

## **Chapter 2 Involvement of Mr LEUNG Chun-ying as a member of the Jury in the Competition**

2.1 In his 1999 Policy Address, Mr TUNG Chee-hwa, then Chief Executive ("CE"), announced the plan to develop a major world-class performance venue on WKR in Hong Kong and hold an open competition to create a new look for Victoria Harbour including the waterfront at WKR. On 6 April 2001, the Government launched the Competition to invite concept plan proposals ("entries") for the development of a 40-hectare prominent waterfront site at the southern tip of WKR ("the Scheme Area") into an integrated arts, cultural and entertainment district. The Competition was organised by the then Planning and Lands Bureau ("PLB") ("the Organiser"). The registration for the Competition began on 7 April 2001 and ended on 8 June 2001. By the 29 September 2001 deadline for submission of entries, the Organiser received a total of 161 entries. All entries were kept anonymous and adjudicated by a Jury of which Mr LEUNG Chun-ying was a member. The Jury met from 25 to 28 February 2002. On 27 February 2002, after completion of the Jury's voting process, the Organiser discovered that DTZ, of which Mr LEUNG Chun-ying was then the Managing Director and Chairman, was listed as one of the project team members of and by Hamzah & Yeang, an entrant on the provisional list of winning entries ("the Entry Concerned"), and the capacity of DTZ was stated as "Property Advisors". In the morning of 28 February 2002, before the announcement of the Competition results, both Mr LEUNG Chun-ying and other members of the Jury were

informed of the matter. The Jury decided to disqualify the Entry Concerned.

2.2 This Chapter comprises six parts giving an account of the involvement of Mr LEUNG Chun-ying as a member of the Jury in the Competition. Part I highlights the Competition rules, requirements and conditions relevant to the Select Committee's study. Part II sets out the process of appointment of Mr LEUNG Chun-ying as a member of the Jury. Part III provides an account of the Organiser's formulation of the mechanism for dealing with conflict of interests and the declarations made by Mr LEUNG Chun-ying. Part IV examines Mr LEUNG Chun-ying's participation as a member of the Jury in the adjudication process. Part V sets out the circumstances leading to the disqualification of the Entry Concerned by the Jury and the subsequent actions taken in relation to Mr LEUNG Chun-ying's declarations. Part VI provides the observations of the Select Committee on the relevant evidence obtained from witnesses.

### **Part I – Competition rules, requirements and conditions relevant to the study**

2.3 In launching the Competition, the Government issued on 6 April 2001 the Competition Document containing, among others, the rules, requirements and conditions of the Competition. The Competition Document was compiled by the Competition Team, which was set up in PLB in March 2000, and endorsed by Mr Gordon SIU, who was

Secretary for Planning and Lands ("SPL") from 21 January 1999 to 30 June 2001. The Competition Team was set up in PLB and its members included officers seconded from the Planning Department and Leisure and Cultural Services Department. According to Mr SIU, in the preparation of the Competition Document, the Competition Team had consulted Mr Bill LACY, who was appointed as the Professional Advisor to the Competition, and relevant government departments by circulation of papers in accordance with the established procedures of the Government.

2.4 According to Mr PO Pui-leong, Principal Assistant Secretary (Special Duties) in PLB from March 2000 to August 2001 and Competition Co-ordinator up to August 2001, the Competition was the first of its kind in Hong Kong. The Administration originally designed it as a locally-judged competition and aimed to launch it in April 2000. Given the significance of and with a view to adding impetus to the development of WKR, the Administration subsequently decided to invite internationally renowned experts to join the Jury. The Competition was held one year behind the original schedule. The Competition Team had sought advice from local and overseas experts and made reference to international practices relating to concept/architectural design competitions to ensure that the rules, requirements and conditions of the Competition were in line with international standards, with a view to attracting quality submissions from both local and overseas participants.

2.5 The Select Committee has considered the rules, requirements and conditions of the Competition which are relevant to its study. Details

of such rules, requirements and conditions are set out in paragraphs 2.6 to 2.15 below.

### Jury and Technical Panel

2.6 The Select Committee notes that all entries were adjudicated by a Jury made up of 10 non-official members appointed by CE. The membership of the Jury is in **Appendix 2(a)**. The Jury was tasked to award five prizes, viz. the first prize winner, the second prize winner and three honourable mentions. According to paragraph 31 of the General Conditions of the Competition Document, all entries were judged in accordance with the broad assessment criteria in **Appendix 2(b)**, details of which were established by the Jury. Paragraph 32 of the General Conditions of the Competition Document stipulated that "*[t]he decisions of the Jury shall be final and cannot be appealed against*".

2.7 The Jury was assisted by a Technical Panel consisting of 10 members chaired by the then Director of Planning. The membership of the Technical Panel is in **Appendix 2(c)**. Paragraph 9 of the General Conditions of the Competition Document specified that the main role of the Technical Panel was to provide advice to the Jury on the technical assessments of individual entries.

2.8 The Select Committee notes that under the Administration's original plan as stated in the information paper dated 9 March 2000 provided by PLB to LegCo, a Technical Panel to be chaired by the Director of Planning would initially assess all entries and shortlist five

entries for the final consideration of an Executive Panel. On 6 March 2000, the Administration conducted an informal briefing for the non-official Members of the Executive Council ("ExCo"), providing information similar to that in the above paper. According to Mr PO Pui-leong and Mr Bosco FUNG, then Director of Planning and Chairman of the Technical Panel, the Administration was advised that the key to a successful international competition was to appoint a person of eminent international standing as the Chairman of the Jury who might help attract prominent experts as jurors. The general practice for an international competition was to entrust the adjudication responsibility to the jury instead of confining the jury's responsibility to adjudicate the entries shortlisted by another body. In the light of expert advice, the Administration decided that all entries should be adjudicated by the Jury only and the role of the Technical Panel should be confined to the provision of technical advice to the Jury.

### Entry requirements

2.9 The Select Committee notes the following entry requirements in paragraph 12 of the General Conditions of the Competition Document :

*"The Competition is open to all qualified planners and architects, as defined by the requirements in existence in their respective place of practice. Both individual and collaborative entries by multi-disciplinary project teams are permitted, and entries can be made on behalf of limited*

*companies, provided that the team or the company is represented by a qualified planner or architect, and that the application for registration is made in the name of that planner or architect. In the case of companies or project teams, information on all participants and such company information as requested in the Registration Form shall be provided to the Organizer. Each individual participant or company or project team shall only make one submission and each individual shall only participate in one submission either in an individual capacity, on behalf of a company or as a member of a project team."*

### Ineligibility

2.10 The Select Committee notes that pursuant to the following ineligibility provision in paragraph 16 of the General Conditions of the Competition Document, a company of which a member of the Jury was a director or major shareholder was ineligible for the Competition :

*"All those likely to be in conflict of interest are excluded from the Competition including but not necessarily limited to the following:*

- (i) Persons closely associated with the Competition and their immediate family members;*

- (ii) *Members of the Jury and the Technical Panel, and the Professional Advisor and their immediate family members;*
- (iii) *An employee, any person having an employment-type contract or at continuous and close professional association or partnership with a member in category (i) and (ii) above; or*
- (iv) *A company of which a member in category (i) and (ii) above is a director or major shareholder."*

2.11 The Select Committee notes that according to Mr Eric JOHNSON who took over from Mr PO Pui-leong as Competition Co-ordinator in August 2001, the Competition Document was silent on the question of making declaration of interest by individuals participating in decision-making at both the technical assessment and adjudication stages of the Competition.

### Disqualification

2.12 Paragraph 44 of the General Conditions of the Competition Document provides that "*[a]ny participant who does not abide by the rules, requirements or conditions as set out in this Competition Document may result in disqualification of the relevant submission*".

### Anonymity and confidentiality

2.13 The Select Committee notes that pursuant to paragraphs 25, 26, 27 and 33 of the General Conditions of the Competition Document in **Appendix 2(d)**, all submission materials were to be kept anonymous and should be wrapped twice. The inside wrapper should be free of any identifying marks and no letter of any sort should be attached. Full information on all of the persons participating in the Competition had to be provided in a sealed envelope attached to the inner wrapper of the entry. To maintain the anonymity of the participants, a serial number was assigned to each of the entrants for use by the Technical Panel and the Jury during the assessment and adjudication processes which were carried out in strict confidence. Paragraph 35 of the General Conditions of the Competition Document stated that "*[t]he results of the Competition will be announced through the mass media*", and "*[r]egistrants of the winning entries will be notified directly of the results*".

### Prizes and development right

2.14 The Select Committee notes that the five winning entries selected by the Jury would be awarded with cash prizes, viz. HK\$3 million for the first prize winner, HK\$1.5 million for the second prize winner, and HK\$0.8 million for each of the three honourable mentions. Pursuant to paragraphs 2, 3, 4 and 40 of the General Conditions of the Competition Document, there was no linkage between the Competition and the eventual development rights of the Scheme Area. It was the Government's intention that following the Competition, a team

would be appointed through normal consultants selection process to finalise a detailed masterplan for the Scheme Area on the basis of the winning entries, if appropriate. The Government would not be bound to adopt the winning entries as the basis for the finalisation of the detailed masterplan for the Scheme Area. Nevertheless, winners of the Competition would be automatically pre-qualified for inclusion in the list of consultants to be invited for bidding for the masterplanning work. They would also be invited to take part in bids for development and informed of the subsequent architectural design competitions for individual buildings/facilities in the Scheme Area. The Administration considered that these arrangements might enhance the incentives for joining the Competition.

2.15 The Select Committee further notes from paragraph 11 of the Competition Brief of the Competition Document that "*[t]o allow flexibility in the planning and design for this area, participants may submit proposals that extend beyond the boundary of the Scheme Area provided that full justifications are given to substantiate their proposals*". The Administration hoped that this provision would provide greater flexibility for participants to draw up innovative proposals for the Scheme Area and demonstrate how they would optimise the site potential and achieve integration with the surrounding areas.

## **Part II - Appointment of Mr LEUNG Chun-ying as a member of the Jury**

2.16 The Select Committee notes that during the period from CE's announcement in his 1999 Policy Address to hold a design competition for WKR to the end of the Competition in late February 2002, Mr LEUNG Chun-ying was a non-official Member and Convenor of the Executive Council ("ExCo"). According to the Register of Interests of Members of the Executive Council, Mr LEUNG Chun-ying declared in August 2000 and August 2001 that he was a remunerated director of DTZ. Mr LEUNG Chun-ying informed the Select Committee that he was the Chairman of DTZ in 2001-2002. On 13 March 2001, Mr LEUNG Chun-ying accepted the Government's invitation to serve as a member of the Jury for the Competition. The following gives an account of the process of appointment of Mr LEUNG Chun-ying as a member of the Jury.

