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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 18 May 2020 attaching a letter from Hon Tony Tse Wai-chuen 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, shall remain unchanged.

Regarding the questions raised by Hon Tony Tse Wai-chuen, please find our reply as follows -

## Work of the Government

The OPC is a statutory body established pursuant to the Ocean Park Corporation Ordinance (Cap. 388) (“OPCO”) and its main function is to manage and control Ocean Park as a public recreational and educational park.

The Commerce and Economic Development Bureau (“CEDB”) is responsible for overseeing OPC’s operation. Two of the incumbent members of the Board of the OPC are government officials, namely the Permanent Secretary for Development (Works) (“PS(Works)”) (or representative) and the Commissioner for Tourism (“CT”) (or representative)<sup>1</sup>. The number of Board meetings held and the attendance rate of the two government officials in the past five years are set out in the table below. When the two government officials were unable to attend meetings due to other official engagements, they would arrange a representative to attend on their behalf as far as possible.

Financial Year (“FY”) of the OPC		2014-15	2015-16	2016-17	2017-18	2018-19
No. of meetings		5	4	5	5	8
Attendance rate	PS(Works) (or representative)	100%	100%	100%	100%	100%
	CT (or representative)	100%	100%	100%	80%	100%

In view of the changing business environment and its financial deficit emerging in FY 2015-16, the OPC has been responding proactively. The Government has also supported the Park in taking forward education and tourism projects so as to enhance its attractiveness and competitiveness. The Government has also rendered full range of assistance to the OPC, including participating in its Board and committees to help, together with its Board, scrutinise the work of the OPC. CEDB has also liaised with relevant departments such as the Buildings Department and Food and Environmental Hygiene Department, etc. to help the OPC get hold of the relevant statutory requirements in relation to the Tai Shue Wan Waterpark to facilitate its early commissioning.

Through the government officials in the Board of the OPC, the Government has been providing advice to the OPC and urged its management to adopt additional measures to cut cost and raise revenue, such as expanding source markets and boosting in-park spending of visitors. In cutting cost, on

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<sup>1</sup> The Permanent Secretary for Financial Services and the Treasury (Treasury) (or representative) and the Permanent Secretary for Home Affairs (or representative) were also official members of the Board of the OPC before July 2017.

the premise of not compromising the service, safety, and performance quality, the OPC has temporarily ceased the recruitment of additional staff; engaged staff on contract basis whenever necessary to sustain the Park's operation; imposed a pay freeze; stringently controlled expenses pertaining to travel and non-work related training, office-operating expenses, as well as other discretionary spending; encouraged staff to apply for voluntary no pay leave or early retirement. Furthermore, in view of the recent drastic worsening of the financial condition, OPC's Board also approved a one-third reduction in the salary of the executives, an eight-day no pay leave per month for the assistant executives, and a four-day or six-day no pay leave (depending on their salary grade) for other staff from March until further notice.

Meanwhile, facing the increasingly challenging business environment, the OPC has embarked on a repositioning exercise in 2018 which culminated into the Strategic Repositioning Plan ("SRP"). It was hoped that by taking forward the SRP, the attractiveness of the Park would be enhanced, enabling it to achieve long term financial sustainability. The Government has been closely monitoring the progress and providing advice for this exercise. At the same time, the Government has formulated the financial arrangements for supporting the implementation of the SRP and engaged an independent financial adviser to assess the SRP in terms of its offerings and financial arrangements. The Government together with the OPC consulted the Legislative Council ("LegCo") Panel on Economic Development on the proposal on 20 January 2020.

Regrettably, six days afterwards, in view of the epidemic, Ocean Park has been temporarily closed for nearly four months by now since 26 January. During this period, OPC's financial condition has been doubly hit. On the one hand, it has lost over \$300 million of revenue. On the other, it has to shoulder nearly \$400 million of operating costs. As a result, its cash balance would no longer be adequate for sustaining its operation till the end of the year as originally envisaged and would be depleted in June 2020.

Regarding the proposal of creating civil service posts to set up the OPR Unit, we have already removed the relevant part from our funding proposal.

