

**Ruling of the Chairman of the Finance Committee on two motions proposed by Hon CHU Hoi-dick, Dr Hon YIU Chung-yim and Hon LEUNG Kwok-hung in two letters dated 18 April 2017 in respect of the funding proposal for the expansion and development plan at Phase I site of the Hong Kong Disneyland Resort**

By two letters both dated 18 April 2017, Hon CHU Hoi-dick, Dr Hon YIU Chung-yim and Hon LEUNG Kwok-hung ("the three Members") requested the Chairman of the Finance Committee ("FC") to include in the agenda of FC meeting(s) two motions proposed under paragraph 21 of the Finance Committee Procedure ("FCP") and paragraph 5(b) of the Resolution on Capital Investment Fund (Cap. 2B) in respect of FCR(2017-18)1. The purpose of FCR(2017-18)1 is to seek FC's approval to inject funds as equity from the Capital Investment Fund ("CIF") to the Hongkong International Theme Parks Limited ("HKITP") for the expansion and development plan at the Phase I site of the Hong Kong Disneyland Resort ("HKDL"). The two letters are at **Appendix I(a)** and **Appendix I(b)** respectively.

**Notice of the two motions**

2. Paragraph 29 of FCP provides that where the Administration is seeking approval of FC under paragraph 5 of Cap. 2B<sup>1</sup> on CIF, FC may specify terms and conditions in relation to such approval. In accordance with paragraph 21 of FCP, a motion proposed by FC members to impose such terms and conditions is subject to the notice requirement of six clear days, but shorter notice may be given if the FC Chairman so directs, provided that it shall not be shorter than two clear days. Whether I would exercise my discretion to allow a shorter notice would be decided on a case-by-case basis.

---

<sup>1</sup> The Chinese equivalent of the reference to "paragraph 5 of Cap. 2B" should be "香港法例第 2B 章第 5 條", instead of "香港法例第 2B 章第 5 段" as in the Chinese version of paragraph 29 of FCP.

3. FC started but did not finish the deliberation on FCR(2017-18)1 on 1 April 2017<sup>2</sup>. In accordance with paragraph 11 of FCP, the item was to be carried over to the next meeting, which had been scheduled for 21 April 2017<sup>3</sup>. The three Members wrote to me on 18 April 2017 proposing the two motions, giving only two clear days' notice for the motions. There has been ample time between 1 April 2017 and 21 April 2017 for the three Members to submit their motions and hence they should have been able to give six clear days' notice for the motions in compliance with the notice requirement under paragraph 21 of FCP. The reason that I was prepared to exercise discretion conferred on me under paragraph 21 of FCP to allow a shorter notice of two clear days for the two motions is that it is the first time that members of FC have ever proposed motions which seek to invoke paragraph 5(b) of Cap. 2B in respect of a proposal seeking funds from CIF.

#### **Administration's views**

4. To assist me in considering whether the two motions are in order, I invited the Administration to comment on the motions and the three Members to respond to the Administration's comments.

5. The Administration's views are set out in its letter of 20 April 2017 (**Appendix II**). In gist, the Administration considers that the proposed conditions as specified in the two motions are not relevant to how the moneys from CIF (as approved by FC) may be expended by the Financial Secretary ("FS") on the expansion and development plan at the Phase I site of HKDL. As such, the two motions fall outside the scope of paragraph 5(b) of Cap. 2B. The two motions should not be included in the agenda of FC meeting(s) for being out of order. The Administration also considers that the basis of the two motions is factually incorrect, and that the content of the two motions is not directly relevant to the funding proposal.

---

<sup>2</sup> FC members were notified on 29 March 2017 (vide the circular LC Paper No. FC85/16-17) of the inclusion of the agenda item on that occasion.

<sup>3</sup> FC members were notified on 11 April 2017 (vide the circulars LC Paper No. FC96 and 98/16-17) of the agenda items for the meetings on 21 April 2017 and that three additional meetings would be held on 22 April 2017.