### Appointment of members of the Jury

2.17 With a view to putting together a respected panel of international and local jurors so as to add prestige to the Competition and attract international interest and participation, the Administration conducted overseas visits to identify and contact potential members of the Jury and invited nominations from local professional bodies. As shown in **Appendix 2(e)**, on 23 May 2000, Mr PO Pui-leong attended a meeting with CE on the composition of the Jury. The proposed list tabled at the meeting indicated that the Jury would comprise a non-official Chairman and 10 non-official members. Mr LEUNG Chun-ying was not on the

proposed list. CE directed that contact should first be made with Lord ROTHSCHILD as the Chairman of the Jury.

2.18 On 5 January 2001, Mrs Anson CHAN, then Chief Secretary for Administration, met with Lord ROTHSCHILD in Hong Kong and sought his views on how to take the Competition forward. On 18 January 2001, Mrs CHAN sent a letter to Lord ROTHSCHILD expressing gratitude for his agreement to chair the Jury and seeking his endorsement of the proposed list of members of the Jury (as at 10 January 2001) attached to the letter in **Appendix 2(f)**. Mr LEUNG Chun-ying was not on the proposed list.

2.19 The Select Committee notes that the proposed list of members of the Jury in Appendix 2(f) comprised 11 members with Lord ROTHSCHILD as the Chairman. Among the 10 other members, Mr Ieoh Ming PEI agreed to serve as the Honorary Special Advisor instead of a member of the Jury; eight members later accepted the Government's invitation extended to them on 17 February 2001 and became members of the Jury; and the remaining member was Mr Antony LEUNG, the Managing Director and Regional Manager (Greater China and the Philippines) of the Chase Manhattan Bank and an ExCo Member.

#### Replacement of Mr LEUNG Chun-ying for Mr Antony LEUNG

2.20 According to Mr Gordon SIU, the proposed appointment of Mr Antony LEUNG as a member of the Jury was based on two major considerations. Firstly, his financial expertise would contribute, where

necessary, to the consideration of the financial viability of individual entries to the Competition. More importantly, in anticipation of the attraction of the Competition to local and international media and in view of Mr Antony LEUNG's capacity as an ExCo Member, the Administration considered that he could assist CE and the top level of the Government in keeping abreast of the development of the Competition.

2.21 Following the Government's announcement on 15 February 2001 of the appointment of Mr Antony LEUNG as the Financial Secretary ("FS"), Mr Gordon SIU discussed with CE the need to identify a candidate to replace Mr Antony LEUNG as a member of the Jury. As the Jury should comprise non-official members only, Mr SIU told the Select Committee that in proposing to CE the appointment of Mr LEUNG Chun-ying as a replacement for Mr Antony LEUNG, the capacity of Mr LEUNG Chun-ying as a non-official Member of ExCo was the prime consideration.

2.22 According to Mr Gordon SIU, in considering the replacement of Mr LEUNG Chun-ying for Mr Antony LEUNG as a member of the Jury, both CE and himself were aware that Mr LEUNG Chun-ying was then the chairman of a major surveying company in Hong Kong. Mr SIU was directed by CE to contact Mr LEUNG Chun-ying personally. Mr SIU recalled that perhaps on the same day after his discussion with CE on Mr Antony LEUNG's replacement, he had called Mr LEUNG Chun-ying to sound out his interest in serving as a member of the Jury and explain to him the implications thereof. According to Mr SIU, he and his colleagues also conveyed a similar message to other

potential members of the Jury that pursuant to the Competition rules to be announced, members of the Jury and persons having working or business relationship with them, among others, might be excluded from the Competition. Mr SIU also informed Mr LEUNG Chun-ying that many persons invited to serve as members of the Jury had turned down the invitation because of their professional interest or the interest of their company in participating in the Competition. Mr SIU recalled that Mr LEUNG Chun-ying indicated that he fully understood the implications of serving as a member of the Jury for himself, his company and his family and was willing to accept the appointment as a member of the Jury in view of the importance of the Competition to Hong Kong.

2.23 In respect of the above telephone conversation, Mr LEUNG Chun-ying informed the Select Committee that he had recollection of having received a telephone call from Mr Gordon SIU regarding the invitation and Mr SIU had probably reminded him of the responsibility to avoid conflict of interests after becoming a member of the Jury. However, he could not recall the details of the conversation. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"As far as I can remember, our conversation did not go to such specific details. However, I am not sure about each and every word that Mr Gordon SIU had said. After all, it happened 11 years ago."*

*"Basically, it was Mr SIU who contacted me by telephone and invited me. He had probably said something like 'I wish to remind you that once you become a member of the Jury, you will have a responsibility to declare interest or avoid conflict of interests.'"*

*"I cannot remember the specific details."*

2.24 Mr LEUNG Chun-ying told the Select Committee that it had not appeared to him that serving as a member of the Jury would have any implication on him and his company, as his company had not participated and had no knowledge in planning design competitions. His company had been engaged in estate surveying instead of architecture, building surveying or quantity surveying, and therefore its relationship with planning design competitions had been very remote. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"As far as I was concerned, our company did not participate in such planning design competitions, nor did we have the expertise in this area. Our company was engaged in estate surveying instead of architecture, building surveying or quantity surveying, and therefore its relationship with planning design competitions was very remote."*

2.25 On 8 March 2001, Mr Gordon SIU informed CE's Office by email (**Appendix 2(g)**) of Mr LEUNG Chun-ying's indication of interest

in joining the Jury. In the email, Mr SIU advised that Mr LEUNG Chun-ying was "*fully aware of the implications for himself and his company*". On 9 March 2001, CE issued a letter to Mr LEUNG Chun-ying inviting him to serve as a member of the Jury. On 13 March 2001, Mr LEUNG Chun-ying replied to CE indicating his acceptance of the invitation. With the replacement of Mr LEUNG Chun-ying for Mr Antony LEUNG and the non-acceptance of Mr Ieoh Ming PEI for being a member of the Jury, the Jury was finally made up of five local and five overseas non-official members including the Chairman. The 10-member Technical Panel was also subsequently formed following the Government's invitation sent to potential members on 26 March 2001.

2.26 The Select Committee notes that following Mr Gordon SIU's telephone conversation with Mr LEUNG Chun-ying on 8 March 2001, Mr PO Pui-leong sent a letter in **Appendix 2(h)** to Mr LEUNG Chun-ying on 9 March 2001 enclosing a draft Competition Document for his reference and informing him of the Administration's plan to launch the Competition in end March/early April 2001 and schedule the Jury meeting in January 2002. In the draft Competition Document as at early March 2001, there was an ineligibility provision similar to paragraph 16 of the General Conditions of the Competition Document formally issued on 6 April 2001. In addition, on 6 April 2001, Mr PO Pui-leong sent a letter to each local member of the Jury informing them of the launch of the Competition and enclosing, among others, a Competition Folder which included a copy of the Competition Document issued on 6 April 2001.

2.27 The Select Committee notes that Mr YUEN Lup-fun of the Task Force for the Competition ("Task Force") sent a fax to Mr LEUNG Chun-ying on 10 March 2001 informing him of the Organiser's plan to produce a pamphlet on the Jury for publicity purposes and inviting him to provide a copy of his curriculum vitae ("CV") and a coloured photo for inclusion in the pamphlet. The fax enclosed a CV of Mr LEUNG Chun-ying which the Task Force had found from the webpage and a draft pamphlet for Mr LEUNG Chun-ying's consideration. It was pointed out in the fax that because of the limited size of the pamphlet, the CV was presented in a few points. The Select Committee notes that the CV of Mr LEUNG Chun-ying obtained from the webpage showed Mr LEUNG Chun-ying's occupation as "*Chairman, DTZ Debenham Tie Leung Limited*" but such information was not included in the draft pamphlet, nor was it included in the publicity pamphlet about the Jury subsequently published.

2.28 Mr LEUNG Chun-ying told the Select Committee that before his appointment as a member of the Jury and throughout the conduct of the Competition, the Organiser had been aware of his chairmanship and directorship of DTZ. The Select Committee notes that all letters from the Organiser to Mr LEUNG Chun-ying had been sent to his office at DTZ. Mr LEUNG Chun-ying's response at the hearing on 20 March 2012 was as follows (English translation) :

*"I confirm that all documents relating to the West Kowloon Reclamation Concept Plan Competition had been delivered*

*to my office at DTZ and the name of DTZ was listed on all such correspondences."*

### **Part III - Mechanism for dealing with conflict of interests and Mr LEUNG Chun-ying's declarations**

2.29 As mentioned in paragraph 2.10 above, a company of which a member of the Jury was a director or major shareholder was ineligible to enter the Competition. The Competition Document did not provide for any mechanism for declaring interest or dealing with conflict of interests by members of the Technical Panel and the Jury. Mr Eric JOHNSON also told the Select Committee that the completion of declaration of interest forms by members of the Jury or the Technical Panel had not been a requirement in the Competition Document. It had been imposed separately as a supplementary requirement by the Organiser after the launch of the Competition. This part provides an account of the process of the Organiser's formulation of the mechanism for dealing with conflict of interests and sets out Mr LEUNG Chun-ying's declaration.

#### Formulation of the mechanism for dealing with conflict of interests

2.30 According to Mr Gordon SIU and Mr PO Pui-leong, the mechanism for dealing with conflict of interests was formulated after they left PLB in July 2001 and August 2001 respectively. Mr SIU advised that the basis for not formulating such mechanism earlier was the lack of general practice in relation to declaration of interest in international

competitions according to the Professional Advisor. Different competitions had adopted different arrangements. The Administration then considered that the formulation of such mechanism needed more research, and therefore decided to launch the Competition first and then follow up on the matter. According to Mr PO, the Competition Document was mainly provided for participants' reference, while declaration of interest was a matter for the Jury and the matter could be followed up after the launch of the Competition.

2.31 The formulation of the mechanism for dealing with conflict of interests was left to Mr PO Pui-leong's successor, Mr Eric JOHNSON. Mr JOHNSON told the Select Committee that when he took over the duty as Competition Co-ordinator, the Competition was well underway. The Jury and the Professional Advisor had already been appointed. The Competition Document establishing the rules and conduct of the Competition, including the membership of the Jury and the Technical Panel, had been issued. Registration of interest in entering the Competition had been received and the Organiser was awaiting receipt of entries. His immediate tasks were to devise procedures for the secure and proper handling of entries and for declaration of interest in consultation with the Professional Advisor and the Chairman of the Jury. The objective was to ensure that arrangements were in place for fair and efficient handling and adjudication of the entries.

