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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.

3.59 Mr Kenneth POON told the Select Committee that according to his letter of 11 September 2001 to Mr Ronald LIANG, he should have talked to DTZ about Mr LEUNG Chun-ying being a juror, although he could not recall with which person from DTZ he had talked and whether this was mentioned during the meeting with DTZ or over the phone after the meeting. Nevertheless, concerning whether he had told DTZ that Mr LEUNG Chun-ying was a member of the Jury, Mr POON advised that he "*must have said so*" and he "*has mentioned that to them under certain circumstances*". Mr POON also told the Select Committee that he felt at the time that Mr LEUNG Chun-ying joined the Jury in his personal capacity and there should be no problem if he had declared his interests.

3.60 Similarly, Mr Ronald LIANG told the Select Committee that despite his knowledge of Mr LEUNG Chun-ying being a juror and the Chairman of DTZ, he had raised no objection to the inclusion of DTZ into the Project Team because he had assumed that as a professional, every Project Team member should understand its position. He did not remember whether he had been aware of the ineligibility provision at the time. He told the Select Committee that had he known the ineligibility provision, he would question the inclusion of DTZ in the Project Team as a member.

3.61 Notwithstanding their awareness of Mr LEUNG Chun-ying being a juror, it appears to the Select Committee that both Mr Kenneth POON and Mr Ronald LIANG did not notice or pay sufficient attention to the ineligibility provision in the General Conditions of the Competition Document.

3.62 The Select Committee notes that Mr Kenneth POON's letter of 11 September 2001 was copied to Dr Kenneth YEANG of Hamzah & Yeang and Mr CHIU Kam-kuen of DTZ. Since the Select Committee has not obtained evidence from Dr YEANG because of his refusal to accept the Select Committee's invitation to attend its hearings, it has no evidence to indicate whether Hamzah & Yeang received the letter and was aware that DTZ's chairman was Mr LEUNG Chun-ying, who was a juror for the Competition.

3.63 As regards DTZ's knowledge of Mr LEUNG Chun-ying's appointment as a juror, the Select Committee notes inconsistent evidence. According to Mr Kenneth POON, he should have discussed with someone in DTZ about the matter; otherwise he would not have so stated in his letter of 11 September 2001. However, according to Mr CHIU Kam-kuen and Mr WONG Kim-bon, DTZ did not receive Mr POON's letter of 11 September 2001 and they had no knowledge of the letter at all. 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 juror. According to Mr CHIU, his impression was that Mr POON had not talked to him about Mr LEUNG Chun-ying being a juror. Mr CHIU told the Select Committee that should he have known Mr LEUNG Chun-ying being a juror, DTZ would not have provided any advice to DLS in relation to land valuation on WKR.

3.64 The Select Committee observes that Mr CHIU Kam-kuen's fax number, i.e. 2530 1502, was shown in Mr Kenneth POON's letter of 11 September 2001. According to Miss Teresa NG, the aforesaid number

was the only fax number used by Mr CHIU to receive faxes, including those of a confidential nature. Mr CHIU Kam-kuen/Mr WONG Kim-bon had received a total of five letters (excluding Mr POON's letter of 11 September 2001) concerning the Competition from the Project Team members through this fax number between 19 and 26 September 2001. The Select Committee also notes that upon Mr LEUNG Chun-ying's request, Mr WONG Kim-bon delivered the file containing all the correspondence and reference documents relating to WKR from the office of DTZ Valuation Department at Quarry Bay to Mr LEUNG Chun-ying's office in Central in the afternoon of 28 February 2002, but the aforesaid letter of 11 September 2011 was not in the file.