## **Members' response**

6. Mr CHU Hoi-dick's response to the Administration's views is detailed in his letter of 22 April 2017 (**Appendix III**). The other two Members have not separately responded to the Administration's views. In gist, Mr CHU does not subscribe to the Administration's views that the two motions fall outside the scope of paragraph 5(b) of Cap. 2B. Mr CHU considers that the Administration's responses are too brief, without detailed explanations as to what constitutes a condition that is considered "irrelevant". He is of the view that if the Administration adopts a narrow definition for the term "condition" and the Chairman accepts such a definition, it would be tantamount to degrading the statutory powers conferred upon FC by the Public Finance Ordinance (Cap. 2).

7. In response to the Administration's allegation that the basis of the two motions is factually incorrect, Mr CHU agrees that the Administration's views on the motion in Appendix I(a) ("the First Motion") are correct. He points out that the incorrect content in the First Motion is the result of a "slippery error". He holds that after the wording of the First Motion has been amended, the Chairman should accept the amended version. As to the Administration's views on the motion in Appendix I(b) ("the Second Motion"), Mr CHU considers that the views, albeit containing some valid points, are inaccurate. He holds that the Second Motion is factually correct, and its accuracy will be enhanced by fine-tuning the wording. He holds that the Chairman should accept the Second Motion.

8. Moreover, Mr CHU queries my seeking the Administration's views prior to ruling on the two motions. He considers that although the content of the two motions is concerned with the Government, such matters are internal affairs of the Legislative Council ("LegCo"). Prior consultation with the Administration over the Council's internal affairs constitutes a substantial infringement of and poses an immense challenge to parliamentary autonomy.

## **My opinion**

9. Under Rule 30(3)(c) of the Rules of Procedure ("RoP"), a notice of motion or amendment shall be returned to the Member as being in the opinion of the President out of order. By virtue of paragraph 37 of FCP, RoP 30(3)(c) applies to the FC proceedings in dealing with motions with necessary modifications, subject to the decisions of FC made from time to

time. In considering the admissibility of the two motions, I have looked at the President's past rulings. I note that motions which are inconsistent with statutory provisions<sup>4</sup> or are meaningless or *ultra vires*<sup>5</sup> have been ruled to be out of order under RoP 30(3)(c).

10. The three Members seek to rely on paragraph 5(b) of Cap. 2B as the legal basis for their motions. I note that CIF was established in 1990 under section 29 of Cap. 2. Under section 29(1) of Cap. 2, moneys credited to CIF may be expended by FS for the purposes of the Fund subject to such conditions, exceptions and limitations as may be specified in Cap. 2B. Under paragraph 5(b) of Cap. 2B, FS may expend moneys from the Fund for the purpose of financing loans, advances and investments to or in such persons as may be approved by FC, in accordance with such terms and conditions as may be specified by FC. According to paragraph 29 of FCP, where the Administration is seeking approval of FC under paragraph 5 of Cap. 2B, FC may specify terms and conditions in relation to such approval.

11. Counsel to FC advises me that in determining the admissibility of the two motions, the issue I need to consider is whether the motions are within the scope of paragraph 5(b) of Cap. 2B. Counsel further advises that paragraph 5(b) of Cap. 2B, as drafted and when interpreted in the context of the functions of FC conferred by Cap. 2 and the power and function of the LegCo under Article 73(3) of the Basic Law<sup>6</sup>, suggests that the types of conditions that may be specified by FC under that paragraph are those that relate to the way FS may expend the moneys from CIF for the specified purpose.

12. By FCR(2017-18)1, the Government is seeking the funding required for the expansion and development plan at the Phase 1 site of HKDL ("Phase 1 Plan"). I note that each of the two motions seeks to impose a condition on the use of the funding approved by FC for the said purpose. The First Motion requires the Government to, among others, negotiate with The Walt Disney Company ("TWDC") to revise the basis of calculation of the annual royalties and management fees before the

---

<sup>4</sup> President's ruling dated 20 March 2012 on Hon LEE Wing-tat's proposed resolutions to amend the six Orders made under section 5(1) of the Public Bus Services Ordinance (Cap. 230) and gazetted on 20 January 2012.