2.32 The Select Committee notes that the Organiser initially considered applying the declaration arrangements to members of the Technical Panel first. At the first meeting of the Technical Panel on

9 October 2001, under the agenda item on "*declarations of interest*", Mr Eric JOHNSON informed members that PLB was looking into whether the provisions concerning ineligibility, anonymity and confidentiality in the General Conditions of the Competition Document should be supplemented with declarations of interest by members of the Technical Panel and had sought the advice of the Professional Advisor on the approach to be adopted. The Chairman of the Technical Panel reminded members to be aware of the competition rules on ineligibility and conflict of interests, notwithstanding that the onus of compliance was in most cases on the participants and that the Organiser was responsible for verifying ineligibility. After some discussion, members agreed that the best way forward might be a general declaration of no conflict of interests even though a declaration of interest was not required.

*Consultation with Independent Commission Against Corruption ("ICAC")*

2.33 On 18 October 2001, Mr Eric JOHNSON sent a memorandum attaching a draft declaration form in **Appendix 2(i)** to the Commissioner of ICAC seeking his views on the question of declaration of interest by members of the Technical Panel. The draft declaration form provided four items for declarants' selection, as reproduced below:

*"\*(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition;*

*\*(b) I believe that the following, among my immediate family members or employees and those who have an employment-type contract or close professional association or partnership with me, have entered the competition;*

Name of entrant	Relationship with entrant

*\*(c) no company of which I am a director or major shareholder has entered the competition;*

*\*(d) a company of which I am a director or major shareholder has entered the competition. The company's name is:*

*(\*delete as appropriate)"*

2.34 Mr Eric JOHNSON stated in his memorandum of 18 October 2001 that the Organiser was considering whether to require members of the Technical Panel to declare whether they were aware that any of their immediate family members, employees or close professional associates, or any company of which they were a director or major shareholder, had entered the Competition and, if so, the names of those concerned. The Organiser would be able to check any declared names against the information in the sealed envelopes submitted with the entries

and report the outcome to the Chairman of the Technical Panel for a ruling.

2.35 In the reply dated 6 November 2001 to Mr Eric JOHNSON in **Appendix 2(j)**, the Director of Corruption Prevention of ICAC advised that all persons closely associated with the Competition should be asked to declare conflict of interests to the best of their knowledge. The declaration requirement should apply not only to the Technical Panel but also the Jury and the Professional Advisor. To facilitate declaration and to check eligibility, they had to be informed of the identities of the entrants. ICAC recommended that entrants' consent be sought to waive the confidentiality and anonymity restrictions of the Competition Document. ICAC also suggested that "*if the declaration is made without disclosure of the entrants' identities, the revelation of their identities (for vetting of eligibility purpose) should be the last step before announcement of the winners. Alternatively, the declaration should be made based on the sight of a list of entrants but with anonymity of the proposals maintained*".

2.36 On 23 November 2001, Mr Eric JOHNSON sent a memorandum in **Appendix 2(k)** to ICAC attaching the finalised version of the declaration form and stating that the Organiser "*shall extend the proposed declaration arrangements to the Jury and the Professional Advisor in addition to the Technical Panel*". Mr JOHNSON also stated in the memorandum that the Organiser preferred to proceed initially on the basis of a declaration to the best of the declarants' knowledge. Accordingly, the Organiser considered it unnecessary to ask entrants for

consent to waive the confidentiality provisions so that declarations could be made with knowledge of the entrants' identities. The Competition Team would however consider ICAC's suggestion that there should be a further opportunity (for all those who had completed the initial "best of my knowledge" declaration) to declare any conflict of interests in the light of the identities of the winning entries before they were announced. The Organiser considered that this would help to safeguard the integrity of the Competition.

2.37 The Select Committee notes that compared to the draft declaration form attached to Mr Eric JOHNSON's memorandum dated 18 October 2001 to ICAC (Appendix 2(i)), the finalised version of the declaration form attached to his memorandum dated 23 November 2001 to ICAC (Appendix 2(k)) provided not only the four items in paragraph 2.33 above but also an additional option for declarants to choose, i.e. new item (c) was inserted and former items (c) and (d) became items (d) and (e), as reproduced below :

*"\*(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition;*

*\*(b) I believe that the following, among my immediate family members or employees and those who have an employment-type contract or close professional*

*association or partnership with me, have entered the competition;*

Name of entrant	Relationship with entrant

*#(c) I am not a director or major shareholder of any company;*

*#(d) no company of which I am a director or major shareholder has entered the competition;*

*#(e) a company of which I am a director or major shareholder has entered the competition. The company's name is:*

*\*delete (a) or (b); if you delete (a), complete (b)*

*#delete/complete as appropriate; whichever one applies, delete the other two"*

### Declarations by members of the Technical Panel

2.38 On 24 November 2001, the Competition Team wrote to members of the Technical Panel attaching the declaration form (**Appendix 2(I)**) and requesting them to make declaration of interest as soon as possible. The Competition Team received all the declaration

forms dated from 27 November 2001 to 10 December 2001 completed by the Chairman and members of the Technical Panel as well as the Professional Advisor. Mr Eric JOHNSON told the Select Committee that members of the Technical Panel had not experienced any particular problems in completing the declaration form.

2.39 At its meeting on 11 December 2001, the Technical Panel discussed the declarations made by members. Members noted that a member, Professor Alex LUI Chun-wan, had declared that one company for which he had occasionally provided consultancy service had participated in the Competition but he himself had not participated in the entrant's project and did not know which of the submissions was from that company. Members were satisfied that on the basis of the declarations, no conflict of interests arose for any member. A table summarising the declarations made by members of the Technical Panel in the declaration forms is in **Appendix 2(m)**.

*Mr David LEE's declarations*

2.40 The Select Committee notes that at the meeting of the Technical Panel on 9 October 2001, Mr David LEE, a member of the Technical Panel, informed members that in order to avoid inadvertent conflict of interests, he had informed his staff by circular that he had been appointed as a member of the Technical Panel and reminded them that as employees of his firm, they were ineligible to participate in the Competition. In this connection, Mr LEE attached to his declaration form dated 4 December 2001 a copy of two internal circulars issued by him on

12 June 2001 to the staff of his two firms, namely David C Lee Surveyors Limited and JADL Design Limited, on the subject of conflict of interests. A copy of Mr LEE's declaration form and internal circulars are in **Appendix 2(n)**. In the internal circulars, Mr LEE reproduced the ineligibility provision in paragraph 16 of the General Conditions of the Competition Document for his staff's reference. He hoped that his staff would "*refrain from entering the Competition in any way or form*", and stated that if he was aware of anyone of his staff taking part in the Competition, he would be duty bound to disclose the entry concerned and it would probably be disqualified.

2.41 Mr Eric JOHNSON told the Select Committee that Mr David LEE was the only person who attached to his declaration form internal circulars of that nature. Mr JOHNSON stated that it had been up to members of the Technical Panel to supplement their declarations. The Organiser had not sought any additional supplementation from them. In his view, the declaration form itself had provided sufficient declaration material to comply with paragraph 16 of the General Conditions of the Competition Document, which was reproduced in the first part of the form.

#### Declaration arrangements for the Jury

2.42 On 11 February 2002, in the light of the experience of the Technical Panel, Mr Eric JOHNSON asked Lord ROTHSCHILD, Chairman of the Jury, for approval to apply similar declaration

arrangements to the Jury. Lord ROTHSCHILD gave his approval on 12 February 2002. Mr JOHNSON informed the Select Committee that :

*"Basically, when I took over the job, I thought no work had been done up to that point on the question of declaration of interest. Possibly because it was not an item mentioned in the Competition Document, and therefore had not attracted my predecessor's attention very much up to that point. But I recognized immediately that something had to be done. And I spent an inordinate amount of time, in fact, on developing the process for the conflict of interest exercise, developing the form for the declaration and consulting the Professional Advisor, consulting the ICAC, and all of this did take us into February. It was not until all that work had been done that we were in a position to issue the forms to the members of the Jury."*

*"...it was not a sort of 'quick quick' process, it was something which had to be thought through. ... I think we did it pretty expeditiously. I do not think that it was unduly late. But we had to do it before the Technical Panel started convening. And we did that. It was not late for that. Then we applied it to the Jury in reasonable time. So I do not think that we were dilatory in any way in producing these forms or in dealing with the subject generally of the declaration of interests."*

*Declaration form and requirements*

2.43 On 21 February 2002, Mr Eric JOHNSON faxed a letter to members of the Jury informing them of the programme for the Jury from 21 February to 2 March 2002, including the viewing sessions of the entry presentation boards on 24 and 25 February 2002. The letter enclosed the declaration form in **Appendix 2(o)** in which the five items provided for the declarant to choose were identical to those listed in paragraph 2.37 above. In the letter, Mr JOHNSON requested members of the Jury to return the completed forms to him by fax by Saturday, 23 February 2002, so that the completed declarations would be reviewed initially by the Organiser and Lord ROTHSCHILD on 24 February 2002 and be discussed at the first Jury meeting on 25 February 2002. Under the section on "*Conflict of interest declarations*" in his letter, Mr JOHNSON quoted the advice of the Professional Advisor that "...*all Jurors and Technical Panel members are expected to sign a binding agreement of confidentiality and conflict of interest notification...*", and asked members of the Jury to note the following points before completing the declaration form in Appendix 2(o) :

- "(i) *paragraph 16 of the General Conditions in the Competition Document provides among other things that the members of the Jury, their immediate family members, their employees, their close professional associates and any company of which they are a director or major shareholder are ineligible to enter the competition;*

- (ii) *as regards immediate family members, employees and close professional associates, the onus is on the prospective participant to check whether he has such a relationship with any member of the Jury, so that he does not enter the competition when ineligible. Hence it is sufficient in the declaration form for the juror to declare to the best of his knowledge (in item (a)) or belief (in item (b));*
- (iii) *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;*
- (iv) *where item (b) applies, perhaps because the juror has been told by someone that he has entered the competition, this will not necessarily be a problem, as the likelihood is that no conflict of interest will arise if the juror has not participated in the entrant's project and does not know which of the entries is from that entrant;*
- (v) *as regards directorships and majority shareholdings, the juror is assumed to be aware of the activities of his companies, if any, and the onus is therefore on him to ensure that none enters the competition. Hence the declaration here - with a choice between items (c), (d)*

*and (e) in the form - assumes full knowledge on the part of the declarant; and*

*(vi) the completed declarations will be reviewed initially by the organizer and Lord ROTHSCHILD on 24 February and be discussed at the first Jury meeting on 25 February. It is therefore essential that you return the completed form to me by 23 February."*

Mr JOHNSON's explanation of the five items in the declaration form is in **Appendix 2(p)**.

