

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.