<sup>5</sup> President's ruling dated 18 June 2012 on the amendments proposed by Hon Albert CHAN and Hon WONG Yuk-man to the proposed resolution under section 54A of Cap. 1.

<sup>6</sup> The power and function of the Legislative Council provided in Article 73(3) of the Basic Law is to approve taxation and public expenditure.

approved funding could be used. The Second Motion requires the Government to, among others, reopen negotiation with TWDC to revise the option deed signed between the Government and HKITP in order to release an area of 60 hectares of land at the Phase 2 site of HKDL before the moneys approved for the Phase 1 Plan could be used.

13. In considering the admissibility of the two motions, I accept Counsel to FC's advice that I need to consider whether the motions are within the scope of paragraph 5(b) of Cap. 2B. Given that the power and function of LegCo in relation to financial proposals under the Basic Law, as interpreted by the courts, is to examine and approve budgets introduced by the executive authorities and to approve (not create or decide upon) taxation and public expenditure, while it is for the executive authorities to formulate policy, expressing it in terms of legislation and financial proposals<sup>7</sup>, I consider that FC's power under paragraph 5(b) of Cap. 2B should be interpreted in the above context. In my view, since the said paragraph provides for the expenditure of moneys from CIF for the specified purpose in accordance with such terms and conditions specified by FC, in order for a condition to be within the scope of paragraph 5(b) of Cap. 2B, the condition should relate to how FS may expend the moneys approved for the relevant purpose.

14. As far as the First Motion is concerned, I consider that the effect of the condition proposed therein is to prescribe a negotiation and consultation procedure relating to the annual royalties and management fees receivable by TWDC. In my view, the above condition is not one that relates to how FS may expend the moneys approved for the Phase 1 Plan.

15. The proposed condition in the Second Motion relates to negotiation and consultation on the land use regarding the Phase 2 site of HKDL. As such, I do not consider that the proposed condition relates to how FS may expend the moneys approved for the Phase 1 Plan.

16. For the reasons set out in paragraphs 14 and 15, I consider that the two motions do not fall within the scope of paragraph 5(b) of Cap. 2B, and having regard to the President's past rulings as mentioned in paragraph 9 above, I consider that the two motions are out of order pursuant to RoP 30(3)(c) and paragraph 37 of FCP.

---

<sup>7</sup> Refer to *Leung Kwok Hung v President of Legislative Council* [2007] 1 HKLRD 387, paras. 67 and 68, where the Court of First Instance set out its views on the respective powers and functions of LegCo and the executive authorities in relation to financial proposals under the Basic Law.

17. As I have already come to the view that the two motions are out of order on the ground that they are outside the scope of paragraph 5(b) of Cap. 2B, it is not necessary for me to deal with the other grounds put forward by the Administration in determining the admissibility of the motions. I would however wish to add that as the funding proposal under FCR(2017-18)1 is concerned with the Phase 1 Plan, the two motions which relate to the calculation basis of the annual royalties and management fees in respect of HKDL as a whole and the land use regarding the Phase 2 site of HKDL are apparently outside the scope of the above funding proposal.

### **Other matters**

18. As for the queries raised by Mr CHU regarding my seeking the Administration's views prior to making my ruling, I must point out that the motions on which a ruling is to be made are proposed under paragraph 5(b) of Cap. 2B. The motions, if ruled to be in order and subsequently passed by FC, are legally binding on the Government. In accordance with the principle of procedural fairness, I have decided to invite all parties who may be affected by my ruling to give comments on the motions before I come to a decision on their admissibility. Hence, I have invited the Administration to comment on the motions and the three Members to respond to the Government's comments before I rule on the two motions. This practice is in line with LegCo's practice in handling Members' proposals to amend Government bills and subsidiary legislation.

