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21 May 2020

Clerk to the Finance Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Anita Sit)

Dear Ms Sit,

Thank you for your email of 14 May 2020 attaching a letter from Hon Tanya Chan with questions on the Finance Committee (“FC”) paper of FCR (2020-21)9.

Taking into account the views expressed by Members, the public and various sectors of the community, we plan to withdraw the FC paper FCR(2020-21)9 and submit FC paper FCR(2020-21)15 to seek FC’s approval for our revised funding proposal. Under the revised proposal, funding would no longer be sought for setting up the Ocean Park Review Unit (“OPR Unit”). The rethink on Ocean Park will be undertaken using existing resources of the Government. The funding sought for supporting the operation of Ocean Park for one year, repaying the commercial loans of the Ocean Park Corporation (“OPC”), and settling the costs for completing the Ocean Park’s Tai Shue Wan Development Project (“TSW Development Project”) shall remain unchanged.

Regarding the questions raised by Hon Tanya Chan, please find our reply as follows.

Ocean Park was opened to public in 1977. The OPC was established in 1987 pursuant to the Ocean Park Corporation Ordinance (Cap. 388) (“OPCO”). As a statutory body, OPC’s main function is to manage and control Ocean Park as a public recreational and educational park. Over the past 40-odd years, the OPC has never received any recurrent Government funding to perform its functions. The OPC, as a non-profit making organization, has to apply its profit derived on its statutory function.

At the same time, due to the constraint of OPCO, the OPC could not issue shares to raise the required funds. The Government also cannot inject equity to OPC to support its operation. As such, borrowing becomes OPC’s only way of raising funds for expansion. Ocean Park can take forward the Master Redevelopment Plan (“MRP”) and Tai Shue Wan Waterpark in 2005 and 2013 respectively to strengthen its attractiveness and competitiveness only by borrowing.

Although the OPC could borrow money to implement the above projects, huge depreciation cost arising from the projects, together with the interest and relevant financing costs of the loans, have brought direct impact to the operating profit and loss of the Park. The annual repayment of loan principal, interest and other financial costs have also exerted great pressure on OPC’s cashflow.

Commercial Loan

To take forward the MRP, the OPC obtained the following two commercial loans in 2005/06

	Commercial Loan with Government Guarantee	Commercial Loan
Amount	\$1,387.5 million	\$2,775 million
Lending Bank	A syndicate of over 20 commercial banks	A syndicate of over 20 commercial banks
Purpose	To pay for 25% construction cost of MRP	To pay for 50% construction cost of MRP
Date of borrowing (i.e. Date of signing loan agreement)	June 2006	June 2006
Commencement of Repayment	2015/16	2011/12

	Commercial Loan with Government Guarantee	Commercial Loan
Original Final repayment date	2020/21	2020/21
Security	OPC's fixed deposits at the banks and OPC's intellectual property were pledged as security. In addition, all tangible moveable properties are pledged as floating charge.	
Government Guarantee	Yes*	Nil

*As approved by the FC by FCR(2005-06)35.

The OPC has started repayment of the above two commercial loans relating to MRP ("MRP – Commercial Loan") since 2011/12, and fully repaid all outstanding amounts through refinancing in 2015/16, with the loan principal totalling \$3,663 million. The actual pay-out by the OPC for the loan principal was \$1,025 million after deducting the refinanced loan of \$2,638 million obtained in 2015/16 ("MRP – Refinanced Commercial Loan"). On the other hand, interest and other financial cost totalled \$546 million.

As mentioned above, the OPC only carried out refinancing arrangement once in 2015/16. When the OPC made the financing arrangement of \$650 million for the additional budget of TSW Development Project, it has obtained a MRP – Refinanced Commercial Loan at the same time to repay the two MRP – Commercial Loans mentioned above.

Besides, the OPC has also obtained a revolving loan from the lending bank in 2019/20 to address its short term cashflow requirement.

Information of the three commercial loans is as follow:

	MRP – Refinanced Commercial Loan	TSW Development Project - Commercial Loan	Commercial Revolving Credit Facility
Amount	\$2,638 million	\$650 million	\$1,000 million
Lending bank	The Bank of China (Hong Kong) Limited ("BOCHK")	BOCHK	BOCHK

	MRP – Refinanced Commercial Loan	TSW Development Project - Commercial Loan	Commercial Revolving Credit Facility
Purpose	To repay two MRP – Commercial Loans	To pay for the additional construction cost of TSW Development Project	For short term operating cashflow
Date of Borrowing (i.e. Date of Signing Loan Agreement)	March 2016	March 2016	October 2019
Commencement of Repayment	2015/16	2020/21	2020/21
Final Repayment Date	2020/21	2020/21	2020/21
Security	A designated sum has to be deposited in the designated account of the lending bank according to the loan agreement. In addition, all the other bank accounts maintained with the lending bank are pledged as floating charge.	Nil	Nil
Government Guarantee	Nil	Nil	Nil

The OPC has started repayment of MRP – Refinanced Commercial Loan since 2015/16. The loan principal repaid amounted to \$1,168 million. On the other hand, interest and other financing costs totalled \$273 million. Regarding the TSW Development Project – Commercial Loan and Commercial Revolving Credit Facility, the OPC has not yet started repayment of loan principal but has already repaid the interest and other financing costs

for the former, totalling \$13 million.

