

Mr LEUNG Chun-ying's understanding of the declaration requirements

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The Nature of Mr Leung's Declaration

31. Mr Eric Johnson's fax letter dated 21 February 2002 was the first time when the organizers, on the recommendation of Lord Rothschild (see page 3 of that letter), suggested to the jurors that they should complete a conflict of interests declaration. Mr Leung was only late by one day, such lateness had no effect on the Competition.
32. At the time of making Mr Leung's Declaration, Mr Leung believed that he was required to make a 'declaration of *conflict of interests*', not a 'declaration of interest'. The difference between the two can be illustrated as follows:
- a. If Mr Leung was asked at the time, "Are you a director or shareholder of any company", he would have answered "Yes, of course".
 - b. If Mr Leung was asked at the time, "Are you a director or shareholder of any company that is likely to be in conflict with the Competition", he would have answered "No, none of my companies is in conflict".

The answers to the two questions could be diagonally opposite. It depends on how the requirements and the declaration form were presented to Mr Leung and what Mr Leung perceived them to mean.

33. On 'requirement', on page 3 of Eric Johnson's letter of 21 February 2002, the sub-heading is "conflict of interest declarations". In the passage reproduced in italics, it also mentioned that the requirement and purpose was one of "conflict

of interest” notification. The declaration form was also attached to the letter. It would therefore be reasonable for Mr Leung to believe that he was required to declare whether or not he would have a conflict of interest acting as a juror in the Competition, not whether or not he was a director or shareholder in any company.

34. Mr Leung’s belief of the requirement and purpose of the declaration was reinforced by the format of the declaration.
 - a. It refers to paragraph 16 of the General Conditions of the Competition Document in the Competition Brief;
 - b. Paragraph 16 started with “All those likely to be in conflict of interest are excluded from the Competition etc”;
 - c. Roman (i) to (iv) are examples only, they do not intend to be exclusive;
 - d. In answering the question starting from the middle part of the declaration, it asks Mr Leung to take on board of paragraphs 16(ii), (iii) and (iv) (i.e. the phrase “in relation to”);
 - e. Paragraph 16(iii) and (iv) refer to (i) as well, hence (i) to (iv) have to be considered in the answers;
 - f. Among (c), (d) and (e), only one of them can be chosen. See the “#” and the remarks.
35. Mr Leung’s belief can be further reinforced upon a closer reading of ‘the points to note before completing the form’ on pages 3 and 4 of Mr Eric Johnson’s letter of 21 February 2002. Please refer to paragraphs 39 to 41 in this statement.
36. Mr Leung sets out his purposive reading of the declaration in Annex 1 hereof.
37. If the organizers of the Competition simply wanted to know whether Mr Leung was a director or shareholder of any company, they could have given him a declaration form without the first half of the content starting from “*(a)”,

the meaning without that first half would then be clearer.

38. Mr Leung noted that in their letter to the Legislators dated 24 February 2012, Home Affairs Bureau (“HAB”) included an attachment entitled “Legislative Council House Committee West Kowloon Reclamation Concept Plan Competition”. On pages 4 and 5 of that attachment, HAB now used the description “Declaration of interests” in describing the requirement. The government’s present presentation of the requirement of the declaration to the Legislators is a ‘declaration of interests’, not a ‘declaration of conflict of interests’, however, it should be pointed out that it was not how the requirement was presented to Mr Leung in the 21 February 2002 letter.

The Different Roles of the entrants, organizers and jurors in identifying Conflict of Interest

39. In Mr Eric Johnson’s letter of 21 February 2002, he asked Mr Leung to note the points in pages 3 and 4 before completing the form, in essence:-
- a. Mr Leung and his companies are ineligible to enter the Competition (see (i));
 - b. the onus is on the prospective participant to check whether he has a relationship with any member of the jury (see (ii));
 - c. it is not incumbent upon jurors to make enquiries of any close associate or contact to ascertain whether or not they have entered the Competition (see (iii));
 - d. if a juror has been told by someone who has a relationship with that juror that he has entered the Competition, this will not necessarily be a problem (see (iv));
 - e. the juror is assumed to be aware of the activities of his companies and the onus is on him to ensure that none enters the Competition (see (v));
 - f. the completed declarations will be reviewed by the organizer and Lord Rothschild on 24 February and be discussed at the first jury meeting on

25 February (see vi)).

40. To Mr Leung, the following three groups of people all had some duties in checking conflict of interest:-
- a. *First:* the jurors would have to check whether they might be in conflict of interest when acting as jurors in the Competition;
 - b. *Second:* the prospective participants or entrants would have to ensure that they were not in conflict when they entered the Competition; and
 - c. *Third:* the organizers would have to check conflict and advise the jurors.
41. From the way the points to note were presented in pages 3 and 4 of Mr Eric Johnson's letter of 21 February 2002 (see paragraph 39), the primary obligation to check conflict rested with the prospective participants or entrants as they were the ones who would decide whether or not to 'enter the Competition'.

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Source : Extract from the second written statement produced by Mr LEUNG Chun-ying, witness appearing before the Select Committee

Annex 1

Mr Leung's reading of the declaration form

I am not a director or major shareholder of any company that:-

- (i) has people (including their immediate family members) in it who are closely associated with the Competition;
- (ii) has people (including their immediate family members) in it who are members of the Jury or the Technical Panel, or the Professional Advisor;
- (iii) has in it employees, or persons having an employment-type contract or who are at a continuous and close professional association or partnership with a person in category (i) or (ii) above; or
- (iv) a member in category (i) and (ii) above is a director or major shareholder

and is likely to be in conflict of interest with me as a member of the Jury.