*Deadline for submission of declarations*

2.44 Given that Lord ROTHSCHILD had given clearance to proceed with the declaration arrangements for the Jury on 12 February 2002, the Select Committee asked Mr Eric JOHNSON why members of the Jury were given only two days to complete and return the declaration forms. Mr JOHNSON stated that he could not recall why members of the Jury had not been given as much time as members of the Technical Panel to complete and return the declaration forms. He recalled that he had sent out all the declaration forms to members of the Jury at the same time and that was probably because he had been awaiting the arrival of the overseas members of the Jury on about 21 February 2002. He remembered giving the declaration forms to overseas members of the Jury with his letter of 21 February 2002 more or less as soon as they stepped off the plane. He was not sure whether any member of the Jury

had received the declaration form earlier but it would only have been the local members. Mr JOHNSON told the Select Committee at its hearing on 17 March 2012 that :

*"I felt by that time it was a very simple form to complete actually, and it did not require or should not have required a lot of research on the part of the declarant...Anybody who was in pretty good contact with his family members, employees and close business associates, or if he was running a business, anybody who knew what was actually going on in his businesses or was in control of the situation, could complete the form easily and quickly".*

He also told the Select Committee that members of the Jury had quite enough time to complete the declaration forms and nobody had complained to him that they had not had enough time to do so. As far as he could recall, no members of the Jury had sought further advice from him on how to interpret or complete the declaration form.

2.45 As regards the receipt of Mr LEUNG Chun-ying's declaration form, Mr Eric JOHNSON told the Select Committee that it was up to Mr LEUNG Chun-ying to decide whether he should fax the completed declaration form to him on 23 or 24 February 2002 or bring it back to him during the viewing session on 24 February 2002. Many members of the Jury who had not given him the completed declaration forms by the 23 February 2002 deadline actually handed the forms to him

during the viewing session. Mr LEUNG Chun-ying chose to hand the form to him at the Jury meeting of 25 February 2002.

2.46 Before the Sunday afternoon of 24 February 2002, Mr Eric JOHNSON received eight completed declaration forms from members of the Jury, with six of them dated 23 February 2002 or earlier and two of them (from Mr Nicholas BROOKE and Prof CHANG Hsin-kang) dated 24 February 2002. In that afternoon, Mr JOHNSON had an initial review of the eight declaration forms received with Lord ROTHSCHILD and the Professional Advisor, and they considered that such declarations appeared to pose no problem. The declaration forms from Mr LEUNG Chun-ying and Prof Patrick LAU had yet to be received at the time.

#### Declaration made by Mr LEUNG Chun-ying

2.47 At the first Jury meeting held in the morning of 25 February 2002, Mr Eric JOHNSON received the two outstanding declaration forms, both of which dated 25 February 2002, from Mr LEUNG Chun-ying and Prof Patrick LAU in **Appendices 2(q)** and **2(r)** respectively. Prof LAU told the Select Committee that he could not recall why he had submitted the declaration form after the specified deadline and this might have been caused by the short time given. The Select Committee notes that there was an agenda item on "*Conflict of interest declarations*" for the Jury meeting of that day. Mr JOHNSON stated that the purpose of the agenda item was to chase members of the Jury who had missed the deadline of 23 February 2002 for return of declaration forms and to provide a second opportunity – the first opportunity having been on 24 February – for

consideration by the Chairman of the Jury of any potential conflict of interests declared in any of the completed declaration forms.

2.48 In the declaration form submitted by Mr LEUNG Chun-ying in Appendix 2(q), he deleted items (b), (d) and (e) and chose the following two items :

*"(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition"; and*

*"(c) I am not a director or major shareholder of any company".*

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

2.49 Mr LEUNG Chun-ying told the Select Committee that at the time of making his declaration, he believed that he was required to make a "*declaration of conflict of interests*" and not a "*declaration of interest*". Mr LEUNG Chun-ying's response at the hearing on 20 March 2012 was as follows (English translation) :

*"...I do hope that we can clearly distinguish the difference between the two types of declaration requirements. One is about declaration of interests ... the other one is about*

*declaration of conflicts of interests. Up to now, I still hold the view that the form concerned required me to make a conflict of interest declaration. I believe that, among all members of the Technical Panel and members of the Jury, I was not the only one who had such an understanding. After that, Mr Eric JOHNSON had not asked me to fill in another form."*

*"It was stated clearly in the form that it was about conflict of interests, rather than interests ... These two concepts have all along been there. My understanding was that the declaration on this occasion was not a general declaration of interests, but a declaration of conflict of interests. Therefore, you can see that in both the guidance notes on the completion of the declaration form and the declaration form itself, the word 'conflict' had appeared on a number of occasions."*

Mr LEUNG Chun-ying's understanding was that the sub-heading on page 3 of Mr Eric JOHNSON's letter dated 21 February 2002 (Appendix 2(o)) was "*Conflict of interest declarations*". The passage on the Professional Advisor's advice reproduced in italics in the letter also mentioned "*conflict of interest notification*". It would therefore be reasonable for him 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*". Mr

LEUNG Chun-ying's written evidence on his understanding of the declaration form and requirements is reproduced in **Appendix 2(s)**.

2.50 Mr LEUNG Chun-ying informed the Select Committee that he filled in the form by himself and did not seek advice or assistance from any other person. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

- (a) *"I completed it ... er ... by myself because I recognized my own handwriting, and there was not much to fill in that required the assistance of others. As I said at the previous hearing, I had conducted the conflict search by checking "the Book"."*
- (b) In reply to the question raised by a member *"Please confirm once again that in the course of filling in the form, you had not asked anybody or any third party as to how to interpret the contents of the form."*, Mr LEUNG Chun-ying stated that *"No. I had not."*

Mr LEUNG Chun-ying informed the Select Committee that before completing the declaration form, he had conducted a conflict of interest check by calling a staff member of the DTZ office at Quarry Bay in Hong Kong ("the Staff Member Concerned") between 21 and 23 February 2002 to check whether DTZ had recently done or was in the course of doing any jobs in relation to WKR. The Staff Member Concerned called back later to confirm that there had been no such record in the Confirmed

Instruction Registry (which was called by DTZ as "the Book" ) indicating that DTZ had been retained and/or was in the process of carrying out work for retained clients in relation to WKR. The Select Committee requested Mr LEUNG Chun-ying to find out who the Staff Member Concerned was, but he responded that he could not recall the identity of and locate the Staff Member Concerned (please refer to paragraphs 3.41 to 3.54 of Chapter 3 for details).

2.51 The Select Committee notes that Prof Patrick LAU, a member of the Jury, and Prof CHOW Che-king, a member of the Technical Panel, had been a director or major shareholder of companies but had also chosen items (a) and (c) in their declaration forms. Prof LAU told the Select Committee that he had so declared because according to his understanding at the time, while he was a director and shareholder of Meritor Investment Limited, the company was only a property holding investment company without any actual business operation. There would not be any conflict of interests arising from his participation in the adjudication process of the Competition. He had therefore considered it unnecessary to make any declaration.

2.52 Mr Eric JOHNSON recalled that at the Jury meeting in the morning of 25 February 2002, he only had time for a quick look at the declaration forms from Mr LEUNG Chun-ying and Prof Patrick LAU, and his focus then was whether any company's name had been entered in items (b) and (e) of the forms because any company's name being entered in item (b) or (e) was of utmost importance to the Jury, as this could signal a potential conflict of interests. Mr JOHNSON told the Select

Committee that Mr LEUNG Chun-ying's declaration that he was not a director or major shareholder of any company "*was not of really immediate importance for the Jury*". As with the other eight declarations, no company's name was entered in item (b) or (e) in the declarations of Mr LEUNG Chun-ying and Prof LAU. He therefore reported to the Chairman of the Jury that "*everything appeared to be in order*" as regards potential conflict of interests. A table summarising the declarations made by members of the Jury in the declaration forms is in **Appendix 2(t)**.

2.53 The Select Committee notes that different views had been expressed by the local members of the Jury on the design of the declaration form. Prof Patrick LAU told the Select Committee that he had not been subject to such declaration requirements in his jury experiences in similar competitions. He considered the form "*rather difficult to understand*" and he filled in the form based on his understanding that members of the Jury should not have any relationship with the participants in the Competition. The Select Committee also notes that Mr Nicholas BROOKE, another member of the Jury whose company was similar in nature to that of Mr LEUNG Chun-ying, had made enquiries of the central file registry of the Accounts Department of his company to confirm whether jobs relating to WKR had been received before filling in his declaration form. According to Mr BROOKE, when he started to fill in the declaration form, he was "*somewhat confused*" by item (c) ("I am not a director or major shareholder of any company."), as "*it did not seem to relate specifically to the Competition*", whereas item (d) ("no company of which I am a director or major shareholder has entered the competition") was "*a very clear declaration*" and "*related to the*

*Competition*". Upon careful reading and understanding of the other items mentioned in the form, he finally deleted item (c) and chose item (d), which in his view, accurately stated his situation. Prof CHANG Hsin-kang told the Select Committee that he had no difficulty in completing the form, as he and his family members had never participated in similar competitions or architectural or property businesses. In the view of Mrs Selina CHOW, the declaration requirements had been clearly spelt out in the declaration form. Members of the Jury were requested to declare interest with the objective to avoid conflict of interests. It was not difficult for her to complete and return the form within the given timeframe. The Select Committee notes that all five of the overseas members of the Jury completed and returned the declaration forms by the deadline set.

#### **Part IV - Mr LEUNG Chun-ying's participation as a member of the Jury in the adjudication process**

2.54 According to the proposed programme for the week of the Jury meeting in late February 2002 (Appendix 2(o)), which was attached to Mr Eric JOHNSON's letter dated 21 February 2002 to members of the Jury, they were invited to view the entry presentation boards at the Jury meeting venue at the Hong Kong City Hall on Sunday, 24 February 2002. In the morning of 25 February 2002, the Jury first met to consider, among others, the Report of the Technical Panel and the adjudication process. The Jury devoted 26 and 27 February 2002 to the adjudication of the entries and spent the morning of 28 February 2002 finalising its decisions

and compiling its commentary on the entries that it had selected as the five prize winners. This part gives an account of Mr LEUNG Chun-ying's participation as a member of the Jury in the adjudication process of the Competition.

### **Technical assessment of the entries**

2.55 At its meeting held in the morning of 25 February 2002 and before the commencement of its adjudication process, the Jury considered, among others, the Report of the Technical Panel. According to the evidence obtained by the Select Committee, the Technical Panel first met on 9 October 2001 to decide upon a process for the technical assessment of the 161 entries and assess each of them on 11, 12, 15 and 17 December 2001. The Technical Panel categorised the entries according to whether they had generally met the requirements of the Competition Brief in the Competition Document (Category 1), failed to meet the requirements of the Competition Brief in important respects (Category 2), or failed to abide by the rules, requirements or conditions set out in the Competition Document in important respects and should be recommended for disqualification (Category 3). Category 1 was sub-divided into Category 1(a) covering entries which were well presented with innovative ideas and commendable design concepts, and Category 1(b) covering entries which were of average quality with some good features. The outcome of the Technical Panel's assessment was that of the 161 entries, 54 were placed in Category 1, with 21 of them in Category 1(a). The Entry Concerned was one of these 21 entries. There were 95 entries placed in

Category 2. The other 12 entries were placed in Category 3 and were recommended by the Technical Panel for disqualification on the advice of the Professional Advisor.

