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Clerk to Finance Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn.: Mr Derek LO)

17 September 2018

Dear Mr LO,

**Legislative Council Finance Committee
Meeting on 18 July 2018**

**Resources Proposals Relating to Government Facilities and
Equipment to Support the Three-Runway System
at the Hong Kong International Airport
(FCR(2018-19)49 and FCR(2018-19)50))
Supplementary Information**

We consulted the Finance Committee (FC) of the Legislative Council (LegCo) on the proposals in FCR(2018-19)49 and FCR(2018-19)50 on 18 July 2018. At the aforesaid meeting, some Members requested the Government to provide supplementary information. Having consulted the relevant government departments and the Airport Authority Hong Kong (AAHK), we would like to provide a consolidated reply as follows.

**Measures and monitoring mechanism to be considered and implemented in
light of predicted ground settlement in the reclamation area**

AAHK needs to formulate a ground settlement monitoring plan for the

design and construction of government facilities to support the Three-Runway System (3RS), including installing a number of settlement monitoring points at the new reclamation area and buildings for regular monitoring purpose, and comparing the monitoring results with the predicted settlement values. If the settlement monitoring results deviate from the predicted settlement values, the construction team will inform the design team for review and implementation of relevant measures, including increasing the monitoring frequency, analysing the impact of settlement on the building structures, and considering issuing an instruction to cease works to ensure that the buildings concerned are in compliance with the safety and quality requirements. During the design stage, the design consultant of AAHK will give corresponding consideration to the design in the light of the predicted settlement of the new reclamation area in the next 50 years, for example, provision of “flexible joints” at the connections between buildings and underground ducts to allow greater differential settlement, and adopting an appropriate foundation design to avoid or to minimise the overall settlement of buildings.

Specific coverage of the Civil Aviation Department’s proposed installation of surveillance radars

The surveillance radars of the Civil Aviation Department (CAD) are mainly used for the surveillance of aircraft traffic within the Hong Kong Flight Information Region (HKFIR) for the provision of air traffic management services within HKFIR. The surveillance radar equipment proposed to be installed by CAD includes primary surveillance radar (PSR) and secondary surveillance radar (SSR). PSR detects and provides both the range and bearing information of an aircraft within its effective coverage by the principle of radio wave reflection, while SSR interrogates a target aircraft’s transponder, and after processing the transponder’s reply signals, obtains the altitude, callsign, range and bearing of the target aircraft. In terms of design, the coverage of PSR and SSR may reach about 140 to 200 nautical miles and about 250 nautical miles respectively, which is sufficient to cover the HKFIR. Regarding the enquiry about the Guangzhou Baiyun Airport (GBA) raised by Members at the meeting, the airport is located within the Guangzhou Flight Information Region instead of the HKFIR and its air traffic management control services are provided by the Air Traffic Management Bureau of the Central and Southern Regional Administration under the Civil Aviation Administration of China. The GBA is about 70 to 85 nautical miles away from the CAD’s surveillance radar equipment. It is within the designed coverage of the CAD’s radars.

Responses to the questions on the entrustment agreement and the responsibilities of AAHK as the project manager raised by Hon AU Nok-hin in his letter dated 13 July 2018

Entrustment Agreement

To tie in with the overall implementation programme of the 3RS project, the Architectural Services Department (ArchSD) is closely liaising with AAHK on the details of individual terms of the entrustment agreement (EA). Members' views collected during the deliberation of the funding proposals will also be considered so as to complete the EA for approval by relevant bureaux and departments. ArchSD will execute the EA with the AAHK after obtaining the approval, with a view to commencing the entrusted works for the provision of air traffic control (ATC) facilities, aviation weather services facilities and fire services facilities to support the operation of the 3RS at the Hong Kong International Airport (HKIA) as early as possible.

