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本署檔號 Our Ref: (18) in LDC 1/4/5060/16 Pt. 4  
來函檔號 Your Ref: CB4/PAC/R68

來函請註明本署檔號  
*Please quote our reference in your reply*

我們矢志努力不懈，提供盡善盡美的土地行政服務。  
We strive to achieve excellence in land administration.

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**By Fax & Email**  
(Fax No. 2543 9197)

25 May 2017

Clerk, Public Accounts Committee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn : Mr. Anthony CHU)

Dear Mr. CHU,

### **Public Accounts Committee**

### **Consideration of Chapter 1 of the Director of Audit's Report No. 68**

### **Government's support and monitoring of charities**

I refer to your letter of 24 May 2017 and enclose the requested protocol delineating sharing of responsibilities between Lands Department and Bureaux/departments which support various types of private treaty grants, as promulgated by LandsD in July 2014 for reference.

Please note that the above document is only available in English.  
Besides, soft copy of the document (in Microsoft Word format) is not available.

Yours sincerely,



(Ms Sophia CHIANG)  
for Director of Lands

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)  
Commissioner of Inland Revenue (fax no. 2877 1082)  
Secretary for Home Affairs (fax no. 2591 5536)  
Director of Social Welfare (fax no. 2891 7219)  
Registrar of Companies (fax no. 2868 5384)  
Commissioner of Police (fax no. 2866 2579)  
Secretary for Education (fax no. 2810 7235)  
Director of Audit (fax no. 2583 9063)

Secretary for Development (fax no. 2147 3691)

- enclosed also the incoming letter of 24.5.2017 from the Clerk, PAC

**Protocol on Responsibility-sharing in Private Treaty Grants**

	Key Steps	Responsible party *	Remarks
(A)	<b><u>Application for a site:</u></b>		
1	Policy support for the direct grant of land to applicant or consideration of competitive bids where made for the same site, taking into account the applicant's financial capability to complete the development	Policy bureau overseeing the proposed operations / services to be provided by the applicant at the proposed PTG site (Supporting policy bureau)	<ul style="list-style-type: none"> <li>● Where there is existing policy for LandsD to make direct grant for the PTG under application, the supporting policy bureau to consider whether to give policy support to the applicant or not and consider any competing bid (if received) for a site. Where different policy bureaux give support to different applicants, the Development Bureau as the housekeeping bureau of LandsD will be requested to sort out with the bureaux on the way forward or to escalate the competing bids to higher authorities, if appropriate.</li> <li>● Where there is no existing policy for LandsD to make direct grant for the PTG (or on the terms proposed), the supporting policy bureau to take up Key Step 7.</li> <li>● Where all aspects of an application are considered acceptable but an applicant needs time to secure sufficient funding to prove his financial capability, LandsD may allow reservation of the site in favour of the applicant for a limited period (e.g.</li> </ul>

	Key Steps	Responsible party *	Remarks
			of not more than 3 years in the case of PTGs for religious purposes) with the support of the supporting policy bureau.
2	Identifying sites, securing approval under the planning regime and local consultation	Supporting policy bureau, its executive department, in conjunction with the project proponent or prospective grantee and assisted by PlanD if necessary.	Where sites have not been identified for the proposal, the project proponent or applicant and policy bureau may request Planning Department to conduct a site search pursuant to HPLB General Circular no. 1/2004. Plan D would help identify the site and work with the supporting policy bureau, its executive department and prospective grantee in pursuing optimum utilization of the site and go through the planning process as required.
3	Considering the premium for the PTG – whether nominal, concessionary or full market premium should be charged	Supporting policy bureau	The general policy is to adopt full market premium, except where there is a policy for nominal or concessionary premium as endorsed by ExCo (individual cases may be approved by LandsD under authority delegated by ExCo). If not and the supporting bureau or its executive department recommends nominal or concessionary premium, the supporting bureau should make a submission to ExCo to get policy approval for applying such a policy to a particular type of PTGs or such an arrangement to a particular case of PTG in question.
4	Preparation of draft lease	LandsD	

