

# 立法會

## *Legislative Council*

LC Paper No. CB(4)1366/20-21

Ref. : CB4/BC/7/20

### **Report of the Bills Committee on Ocean Park Corporation (Amendment) Bill 2021**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on Ocean Park Corporation (Amendment) Bill 2021 ("the Bills Committee").

#### **Background**

2. Ocean Park ("OP") was established in 1977. Under the Ocean Park Corporation Ordinance (Cap. 388), OP is managed by the Ocean Park Corporation ("OPC") as a public recreational and educational park. OPC is required to apply all its profits towards the promotion of its statutory functions. With intensifying regional competition and the lack of new major attractions since completion of its last major redevelopment in 2012, OP is in need of repositioning. Meanwhile, the Coronavirus Disease 2019 pandemic, which has hit Hong Kong since late January 2020, has given rise to new circumstances which cast doubts on the commercial viability of OP pursuing a conventional development model of theme parks.

3. Against this background, the Administration together with OPC have drawn up a future strategy for OP comprising a new vision, a number of major new initiatives, and a new mode of operation for OP ("the Strategy"). Details of the Strategy are set out in Annex B to the Legislative Council Brief (File Ref.:TC CR T2 22/40/3/3). Under the Strategy, OP will be transformed into a travel destination and leisure zone with a focus on conservation and education, grounded in nature and complemented by adventure and entertainments to enhance the visitor experience.

4. The financial arrangements for supporting the implementation of the Strategy comprise three parts, namely (a) a non-recurrent funding support of

\$1,664 million for OPC, (b) restructuring of Government loans provided to OPC, and (c) a time-limited subvention of not more than \$280 million per year for OPC for four financial years between 2022-2023 and 2025-2026. The Government obtained the approval of the Finance Committee ("FC") on (a) and (b) above on 19 March 2021, while the financial requirements for (c) above will be reflected in the Estimates of the fiscal years concerned. The current legislative amendment exercise is the next step for enabling OPC to take forward the Strategy.

## **The Bill**

5. The Bill was published in the Gazette on 18 June 2021 and received its First Reading at the Council meeting of 23 June 2021. Key amendments proposed in the Bill are as follows:

- (a) expand and expressly state the functions of OPC to include conservation in addition to recreation and education, and empower OPC to carry out functions relating to recreation, education or conservation outside OP;
- (b) expressly empower OPC to enter into a contract or an arrangement with any other person in relation to the performance of its functions so as to enable OPC to outsource part of OP's operation;
- (c) streamline the relevant approval process relating to the use of part of the Ocean Park Trust Fund ("the Trust Fund") by OPC for taking forward its functions; and
- (d) repeal the Ocean Park Bylaw (Cap. 388B) in order to cater for the new mode of operation of OP.

## **The Bills Committee**

6. At the House Committee meeting on 25 June 2021, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix**. Under the chairmanship of Hon Jimmy NG Wing-ka, the Bills Committee held one meeting on 12 July 2021 to deliberate on the details of the Bill with the Administration. The Bills Committee has invited the public to provide written views on the Bill, and has not received written submissions on the Bill.

## **Deliberations of the Bills Committee**

7. Members of the Bills Committee in general support the Bill. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

### Expansion of OPC's functions

#### *Meaning of "conservation"*

8. The Bill expands and expressly states the functions of OPC to include conservation in addition to recreation and education, and empowers OPC to carry out functions relating to recreation, education or conservation outside OP. The Bills Committee has looked into whether such inclusion will give rise to subsequent judicial reviews, particularly when OPC performs certain acts, e.g. demolishing aging facilities or cutting trees in the park, which some might construe as going against OPC's function on conservation. To avoid future disputes or litigation, a member suggests that the Administration should consider defining the meaning of "conservation" in the Bill by making reference to other legislation.