### **My ruling**

19. I rule that the two motions proposed by Hon CHU Hoi-dick, Dr Hon YIU Chung-yim and Hon LEUNG Kwok-hung are out of order. In accordance with RoP 30(3)(c), the notices of the motions shall be returned to the three Members.



(CHAN Kin-por)  
Chairman  
Finance Committee

Encls  
25 April 2017

敬啟者

就迪士尼樂園區第一期擴建項目投資撥款以財委會會議程序第 21 段提出議案

按《財務委員會會議程序》第 21 段：

「作為香港特別行政區政府根據《基本法》第六十二（六）條委派的官員的財政司司長、財經事務及庫務局局長、財經事務及庫務局常任秘書長（庫務）或財經事務及庫務局副秘書長（庫務），或任何委員，可就擬列入財務委員會會議議程內的事項，向秘書作出預告〔議事規則第 9（2）條〕。有關議程項目的預告應在有關的委員會會議舉行最少 6 整天前送達秘書，但如主席另有指示，可給予較短時間的預告。惟委員就根據《公共財政條例》（第 2 章）作出決定的事宜而動議的議案，其預告時間不得少於 2 整天。擬提出的議案應以書面形式提交。」

及，香港法例第 2B 章《資本投資基金》立法局決議

「5.財政司司長可自基金支用款項—（1997 年第 362 號法律公告）

（b）以向獲財務委員會核准的人提供資金，作為貸款、墊款及投資（包括以寬免地價、捐贈工程或其他非現金利益的形式作出的投資）之用，但須按照財務委員會指明的條款及條件行事；或」；

我等特此就立法會文件編號 FCR(2017-18)1，議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，提出議案如下：

按《財務委員會會議程序》第 21 段及香港法例第 2B 章《資本投資基金》立法局決議第 5（b）項，就議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，財務委員會謹此指明，其撥款條件為：

政府須與迪士尼公司，就其每年收取的管理費及專利權費安排，進行磋商，將迪士尼公司收取專利權費和管理費的計算基礎，由原來與未扣除利息、稅項、折舊及攤銷前盈利（EBITDA）掛鈎，修訂為與扣除利息、稅項、折舊及攤銷後盈利掛鈎，以爭取特區政府在香港國際主題樂園有限公司的營運中，獲取最佳的長遠股東利益，保障公帑之投資及運用。

政府須在本議案通過後三個月內執行上述磋商，並於通過後六個月內公布此磋商結果，交公眾諮詢及交本委員會參詳。政府須完成此磋商及公布，方可動用新分目「注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃」之撥款。

請主席接納及處理。萬分感謝。

此致  
財委會主席陳健波議員

立法會議員朱凱迪  
立法會議員姚松炎  
立法會議員梁國雄  
謹啟

2017 年 4 月 18 日

敬啟者

就迪士尼樂園區第一期擴建項目投資撥款以財委會會議程序第 21 段提出議案（2）

按《財務委員會會議程序》第 21 段：

「作為香港特別行政區政府根據《基本法》第六十二（六）條委派的官員的財政司司長、財經事務及庫務局局長、財經事務及庫務局常任秘書長（庫務）或財經事務及庫務局副秘書長（庫務），或任何委員，可就擬列入財務委員會會議議程內的事項，向秘書作出預告〔議事規則第 9（2）條〕。有關議程項目的預告應在有關的委員會會議舉行最少 6 整天前送達秘書，但如主席另有指示，可給予較短時間的預告。惟委員就根據《公共財政條例》（第 2 章）作出決定的事宜而動議的議案，其預告時間不得少於 2 整天。擬提出的議案應以書面形式提交。」

及，香港法例第 2B 章《資本投資基金》立法局決議

「5.財政司司長可自基金支用款項—（1997 年第 362 號法律公告）

（b）以向獲財務委員會核准的人提供資金，作為貸款、墊款及投資（包括以寬免地價、捐贈工程或其他非現金利益的形式作出的投資）之用，但須按照財務委員會指明的條款及條件行事；或」；