	Key Steps	Responsible party *	Remarks
	<p>conditions for circulation, if the site is suitable and accords with the town planning intention. Thereafter, liaison among relevant parties with a view to consolidating lease conditions for making a recommendation to the District Lands Conference.</p>		
5	<p>Advising on the lease conditions relevant to the proposed use and development from the policy angle and ascertaining that the policy objectives pursuant to ExCo decision/prevalent policies (where applicable) in granting the specific kind of PTG are implemented through the land lease/other forms of agreement to be entered into between the supporting policy bureau (or its executive department) and the</p>	<p>Supporting policy bureau and its executive department</p>	<p>In particular, supporting policy bureau and its executive department should advise on lease conditions specific to the operation/services to be provided, e.g. types and scope of essential services/facilities to be provided, permissible ancillary facilities, the commence-to-operate period etc.</p> <p>Generally, supporting policy bureau and its executive department would have to attend District Lands Conference for discussion on the proposed PTG, save for straight-forward cases where written support and comments have been provided.</p> <p>The supporting policy bureau and its executive department to prepare separate agreement(s) outside of the PTG as appropriate</p>



	Key Steps	Responsible party *	Remarks
	applicant/grantee as appropriate		to govern aspects of the services/operation which should more appropriately be regulated outside the context of the land lease.
6	Approval of PTG and the lease conditions, if the authority to approve PTG of that nature has been delegated to a bureau/department	LandsD or the bureau/department to which the authority has been delegated.	Where the authority to approve PTG has been delegated to another authority other than the LandsD, LandsD would approach the relevant authority for approval on the extent/scope of the support after the draft lease conditions have been endorsed by LandsD.
7	Drafting and submission to ExCo, if required	Supporting policy bureau and its executive department	<p>Required where the authority to approve the PTG in question has not been delegated (e.g. to LandsD). The ExCo submission will include key basic terms of the proposed PTG as endorsed by DLC but with recommendation that LandsD be delegated authority to amend the terms that will not be inconsistent with the spirit of the PTG as approved by ExCo.</p> <p>Where delegated authority exists for other government officials/Director of Lands to approve the PTG, the supporting policy bureau should advise the source of the delegated authority, i.e. the relevant ExCo paper/decision under which the authority has been delegated.</p>

	<b>Key Steps</b>	<b>Responsible party *</b>	<b>Remarks</b>
8	Offer, acceptance of terms including land premium and completion of land grants	LandsD	Lands D will issue a letter to the grantee advising him of the relevant authority for receiving submission and granting of approval under respective lease conditions.
9	Completion of other agreement(s) with the applicant, e.g. service agreement, funding agreement, loan agreement if appropriate	Relevant B/D in conjunction with DoJ	The other agreement(s) may be coterminous with the land lease
<b>(B)</b>	<b><u>Development phase (after execution of the land grant):</u></b>		
10	Consideration of development proposals	LandsD in consultation with relevant departments	LandsD will circulate to relevant B/D as necessary and give approval under the lease taking into account B/Ds' advice/comments
		Supporting policy bureau and/or its executive department	Comment on the development proposals where required
11	Checking completion of development and commencement of operation to the satisfaction of	LandsD seeking advice from the supporting policy bureau or its	The relevant authority to confirm with LandsD that the development has fulfilled the "commence-to-operate" clause under the lease. Where it has not been fulfilled, LandsD to

	Key Steps	Responsible party *	Remarks
	the relevant authority	executive department.	consider, in consultation with the relevant authority, if the date should be extended or lease enforcement actions should be taken.
(C)	<b><u>Monitoring and enforcement of lease conditions throughout lease term</u></b>		
12	Consideration of application/proposal from grantee regarding operations/services requiring Government's approval under lease conditions	Normally LandsD as specified under the lease, acting on the advice of the supporting policy bureau or its executive department. Where the authority has been delegated by LandsD to the B/D concerned, the B/D will approve while keeping LandsD informed.	<ul style="list-style-type: none"> <li>● Examples include ancillary users to the main use requiring approval under the lease.</li> <li>● As a good practice, the supporting policy bureau or its executive department should draw up guidelines on operations/services that may/may not be approved under lease for the same type of PTGs.</li> </ul>
13	Consideration of application/proposal from grantee	LandsD on the advice of the supporting	



	<b>Key Steps</b>	<b>Responsible party *</b>	<b>Remarks</b>
	regarding departure from the alienation restriction under the lease	policy bureau	
14	Monitoring or control over operations/services to the satisfaction of Government	The relevant authority, generally the supporting policy bureau or its executive department.	<p>Examples include :</p> <ul style="list-style-type: none"> <li>● User</li> <li>● Type of building</li> <li>● Standard of conduct</li> <li>● Continuous operation to a scale to the satisfaction of Government after commencement of operation</li> <li>● Submission of accounts and scrutiny</li> <li>● Non-distribution of profits</li> </ul> <p>LandsD to provide advice on interpretation of lease conditions.</p>
15	Monitoring of other development conditions and engineering conditions	LandsD, in consultation with relevant expert departments	Examples include green area formation, development conditions, preservation of trees, landscaping, parking requirements, vehicular access, green-hatched black area, set back, cutting away, spoil or debris, no rock-crushing, anchor maintenance, damage to services, constructing drains and sewers etc.