There will be detailed terms in the EA setting out the scope of the entrusted works, percentage of the on-cost and the rights and responsibilities of both parties. When the preliminary and detailed designs of the projects are completed, AAHK needs to submit project details such as the design, materials to be used and project estimates to ArchSD for approval. Moreover, before tendering, AAHK needs to submit the tender documents to ArchSD for scrutiny to ensure that the designs are up to standard and the costs involved are within the overall budget. During construction, AAHK needs to update ArchSD regularly on the works progress and submit progress reports, summaries of variations to the project items, and relevant estimates and financial statements (including financial assessments stipulating the payments already made and all known and expected variations) for ArchSD's scrutiny and monitoring. If the works involve major variations, AAHK must obtain ArchSD's prior approval before such variations can be made. ArchSD will also hold regular meetings with AAHK to monitor the works, including the financial position. Monitoring measures taken at different stages can ensure the delivery of the projects within the agreed budget. In addition, according to the relevant terms of the EA being drafted, if AAHK cannot deliver the entrusted projects within the time as agreed between the parties¹, AAHK has to pay liquidated damages to the Government for the delay in accordance with the EA.

¹ The time as agreed between the parties includes the extension of the project completion date approved by ArchSD due to inclement weather or other factors after execution of the EA by the parties.

Responsibilities of the Government and AAHK under the EA

ArchSD will scrutinise the design proposals submitted by AAHK from three aspects, namely the cost, standard and quality of the entrusted works, based on the requirements stipulated in the EA and government standards. Moreover, the design and construction of the government facilities to support the 3RS are governed by the Buildings Ordinance (Cap. 123). The authorised persons, registered structural engineers, registered geotechnical engineers, site supervision teams and contractors appointed by AAHK shall be responsible for the design and the quality of construction of the projects.

As mentioned above, it is AAHK's responsibility under the EA to ensure the delivery of the projects within the time as agreed between the parties; otherwise AAHK has to pay liquidated damages to the Government for the delay. In accordance with the requirements of the International Civil Aviation Organization (ICAO), the three government facility projects are indispensable to support the 3RS operation. Therefore, AAHK will endeavor to deliver the works on time and in accordance with the requirements stipulated in the EA to ensure that the Third Runway and the whole 3RS can come into operation as scheduled.

If a contractor makes a claim during construction, AAHK has to assess whether the submitted claim is reasonable and justified in accordance with the terms of the contract signed with the contractor. If it is confirmed that the claim involves the government facilities, AAHK should provide the justifications, the amount of the claim, and AAHK's assessment and recommendations for ArchSD's scrutiny and monitoring in accordance with the requirements of the EA. If compensation has to be made, the amount will be covered by the contingencies of the project estimate.

Problem of overdue en-route navigation charges

Under current practice, the CAD collects en-route navigation charges ("ENCs") from the relevant operators (mainly airlines) for aircraft overflying the HKFIR without taking off/landing at the HKIA in order to fully recover the cost for the provision of ATC services.

To prevent the loss in public revenue, since 2014-15, the CAD has proactively implemented the recommendations made by the Public Accounts Committee of the LegCo in the light of the Director of Audit's Report ("Audit Report") No. 63 (October 2014) and taken effective follow-up actions. For

example, from November 2014 onwards, when aircraft overflies Hong Kong for the first time, the CAD will issue a notice to the airline concerned in relation to the contractual obligation to pay ENC. Similar notices are also included in the demand notes for ENCs to remind airlines of their contractual obligation to pay ENCs. The CAD will demand banker's guarantees from operators with unsatisfactory ENC payment records, remind them of their contractual obligation to pay ENCs and take legal actions against defaulting airline operators as appropriate. The CAD also takes the initiative to liaise with the local civil aviation authority and seeks its assistance to recover the overdue amount from overseas airlines. At the Conference of Directors General of Civil Aviation, Asia and Pacific Regions held in Hong Kong in November 2014, the CAD raised the issue of overdue ENCs by airlines for discussion. At the conference, participants suggested the ICAO facilitate the setting up of a mechanism for sharing of information and experience, and continue to identify practical operational measures to tackle the problem of overdue ENCs by airlines.

Since the implementation of the above enhanced measures, the situation of overdue ENCs has improved. The amount of cumulative overdue ENCs increased from \$15 million in 2014-15 to \$15.9 million in 2017-18, while the total revenue over the same period (four years) was \$1.257 billion. The cumulative increase of overdue charges was at 0.07% of the total revenue over the same period, which is lower than the relevant percentage (1.00%) as compared with the five years (from 2009-10 to 2013-14) taken into account in the Audit Report. Hence it is evident that the measures implemented by the CAD since 2014-15 are effective indeed.

