

立法會
Legislative Council

LC Paper No. CB(1) 899/99-00

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by the Administration)

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**Legislative Council
Panel on Financial Affairs**

**Minutes of Meeting held on
Monday, 6 December 1999, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)

Hon Eric LI Ka-cheung, JP (Deputy Chairman)

Hon James TIEN Pei-chun, JP

Hon Albert HO Chun-yan

Hon LEE Cheuk-yan

Hon Martin LEE Chu-ming, SC, JP

Hon NG Leung-sing

Hon Ronald ARCALLI, JP

Hon James TO Kun-sun

Hon CHEUNG Man-kwong

Hon Ambrose CHEUNG Wing-sum, JP

Hon HUI Cheung-ching

Hon SIN Chung-kai

Dr Hon Philip WONG Yu-hong

Hon Jasper TSANG Yok-sing, JP

Hon Emily LAU Wai-hing, JP

Hon FUNG Chi-kin

Members attending : Hon LEE Kai-ming, SBS, JP

Dr Hon LUI Ming-wah, JP

Hon CHAN Yuen-han

Hon Mrs Sophie LEUNG LAU Yau-fun, JP

Members absent : Dr Hon David LI Kwok-po, JP

Hon Bernard CHAN

Hon Timothy FOK Tsun-ting, SBS, JP

Action

Public officers attending : For Item IV

Hon D Y K TSANG, JP
Financial Secretary

Miss Elley MAO
Acting Government Economist

Mr Philip YUNG
Administrative Assistant to Financial Secretary

For Item V

Mr M M GLASS
Deputy Secretary for the Treasury

Clerk in attendance : Ms LEUNG Siu-kum
Chief Assistant Secretary (1)4

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie SZETO
Senior Assistant Secretary (1)1

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V Ground rules for special consideration of private sector initiatives
(LC Paper No. CB(1)510/99-00(04))

27. The Deputy Secretary for the Treasury (DS/T) briefed members on the information paper which set out the seven ground rules for special consideration by the Administration in the examination of future initiatives proposed by the private sector for the disposal of land and the procurement of goods and services. He said that the paper was provided in response to members' concern raised at the Public Works Subcommittee meeting in May 1999 about the process through which the Administration arrived at the decision to grant the development right of the Cyberport project to a single private company without a tendering exercise.

28. Miss Emily LAU expressed grave concern about the proposed ground rules. She considered that the Administration had provided too much flexibility for a departure from the norm of following an open, fair and competitive bidding process. The Administration could easily justify itself anytime for a departure from existing practices.

29. Mr CHEUNG Man-kwong echoed Miss LAU's view. He expressed further dissatisfaction that given the proposed lenient approach, these ground rules were still by no means intended to be exhaustive. He also expressed dismay that the proponent's stance to an open and competitive bidding exercise was one of the circumstances to be considered for a departure from the normal open and competitive bidding process.

30. Mr Eric LI remarked that except the time-sensitiveness of the proposed initiative, which to some extent might worth special consideration by the Administration, all other ground rules did not justify the Administration for departing from the norm. In order to uphold the principle of maintaining a level playing field for all interested companies, he stressed the importance for the Administration to follow the normal open and competitive bidding process when other companies had expressed interest in the proposed private sector initiative.

31. DS/T advised that, as a general rule, the Administration would continue to consider and process private sector initiatives in accordance with approved government policies and procedures and to follow an open, fair and competitive bidding process in awarding projects.

32. Responding to the concern about the broad nature of the ground rules, DS/T explained that as the circumstances of each private sector initiative would be different, the rules were essentially guidelines consisting of broad principles, rather than detailed procedures to be followed. The rules could be regarded as a template to assist bureaux and departments in the examination of individual private sector proposals as and when they arose. They served as the bases on which departure from the norm could be considered, but it did not necessarily imply that the Administration would automatically permit a deviation from the norm when a proposal met one or more of the rules. Departure from the norm had to be fully justified on a case-by-case basis. Subject to the particulars of an individual case and having regard to the ground rules, the Administration might seek special approval from relevant decision making body for such a departure. DS/T assured members that the Administration had to follow the established procedures on processing proposed projects initiated by the private sector. It did not have a complete free-hand in the decision making process. Besides taking into account of the public acceptability of the proposal and views of the relevant Legislative Council (LegCo) Panels, the Administration had to seek approval from the LegCo and its Finance Committee (FC) when legislation or funding application were required.