9. The Administration advises that while conservation is an important aspect of OPC's work in providing recreation and education since its establishment in 1987, it is not explicitly provided for in Cap. 388. To put it beyond doubt that conservation is a major focus of OPC under the Strategy, the functions of OPC are amended to include "conservation" in addition to recreation and education. After considering the context of and the provisions in Cap. 388 and making reference that the same term in other relevant legislation has not been defined, the Administration holds the view that it is not necessary to define the term "conservation" in Cap. 388 as the term should be interpreted based on its ordinary and natural meaning, and such meaning should be applied in the context of Cap. 388. This will give OPC more flexibility in undertaking its conservation work according to the prevailing circumstances. Furthermore, as OPC at present has already been undertaking various conservation work, the public has considerable understanding of OPC's work and function relating to conservation, and there is a general consensus on specifying "conservation" as a function of OPC. As Cap. 388 currently also does not define the two functions of OPC, i.e. "recreation" and "education", it will not be appropriate to define "conservation" alone.

#### *Carrying out functions and activities outside OP or Hong Kong*

10. The Bill provides that OPC is empowered to carry out functions and activities relating to recreation, education or conservation outside OP or even

Hong Kong. Some members have enquired about the rationale for such empowerment, the OPC's plans as well as the projected income so arise. Although members consider it appropriate for OPC to steer away from the conventional development model of theme parks and re-orient its development focus to conservation and education, some members opine that OPC should place more emphasis on improving its local business and financial position at this stage, instead of distracting from carrying out functions and activities outside Hong Kong.

11. The Administration advises that the current priority of OPC is to change the positioning and mode of operation of OP to achieve financial sustainability and that OPC has no concrete plans at present for carrying out its functions outside Hong Kong. The proposed empowerment aims to provide flexibility, thereby enabling OPC to seize opportunities at appropriate juncture in the long run. Under the Strategy, OPC will promote conservation and education to the wider community and provide holistic leisure experiences within or beyond OP's physical boundary, whether in or outside Hong Kong. For instance, OPC may host educational programmes at schools, develop marine tourism, collaborate with conservational institutions to hold conservation-themed activities, as well as organize conservation-themed study tours to the Guangdong-Hong Kong-Macao Greater Bay Area and other parts of the world. In addition, OPC may provide advisory services in or outside Hong Kong by harnessing its expertise and experience in the relevant areas, such as animal care and operation of attractions. This will help OPC accumulate experience for further improvement and provide an additional income source for OPC to strengthen its financial position.

#### Outsourcing arrangements under the Strategy

12. As set out in the Strategy, to enable OPC to focus on conservation and education while ensuring that OP would provide a unique leisure and entertainment experience for its visitors, there is a need for OPC to adopt a new mode of operation. Specifically, while OPC will continue to take charge and operate OP's conservation and education related facilities, OPC will outsource the Retail, Dining and Entertainment ("RDE") zone in the lower park to private developer(s) under a long-term concession. In gist, the developer(s) will be responsible for the planning, design, construction, management, maintenance, marketing and leasing of the RDE facilities as well as the related facilities therein. Similarly, OPC may outsource parts of its upper park to outside operator(s) for developing and operating the adventure and wellness zones. OPC may also authorize other educational institutions to run its franchised educational modules or contract out the operation of marine eco-tours to other non-governmental organizations.

13. Members are concerned about the financial position of OPC in the short, medium and long term which will rely greatly on the effectiveness of and income generated from the outsourcing arrangements under the Strategy and the operation of Water World which is a year-round and all-weather seaside water park yet to be opened. To ensure that the future operation of OP can achieve self-sustainability without requiring further funding from the Government, some members have enquired about the new business plans of OPC and the projected income to be received from different revenue streams, including outsourcing OP's facilities and donations.

14. The Administration advises that income to be received by OPC from the outsourcing arrangements will depend on the result of the tendering exercise. According to the present work plan and subject to the passage of the Bill, OPC targets to launch the tendering exercise for outsourcing by the end of 2021, with the first upfront payment to be received in financial year 2022-2023. Subject to the development plan(s) of the private developer(s), OPC expects the new RDE zone to commence operation in financial year 2026-2027 and OPC will start receiving the rent/revenue share derived by then. Meanwhile, OPC will be provided with a time-limited subvention of not more than \$280 million per year for its conservation and education initiatives for four financial years between 2022-2023 and 2025-2026 to tide over its financial need in the short to medium term. In addition, OPC is striving to control cost and open up more sources of revenue. As OPC has no concrete plans to undertake a major campaign for soliciting donations, relevant revenue projection is not available at this stage.