Whether DTZ was aware of its being included in the Project Team as a member

3.65 The Select Committees notes that Dr Kenneth YEANG, in his letter of 7 September 2001, asked the Project Team members to provide him by email, by 25 September 2001, with information on their respective companies and key personnel who worked on the project to facilitate his preparation for the final submission documents for the Competition. Enclosed in Dr YEANG's letter were a copy of page nine of the Competition Document with paragraph 27(ii) and (iii) therein concerning the requirements for information on participants in the case of project team circled and asterisked, and a copy of page two of Hamzah & Yeang's Registration Form concerning the requirements for the provision of similar information circled and asterisked likewise. DTZ's name was not included on the list of recipients of Dr YEANG's letter. However, in Mr Kenneth

POON's letter of 11 September 2001, he told Mr Ronald LIANG that "*with the joining of DTZ, we now have a full team for the study*". On 19 September 2001, Mr POON sent a letter to Mr CHIU Kam-kuen with the aforesaid Dr YEANG's letter of 7 September 2001 attached. In his letter of 19 September 2001, Mr POON asked Mr CHIU to provide "*the necessary information*" to Hamzah & Yeang, without elaborating on what such information referred to.

3.66 While Mr CHIU Kam-kuen claimed that he had only received Mr Kenneth POON's letter of 19 September 2001 without the attachment (i.e. Dr Kenneth YEANG's letter of 7 September 2001 to Project Team members), the Select Committee observes that on the instruction of Mr CHIU or Mr WONG Kim-bon, Miss Teresa NG provided Hamzah & Yeang, by email on 25 September 2001, with the information as requested by Dr YEANG in his letter of 7 September 2001. The information included the name, type, registered address and contact details of DTZ; the relevant strength and experience of DTZ as Land Consultant; the names, titles, phone numbers and email addresses of the two key personnel (i.e. Mr CHIU Kam-kuen and Mr WONG Kim-bon) who worked on the project; and the CVs of Mr CHIU Kam-kuen, Mr WONG Kim-bon, Mr Wilfred CHAN and Mr Henry CHENG, as mentioned in paragraph 3.9. The Select Committee also observes that the relevant information was sent to the email address as requested in Dr YEANG's letter of 7 September 2001. The documents obtained by the Select Committee show that this was the only time that DTZ issued documents to the Project Team members by email. DTZ had all along exchanged correspondence with them by fax.

3.67 The Select Committees notes Mr CHIU Kam-kuen's evidence at the hearing on 14 April 2012 that "*DTZ had all along no direct contacts with Dr YEANG and no business relationship with him*". It appears to the Select Committee that unless Dr Kenneth YEANG's letter of 7 September 2001 had been seen, it seems highly unlikely that the types of information sent by Miss Teresa NG on 25 September 2001 (the deadline set by Dr YEANG) could be the same as the information requested in Dr YEANG's letter of 7 September 2001. It is also highly unlikely that the email address to which Miss NG sent the information could be the same as that stated in the aforesaid letter of Dr YEANG. Besides, in his letter of 19 September 2001, Mr Kenneth POON stated that "*I attach herewith copy of a fax from TR Hamzah & Yeang which is self explanatory*". The Select Committee found it perplexing that no one in DTZ followed up on the missing attachment to the letter. The Select Committee also notes that in Miss Teresa NG's email dated 25 September 2001 to Dr YEANG (Appendix 3(p)), the heading of one of the documents is "*Project Team information*".

3.68 The Select Committee notes that in response to Dr Kenneth YEANG's letter of 7 September 2001, DLS and LWK which were listed as Project Team members of the Entry Concerned sent the same type of information to Hamzah & Yeang on 24 and 25 September 2001 respectively as did DTZ. While Mr CHIU Kam-kuen told the Select Committee that DTZ's prior consent had not been sought for its inclusion into the Entry Concerned, the Select Committee observes that DTZ did not take any action against Hamzah & Yeang after being told on 28 February 2002 that it had been listed as "Property Advisors" by the entrant of the Entry Concerned. The Select Committee notes that according to Mr

Nicholas BROOKE, immediate action would have been contemplated should the name of his company, which was engaged in business of similar nature as DTZ, was used by other persons or companies without his consent. Mr BROOKE told the Select Committee that "*clearly I would take action. 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.*". Although Mr CHIU Kam-kuen found it unacceptable that certain information supplied by DTZ had been incorrectly used in the Entry Concerned, the Select Committee observes that no follow-up action was taken on the part of DTZ, which was a sizable company with reputation in the industry.