2.56 Mr Bosco FUNG told the Select Committee that the Technical Panel was mindful of its role to assist the Jury without infringing on the Jury's ultimate adjudication responsibility. In adjudicating the entries, the Jury was not bound by the Technical Panel's assessment results. The Technical Panel's categorisation and assessment outcome of individual entries were dispatched to members of the Jury towards the end of January 2002 for their perusal prior to the adjudication process.

### **Mr LEUNG Chun-ying's participation in the adjudication process**

2.57 Mr LEUNG Chun-ying's participation in the adjudication process is elaborated below.

#### 24 and 25 February 2002 –viewing of entry presentation boards

2.58 On 24 February 2002, Mr LEUNG Chun-ying attended the viewing session of entry presentation boards, which were set up according to the Categories determined by the Technical Panel as mentioned in paragraph 2.55 above. Mr LEUNG Chun-ying's response at the hearing on 20 March 2012 was as follows (English translation) :

*"... on the 24<sup>th</sup> ... we went to view the presentation boards at the Hong Kong City Hall Low Block."*

Mr LEUNG Chun-ying submitted a list of 18 entries that he liked to the Organiser.

25 February 2002 – the Jury meeting

2.59 In the morning of 25 February 2002, before the start of the Jury meeting, in response to enquiries from the media about the Jury and its work, members of the Jury attended a photo opportunity for the media and the Chairman of the Jury answered media questions. On whether he had attended any media interview or any official function which would enable the public to know that he was a member of the Jury, Mr LEUNG Chun-ying told the Select Committee that he could not recall whether he had attended any media interview; nor was he certain whether the media had taken any photograph of him at the aforementioned media briefing. Mr LEUNG Chun-ying's response at the hearing on 21 April 2012 was as follows (English translation) :

*"I do not recall that there was any ... interview."*

*"I cannot recall whether the media had taken any photographs of me or whether the media had published my name after that day as one of the Jury members. I really had no recollection about it."*

2.60 Mr LEUNG Chun-ying took part in the Jury meeting on 25 February 2002. The agenda for the Jury meeting showed the following items: "*Chairman's opening remarks*", "*Conflict of interest declarations*", "*Report by the Chairman of the Technical Panel*", "*Consideration of the Report of the Technical Panel*" and "*Consideration of adjudication process*". "*Conflict of interest declarations*" was a new item which was not included in the draft proposed programme attached to Mr Eric JOHNSON's letter dated 8 February 2002 to Mr LEUNG Chun-ying.

2.61 The Jury decided on the strategy for the adjudication process at the meeting. Three local members of the Jury, viz. Mrs Selina CHOW, Prof CHANG Hsin-kang and Prof Patrick LAU, told the Select Committee that the Jury had made a conscious decision to consider all the 161 entries, while Mr Nicholas BROOKE recalled that the Jury had agreed to include Category 2 entries in its adjudication in addition to Category 1 entries as assessed by the Technical Panel.

#### 26 to 27 February 2002 – adjudication

2.62 The selection of the five prize winners by the Jury, which comprised seven rounds of adjudication, took place from 26 to 27 February 2002. Mr LEUNG Chun-ying was absent from Round 1 conducted in the morning of Tuesday, 26 February 2002 and present at all other rounds. A summary of the votes by the Jury and a table consolidating the voting records of each member of the Jury without showing their identities are in **Appendices 2(u)** and **2(v)** respectively.

*Selection of the first prize and second prize winners on 26 February 2002*

2.63 In Round 1, which took place at 10:00 am, each member of the Jury was invited to vote for five entries meriting further consideration as the winning entries, on a non-binding basis and without ranking them. Twenty entries received votes in this way. The Select Committee notes that seven of the 18 entries selected by Mr LEUNG Chun-ying during the viewing session on 24 February 2002 were also voted for by other members of the Jury. Mr Eric JOHNSON told the Select Committee that in view of Mr LEUNG Chun-ying's absence from Round 1, the Chairman of the Jury had raised the question at the meeting on how to handle Mr LEUNG Chun-ying's list of the 18 entries selected by him. The Chairman had decided and other members had agreed that despite Mr LEUNG Chun-ying's absence from Round 1, his selection of the seven entries which had also been voted for by other members should be reflected in the tally of votes by adding one more vote to the total number of votes received by each of these seven entries. After reviewing the votes cast, it was agreed by the Jury that the top nine entries, instead of the top five, with the highest number of votes should be considered further in Round 2. Out of the seven entries selected by Mr LEUNG Chun-ying, six (including the Entry Concerned) were among the top nine entries with the most votes. The Entry Concerned received a total of four out of 53 votes in Round 1.

2.64 In Round 2, which took place at 2:30 pm, members of the Jury each cast one vote on a non-binding basis to select a winner from the top nine entries with the most votes in Round 1. All 10 members cast

votes in Round 2. Mr LEUNG Chun-ying and two other members voted for the Entry Concerned. After reviewing the votes cast, the Jury decided to discuss further the three entries receiving the most votes. The Entry Concerned was among these three entries.

2.65 In Round 3, which took place at 3:40 pm, each member of the Jury cast a binding vote to select the first prize winner from the three entries with the most votes in Round 2. All 10 members cast votes in Round 3. Mr LEUNG Chun-ying and one other member voted for the Entry Concerned. The entry from a team led by Foster & Partners of the United Kingdom received eight out of the 10 votes and became the first prize winner.

2.66 In Round 4, which took place at 4:00 pm, the Jury discussed the nomination of five entries to select the second prize winner from the eight entries remaining from the original group of nine considered for selection as the first prize winner. All 10 members including Mr LEUNG Chun-ying were present in this round, which involved discussion only with no voting conducted. Five entries were selected for Round 5.

2.67 In Round 5, which took place at 4:15 pm, members of the Jury each cast a non-binding vote for one entry from the five entries nominated from Round 4. All members cast votes in Round 5. Mr LEUNG Chun-ying and two other members voted for the Entry Concerned. After reviewing the votes cast, the Jury decided to discuss the three entries receiving the most votes. The Entry Concerned was among these three entries.

2.68 In Round 6, which took place at 4:30 pm, members of the Jury each cast a binding vote to select the second prize winner from the three entries with the most votes in Round 5. All 10 members cast votes in Round 6. Mr LEUNG Chun-ying did not vote for the Entry Concerned but voted for the entry from a team led by Mr Philip Y K LIAO of Hong Kong, which received nine out of the 10 votes and became the second prize winner. The Entry Concerned received one vote from another member.

*Selection of the three honourable mentions on 27 February 2002*

2.69 In Round 7, which took place at 10:50 am on 27 February 2002, the Jury decided to invite members to nominate any one from among the seven entries remaining from the group of eight considered for selection as the second prize winner, or any other entry (even though not among these seven), that in their view merited further consideration of the selection of the three honourable mentions. After discussion (without voting taken), six entries including the Entry Concerned were nominated. Members of the Jury each cast three binding votes for three entries to select the three honourable mentions. All 10 members cast votes in Round 7. Mr LEUNG Chun-ying voted for three entries, including the Entry Concerned, which received the most votes (nine out of the 30 votes cast). The Entry Concerned and the other two entries which received the highest votes among the six nominated entries, together with the first prize and second prize winners, formed the provisional list of winning entries.

## **Part V – Disqualification of the Entry Concerned and subsequent actions taken in relation to Mr LEUNG Chun-ying's declarations**

2.70 Checking the identities of winners was the next task for the Organiser after the Jury had finalised its provisional list of winning entries. In the evening of 27 February 2002, Mr Eric JOHNSON returned to his office to check the identities of the winning entrants for vetting eligibility purposes and spotted that a company which appeared to be associated with Mr LEUNG Chun-ying was listed as a project team member of an entry (i.e. the Entry Concerned) on the provisional list of winning entries. This part provides an account of how the Organiser and the Jury, in particular Mr LEUNG Chun-ying, responded to the situation and why a decision was made by the Jury to disqualify the Entry Concerned, as well as the subsequent actions taken in relation to Mr LEUNG Chun-ying's declarations.

### **Discovery of the association of the Entry Concerned with Mr LEUNG Chun-ying's company**

2.71 As described in paragraph 2.69 above, the Jury finalised the provisional list of the five winning entries on 27 February 2002. In that evening, Mr Eric JOHNSON opened the sealed envelopes submitted by the entrants on the provisional list of winning entries. He saw that one of these entrants had listed DTZ as one of its project team members. He associated this reference with Mr LEUNG Chun-ying, as PLB had all

along been corresponding with Mr LEUNG Chun-ying at his DTZ address. He then reviewed the set of declaration forms submitted by members of the Jury, which he did not find time to do so before that evening. He noticed from Mr LEUNG Chun-ying's declaration form that the name of the entrant concerned had not been declared in either item (b) or (e) of the form (Appendix 2(q)). Mr LEUNG Chun-ying had declared in the form that "*I am not a director or major shareholder of any company*". Mr JOHNSON told the Select Committee that on the face of it, there was an undeclared conflict of interests. He intended to report the finding to Mr John TSANG, then SPL, but Mr TSANG had left the office.

2.72 In the morning of 28 February 2002, Mr Eric JOHNSON reported the finding to Mr John TSANG. The Select Committee notes Mr JOHNSON's report of the finding to Mr TSANG as mentioned in paragraph 37 of his written statement submitted to the Select Committee on 17 March 2012 :

*"I reported the matter to him first thing the next morning on Thursday, 28 February. I cannot recall exactly what Mr TSANG said at the time, but he treated the matter as serious and if I recall correctly, tried to reach Mr LEUNG by telephone but was unable to reach him at the first attempt..."*

2.73 At the hearing on 17 March 2012, a member of the Select Committee asked Mr Eric JOHNSON why he reported the finding to Mr John TSANG first thing in the morning of 28 February 2002. Mr JOHNSON's response was as follows :

*"I saw it as my duty. In fact, I recognised myself that this was a potentially serious issue for the Jury, and I needed to inform Mr TSANG. I think it did not matter who the Jury member concerned was, I still would have gone in to inform him, and because this was obviously a potentially serious matter."*

2.74 At the hearing on 17 March 2012, in relation to Mr John TSANG's response to the finding of Mr Eric JOHNSON, a member of the Select Committee asked the following question (English translation) :

*"...if I can confirm, you considered the just mentioned omission to declare by Mr LEUNG Chun-ying a serious matter?"*

Mr TSANG responded as follows (English translation):

*"This is a fact."*

Mr TSANG also told the Select Committee that he considered that the matter should be resolved by the Jury, and therefore did not report the matter to more senior officers.

