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27 November 2003

Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands
Housing, Planning and Lands Bureau
8/F, West Wing
Central Government Offices
Central
Hong Kong

Dear Mr SUEN,

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

West Kowloon Cultural District

As instructed by the Chairmen of Panel on Planning, Lands and Works and Panel on Home Affairs, I write to request for information related to the funding arrangements for the development of the Hong Kong Convention and Exhibition Centre and the adjacent hotel, commercial and residential facilities (the HKCEC development).

At the joint meeting of the two Panels on 25 November 2003, members noted that the funding arrangements for the West Kowloon Cultural District (WKDC) development deviated from normal practice. They questioned why the funding for this project was not subject to the approval/scrutiny of the Legislative Council. Members were particularly concerned if the arrangements adopted by the Administration for implementation of the development contravened any constitutional principle/legislative provision(s)/rule(s). Hon Abraham SHEK has articulated some of these issues in his letter to the Chairman of the Panel on Planning Lands and Works dated 18 November 2003 for the purpose of the joint Panel meeting. A copy of his letter is attached.

We have written to the Financial Secretary on issues relating to the administration of public funds, including whether the funding arrangements and/or the accounting arrangements adopted by the Administration for implementation of the WKDC development are in breach of sections 3 and 4 of the Public Finance Ordinance (Cap. 2). The Legal Adviser of the Legislative Council Secretariat will separately examine the issues and give his advice to the Panels.

At the meeting, members also noted that according to the paper provided by the Administration for the joint Panel meeting on 18 November 2003, the development approach adopted for the WKDC development is not new and has already been applied successfully in Hong Kong. It is cited in the paper that the Hong Kong Convention and Exhibition Centre and the adjacent hotel, commercial and residential facilities (the HKCEC development) were developed using a conceptually similar single package approach.

To enable members to understand the process and experience of the HKCEC development, I should be grateful if your Bureau would provide the Panels with the relevant information. The information includes but is not limited to papers presented to and records of the deliberation of the relevant authorities, document(s) to invite development proposals from the private sector and other document(s) relevant to the entire procurement process.

I should be grateful if you would let me have the information requested **on or before 3 December 2003**. Please note that unless you state otherwise, the information will be made available to all Legislative Council Members, the press and members of the public, and uploaded onto the web site of the Legislative Council.

Best regards,

Yours sincerely,

(Ms Anita SIT)

Clerk to Panel on Planning Lands, and Works

Encl.

cc Dr Hon TANG Siu-tong, JP (Chairman of the Panel on Planning, Lands and Works) (w/o encl)
Hon IP Kwok-him, JP (Chairman of the Panel on Home Affairs) (w/o encl)
Mr Thomas TSO, JP (DS/HPL(PL)1)
Mrs Lilian LEUNG (SEO(Adm))

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-ming 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.