我等特此就立法會文件編號 FCR(2017-18)1，議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司可以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，提出議案如下：

按《財務委員會會議程序》第 21 段及及香港法例第 2B 章《資本投資基金》立法局決議第 5（b）項，就議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司可以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，財務委員會謹此指明，其撥款條件為：

政府須與美國迪士尼公司重啟磋商，以期爭取修訂政府與香港國際主題樂園有限公司簽署之認購權契約（option deed），將 60 公頃迪士尼樂園區第二期預留土地未來之用途重新開放，並作公眾諮詢。

政府須在本議案通過後三個月內執行上述磋商，並於通過後六個月內公布此磋商結果，交公眾諮詢及交本委員會參詳。政府須完成此磋商及公布，方可動用新分目「注資香港國際主題樂園有限公司可以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃」之撥款。

請主席接納及處理。萬分感謝。

此致  
財委會主席陳健波議員

立法會議員朱凱迪  
立法會議員姚松炎  
立法會議員梁國雄  
謹啟

2017 年 4 月 18 日



財 經 事 務 及 庫 務 局  
( 庫 務 科 )



**FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
( The Treasury Branch )**

香港金鐘添美道二號  
政府總部二十四樓

24/F, Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

傳真號碼 Fax No. : 2530 5921  
電話號碼 Tel. No. : 2810 2668  
本函檔號 Our Ref. : TsyB LT 00/700-2/15 (2016-17)  
來函檔號 Your Ref. :

20 April 2017

Ms Anita SIT  
Clerk to the Finance Committee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Anita,

**Proposal from Hon CHU Hoi-dick, Hon YIU Chung-yim and  
Hon LEUNG Kwok-hung**

Thank you for the Secretariat's email of 19 April seeking the Government's view on the proposal raised by Hon CHU Hoi-dick, Hon YIU Chung-yim and Hon LEUNG Kwok-hung on 18 April 2017. Our response is set out at **Annex**.

Yours sincerely,

(Alfred ZHI)

for Secretary for Financial Services  
and the Treasury

**Government's Response to  
Motions proposed by Hon CHU Hoi-dick, Hon YIU Chung-yim and  
Hon LEUNG Kwok-hung on 18 April 2017**

**The Motions**

The Hon Chu Hoi-dick, the Hon Yiu Chung-yim and the Hon Leung Kwok-hung intend to move two motions (the two Motions) at **Enclosure 1**. Government's response is set out in the ensuing paragraphs.

**The two Motions are out of order**

2. Motion 1 proposes specifying conditions which require Government to hold discussion with The Walt Disney Company (TWDC) on the calculation of management fees and royalties charged by TWDC. The proposed conditions are not relevant to how the moneys from the Capital Investment Fund (as approved by the Finance Committee (FC)) may be expended by the Financial Secretary on the expansion and development plan at the Phase 1 site of the Hong Kong Disneyland Resort (HKDL).

3. Motion 2 proposes specifying conditions which require Government to hold discussion with TWDC on the release of the land reserved for Phase 2 development of HKDL (Phase 2 site) under the Option Deed. Likewise, the proposed conditions are not relevant to how the moneys from the Capital Investment Fund (as approved by the FC) may be expended by the Financial Secretary on the expansion and development plan at the Phase 1 site of HKDL.

4. As such, the two Motions fall outside the scope of paragraph 5(b) of Cap. 2B. The two Motions should not be included in the agenda of the FC meetings for being out of order.

**Basis of the two Motions is factually incorrect**

5. Motion 1 requires Government to hold discussion with TWDC on the arrangements of royalties and management fees payable by the Hongkong International Theme Parks Limited (HKITP) every year, so that the calculation basis can be changed from the existing arrangements of linking the royalties and management fees with earnings before interest, tax, depreciation and amortisation (EBITDA) to linking them with earnings after interest, tax, depreciation and amortisation. As the royalties payable by HKITP are linked with revenues but not EBITDA, the basis of Motion 1 is factually incorrect.