2.75 In relation to the finding concerned, Mr John TSANG responded at the hearing on 3 April 2012 as follows (English translation) :

*"In relation to whether the matter was serious, this was mentioned by Mr Eric JOHNSON in his statement. At the time, I thought the matter should be dealt with expeditiously, as it was on 28<sup>th</sup>, and there would be an announcement in the afternoon. We therefore needed to deal with the matter expeditiously...I think I did not say, "regard the matter as serious""*

*"The fact is Mr LEUNG claimed that he was not a director or major shareholder of any company; that is the fact, the fact that I am referring to"*

*"I did not think it was serious, and did not think it was not serious"*

2.76        Regarding Mr John TSANG's response above, Mr Eric JOHNSON advised at the hearing on 3 April 2012 that :

*"When I mentioned the word "serious", it was in paragraph 37 of my first witness statement when I said that Mr John TSANG treated the matter as serious. I did not refer to the matter actually being serious in my own view. I said that Mr TSANG treated the matter as serious. And, when I referred to the matter, I talked about the two documents, the one which had been completed by the entrant, read with Mr LEUNG's declaration. The two things together comprised the whole matter. And I felt that this had to be shown to Mr*

*TSANG. And, as I say, he treated it as something serious. He was not dismissive about it or anything like that. He treated it as serious. "*

2.77 The Select Committee notes from Mr LEUNG Chun-ying that he was asked by Mr Bosco FUNG to call Mr John TSANG in the morning of 28 February 2002. He was told by Mr TSANG that DTZ was named as property advisors by one of the entrants of the Competition. Mr LEUNG Chun-ying told Mr TSANG that he was not aware of that. Mr TSANG advised him to ask Mr Eric JOHNSON, who then told Mr LEUNG Chun-ying that Mr CHIU Kam-kuen was one of the DTZ personnel named in the Entry Concerned. Mr LEUNG Chun-ying immediately called Mr CHIU and asked him why DTZ was involved in the Competition. Mr CHIU then referred him to Mr WONG Kim-bon, who was also named in the Entry Concerned and was the person undertaking the task relating to the Competition. Mr LEUNG Chun-ying had a brief discussion over the phone with Mr WONG and asked Mr WONG to send him the file containing all the correspondence and reference documents on the task undertaken by Mr WONG in relation to the Competition.

### **Disqualification of the Entry Concerned**

2.78 Mr Eric JOHNSON told the Select Committee that as far as he could recall, before the start of the Jury meeting at 9:30 am on 28 February 2002, he had informed Lord ROTHSCHILD that a company

apparently closely linked with Mr LEUNG Chun-ying was among the participants in one of the winning entries and this relationship was not reflected in Mr LEUNG Chun-ying's declaration form. Lord ROTHSCHILD had taken him and Mr LEUNG Chun-ying aside for a short discussion outside the meeting. According to Mr JOHNSON, Lord ROTHSCHILD had sought elaboration from Mr LEUNG Chun-ying as to how the apparent conflict of interests had arisen and Mr LEUNG Chun-ying, in turn, explained that he also found it difficult to understand how the situation could have arisen. The three of them then returned to the Jury meeting room.

2.79 According to Mr Eric JOHNSON, at the invitation of Lord ROTHSCHILD, Mr LEUNG Chun-ying explained to the Jury that he had difficulty in understanding how the situation of the apparent conflict of interests could have arisen. The local members of the Jury recalled that Mr LEUNG Chun-ying told them that he was unaware of the association of his company with the Entry Concerned. The members of the Jury were generally surprised at such a situation as any entrant would not have included a company which was associated with a member of the Jury as its team member. By such inclusion, the entrant was making itself ineligible as a result of the ineligibility provision in paragraph 16 of the General Conditions of the Competition Document. Mrs Selina CHOW informed the Select Committee that her reaction at that time was more a kind of "*hard to believe*" as Mr LEUNG Chun-ying, being an experienced participant in public service, should not have overlooked the important duty to declare his interest. Prof Patrick LAU regarded the matter as very unfortunate as it had led to the disqualification of an entrant. Prof

CHANG Hsin-kang, on the other hand, recalled that the matter was not viewed to be that significant at the time.

2.80 According to the local members of the Jury, upon knowing the association of Mr LEUNG Chun-ying's company with the Entry Concerned, their immediate concern was how to deal with the Entry Concerned. The Jury very quickly came to a consensus view that the Entry Concerned should be disqualified. Mrs Selina CHOW told the Select Committee that the disqualification of the Entry Concerned had been the best and only solution available. Mr Nicholas BROOKE considered that there had been no alternative but to disqualify the Entry Concerned. Prof Patrick LAU recalled that he had felt sorry about the disqualification of the Entry Concerned but had considered it necessary to take such a decision given the ineligibility provision in the Competition Document. The local members of the Jury had different recollections as to whether Mr LEUNG Chun-ying had participated in the making of the disqualification decision but Mr LEUNG Chun-ying confirmed that he was present when the decision was made and he raised no objection to the disqualification decision by the Jury. After the disqualification of the Entry Concerned, Mr LEUNG Chun-ying continued to participate in the Jury meeting. Lord ROTHSCHILD reminded members of the Jury, following the disqualification of the Entry Concerned, that the matter of the disqualification should be kept confidential.

## **Actions taken in relation to Mr LEUNG Chun-ying's declarations**

2.81 The Select Committee notes from the evidence that at the Jury meeting in the morning of 28 February 2002, Mr LEUNG Chun-ying undertook at the Jury meeting to provide information to Mr Eric JOHNSON regarding the role of DTZ in the Entry Concerned. The Jury did not have any further discussion on matters relating to Mr LEUNG Chun-ying's declarations at the meeting.

2.82 On 11 March 2002, Mr LEUNG Chun-ying sent a letter to Mr Eric JOHNSON regarding the role of DTZ associated with him in respect of the Entry Concerned in **Appendix 2(w)**. In the letter, Mr LEUNG Chun-ying reiterated that he had not been aware of DTZ being named as "Property Advisors" in one of the entrants in the Competition before completion of the Jury's voting process, and he had only been informed of this after 10:00 am on 28 February 2002. Mr LEUNG Chun-ying also provided a sequence of events relating to DTZ's contacts with DLS and LWK, which were two of the project team members of the Entry Concerned. Mr LEUNG Chun-ying stated in the letter that "*[t]here has been no agreement or understanding between DTZ and Davis Langdon & Seah or anyone else for any future role or fees in respect of this exercise. Neither was there any indication or promise of future work if the entrant wins the competition*". Mr LEUNG Chun-ying also stated that "*[t]o complete my declaration, I attach a full list of companies in the DTZ Group, in which DTZ Debenham Tie Leung is the main operating company*", and "*I am a shareholder and Managing Director of DTZ Debenham Tie Leung*".

2.83 On 23 March 2002, Mr Eric JOHNSON replied to Mr LEUNG Chun-ying in writing that he would inform Lord ROTHSCHILD that Mr LEUNG Chun-ying had provided "*the supplementary declaration agreed upon when the matter was discussed on 28 February 2002*".

2.84 On 15 May 2002, Mr Eric JOHNSON wrote to Lord ROTHSCHILD informing him, among others, that a member of the Jury (without mentioning the name of Mr LEUNG Chun-ying) had provided him with information "*stating his position as a shareholder and managing director of the company concerned, the names of other companies in which the company concerned is the main operating company and the names of other companies of which he is a director or major shareholder*". In the letter, Mr JOHNSON also stated that "*the member concerned did not request reconsideration of any of the decisions taken by the Jury*". Mr JOHNSON considered that "*no further action need be taken in connection with this matter*". On 27 May 2002, Lord ROTHSCHILD replied to Mr JOHNSON stating that "*it was good to hear that no further action was needed on the conflict of interest declaration point*". Mr JOHNSON told the Select Committee that this correspondence was purely within the context of the Jury and what Lord ROTHSCHILD might or might not have been able to do in his capacity as Chairman.

2.85 On 30 May 2002, with Lord ROTHSCHILD's authorisation, Mr LI Ho-kin of PLB circulated the draft Report of the Jury ("draft Report") to members of the Jury, including Mr LEUNG Chun-ying, for review. The Select Committee notes paragraph 19 of the draft Report,

which stated that "*[D]uring its consideration of the 161 submissions, the Jury, taking into account the recommendations of the Technical Panel and the Professional Advisor, as appropriate, disqualified a total of 13 entries for failing to meet the competition requirements in specific non-technical respects.*" The Select Committee notes that the aforesaid 13 entries comprised the 12 entries recommended by the Technical Panel for disqualification and the Entry Concerned disqualified by the Jury at its meeting on 28 February 2002.

2.86 On 17 June 2002, Mr LI Ho-kin informed Mr LEUNG Chun-ying, among others, of PLB's wish to receive his comments on the draft Report by 19 June 2002. On 8 July 2002, in response to Mr LEUNG Chun-ying's enquiry about the comments on the draft Report received from other members of the Jury, Mr Eric JOHNSON informed Mr LEUNG Chun-ying that PLB had received replies from four members of the Jury to the effect that they found the draft in order while Mr Nicholas BROOKE suggested amendment relating to the introduction of the draft Report. On 19 August 2002, Mr JOHNSON informed Mr LEUNG Chun-ying again of the replies received from three more members of the Jury to the effect that they found the draft Report in order, and reminded him to provide his reply. On the same day, Mr LEUNG Chun-ying wrote to Mr JOHNSON stating that he had no comments on the draft Report. On 27 August 2002, Mr JOHNSON informed Lord ROTHSCHILD that he had recast paragraphs 1 and 2 of the draft Report in accordance with Mr BROOKE's suggestion and amended a few paragraphs for greater accuracy. On 10 September 2002, Lord ROTHSCHILD approved for the publication of the Report of the Jury,

which included paragraph 19 of the draft Report to which no amendments had been made by members of the Jury or the Organiser. Paragraph 19 was as follows :

*"During its consideration of the 161 submissions, the Jury, taking into account the recommendations of the Technical Panel and the Professional Advisor, as appropriate, disqualified a total of 13 entries for failing to meet the competition requirements in specific non-technical respects."*

2.87 According to Mr Eric JOHNSON, the individual reasons for disqualification of the 13 entries were not elaborated in paragraph 19 of the Report of the Jury on disqualification of entries because they were considered to be governed by the provisions of paragraph 33 of the General Conditions of the Competition Document, which provided for the assessment process to be carried out in strict confidence. In keeping with these provisions, entrants which were disqualified were not notified of the reasons for their disqualification. Paragraph 35 of the General Conditions of the Competition Document only provided for the winning entrants to be notified.

2.88 The Select Committee notes that local members of the Jury raised no objection to paragraph 19 of the Report of the Jury. Mrs Selina CHOW told the Select Committee that the Jury had not discussed whether the individual reasons for disqualification of the 13 entries should be elaborated. She considered that paragraph 19 had provided a general description of the Jury's disqualification decisions on 13 entries.