Approval Procedures

For the Government and commercial loans of \$5,550 million required for implementing the MRP in 2005 and the Government loan of \$2,290 million required for implementing the TSW Project in 2013, the OPC submitted both loan proposals to the Board for approval. Upon the Board's approval, the OPC submitted the application to the Government regarding the Government loan and the loan with Government guarantee for FC's approval.

As regards the MRP, FC approved in 2005 the provision of a Government loan of \$1,387.5 million through the Loan Fund to the OPC and the provision of Government guarantee to a commercial loan of \$1,387.5 million to the OPC. The OPC had to arrange another commercial loan of \$2,775 million by itself. As regards the TSW Project, the FC approved in 2013 the provision of a Government loan of \$2,290 million through the Loan Fund to the OPC.

According to the loan agreements signed between the Government and the OPC regarding the two Government loans for MRP and TSW Development Project, the OPC has to seek the Government's written consent for any additional borrowing. As such, in 2015 the OPC has first submitted to the Board the two loan proposals, i.e. MRP – Refinanced Commercial Loan and TSW Development Project – Commercial Loan, for approval, with the MRP – Refinanced Commercial Loan without Government guarantee fully repaying the MRP – Commercial Loan with Government Guarantee and the MRP – Commercial Loan, as well as the TSW Development Project – Commercial Loan for addressing the additional budget of the TSW Development Project. Upon the Board's approval, the OPC submitted the application to the Government, whose consent was given for OPC to obtain the two commercial loans. The Government has reported to the Legislative Council (“LegCo”) Panel on Economic Development on the refinancing arrangement (see LegCo Paper No. CB(4)271/15-16(01))

Separately, to address the short term operating cashflow requirement, the OPC has, following the same procedures, first submitted the loan proposal regarding the Commercial Revolving Credit Facility to the Board in 2019 for approval. Thereafter, OPC submitted the application to the Government, whose consent was given to OPC to obtain the revolving loan.

Loan Repayment

Over the years, the repayment of principle and interest has posed challenges to the OPC's operations. The OPC has repaid a total of about \$3,025 million for the principal, interest and related financing costs of all commercial loans so far. As at end-April 2020, there was no overdue loan.

In the current funding application submitted by the Government, the \$3,090 million for the repayment of commercial loans and related financing costs include \$3,070 million to repay commercial loans which are due soon, related interest of \$9.194 million, and financing costs for interest rate swap contracts of \$11.33 million. The OPC has discussed with the relevant bank that, should the funding application be approved and all commercial loans be repaid earlier than scheduled, the additional fees and associated capital costs estimated to be about \$6 million would be exempted.

The OPC has tried their utmost to negotiate with the lending bank with a view to refinancing or deferring the repayment of the loans. Nevertheless, without the Strategic Repositioning Plan or any new capital investment for development, it is impossible to refinance the loan or postpone the repayment date.

The Government's funding application is to support the operation of the Ocean Park for one year, settle the costs for completing the Ocean Park's TSW Development Project, and repay the commercial loans of the OPC, so as to avoid the OPC depleting its cash reserve, rendering it unable to repay various creditors, including the lending bank, contractors/suppliers, staff, etc. and lead to liquidation.

Implication of Liquidation to the OPC

Should the liquidation process be initiated, about 2 000 full-time employees of Ocean Park might not be able to obtain compensation in accordance with their employment contracts and related ordinances. They might not even be protected by the Protection of Wages on Insolvency Fund ("the Fund"). This is because, unlike ordinary companies which could be wound up in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance ("CWUMPO") in case of bankruptcy, the OPC is a statutory body established under the OPCO, and it is doubtful whether the OPC could follow the CWUMPO in winding-up. It is thus uncertain if OPC's staff is eligible to apply for ex-gratia payment under the Fund.

On the other hand, Ocean Park currently has more than 7 500 animals. Among them, over 500 are endangered precious species. Over 130 of them are classified as “Critically Endangered” and “Endangered” species. For instance, the Chinese Giant Salamander and Chinese Sturgeon (“Critically Endangered”) as well as Red Panda and Golden Snub-nosed Monkey (“Endangered”) etc. are the better known ones. It is uncertain whether the liquidator appointed by the court could provide appropriate care for the animals in the Ocean Park.

If the Government shoulders all of OPC’s liabilities to avoid the liquidation process when the OPC goes bust, based on rough estimates, the financial implications on the Government would be over \$10 billion at least including the repayment for the commercial loans and the writing off of the Government loans which together involve a total amount of more than \$8 billion. Moreover, this amount has yet to cover the severance payment for staff, the costs for resettling the animals, compensation for contractors and suppliers, as well as expenses for demolition and reinstatement, etc. In parallel, we would lose the additional spending and economic benefit brought by Ocean Park which amounted to over \$7.6 billion and over \$3.9 billion in 2018-19.

We consider that the current proposal in FCR(2020-21)15 is the best option available. On the one hand, by repaying the commercial loans and sustaining the operation of the Park, it would help ward off any creditors from winding up the OPC by petitioning to the court. On the other hand, it would allow the Government to undertake the rethink exercise for charting the way forward for Ocean Park’s rebirth.

We hope that the FC would support our funding proposal, averting the OPC from the risk of liquidation and allowing it to start a new page.

Yours sincerely,



(Anson Lai)
for Commissioner for Tourism