6. Motion 2 requires Government to hold discussion with TWDC with a view to amending the Option Deed entered into between Government and HKITP, so that the Phase 2 site can be released for alternative uses.

7. However, the specific land use of the Phase 2 site is restricted by the Deed of Restrictive Covenant entered into between Government and HKITP instead of the Option Deed. The Option Deed does not impose restriction on the land use of the Phase 2 site. As such, the basis of Motion 2 is also factually incorrect.

**Content of the two Motions is not directly relevant to the funding proposal**

8. Motion 1 is on the arrangements of royalties and management fees payable by HKITP. HKITP needs to pay royalties and management fees regardless of whether there is the proposed expansion and development plan. Furthermore, the \$10.9 billion cost estimate of the expansion and development plan does not involve any royalties and management fees. Hence, Motion 1 is not directly relevant to the proposed financial arrangements in the funding proposal.

9. Motion 2 is on the land use of the Phase 2 site. As the proposed expansion and development plan is within the Phase 1 site of HKDL, Motion 2 is not directly relevant to the proposed financial arrangements in the funding proposal.

### **Conclusion**

10. Government considers that the conditions proposed in the two Motions fall outside the scope of paragraph 5(b) of Cap. 2B. The basis of the two Motions is factually incorrect and their content is not directly relevant to the agenda item. Therefore, the two Motions should not be included in the agenda of the FC meetings.

**Financial Services and the Treasury Bureau**

**April 2017**

### 議案一

按《財務委員會會議程序》第 21 段及香港法例第 2B 章《資本投資基金》立法局決議第 5 (b) 項，就議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，財務委員會謹此指明，其撥款條件為：

政府須與迪士尼公司，就其每年收取的管理費及專利權費安排，進行磋商，將迪士尼公司收取專利權費和管理費的計算基礎，由原來與未扣除利息、稅項、折舊及攤銷前盈利 (EBITDA) 掛鈎，修訂為與扣除利息、稅項、折舊及攤銷後盈利掛鈎，以爭取特區政府在香港國際主題樂園有限公司的營運中，獲取最佳的長遠股東利益，保障公帑之投資及運用。

政府須在本議案通過後三個月內執行上述磋商，並於通過後六個月內公布此磋商結果，交公眾諮詢及交本委員會參詳。政府須完成此磋商及公布，方可動用新分目「注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃」之撥款。

### 議案二

按《財務委員會會議程序》第 21 段及香港法例第 2B 章《資本投資基金》立法局決議第 5 (b) 項，就議程項目「資本投資基金·總目 973 旅遊業·新分目『注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃』」，財務委員會謹此指明，其撥款條件為：

政府須與美國迪士尼公司重啟磋商，以期爭取修訂政府與香港國際主題樂園有限公司簽署之認購權契約 (option deed)，將 60 公頃迪士尼樂園區第二期預留土地未來之用途重新開放，並作公眾諮詢。

政府須在本議案通過後三個月內執行上述磋商，並於通過後六個月內公布此磋商結果，交公眾諮詢及交本委員會參詳。政府須完成此磋商及公布，方可動用新分目「注資香港國際主題樂園有限公司以在香港迪士尼樂園度假區第一期用地推展擴建及發展計劃」之撥款。

敬啟者

關於：回覆政府就本人與梁國雄議員及姚松炎議員  
早前按《財務委員會會議程序》第 21 段提交的兩項議案之意見

如題。謹回覆如下：

(一) 懇切希望財委會主席及協助主席的法律顧問能關注到的事宜

1. 在正式回應政府意見前，本人希望再次清楚表達，本人認為陳健波主席閣下在裁決是否接納議案前，向政府徵詢意見，是不恰當的做法，有欠謹慎。整體而言，議案的實質討論固然可徵詢政府，應徵詢政府，但主席是否接納議員議案，即便議案內容關係到政府，仍屬本會內部事宜；而在內部事宜上先行徵詢政府意見，是對議會自主的具體傷害與嚴峻挑戰。