If our funding proposal is supported by the FC, we will disburse the funding to the OPC on a monthly basis upon receipt and scrutiny by the Tourism Commission based on the monthly cash flow projection from the OPC which is subject to approval by the CT. This proposed mechanism would enable the Government to exercise greater oversight on the expenditure and financial position of the OPC and ensure the latter would control its cost stringently.

### Scaled-down Operation

In the coming year, the OPC will contain cost by cutting down expenses which are not essential. The breakdown of the operating costs at a reduced scale is as follows –

	(\$ million)
(a) Staff costs	634.9
(b) Repair and maintenance costs	154.7
(c) Utility costs	103.3
(d) Other costs <sup>2</sup>	243.6
<b>Total operating costs</b>	<b>1,136.5</b>

The attendance of the Park will be affected by various factors. Hence, it would not be possible to give an accurate projection on the attendance and revenue of the Park upon its reopening. The OPC will strive to boost revenue while containing costs. The Government has considered whether the Park should suspend its operation temporarily. However, under such arrangement, majority of its employees would be laid off. Such arrangement also cannot save part of the fixed costs (such as expenses for animal care and necessary repair and maintenance), and may incur claims for compensation and creditors might petition to the court for liquidation. This is not a tenable option.

### Tai Shue Wan Development Project

Based on the original design, the budget for the Tai Shue Wan Development Project was estimated at \$2.29 billion in 2013. At that time, the project was expected to complete in 2017. Subsequently, as pointed out in our report submitted to the LegCo Panel on Economic Development in 2015, the OPC has revised and enhanced the design of the waterpark taking into account local views. The expected completion date of the project was thus adjusted to the second half of 2018 and the budget was revised to \$2.9 billion. Later on, the Tai Shue Wan Development Project faced various challenges during the construction phase, such as the discovery of unforeseeable geological conditions at various locations within the site. These, together with the complicated topography and geographical setting of the project site of the waterpark, have contributed to cost overruns and delay.

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<sup>2</sup> These expenses include animal expenses, performance and exhibition costs, auditor fee, and insurance fee, etc.

Through the efforts of the Park, most of the issues have already been resolved. However, due to the epidemic, based on the latest estimation, the waterpark will be completed before the end of 2020. The amount spent on this project as at early 2020 is \$3.86 billion. The total expenditure for this project can only be ascertained upon completion of the construction works. As the Park is still negotiating with its contractors on issues such as the final account of the project and the compensation for prolongation of works, we are not in the position to disclose the reserve amount at this juncture to avoid compromising OPC's ability to negotiate.

As the weather will be cold by the time of the expected completion, and given that visitors' interest for the waterpark might be affected by the epidemic, it would not be opportune to open the waterpark as it completes. The Government will make use of this period to review the way forward for Ocean Park including the operation model of the waterpark. As such, it is difficult to ascertain issues of the waterpark such as future expenditures, manpower requirement, and cost recovery, etc. at this stage.

### Consequences of Liquidation

If the FC does not support the funding proposal, the OPC will deplete its cash in June and will not be able to repay its loans. Its creditors, including the commercial lender and creditors of current liabilities, by then might embark on the liquidation procedure to wind up the OPC.

Normally, for a company formed and registered under the Companies Ordinance (Cap. 622) or a company formed and registered under a former Companies Ordinance, the procedures and timeline under Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") would apply. The provisions on winding up by the court in the CWUMPO also apply to "unregistered companies", which can include companies formed under other ordinances, but case law indicates that they do not apply to statutory corporations not formed for trade, which may include the OPC which is a body corporate established under the OPCO.

If the CWUMPO does not apply, creditors who are trying to wind up the OPC might have the OPC wound up pursuant to the inherent jurisdiction of the court. Hence, at this juncture, there are uncertainties on how the OPC would be wound up. About 2 000 full time employees of Ocean Park might not be compensated by the amount to which they are entitled under their employment contracts and relevant legislations. We are also uncertain whether the liquidator appointed by the court could manage to provide proper

care for the animals of Ocean Park which total over 7 500.

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. Given the complicated legal and contractual issues involved, it would be difficult to give an accurate estimate at this stage. 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 FY 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