As a matter of fact, the annual revenue derived from the ENCs between 2014-15 and 2017-18 has increased by about 37% from about \$273 million in 2014-15 to \$375 million in 2017-18, while the cumulative amount of overdue ENCs over the same period maintained at between \$15 million and \$16.2 million. As at 31 March 2018, of about \$15.9 million overdue ENCs, about \$11.23 million falls into the category of relatively long default cases, involving ten airlines which have been dissolved, have stopped operation or have been ordered to suspend their flights by the local civil aviation authority² and they account for an extremely small share of the 410 airlines which need to pay ENCs. With reference to the percentage of net overdue ENCs (i.e. after deducting the amounts long overdue from the ten airlines) to the annual total revenue of ENCs, it has been decreased from 2.2% in 2013-14, the year mentioned in the Audit Report

² Of the ten airlines, the cumulative amount of charges owed by four airlines which had the largest default was \$10.39 million, recorded between 2009-10 and 2014-15, and majority of the amount has been reflected in Audit Report No. 63 (October 2014).

with the largest amount of overdue payments, to 1.3% in 2017-18.

Of the ten airlines, absolute receivership has been ordered by the court of its home country for the airline with the largest amount of ENC's overdue (accounting for \$7.39 million out of \$11.23 million) and discussion is underway with the creditors as to how the overdue charges should be dealt with. To address these cases, the CAD works in collaboration with the Department of Justice ("DoJ") to take appropriate legal actions to recover the overdue amounts from the airlines. For example, for an airline which has been dissolved, the DoJ will recover the overdue amount from the liquidator of the airline. At the same time, the DoJ will liaise with the relevant judicial authority, submit a writ of summons to the court, and apply for extension of the validity period of the writ of summons to ensure that the Government can reserve the right to take legal actions against the airline when necessary. The DoJ will take appropriate action to recover the overdue charges having regard to the actual circumstances of each case.

As regards the remaining cases which involve \$4.67 million, the CAD will handle each case in accordance with the existing procedures, including issuing reminders and warning letters. If the amount owed by an airline operator is overdue for eight to 11 weeks, the CAD will refer the case to the DoJ for handling.

Insurance payments, construction support and airport on-costs payable to AAHK as compared to those under the Hong Kong-Zhuhai-Macao Bridge project

The Hong Kong-Zhuhai-Macao Bridge ("HZMB") project is not a project carried out by way of an EA. Hence, payment of on-costs to the entrustee for managing the entrusted works is not applicable to the HZMB project. Under the HZMB project, there are no costs of "Owner Controlled Insurance Programme in Construction Contracts" ("insurance") and "construction support and airport on-costs" for comparison. Similar to other public works projects implemented by the Government (not by way of an EA), the main contractors of the HZMB project will procure relevant insurance, such as Contractors All Risks Insurance (including damage to property and Third Party Liability Insurance), Professional Indemnity Insurance and Employees' Compensation Insurance, in accordance with the contract requirements. However, not all related costs can be derived from the breakdown of the contract sum.

Procurement procedures of air navigation service equipment

For the procurement of air navigation service (“ANS”) equipment as mentioned in FCR(2018-19)50, the CAD, as the user department, will work out the tender documents in conjunction with the Government Logistics Department (“GLD”) and the DoJ. The CAD will adhere strictly to the tendering procedures stipulated in the Government’s Stores and Procurement Regulations and the World Trade Organization Agreement on Government Procurement, and the Departmental Project Procedures Handbook of the CAD, and consult the GLD and the DoJ in a timely manner as and when appropriate to ensure the fairness and impartiality of the tendering and procurement process.

The CAD is drafting the relevant tender documents, including the technical requirements, contract terms and assessment criteria. On assessment criteria, the CAD will make reference to the recommendations set out in the Stores and Procurement Regulations and the need for the ANS equipment in formulating the documents. For the procurement of relatively simple equipment with low technology content, the CAD will consider awarding the contract with an aim to achieve the best value for money when all necessary requirements of the tender documents are fully met. As for the procurement of relatively sophisticated equipment with high technology content, the CAD will consider adopting the assessment criteria of combined technical and price score and taking into account Members’ views, including increasing the weighting for the technical score as appropriate when applicable and necessary in formulating the criteria. The CAD will also consult the GLD and the DoJ, and incorporate the criteria into the tender documents after obtaining the consent of the tender board to ensure the fairness, impartiality and value for money in the procurement process.

Yours sincerely,

(W Y NG)
for Secretary for Transport and Housing