因陳健波主席的角色十分重要，閣下（徵詢政府）之決定不是個人名義之決定，亦即議會之決定，不宜輕率，還望權衡再三。

2. 按本人理解，處理《財務委員會會議程序》第 21 段議案，在過去數屆立法會，未曾發生。故主席決定先行徵詢政府意見一事，其實無先例可考，亦無法以「行之有效」解釋。

3. 《基本法》第 73 條，述及立法會的十項職能與憲制責任。第（二）、（三）、（四）、（五）、（九）項，皆為監察政府之工作。政府既為立法會監察對象，就並非純粹的「持份者」，角色上與立法會明顯存在微妙的衝突關係，在絕大部分情況下，立法會主席、內會主席、財委會主席及事務委員會主席，均應避免政府直接介入本會內部事宜之討論——這是上述憲法上的職能，得以體現的關鍵前提。懇請主席在裁決前，充分察悉這點。

4. 三權分立乃普通法的內在假設。在三權分立下，即使司法機關，亦時刻警惕，不輕言介入立法機關事宜；行政機關介入議會事宜，更是禁忌。立法機關的獨立性，可見諸多情況：例如警察不能擅進立法會大樓，若要進入，必須立法會主席／行管會主席要求；又如市民司法覆核立法機關決定的門檻，高於司法覆核行政機關決定的門檻。凡此種種，皆在在說明，容讓行政機關介入本會內部事宜，務須極其謹慎，可免則免。這不但關係到議會的抽象尊嚴，亦關係到整個社會的整體政治分工，此一分工乃程序正義之基石。無論如何，亦懇請主席在裁決前，充分察悉這點。

5. 政府按《議事規則》及《會議程序》，向本會各委員會提出議程，主席考慮是否接納及如何安排前，其實不會徵詢議員意見。現在，議員按《議事規則》及《會議程序》，提出議案，主席卻先徵詢政府意見，才考慮是否接納。兩者相較，似有兩套標準，令本人覺得，未盡公平。查本會秘書及法律顧問，皆資深優秀，主席決定是否接納議員議案時，實不必向政府求助。

6. 目前政府提供之法律意見極短，背後理據，未有鋪陳。然而「誰主張，誰舉證」，乃舉證責任分配的一般原則。何謂相關，何謂不相關，當中定義，政府須有明確說明，並附理據、佐證、典故。沒有舉證細節的意見，主席閣下實不宜採納（下文會再簡單申論）。

7. 無先例可援時，主席應採保守立場。在目前議案例子中，保守立場並非阻止先例發生，而是採取中立立場。須知道，不接納合理的議員議案的實質意義，等如褫奪財委會行駛《公共財政條例》賦予之法定權力。相對下，接納議案，亦不見得等如冒進。懇請主席察悉。

## （二）政府論點簡述

8. 政府意見主要環繞以下三點：

（a）兩議案之條款與條件跟撥款項目不相關，故不屬第 2B 章 5b 範圍；

（b）兩議案的事實基礎不正確；

（c）議案與撥款項目不相關。

## （三）本人回應

9. 本人對政府意見（a）點之回應：

（i）政府只說「條款與條件」跟撥款項目「不相關」，卻無詳細解釋為何不相關。

（ii）政府只在信件中提出，條件及條款需要與如何支用款項有關，但卻無定義「相關」的條款及條件範圍，即，政府無法提出按何法例，或按《議事規則》或《會議程序》何章何節，論證何謂「相關」的條款及條件。

（iii）本人同意，條款及條件亦有限制（limits）。

（iv）本人認為，條款及條件只要同時符合以下三種情況，即屬「相關」。  
一，條款及條件須合法合憲；二，條款及條件須為政府有能力做到的事情；三，條款及條件需與迪士尼樂園度假區項目相關。