Whether Mr LEUNG Chun-ying was aware of DTZ's association with the Entry Concerned

3.69 According to Mr LEUNG Chun-ying, he was unaware of DTZ being listed as a Project Team member until after he was informed of it in the morning of 28 February 2002. The Select Committee observes that all the correspondence and documents exchanged between Mr CHIU Kam-kuen/Mr WONG Kim-bon and the Project Team members at the time were not copied to Mr LEUNG Chun-ying. The Select Committee notes that Mr LEUNG Chun-ying was not involved in the daily operation of the Valuation Department of DTZ at the time of the Competition. Being the Executive Director of DTZ, Mr CHIU Kam-kuen could decide whether DTZ should provide land valuation information to DLS, the nature of which was similar to the kind of non-fee paying service DTZ provided to

other companies in the same field. Since there was no need for Mr CHIU to seek Mr LEUNG Chun-ying's agreement for the company to undertake this kind of service, the Select Committee notes that there was no evidence indicating that Mr LEUNG Chun-ying had knowledge of DTZ's provision of land value information on WKR to DLS at the time.

3.70 The Select Committee also notes that before completing the declaration form, Mr LEUNG Chun-ying had allegedly made a phone call to the Quarry Bay DTZ office and had asked the staff member ("the Staff Member Concerned") who received his call to conduct a conflict of interest search by checking the Book. Mr LEUNG Chun-ying could not recall who this person was. The four witnesses from DTZ, i.e. Mr CHIU Kam-kuen, Mr WONG Kim-bon, Mr Henry CHENG and Miss Teresa NG, told the Select Committee that they were not the Staff Member Concerned and were not able to identify this person either.

3.71 The Select Committee observes that Mr LEUNG Chun-ying's evidence on the ranking of the Staff member Concerned seems to be inconsistent. At the hearing on 20 March 2012, Mr LEUNG Chun-ying told the Select Committee that the Staff Member Concerned should not be a junior or new staff member as he usually called someone he knew to conduct conflict of interest searches, and therefore they were usually staff members who had served in DTZ for a long time and were relatively senior, and there were over 10 such staff members at the Quarry Bay DTZ office. However, when he explained why he could not recall the identity of the Staff Member Concerned at the hearing on 21 April 2012, Mr LEUNG Chun-ying told the Select Committee that a junior staff member could

conduct conflict of interest searches, as such searches were very similar to land searches undertaken by search clerks in law firms or surveying companies, who were usually junior staff members.

3.72 The Select Committee notes that Mr LEUNG Chun-ying was told by Mr Eric JOHNSON that DTZ was listed as part of the Project Team by the entrant of one of the winning entries in the morning of 28 February 2002. Mr CHIU Kam-kuen recalled that Mr LEUNG Chun-ying sounded "agitated (勞氣)" when making a telephone enquiry with him at that time. The Select Committee observes that the conflict of interest check, i.e. the telephone call to the Staff Member Concerned, was made a few days ago between 21 and 23 February 2002. The Select Committee observes that in the Book, there were no records of WKR. As such, whether the Staff Member Concerned did exist or not would not alter the result of the conflict of interest search.

3.73 The Select Committee observes that Mr LEUNG Chun-ying mentioned generally in his letter of 11 March 2002 to Mr Eric JOHNSON that "*[l]ike other professional firms, DTZ has a practice of checking against potential conflict of interest, to avoid subsequent and conflicting instructions on the same matter. As the indication of site value to Davis Langdon & Seah and LWK & Partners was not a formal instruction and was not fee paying, it does not feature amongst our assignments and was not given a Valuation Job number.*". The Select Committee notes that there is no evidence indicating that before 11 March 2002, Mr LEUNG Chun-

ying had mentioned any conflict of interest search undertaken by him or his DTZ staff in relation to WKR before he completed the declaration form³.