The description in that paragraph might not be detailed and precise but was not factually wrong. Prof Patrick LAU considered it reasonable to adopt a general approach to the presentation of the Jury's disqualification decisions, having regard to the need to safeguard the confidentiality of the assessment details under paragraph 33 of the General Conditions of the Competition Document. Prof CHANG Hsin-kang considered the description in paragraph 19 correct, as there had been various reasons leading to the disqualification of the 13 entries and it might not be feasible to categorise these reasons clearly in the Report of the Jury.

Mr LEUNG Chun-ying's letter of 9 June 2003 to the ExCo Secretariat

2.89 On 9 June 2003, Mr LEUNG Chun-ying sent a letter in **Appendix 2(x)** to the ExCo Secretariat in respect of the *"Invitation of Proposals for the Development of the West Kowloon Cultural District"*. Mr LEUNG Chun-ying declared in the letter that he was a member of the Jury for the Competition and *"one of the entrants of the competition named DTZ Debenham Tie Leung (DTZ) as "Property Advisers". This entrant was not one of the winners"*.

2.90 After receipt of the letter of 9 June 2003 from Mr LEUNG Chun-ying, the Clerk to ExCo issued a letter in **Appendix 2(y)** to Mr LEUNG Chun-ying on 21 June 2003 reminding him to declare interest when the information paper entitled *"Progress Report on Development of the West Kowloon Cultural District"* was discussed at the ExCo meeting on 24 June 2003. The Clerk to ExCo advised Mr LEUNG Chun-ying to make declarations as mentioned in paragraph 2.89 above.

### No record of deliberations on the adjudication process

2.91 The Select Committee notes that throughout the adjudication process, no minutes were taken of the Jury's discussions in the adjudication process, including the discussions leading to the making of the disqualification decision. According to Mr Eric JOHNSON, the Government had appointed an independent Jury of distinguished persons who were entrusted with the responsibility to adjudicate entries with impartiality and integrity. It was in keeping with such an arrangement that the Jury should be able to conduct its deliberations in closed session and its verdict should be respected. Paragraphs 32 and 33 of the General Conditions of the Competition Document provided that the decision of the Jury would be final and the assessment process would be carried out in strict confidence respectively. Accordingly, there was no expectation that the discussions in the Jury on the adjudication of entries and related matters would be minuted. He had not been asked or advised by any member of the Jury, the Professional Advisor or within the Administration to minute the Jury's discussions. Mr John TSANG also told the Select Committee that according to his understanding, there were normally no detailed records of the jury's discussions in the adjudication process of similar international competitions. Nevertheless, there were written records on the voting results in each round of adjudication of the entries for the Competition.

2.92 Regarding the lack of appeal mechanism against the Jury's decision, Mr Eric JOHNSON told the Select Committee that the provision of no appeal against the Jury's decision as stated in paragraph

32 of the General Conditions of the Competition Document was rooted in international practice. According to Mr Bosco FUNG, it would be impractical for the Organiser to put in place an appeal mechanism for a design competition, especially when the competition results needed to be announced by a certain date. The appeals lodged by the affected entrants could be indefinite, as the adjudication of entries by the Jury would usually involve subjective judgements.

## **Part VI - Observations**

### The Organiser's approach to handling conflict of interests

2.93 The Select Committee notes that as the Competition was positioned as a large-scale international competition, which was the first of its kind in Hong Kong, the Organiser made reference to international practices and adopted the arrangements for anonymity of submission materials and participants and confidentiality of the assessment process as provided in the General Conditions of the Competition Document. The Competition Document also provided for ineligibility of certain persons and companies for the Competition because of conflict of interests. The Select Committee observes that with the anonymity, confidentiality and ineligibility provisions included and the names of members of the Technical Panel and of the Jury shown in the Competition Document, the Organiser relied on the prospective participants to check whether they had a relationship with any member of the Technical Panel and of the Jury so that a participant who was ineligible because of the ineligibility

provision would not enter the Competition. In this connection, the Select Committee notes that the Organiser put the primary responsibility for avoiding conflict of interests on the participants. The Select Committee also notes that the Competition Document did not provide detailed information on the background of individual members of the Jury. For instance, it was only stated that Mr LEUNG Chun-ying was an ExCo Member, but there was no mention of Mr LEUNG Chun-ying being the Chairman and director of DTZ at the time.

2.94 The Select Committee further observes that it was the Organiser's conscious decision to launch the Competition in April 2001 before formulating the mechanism for handling conflict of interests in the assessment and adjudication process. The Select Committee notes that in the course of preparing for the launch of the Competition, the Organiser recognised that there was no common international practice for handling issues relating to conflict of interests in concept design competitions. Owing to the lack of such common practice and having considered that the Competition Document was mainly provided for participants' reference and declaration of interest was a matter for the Jury, the Organiser decided to launch the Competition first and then follow up on the matter.

2.95 The Select Committee notices that the Organiser came up with a mechanism for dealing with this important matter at a rather late stage. Mr PO Pui-leong, as the Competition Co-ordinator from March 2000 until August 2001, did not deal with that matter. It was not until August 2001, when Mr Eric JOHNSON took over from Mr PO as

Competition Co-ordinator and the Competition had been launched for four months, that the Organiser started devising procedures for declaration of interest. There were ongoing discussions within the Competition Team and consultation with the Professional Advisor. Nevertheless, when the Technical Panel met for the first time on 9 October 2001 to discuss the technical assessment of the entries, the question of declaration of interest was still under examination by the Organiser and members of the Technical Panel were only advised by Mr JOHNSON at the time that the Organiser was looking into whether the provisions concerning ineligibility, anonymity and confidentiality in the General Conditions of the Competition Document should be supplemented with declarations of interest by members of the Technical Panel.

2.96 The Select Committee notes that the Organiser initially considered applying the declaration arrangements to members of the Technical Panel first. The declaration form for members of the Technical Panel was only finalised in late November 2001 after Mr Eric JOHNSON had corresponded twice with ICAC. In its reply dated 6 November 2001 to the Organiser, ICAC pointed out that the declaration requirement should apply to not only the Technical Panel but also the Jury and the Professional Advisor. ICAC recommended that to facilitate declaration and check eligibility, the Organiser should seek the entrants' consent to waive the restrictions concerning confidentiality of entrants and anonymity of submission materials so that declarations could be made with knowledge of the entrants' identities. ICAC suggested that if declarations were made without disclosure of the entrants' identities, the

revelation of their identities by the Organiser to members of the Jury for the purpose of vetting eligibility should be the last step before announcement of the winners.

2.97 The Select Committee notices that were the Organiser to provide for declaration by members of the Technical Panel and of the Jury with knowledge of the entrants' identities in accordance with ICAC's recommendation, this would have amounted to a variation of the General Conditions for the Competition as the provisions concerning anonymity of submission materials and participants and confidentiality of the assessment process had been expressly provided in the Competition Document, and consent from each and every entrant of the 161 entrants would have to be obtained for the variation of the relevant General Conditions. The Select Committee notes that after having considered the advice of the Professional Advisor on how conflict of interests should be handled in similar international competitions, the Organiser decided to proceed on the basis of a declaration of interest to the best of the declarants' knowledge and considered it unnecessary to ask entrants for consent to waive the confidentiality provisions so that declarations could be made with knowledge of entrants' identities.

2.98 The Select Committee further notes that while not adopting ICAC's recommended approach to provide for declarations made with knowledge of the entrants' identities, the Organiser informed ICAC that it would consider the suggestion of providing a further opportunity (for all those who had completed the initial "best of my knowledge" declaration) to declare any conflict of interests in the light of the identities of the

winning entries before they were announced. The Select Committee notices that this was in fact one of the approaches suggested by ICAC to the Organiser on 6 November 2001 under which the identities of entrants be revealed to members of the Jury for vetting eligibility purposes before the announcement of the prize winners to provide a further opportunity to members of the Jury to declare any conflict of interests. In other words, there should be a second chance for members of the Jury to declare any conflict of interests after the identities of the winning entrants were revealed to them.

2.99 Nevertheless, the Select Committee notes that there was no mention in the letter dated 21 February 2002 from Mr Eric JOHNSON to members of the Jury and the programme for the Jury attached thereto that another opportunity would be provided for members of the Jury to declare any conflict of interests after their submission of the declaration forms. Mr JOHNSON only told the Select Committee that if, after the names of the winning entries were revealed to the Jury, any member of the Jury felt the need to change his/her declaration, he/she had the opportunity to do so then. There is however no evidence that members of the Jury were actually asked by the Organiser whether they needed to declare any conflicts of interests in the light of the identities of the winning entrants revealed to them on 28 February 2002.

2.100 The Select Committee notes that the Competition Team issued the declaration form to members of the Technical Panel on 24 November 2001 and the declarations made by them were discussed at the meeting of the Technical Panel on 11 December 2001. The Select

Committee observes that despite Mr Eric JOHNSON's indication to ICAC on 23 November 2001 that the declaration arrangements would be extended to the Jury and the smooth implementation of the declaration arrangements for members of the Technical Panel in November/December 2001, approval for extension of the declaration arrangements to the Jury was not sought by Mr Eric JOHNSON from the Chairman of the Jury until 11 February 2002, and the approval was given on 12 February 2002.

2.101 The letter from Mr JOHNSON to members of the Jury with a declaration form attached, which was identical to that for members of the Technical Panel, was not faxed or delivered by hand until 21 February 2002, four days before the first Jury meeting on 25 February 2002. In the letter, Mr JOHNSON requested members of the Jury to return their completed declaration forms to him by Saturday, 23 February 2002 for an initial review by the Organiser and the Chairman of the Jury on 24 February 2002 and for discussion at the first Jury meeting on 25 February 2002. The Select Committee notices that the declaration forms submitted by four out of the 10 members of the Jury were dated 24 or 25 February 2002 (beyond the deadline set by Mr JOHNSON). No members of the Jury sought from Mr JOHNSON any further explanation of the declaration form or any extension of time for completion of it.

2.102 The Select Committee considers that while the need for members of the Jury to make declaration was established in November 2001, there was no convincing reason for deferring the announcement of the declaration arrangements for members of the Jury to 21 February

2002, four days before the first Jury meeting on 25 February 2002, and for giving two days for members of the Jury to complete the declaration form, no matter how simple the form appeared to be, not to mention that some kind of checking might need to be undertaken by members of the Jury.

#### Mr LEUNG Chun-ying's approach to making the declaration

2.103 Mr LEUNG Chun-ying informed the Select Committee that before filling in the declaration form, he telephoned a staff member of DTZ between 21 and 23 February 2002 to check whether DTZ had done or was in the course of doing any jobs in relation to WKR at that time. The Select Committee also notes that before completing his declaration form, Mr Nicholas BROOKE, another member of the Jury whose company was involved in property consultancy business and similar in nature to that of Mr LEUNG Chun-ying, had made enquiries with the Accounts Department of his company to confirm that no jobs relating to WKR had been undertaken.