（v）本人認為，政府對「條款及條件」的定義一旦過於狹窄，而主席又接受的話，就會強行矮化了《公共財政條例》賦予財委會之法定權力。這是十分嚴重的危機，絕非公眾樂見，主席務須察悉與警惕。

（vi）本人認為，大部分情況下，社會對「條款及條件」的相關性，有一定彈性。例如，房屋與環境看似兩個範疇，房屋工程皆須確認環境成本與責任的承擔——這種承擔不必等如如何支用工程款額。類似例子俯拾即是。

（vii）管理費計算方法，不但影響現有園區的營運回報，亦影響第一期擴建工

務工程帶來的回報。華特迪士尼公司所取得的管理費越高，香港國際主題樂園有限公司因第一期擴建工務工程帶來的回報就越低，即政府注資的回報就越低。箇中關係極其清楚。

(viii) 眾所周知，社會普遍關注，政府會否把過多公共資源投入迪士尼項目。

因公共資源有限，部分公眾及議員認為，必須減少現有對迪士尼之公共資源投放（取回二期土地認購權），才可增加其他對迪士尼之公共資源投放（一期擴建工務注資）。箇中關係極其密切，亦甚清楚。

10. 本人對政府意見（c）點之回應：

(i) 本人回應，與第 9 點類同。

(ii) 就何謂相關議案，政府著墨更少。「不相關」的舉證責任在於政府。

(iii) 撥款建議正文只有寥寥百字，何謂相關，何謂不相關，政府與議員，必然有一定政治分歧。

財委會主席於處理議案時，必須公正對待這種政治分歧，容納這種政治分歧。這才是唯一保守、穩當、合理和客觀的處理方法。

(iv) 本人必須指出，兩個議案內容，並非本人與梁國雄議員及姚松炎議員憑空虛擬，而是其來有自，反映項目討論過程中，多位議員的共同關注。

(v) 本人必須指出，在經濟發展事務委員會數次會議，及財務委員會兩次會議中，多位議員，不同黨派，其發言及議案，皆圍繞管理費計算方法，及《認購權契約》。顯然，普遍議員意見，認為管理費計算方法及二期土地認購權，與是次撥款關係密切。

11. 本人對政府意見（b）點之回應：

(i) 政府對議案一事實基礎的意見，為正確意見。

該議案觀點，來自 2 月 27 日經濟事務委員會田北辰議員及周浩鼎議員之議案。本人與梁國雄議員及姚松炎議員，嘗試精簡原議案時，未夠小心，導致現時錯誤，實屬手民之誤（slippery error）。懇請主席於訂正後酌情接納。

(ii) 政府對議案二事實基礎的意見，有合理之處，但並不準確。

政府指出，限制土地用途的文件為《限制公契》，而非《認購權契約》，後者只限制認購權。

然而，本人必須指出，兩者同時限制土地用途。

因《認購權契約》之核心內容，即表一（SCHEDULE I）之 28 億特惠地價，其



特惠的前提，是迪士尼必須利用該土地來發展第二期主題樂園。若發展作其他設施，則不會是特惠地價。

即《認購權契約》中限制或保障的認購權，有土地用途上的前設。

簡言之，要釋放該塊土地之用途，有多個條件，不但包括改變《認購權契約》及《限制公契》，亦須修訂分區計劃大綱圖 S/I-NEL/12 的細節。

然而，議案二原文中，並沒有指改變《認購權契約》為釋放二期土地用途的唯一條件，只是述及改變《認購權契約》為釋放二期土地用途的重要條件。

若主席或秘書為議案二稍作潤飾，修辭可以更準確，歧義容或更小。然而，議案二在事實基礎上，並無錯誤。

#### (四) 結論

12. 懇請主席公允及審慎處理，接納兩項議案。感謝。

此致  
財委會主席陳健波議員

立法會議員朱凱迪謹啟

2017年4月22日