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我們矢志努力不懈，提供盡善盡美的土地行政服務
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By Fax & Post
(Fax No.: 2543 9197)

21 January 2015

Mr. Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr CHU,

Follow-up to Public Accounts Committee Report No. 59
Land grants for private hospital development

I refer to your letter of 9 January 2015 on the compliance with the “profits/surplus plough-back” requirement for Hospital D and note that the same letter was sent to the Director of Health (DH) who responded to you in letter of 20 January 2015. The Lands Department (LandsD)’s response to the questions is set out as follows:

- (a) **whether DH and LandsD have sought legal advice on the “profits/surplus plough-back” requirements in the land grants. If yes, please provide details of the advice**
- (i) Hospital D is erected on LG5, LG6 and LP2 and there is in the vicinity of Hospital D a lot (LP3) which is used as a nursing school. LP2 and LP3 were acquired by the Grantee in the private market and both leases do not

contain the “no distribution of profit” clause. The relevant clauses contained in the respective leases of LG5 and LG6 are reproduced as follows :

LG5

"There shall be no distribution of profit derived from the said hospital. All profits, if any, derived from the said hospital shall be applied to charitable purposes of the grantee with the exception of any evangelical or ecclesiastical purposes."

LG6

"There shall be no distribution of profit derived from the said hospital. All profits, if any, derived from the said hospital shall be directed to the improvement or extension of the Grantee's hospital facilities."

- (ii) DH sought advice from LandsD on the subject and we have taken internal legal advice. The general approach in lease interpretation, as we have been advised, is to look at the relevant terms in each individual case, where appropriate, taking into account also the matrix of surrounding facts of the land grant and/or advice including expert advice in relation to terminology and arrangement, and policy intention on the issues. Subject to the above considerations, we have been advised that each relevant lease condition should apply to the lot (or portions of the lot) in question carrying the particular lease condition and be interpreted accordingly. Therefore one possible treatment for assessing compliance with the “profit/surplus plough-back” requirement is that the profits derived from the hospital (where hospital operation straddles two or more lots with different lease conditions) should be suitably apportioned among the lots (or portions of the lot) in question.
- (iii) DH considers that Hospital D is operating as an integral unit on LG5, LG6 and LP2 and it is not feasible to precisely divide incomes and expenditures of individual hospital services. DH considers that profits apportionment by land areas is the only workable approach and that the nursing school site (LP3) should be excluded in the land area apportionment.
- (iv) As to the distribution of the profits for “*the improvement or extension of the Grantee's hospital facilities*” and “*charitable purposes of the grantee*”, we have been advised that the matrix of facts which would reasonably have been available to the parties prevailing at the time of entering into the contracts leading to the incorporation of the above clauses into the land leases are, amongst other factors, relevant for consideration.

- (v) DH is satisfied that the Grantee's hospital facilities include another hospital of the Grantee and the nursing school (which supports the operation of Hospital D).
 - (vi) As the enforcement of the clause is interpretation of the policy intentions and application to the circumstances having regard to the matrix of facts by the policy bureau/department and expert authority, LandsD sees no disagreement to DH's approaches in considering compliance with the above "no distribution of profits" clauses.
- (b) whether DH and LandsD have defined the permissible activities and the non-permissible activities of the non-profit-making grantees/hospitals in respect of the surpluses derived from the hospital operations on PTG sites. If yes, please provide details**

DH responded to you in letter of 20.1.2015 on this question. We have nothing further to add. DH will continue to scrutinise the accounts and the deployment of any surpluses in compliance with the lease restrictions. LandsD will offer assistance to DH on the lease requirements as necessary.

- (c) follow-up actions to be taken by DH and LandsD to address the irregularity case as identified by the Audit Commission in the last paragraph**

As per DH's letter to you of 20.1.2015, DH is satisfied that the Grantee did not breach the "no distribution of profit" clauses in the relevant leases. LandsD is not aware of circumstances which should cause us to disagree with this view of DH.

Yours sincerely,



(Ms Rita Lai)
for Director of Lands

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