	Key Steps	Responsible party *	Remarks
16	Enforcement against breaches of lease conditions	<p>LandsD, in consultation with the supporting policy bureau or its executive department over clauses regarding operation/service aspects under their purview</p> <p>LandsD in conjunction with other expert departments over other clauses</p>	<ul style="list-style-type: none"> <li>● For breaches involving operation/services aspects for which the supporting bureau or its executive department is the leading monitoring party, the monitoring party to investigate, liaise with the grantee with a view to purging of breach or rectification or seeking redress from the grantee. Formal warning letters and legal enforcement actions including taking legal proceedings will be issued by LandsD upon agreeing the courses of actions with the monitoring party.</li> <li>● LandsD will provide advice on lease conditions and take the lead in exploring with the relevant supporting policy bureau/departments appropriate remedies such as damages or re-entry action (only as a last resort in extreme cases). The relevant authority (the policy B/D or other appointed by the B/D) to prepare for taking over the site upon re-entry if such is to be instigated.</li> </ul>
17	Consideration of lease modification/land exchange/waiver application	LandsD in consultation with the supporting policy bureau and its executive department	<ul style="list-style-type: none"> <li>● Similar sharing of responsibilities as per (A) in preparing lease conditions, providing policy support, submission to ExCo if necessary.</li> <li>● LandsD will consult Development Bureau on general land</li> </ul>

	Key Steps	Responsible party *	Remarks
			<p>policy issues if necessary.</p> <ul style="list-style-type: none"> <li>● For a proposed change of user of a PTG, the original supporting policy bureau has to consider release of the site for other uses. LandsD may approve the modification under delegated authority, if applicable. Otherwise, ExCo submission under the lead of the supporting policy bureau for the new user will be required.</li> </ul>
<b>(D)</b>	<b><u>Monitoring and enforcement of conditions in other forms of agreement than the land lease</u></b>		
18	Conditions in other agreement, e.g. service agreement, funding agreement, loan agreement, deed of undertaking	Relevant B/D under the agreement	<ul style="list-style-type: none"> <li>● Legal advice on the Agreement to be sought from DoJ</li> <li>● The relevant B/D under the agreement to consult LandsD as necessary (e.g. on any premium implication) and alert LandsD if the agreement is to be terminated and there being a coterminous provision with the land lease.</li> </ul>

**Note** :\* “Responsible party” here means the leading party. Where the B/D is the leading party, Lands D will advise the leading party on general practices having regard to arrangements for other PTGs and practices in land administration.

## Appendix

### Common Types of PTGs and the corresponding Supporting Bureau/Department:

Type of PTGs	Supporting Bureau	Supporting Department
Subsidized primary school Subsidized secondary school Non-profit making private school Non-profit making kindergarten (N.T. only) Tertiary educational institutions Other educational institutions, industrial operative training (including VTC, Construction Industry Training Authority)	EDB	EDB
Clothing Industry Training Authority	LWB	
Social welfare facilities (including those commercial facilities run on a non-profit making basis)  Home for the aged	LWB	SWD
Community centre/ hall  Kaifong premises	HAB	HAD
Churches/chapels	HAB	-
Temples	HAB	HAD
Places of worship (to be incorporated with social service facilities)  Priest's/supervisor's accommodation service building	HAB LWB	HAD SWD
Private recreational lease	HAB	HAD DAFC (where country parks are involved)
Hospital / clinic	FHB	Dept of Health



Type of PTGs	Supporting Bureau	Supporting Department
Public housing Home Ownership Scheme Hong Kong Housing Society's (HKHS's) Rental Housing Estates HKHS's Senior Citizen Scheme HKHS's Flat-for-sale Scheme/other subsidized sale flats HKHS's Sandwich Class Housing Scheme HKHS's Small Rural Public Housing Estates	THB	Housing Dept
PTGs granted to URA for purposes other than redevelopment	DevB	-
Society for the Prevention of Cruelty to Animals	FHB	DAFC
Gas installations under the Gas Safety Ordinance	ENB	DEMS
Selected industries	CEDB	
Telecommunications installations Radio paging system	SB	OFCA
Bus station/terminus	THB	TD
Railway-related land grants without granting property development rights to rail operators	THB	TD + HyD
Railway projects land grants with property development rights granted to rail operators under Railway plus property model	THB	TD + HyD
Container terminals and river trade terminals	THB	-