

附錄10

政府總部
民政事務局

香港灣仔
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立法會
政府帳目委員會秘書
韓律科女士
(傳真號碼: 2840 0716)

韓女士：

香港2009年東亞運動會(第5章)的第一次公開聆訊

在昨天舉行的第一次公開聆訊中，有委會詢問2009年東亞運動會(香港)有限公司有否從其法律顧問就向運動員基金捐款的建議取得書面法律意見。我們確認該公司的法律顧問曾透過其於2010年4月23日發出的電郵表述她的意見。在取得該位法律顧問的同意後，現隨函夾附相關的意見，供政府帳目委員會參考。

民政事務局局長

(莫君虞)



代行)

2011年5月6日

c.c. 康樂及文化事務署署長 (傳真號碼: 2606 1824)
財經事務及庫務局局長 (傳真號碼: 2147 5239)
審計署署長 (傳真號碼: 2583 9063)

-----Original Message-----

From: [REDACTED]
Sent: Friday, April 23, 2010 11:11 AM
To: 'escllee@lcscd.gov.hk'
Subject: EAG Company Surplus Funds

Dear Eva,

Questions raised in what way the Company can deal with its surplus funds after conclusion of the Games.

Upon further review of the Memorandum and Articles of Association of the EAG Company, I would like to advise that :

1. Clause 4(1) of the Memorandum provides that the income and property of the Company SHALL BE applied SOLELY towards the promotion of the objects of the Company set out in Clause 3 of the Memorandum.

2. All the objects stated in Clause 3 relate directly to the Games, save the following provisions :

(a) Clause 3(4) : To promote the exchange of information, experience, international understanding and goodwill so as to educate the sports community in the organization of major international sports events;....

(b) Clause 3(3)^{*} : To subscribe or guarantee money for charitable/religious or educational objects, and to promote, contribute to or assist financially or otherwise any fund for any charitable purposes.

*委員會秘書附註：本文件只備英文本。

Before the winding up of the Company, the Company may therefore apply its property and income to the above objects according. However, since the Company is bound by the Tripartite Agreement to use its funding towards the Games, I doubt whether the Company can use the income and property towards the above objects if they are not related to the Games, unless the Government agrees to its doing so.

3. Further, **upon winding up of the Company**, it may also transfer its property and income to another institution provided that :

- (1) All the company's debts and liabilities have been satisfied fully;
- (2) the receiving institution has similar object to Company;
- (3) the receiving institution has the same or greater degree of restriction as is imposed on the Company under Clause 4 of the Memorandum in relation to the distribution of its income and property amongst its members;
- (4) such institutions shall be determined by the Members of the Company.

(Clause 7 of the Memorandum refers)

4. However, the EAG Company is bound by the Tripartite Agreement to use the funding for the Games and to refund the surplus to the Government. Such "surplus" is in a sense a liability of the Company owed to the Government as a creditor. If however, the Government waives or concludes that the Company is not required to pay such "surplus" to the Government, the Company may transfer the surplus in accordance with Clause 7 of the Memorandum.

5. To conclude, the Company is bound to use its income and property solely for the objects of the Company and in accordance with its Memorandum. Such memorandum may be amended by the Members of the Company. The Company is also bound by its obligations towards the Government under the Tripartite Agreement, such obligations however may be released if the Government agrees.

Should you have any questions, please feel free to let me know.

Regards,

[REDACTED]

[Remarks : * As confirmed by the Legal Advisor, this clause should read as Clause 3(13).]