me to initiate any such contact."*

*"Mr Chairman, for two reasons. The first reason is that follow-up actions, if any, should be taken by the Organiser. The Organiser did not follow up on the case. Secondly, there was no cover-up whatsoever, and therefore there was nothing to be uncovered. As for Dr Kenneth YEANG, he had put the name of DTZ into the list of project team members without giving DTZ any prior notice and seeking DTZ's prior consent. Therefore, on this particular issue, no one ever attempted to cover up anything. Because of the above reasons, I could see nothing that required further follow-up actions. If further*

*understanding of the case was needed, it should be the job of the Jury."*

3.56 According to Mr LEUNG Chun-ying, the Jury, individual members of the Jury or the Organiser did not consider that he had completed his declaration form incorrectly or had covered up anything. At the hearing on 21 April 2012, he told the Select Committee that (English translation) :

*"The Jury, individual members of the Jury and the Secretariat that was responsible for co-ordinating the adjudication work did not say that I had completed my declaration form incorrectly or had covered up anything. They did not give any negative comments, nothing of the kind."*

3.57 The Select Committee notes that Mr LEUNG Chun-ying did not consider it necessary to take any follow-up action, including legal action against Hamzah & Yeang; nor did he consult Mr CHIU Kam-kuen on whether to take follow-up action. Mr CHIU told the Select Committee that DTZ did not take any action at the time because there had not been any loss on the part of DTZ. DTZ did not know whether the lead consultant was Dr Kenneth YEANG or Mr Ronald LIANG; nor was DTZ aware of the extent to which the information provided by DTZ to DLS had been used in the Entry Concerned. The whole matter was merely related to a competition, which was of no special importance to DTZ. On the other hand, Mr Nicholas BROOKE, a member of the Jury whose company was engaged in estate surveying, informed the Select Committee that if

somebody else used the name of his company without authorisation, *"I would obviously write to them and say that they have no right to do it and ask them to withdraw our name immediately. I would also, if necessary, go public and make it known that we have no association with this particular company or this particular project"*.

### **Part III – Observations**

#### Whether the Project Team members were aware of Mr LEUNG Chun-ying's appointment as a juror

3.58 Given the ineligibility provision in the General Conditions of the Competition Document, whether the Project Team members were aware of the appointment of Mr LEUNG Chun-ying as a juror for the Competition was the focus of the Select Committee's study. The Select Committee notes that in his letter of 11 September 2001 to Mr Ronald LIANG of LWK, Mr Kenneth POON of DLS drew his attention to the situation that Mr LEUNG Chun-ying was a juror. It was stated in the aforesaid letter of Mr POON that *"[t]his had been discussed with DTZ who advised that Mr LEUNG will make the necessary appropriate declarations and there should be no problem on this matter"*. The Select Committee notes that Mr POON also confirmed at the hearings of the Select Committee that he was aware of Mr LEUNG Chun-ying being a juror and his association with DTZ, though he was unable to say how he came to know about it. Mr LIANG of LWK was also aware of this as he confirmed to the Select Committee his knowledge of the contents of the letter.