33. Mr LEE Cheuk-yan queried whether the paper was written to create a retrospective rationalization of the Administration's decisions in the Cyberport project and the Disney project. He also sought clarification on the decision making process as to whether the decisions to proceed with the projects were actually made by the Chief Executive without the relevant decision-making body examining the projects against the ground rules.

34. DS/T re-iterated that the paper was put forward in response to Members' specific request in May 1999. They were drawn up after discussion in a number of departmental meetings with a view to putting together all the probable circumstances that might justify a departure from the norm. They were not used to rationalize any Administration's decisions. On the decision-making process for a private sector initiative, DS/T replied that at some stage it was necessary to seek approval from the Chief Executive in Council concerning the policy aspect of a proposal. However, he reiterated that the Administration did not have a complete free-hand in awarding public projects. Approval from the LegCo would need to be sought where legislation or funding support were required.

35. Mr Albert HO and Mr SIN Chung-kai cast doubt on whether the Administration would put forward all private sector initiatives for approval of LegCo. Mr Albert HO illustrated his point by citing the examples whereby the Administration granted the exclusive right to the Mass Transit Railway Corporation (MTR) and Kowloon-Canton Railway Corporation (KCR) for the development of the superstructures of MTR stations and KCR stations respectively without seeking LegCo's approval.

36. DS/T stressed that equity investment into public projects and funding applications for construction of related essential infrastructure facilities required FC's approval. He further clarified that the granting of property development rights of railway station superstructures to the concerned corporations was included in the project agreements of respective railway projects which had been fully discussed by Members. He undertook to provide copies of relevant project agreements for members' reference after the meeting.

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37. In connection with Government's direct invested projects, Mr HUI Cheung-ching raised concern about the criteria under which the Administration decided to make a direct investment and enquired whether the ground rules also applied. DS/T responded that in the case of the recent Disney project, the Administration had considered all the options, and believed that making a substantial initial investment of public fund in the project was the only way to bring the project to fruition. In view of the substantial upfront capital investment required for the project, it was not feasible to obtain private sector investment at the initial stage. Nonetheless, the Administration expected that the private sector would be interested in taking over Government's equity shares once the project had been successfully launched. He stressed that the arrangement was consistent with the Administration's policy of fostering an economic and regulatory

environment facilitating private sector enterprises to flourish and keeping the public sector relatively small. He added that there were precedents where the Administration had taken the lead in developing essential infrastructure facilities with a view to eventually passing them over to the private sector once their operation had been firmly on track. For example, the railway projects as well as the new airport and its related facilities were built with equity investment from the Government but operated on a commercial basis. The partial privatization of the Mass Transit Railway Corporation through listing of a minority shares of the corporation was a further step in encouraging private sector participation in the economy. Essentially, the same arrangement would be made for the Disney project. The project was the linchpin of the development in Lantau and its realization was expected to bring substantial economic benefits for Hong Kong as a whole.

38. In conclusion, members could not accept the seven ground rules adopted by the Administration for special consideration of private sector initiatives. They were of the view that the rules did not serve any useful purposes except rationalizing the Administration's decisions regarding the Cyberport and Disney projects. DS/T said that it was precisely the purpose of the ground rules to allow Government to consider special cases such as the Disney project. Government needed some discretion to take such proposals forward in the knowledge that they would eventually need to be accepted by the legislature. Members decided to move a motion to express their disappointment at the ground rules. Proposed by Mr Albert HO and seconded by Ms Emily LAU, the following motion was unanimously passed by Panel members present at the discussion -

"That this Panel objects to the seven ground rules adopted by the Administration for justification of a departure from the norm of following an open, fair and competitive bidding process for the disposal of land and the procurement of goods and services, and urges the Government to reconsider policy guidelines for future initiatives proposed by the private sector and to submit another information paper on these guidelines for members' consideration."

- FB 39. The Administration was requested to give an early response to the motion.

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