3.74 The Select Committee further observes that it was Mr LEUNG Chun-ying's practice to conduct conflict of interest searches by checking the Book. The Select Committee notes that the Book only recorded fee-paying jobs undertaken or confirmed to be undertaken by the Valuation Department of DTZ. As long as a job had yet to be confirmed and was not fee-paying, it was not recorded in the Book, irrespective of the amount of money involved and the extent of professional service rendered by DTZ. In other words, irrespective of whether Mr LEUNG Chun-ying had asked the Staff Member Concerned to conduct the conflict of interest search, and whether the Staff Member Concerned had actually conducted the conflict of interest search as requested by Mr LEUNG Chun-ying, the provision of land valuation information by DTZ to DLS concerning WKR would not have been revealed then by merely checking the Book because it was not fee-paying. Mr CHIU Kam-kuen informed the Select Committee that DTZ then did not have any formal record on no-fee paying jobs/enquiries or yet-to-be-confirmed fee-paying jobs for conflict of interest search purposes. The Select Committee notes that Mr Nicholas BROOKE's company, which was similar in nature to DTZ, also had a central file registry recording all fee-paying instructions.

³ Members voted on the proposal to retain the last sentence of this paragraph. Mr Andrew CHENG, Mr LEE Wing-tat, Ms Cyd HO, Mr Paul TSE, Miss Tanya CHAN and Mr WONG Yuk-man voted in favour of the proposal. Dr Philip WONG, Mr Abraham SHEK, Mr Paul CHAN and Dr Priscilla LEUNG voted against the proposal. The proposal was carried (please refer to paragraphs 12 to 14 of the Minutes of Proceedings of the meeting on 20 June 2012 in this Report).

3.75 The Select Committee is aware that it was common practice in the surveying industry at the material time to ascertain information on conflicts of interests by checking a central file registry like the Book. However, given the importance of the WKR project and the embarrassment which might have caused to Mr LEUNG Chun-ying in face of the revelation of a conflict of interests in front of an international jury, some members of the Select Committee believes that Mr LEUNG Chun-ying should have made a more in-depth enquiry into the matter rather than just reviewing the file.

Whether there was any omission in Mr LEUNG Chun-ying's declaration

3.76 The Select Committee observes that there was disagreement between Mr LEUNG Chun-ying and Mr John TSANG over the completeness of Mr LEUNG Chun-ying's declaration made in his declaration form dated 25 February 2002. Mr John TSANG considered it a fact that there was an omission in Mr LEUNG Chun-ying's declaration as Mr LEUNG Chun-ying did not declare his involvement in DTZ. However, according to Mr LEUNG Chun-ying, there was no omission in his declaration as the purpose of completing the form was to declare any "conflict of interests" rather than just "interests". He also stressed that he had nothing to hide. In this connection, the Select Committee observes that this was inconsistent with what Mr LEUNG Chun-ying stated in his letter dated 11 March 2002 that "*to complete my declaration*", he attached a full list of companies in the DTZ Group, in which DTZ was the main operating company and he was a shareholder and Managing Director of DTZ. The Select Committee observes that had Mr LEUNG Chun-ying drawn such a

distinction between "declaration of interest" and "declaration of conflict of interests" as he claimed at the time of completing the declaration form and had he believed that he was required to make a declaration of conflict of interests instead of a declaration of interest, he should have, after conducting the conflict of interest search, selected item (d) (i.e. "*no company of which I am a director or major shareholder has entered the competition*") instead of item (c) (i.e. "*I am not a director or major shareholder of any company*") in the declaration form.

3.77 The Select Committee notes that there was no linkage between the Competition and the eventual development right of the Scheme Area, but the winners would be automatically pre-qualified for inclusion into the list of consultants to be invited for bidding for the masterplanning work and informed of subsequent architectural design competitions for individual buildings or facilities in the Scheme area. The Select Committee also notes Mr LEUNG Chun-ying's view that DTZ had not participated or had any knowledge in planning design competitions, and its nature of business, i.e. estate surveying, as opposed to architecture, building surveying or quantity surveying, was related to planning design competitions "very remotely". The Select Committee observes that the relationship between DTZ and the planning design competitions was not as "remote" as Mr LEUNG Chun-ying understood, as DTZ's land valuation information provided in Mr WONG Kim-bon's letter of 18 September 2001 had been included largely in the Entry Concerned and DTZ had been included by Dr Kenneth YEANG in the Project Team as a member.