

Our Ref : L/M to IHK/AMB/2/3 IV

27 May 2004

Ms Miranda Hon  
Clerk to Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 42)  
Chapter 4 : Hong Kong Harbour Fest**

I refer to your letter of 21 May 2004.

I wish to take this opportunity to set out the background leading to the signing of the Memorandum of Understanding (MoU) between the Government and the American Chamber of Commerce in Hong Kong (AmCham) on Harbour Fest, before both parties entered into the final Sponsorship Agreement.

After InvestHK had conveyed to AmCham the Economic Relaunch Working Group's (ERWG) decision of 12 July 2003 that the Government would sponsor Harbour Fest and that AmCham had to plan, organise and implement the whole event, AmCham came up with a draft Sponsorship Agreement on 24 July prepared by its lawyer. We made some initial comments and suggested amendments with a view to setting out more precisely the respective rights and obligations of the two signing parties, and sent out the revised draft document to the Department of Justice (DoJ) for legal advice on 30 July. We also included some specific questions on which we invited DoJ's comments, the details of which are set out in Mr Rowse's letter to you of 21 May.



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In parallel, AmCham was proceeding with the preparation for the Harbour Fest event itself. I recall Mr Jim Thompson had approached me exploring the possibility of the Government making an advance payment, equivalent to 25% of the approved sponsorship fee, in order that AmCham would be able to settle some essential upfront payments. We were always mindful of the need to protect the interest of Government in view of the substantial amount of public money involved, notwithstanding the fact that the sponsorship fee had already been approved by ERWG. On the other hand, as the subject department responsible for coordinating Government's support and facilitation to enable this economic relaunch project to proceed as smoothly as possible, we needed to strike the right balance with flexibility within our scope of authority. Against this background, we entered into a simple legal document in the form of an MoU with AmCham, setting out the understanding between the two parties on their respective roles on Harbour Fest in anticipation of the full Sponsorship Agreement. This also provided the formal basis for making an advance payment of sponsorship fee to AmCham.

We did not consult DoJ specifically on the MoU because it was a simple legal document pointing to the final Sponsorship Agreement that the Government and AmCham would enter into and most important of all, there was a perceived urgency for executing the document before any advance payment of sponsorship fee could be made to AmCham. I understand it is not unprecedented for Government bureaux/departments not to seek legal advice from DoJ on grounds of perceived urgency. In his letter to the Inquiry Panel dated 11 February 2004, the relevant DoJ officer states inter alia *"there is no general requirement for a government bureau or department to consult the Department of Justice on every contract it enters into. From experience government bureaux or departments might not consult the Department of Justice for legal advice for various reasons such as the absence of legal implications, the perceived urgency of the matter or in respect of the renewal of contracts in similar terms to those previously cleared by this Department"*.

On your paragraph 4(a), the acting arrangements to cover Mr Rowse's absence on leave/duty visits are as follows:

- (a) 14.7.03 to 27.7.03 ADG(1) Mr John Rutherford doubling up  
 28.7.03 to 10.8.03 ADG(2) Mr Simon Galpin doubling up  
 11.8.03 to 16.8.03 ADG(3) (myself) doubling up
- (b) 21.8.03 to 22.8.03 ADG(1) Mr John Rutherford doubling up
- (c) 25.8.03 to 30.8.03 ADG(3) (myself) doubling up.

On (b), I was deputising for Mr Rowse on all matters relating to the economic relaunch campaign, including the Harbour Fest. In the light of the need for the organisation of the Harbour Fest to proceed as smoothly as possible as explained earlier, I saw the need to effect the MoU urgently. I also considered this to be fully in line with ERWG's decision to sponsor and support the Harbour Fest. For the first MoU, I sent out an email on 30 July 2003 to Mr Rowse's home email address informing him about it and the advance payment. I also briefed the Acting DGIP on the MoU, but accepting that he was not at all familiar with the background to the economic relaunch campaign, I was prepared to sign it on my own authority. For the second MoU, I was the Acting DGIP myself though I signed it in the capacity of my substantive post.

On (c), as explained in the preceding paragraph, I had informed the Acting DGIP and had sent an email to Mr Rowse on the first MoU, but not on the second occasion when I was acting DGIP.

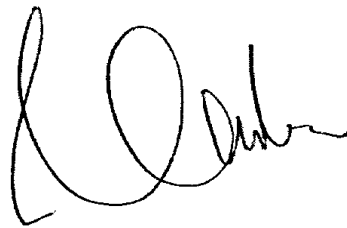
On (d), I updated Mr Rowse on the progress of Harbour Fest, including the advance payments, on each occasion after he returned from leave/duty trip, though I do not recall the details of our discussions given the lapse of time.

On (e), I do not consider there was any negligence at all regarding my signing the two MoUs, which as mentioned above were part of implementing the ERWG's sponsorship decision on Harbour Fest under very exceptional circumstances. With the benefit of hindsight, we could have adopted a holding line and invited DoJ's input before responding to AmCham's request for urgent

advance payment of sponsorship fee (which was already approved by ERWG) in the absence of a full Sponsorship Agreement. However, time was of the essence, and the full Agreement was being drawn up in consultation with DoJ. As Mr Rowse has pointed out in his letter, both the Government and AmCham were fully committed to the Harbour Fest project and acting in good faith. When signing the MoUs, neither party contemplated that the final Agreement would not come through.

I hope the above would be useful to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ophelia Tsang', written in a cursive style.

(Ms Ophelia Tsang)  
Associate Director-General of Investment Promotion

c.c. Financial Secretary  
Director of Audit  
Secretary for Financial Services and the Treasury  
(Attn: Mr Manfred Wong)