2.104 On the other hand, the Select Committee notes that Mr David LEE, a member of the Technical Panel, used a different approach to check for conflict of interests before completing his declaration form. Mr LEE, well before the Organiser contemplated the declaration arrangements for members of the Technical Panel, issued on 12 June 2001 an internal circular to staff of the two companies of which he was the Managing Director or the Director advising them of his appointment as a member of the Technical Panel. In the circular,

Mr LEE not only reproduced the ineligibility provision in the Competition Document, but also advised his staff to refrain from entering the Competition in any way or form. Mr LEE stated in the circular that *"if I am aware of anyone of our staff taking part in the competition, I will be duty bound to disclose it and that entry will probably be disqualified"*.

2.105 The Select Committee further notes that Mr David LEE also suggested at the first meeting of the Technical Panel on 9 October 2001 that members should declare whether they were aware of any conflict of interests. The Technical Panel then agreed that the best way forward might be a general declaration of no conflict of interests even if a declaration of interest was not required.

2.106 The Select Committee notes that both Mr David LEE and Mr LEUNG Chun-ying were in the surveying business. The Select Committee has therefore questioned why Mr LEUNG Chun-ying had merely checked against potential conflict of interests by requesting a staff member to confirm if DTZ had recently done or was in the course of doing any jobs in relation to WKR according to the records in the Book. Given the importance of the Competition and the extent of possible interests involved for the winners of the Competition, some members of the Select Committee question whether a simple phone call to a staff member to confirm whether a conflict of interests was involved was prudent for a person who was the Convenor of ExCo and had extensive public service experience.

2.107 The Select Committee notes from Mr LEUNG Chun-ying's evidence that Mr David LEE was in the building surveying profession and one of his two companies was engaged in building design, while DTZ was in estate surveying which had little part to play in the Competition. Mr LEUNG Chun-ying was therefore of the view that it was not likely that his DTZ staff members would take part in the Competition and DTZ was not the kind of surveying companies which would have any involvement in the WKR development, and therefore took no action to inform DTZ staff of his being a member of the Jury. Despite the said differences between the nature of businesses of DTZ and the two companies of Mr David LEE, the Select Committee considers that Mr David LEE's approach is more pro-active to prevent conflict of interests and should be followed.

2.108 Further, the Select Committee notes Mr Eric JOHNSON's advice to members of the Jury in his letter dated 21 February 2002 that the onus was on members of the Jury to ensure that none of the companies of which he was a director or major shareholder entered the Competition. It appears to the Select Committee that had Mr LEUNG Chun-ying informed DTZ of his appointment as a member of the Jury or its ineligibility for the Competition, the chances that DTZ would take up any jobs, be they fee or non-fee paying, for the Competition would become more remote.

2.109 The further observations of the Select Committee concerning the conflict of interest search conducted by Mr LEUNG Chun-ying and

DTZ's knowledge of Mr LEUNG Chun-ying's involvement in the Competition are in paragraphs 3.37 to 3.77 in Chapter 3.

Mr LEUNG Chun-ying's understanding of declaration of interests

2.110 The Select Committee notes a fine distinction drawn by Mr LEUNG Chun-ying between "declaration of interest" and "declaration of conflict of interests" in completing the declaration form for the Competition. According to Mr LEUNG Chun-ying, his directorship and chairmanship of DTZ were publicly known. He believed at the time of making his declaration that he was required to make a declaration of conflict of interests in the Competition and not a declaration of interest. Hence his selection of items (a) and (c) below in the declaration form following a conflict of interest search conducted by a DTZ staff member at his request :

*"(a) to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition"; and*

*"(c) I am not a director or major shareholder of any company".*

The Select Committee also notes that Mr LEUNG Chun-ying completed the declaration form by himself and had not sought any advice or assistance from Mr Eric JOHNSON or any other person.

2.111 The Select Committee observes that Mr LEUNG Chun-ying did not explain his understanding of the difference between "declaration of conflict of interests" and "declaration of interest" at the Jury meeting after he was informed of the discovery of DTZ's association with the Entry Concerned in the morning of 28 February 2002. Nor did he explain such an understanding in his letter dated 11 March 2002 to Mr Eric JOHNSON in which he provided information on his association with DTZ to complete his declaration, which was the first time for him to afford such an explanation in writing to give a full account of what had happened during the material time. In the light of Mr LEUNG Chun-ying's letter of 11 March 2002 and in the absence of further evidence relating to Mr LEUNG Chun-ying's declaration, some members of the Select Committee have yet to be convinced that Mr LEUNG Chun-ying did draw such a fine distinction between "declaration of conflict of interests" and "declaration of interest" at the time of completing his declaration form in February 2002.

2.112 The Select Committee notes that in the view of Mrs Selina CHOW, the declaration requirements were clearly spelt out in the declaration form and the objective of the Organiser's requirement for declaration of interest was to avoid conflict of interests. On the other hand, the Select Committee notices that Prof CHOW Che-king, a member of the Technical Panel, and Prof Patrick LAU, another member of the

Jury, also chose items (a) and (c) in their declaration forms as Mr LEUNG Chun-ying did. The Select Committee notes that Prof CHOW and Prof LAU were at the material time the director or shareholder of companies. According to Prof LAU, his company was a property holding investment company without any actual business operation and there would not be any conflict of interests arising from his participation in the adjudication process of the Competition. This has led the Select Committee to think whether the declaration form itself did create some kind of confusion, making it easy for someone who was in a rush to complete the form (as both Prof LAU and Mr LEUNG Chun-ying missed the 23 February 2002 deadline and returned the completed forms first thing on 25 February 2002 before the Jury met) to misunderstand the meanings of the various items in the form.

2.113 The Select Committee observes that item (c) was inserted later by the Organiser and was not in the draft declaration form put forward to ICAC for advice. The Select Committee notes that items (b), (c) and (d) of the declaration form were relevant to the following item (iv) of paragraph 16 of the General Conditions of the Competition Document:

*"All those likely to be in conflict of interest are excluded from the Competition including but not necessarily limited to the following:*

- (i) Persons closely associated with the Competition and their immediate family members;*

- (ii) Members of the Jury and the Technical Panel, and the Professional Advisor and their immediate family members;*
- (iii) An employee, any person having an employment-type contract or at continuous and close professional association or partnership with a member in category (i) and (ii) above; or*
- (iv) A company of which a member in category (i) and (ii) above is a director or major shareholder."*

2.114 The Select Committee notes that item (c) in the declaration form involved a general declaration, while items (d) and (e) were related to whether the company of which a member of the Jury was a director or major shareholder had entered the Competition. The Select Committee notices that when Mr Eric JOHNSON received the declaration form of Mr LEUNG Chun-ying at the Jury meeting on 25 February 2002, he only had a quick look at the two forms to see whether any company had been named at items (b) or (e) of the form, as that could signal a potential conflict of interests. According to Mr JOHNSON, he was too busy at that time and it was not until the evening of 27 February 2002 that he had time to revisit the set of declaration forms. The Select Committee notes that when Mr JOHNSON opened the sealed envelopes submitted by the entrants on the provisional list of winning entries in the evening of 27 February 2002, he discovered that DTZ was named by one of the entrants as one of its project team members. He associated this reference

with Mr LEUNG Chun-ying. He went on to inspect Mr LEUNG Chun-ying's declaration form and discovered that Mr LEUNG Chun-ying declared in the form that he was not a director or major shareholder of any company.

Approach taken by the Organiser and the Jury to handling the discovery of the association of the Entry Concerned with Mr LEUNG Chun-ying

2.115 The Select Committee observes that upon discovery of the association of DTZ with the Entry Concerned, both Mr Eric JOHNSON and Mr John TSANG had taken immediate actions. Mr JOHNSON had intended to report the discovery immediately to Mr TSANG in the evening of 27 February 2002, and Mr TSANG, after being informed of the discovery in the morning of 28 February 2002, had tried to contact Mr LEUNG Chun-ying immediately. The Select Committee further observes that notwithstanding their immediate follow-up actions, they had different understandings of the seriousness of the matter. While Mr JOHNSON considered that the revelation of the conflict of interests was serious, Mr TSANG was concerned about how the matter would be handled in view of the need to announce the results in a couple of hours' time on that day. Nevertheless, both Mr JOHNSON and Mr TSANG agreed that the disqualification of the Entry Concerned was the obvious solution because of the ineligibility provision stated clearly in the Competition Document. As regards Mr LEUNG Chun-ying's duty to explain to the Jury the omission in his declaration form, the Select Committee observes that most members of the Jury did not seem to

accord much importance to the matter and had left it to the Organiser and the Chairman of the Jury to handle the matter.

2.116 The Select Committee observes that the Jury did not have any discussion on the omission in Mr LEUNG Chun-ying's declaration after hearing his explanation that he was unaware of the association of DTZ with the Entry Concerned at its meeting in the morning of 28 February 2002. The Select Committee also notes that members of the Jury did not have detailed discussion on how to deal with the Entry Concerned. The Jury very quickly came to a consensus that the Entry Concerned should be disqualified given the ineligibility provision in the Competition Document. The Select Committee observes that the Jury could only disqualify the Entry Concerned in accordance with the ineligibility provision in the Competition Document, and the Entry Concerned had to be disqualified in accordance with the ineligibility provision in the Competition Document, irrespective of whether Mr LEUNG Chun-ying had declared his directorship and chairmanship of DTZ in his declaration form.

2.117 The Select Committee further observes that following the decision made by the Jury on 28 February 2002 to disqualify the Entry Concerned, the matter relating to Mr LEUNG Chun-ying's declaration was not actively pursued by the Jury or the Organiser upon Mr LEUNG Chun-ying's promise, on the same day, to provide information to Mr Eric JOHNSON regarding the role of DTZ in the Entry Concerned after his looking into the matter. After receipt of Mr LEUNG Chun-ying's letter of 11 March 2002, Mr JOHNSON replied to Mr LEUNG Chun-ying in

writing on 23 March 2002 that he would inform the Chairman of the Jury that Mr LEUNG Chun-ying had provided "*the supplementary declaration agreed upon when the matter was discussed on 28 February 2002.*" In his letter dated 15 May 2002 to the Chairman of the Jury, Mr JOHNSON stated, without mentioning the name of Mr LEUNG Chun-ying, that "*the member concerned did not request reconsideration of any of the decisions taken by the Jury*", and he therefore considered that "*no further action need be taken in connection with this matter*". Mr JOHNSON told the Select Committee that these statements were made in the context of the business of the Jury. It appears to the Select Committee that as far as the Organiser was concerned, the handling of the matter relating to Mr LEUNG Chun-ying's declaration was concluded.