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27 November 2003

The Hon Henry TANG Ying-yen, GBS, JP
Financial Secretary
12/F, West Wing
Central Government Offices
Lower Albert Road
Central

Dear Mr TANG,

**Panel on Planning, Lands and Works
and Panel on Home Affairs**

West Kowloon Cultural District

At the joint meeting of the Panel on Planning, Lands and Works and Panel on Home Affairs held on Tuesday, 25 November 2003, Members examined issues relating to the West Kowloon Cultural District (WKDC) development. These issues include those related to the funding arrangements for the WKDC development. As the administration of public finances falls within your purview, Members agreed that you should be asked to respond to them. They are set out below for your reference.

First, there are the issues raised in Hon Abraham SHEK's letter to me dated 18 November 2003. A copy of the letter is attached.

Moreover, other Members also raised the following issues:

- (a) whether the funding arrangements and/or the accounting arrangements adopted by the Administration for the proposed implementation of the WKDC development are in breach of sections 3 and 4 of the Public Finance Ordinance (Cap. 2) ;

- (b) whether the WKDC development as a whole or any part(s) of the development is a project under the Government's Public Works Programme;
- (c) in relation to (b) above, please provide the Administration's definition of "Public Works Programme" and to confirm, in arriving at the definition, whether and how the Administration has taken into account its promulgated policy to promote private sector participation in public works projects; and
- (d) notwithstanding the answers to (a) and (b) above, whether and how far the Administration considers that in respect of the implementation arrangements for the WKDC development, the Administration has fulfilled/will be able to fulfill its constitutional obligations as stipulated in Article 64 of the Basic Law.

I should be grateful if you would let me have your response to the above issues **on or before 17 December 2003**. Upon receipt of your response, the two Panels will consider how the matter should be pursued.

Best regards,

Yours sincerely,

(TANG Siu-tong)
Chairman of Panel on Planning Lands, and Works

Encl.

cc Hon IP Kwok-him, JP (Chairman of the Panel on Home Affairs) (w/o encl)
Chief Secretary for Administration
Secretary for Housing, Planning and Lands
Secretary for Home Affairs



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL
石禮謙議員 Hon Abraham Razack J.P.

致：規劃地政及工程事務委員會主席
鄧兆棠議員

鄧議員：

西九龍文娛藝術區發展計劃

西九龍文娛藝術區是香港近年最大規模的單一發展項目，整個項目投資額高達二百四十億元，毫無疑問是香港近年最觸目及重要的公共工程之一。

政府在今年九月發出有關建議邀請書前，並沒有將該項工程交由立法會工務工程小組及財務委員會審查及批准，政府只承諾會在遴選下決定前向立法會匯報。近日有報章（南華早報，2003年11月17日）指政府未有循正常途徑申請開支撥款，有繞過立法會之嫌。此外，政府擬將商住物業的發展利潤，直接補貼興建大型天幕及一級文娛設施的虧損，而不記入庫務局賬目內，此舉有可能違反公共財政條例（第二章）第四條「記在政府一般收入」之條文。

本人認為立法會有必要諮詢內部法律意見，本人要求立法會法律顧問研究政府是否繞過正常公共工程的申請撥款程序，特別是政府指西九龍項目並非公共工程的說法是否合理；以及政府有否違反其一貫會計安排。本人認為立法會有必要在聽取相關的法律意見後，因應有關意見進一步跟進事件。

立法會議員石禮謙

二零零三年十一月十八日

連附件

副本致：黃宜弘議員（財務委員會主席）
劉健儀議員（內務委員會主席）
何鍾泰議員（工務小組委員會主席）

Kowloon project's financing under fire

The government's 'barter arrangement' for building the planned cultural district may breach accounting rules, say critics

Quinton Chan and Chloe Lai

The government is bypassing normal funding arrangements for building the West Kowloon cultural hub and may be breaching its own accounting rules, critics warn.

Legislators and the head of the Association of Chartered Certified Accountants (ACCA) say the controversial plan does not follow the normal funding arrangements for capital works projects. They say approval for the \$24 billion scheme should be obtained from the Legislative Council's finance committee.

A government spokeswoman said the West Kowloon project was not public works, but "facilities to be used by the public". Therefore, Legco approval was not needed.

Chief Secretary Donald Tsang Yam-kuen announced in September that the 40-hectare site would be given to a single consortium to operate for 30 years. The winning bidder would use income from property sales to fund the construction of cultural facilities, such as theatres, museums and libraries.

The plan has been opposed by some small property developers who would be excluded from taking part in the development.

Zoning plans for the site, which would take the project beyond the scrutiny of the Town Planning Board, have also been criticised. And non-government organisations, lawmakers and cultural groups have voiced fears that the site could be turned into a "developer's colony".

Now, it appears the arrangements may also breach a government accounting principle known as "hypothecation of revenue".

Under the principle, derived from section four of the Public Finance Ordinance, all government revenue should be credited into the Treasury before it is used and all expenditure should come from the Treasury accounts.

Critics say the West Kowloon case does not follow these rules because the value of the land is being redirected to the developer to cover the project's costs without going through the Treasury accounts.

While the ordinance applies to all public works, it also stipulates

that the financial secretary can decide what constitutes public works.

ACCA president Leo Lee Ching said the government should first sell the land in West Kowloon and then use the money to fund construction of the cultural district.

"The government has made the project a barter deal and it is problematic," Mr Lee said. "It should separate the project's accounts on income and expenditure. For a project of such scale, the government should also seek approval from the Legislative Council."

The chief secretary said in Legco on Wednesday that if the West Kowloon site were put up for auction, the revenue raised might not be able to fund the cultural district because of the budget deficit.

A senior government official, who would not be named, also said the present plan may have breached the accounting principle.

"The present arrangements have deprived the Legislative Council's right to scrutinise the project. If this is the case, then many other government projects could also bypass Legco."

Democratic Party chairman Yeung Sum said the government must suspend the plan and conduct a genuine public consultation.

"This project involves no government expenditure and there will not be any legislation. The rules of the game are designed to bypass Legco and leave us unable to have any checks and balances."

The government was criticised by the director of audit in 1996 for violating the principle in a deal with Cathay Pacific for the construction of VIP lounges at the former Kai Tak airport. Cathay built the lounges and was given free use of them for a period to offset the cost.

But the government, in a reply to the auditor's report, said the financial rules should be flexible.

A Housing, Planning and Lands Bureau spokeswoman said last night that the West Kowloon project and the VIP lounge issue should not be compared as they were different. She also said a similar concept had been adopted in two public-private partnership leisure projects in Kwun Tong and Tseung Kwan O.