15. While some members urge OPC to expedite the outsourcing arrangements so as to help alleviate its financial burden, some other members however consider it too optimistic to expect OPC to improve its financial position in the near term by outsourcing OP's facilities. A member has cast doubts on the chance for OPC to engage private investors under the long-term concession arrangement, and enquired about the contingency plan of OPC in case the tendering exercise is unsuccessful or the engaged developers/operators fail to sustain their operation in the long term.

16. The Administration advises that it conducted some market sounding in the course of formulating the Strategy and there were market interests. OPC has further engaged potential investors after obtaining FC's approval in March 2021 and conducted several road shows to explain to potential commercial partners the outsourcing proposal in greater detail. It is envisaged that there will be interested parties taking part in the forthcoming tendering exercise. Meanwhile, OPC is preparing a pre-qualification document to gather

detailed suggestions from the market on the proposed operation mode and the rent/revenue sharing mechanism under the outsourcing arrangements.

#### Application of the Trust Fund

17. The Trust Fund was established on 1 July 1987 consisting of a donation of \$200 million mainly to support capital expenditure of development projects in OP. All donations received by OPC should be credited to the Trust Fund. Currently, the Trust Fund has a balance of \$93 million. OPC may apply the Trust Fund for, among others, the promotion of its functions in accordance with the stipulations in Cap. 388 and approval of the Chief Executive in Council ("CE in C") will be required if the principal money is applied for purposes other than capital expenditure of development projects.

18. The Bills Committee is informed that since the establishment of the Trust Fund, OPC has not received any donations. Nevertheless, with OPC reorienting its focus to conservation and education under the Strategy, it is anticipated that the new focus will help bring in donations for supporting OPC's work in the two areas. It is envisaged that there would be more occasions where the moneys in the Trust Fund would be used for purposes other than capital expenditure of development projects. In considering that the nature of cases involved will be rather straightforward without involving any major policy decisions, the Administration has proposed that the approving authority for the application of the Trust Fund by OPC for the promotion of certain functions other than capital expenditure of development projects of OP should be changed from CE in C to the Secretary for Commerce and Economic Development. The devolving arrangement will streamline the approval process while ensuring appropriate oversight of proper use of the Trust Fund. The Bills Committee also notes that OPC at the moment has no specific plans to use the moneys in the Trust Fund for purposes other than capital expenditure of development projects.

#### Repeal of Cap. 388B

19. Cap. 388B provides for the management of facilities in OP and control of conduct of visitors in OP by OPC as the sole operator. Contravention of a provision of Cap. 388B is an offence. Noting that the Bill seeks to repeal Cap. 388B which confers upon OPC the power to take various enforcement actions against suspected contraventions, members have enquired about the ways to regulate conduct of visitors after the repeal of Cap. 388B.

20. The Administration advises that under the new mixed mode of operation, Cap. 388B will create confusion as to which party (i.e. OPC or the developers or operators) will have the responsibility and authority for enforcement.

Indeed, OPC has rarely resorted to enforcement actions under Cap. 388B since the vast majority of contraventions or suspected contraventions were dealt with by management means or persuasion in the past. After the repeal of Cap. 388B, conduct of visitors in OP will continue to be regulated through management means or persuasion as well as other applicable laws. OPC, as the owner of OP, will coordinate with any future developers or operators and may set up a management committee to ensure consistency in management and regulation of conduct throughout OP.

#### Welfare of OPC's staff and animals

21. As some of OP's facilities will be outsourced under the implementation of the Strategy, some members are concerned about the welfare of OPC's staff and animals under the outsourcing arrangements. They call on OPC to avoid redundancy and preserve jobs for its employees, in particular the junior level staff and frontline workers. They also urge OPC to devise measures to avoid sub-contracting of services and false self-employment under the outsourcing arrangements to eradicate exploitation of employees.

22. The Administration advises that the number of staff directly employed by OPC will inevitably decrease as a result of the outsourcing arrangements. OPC will consider the detailed arrangements for outsourcing including the manpower resources in a comprehensive manner. To reduce the impact on OPC's existing staff, the entire transformation process of OP will be carried out gradually in a few years. Measures such as hiring freezes will be adopted and OPC will encourage its future operating partners to give priority to hiring existing OPC employees. OPC is conducting an animal audit to examine the arrangement for OP's animals under the Strategy and will consider donating the animals that will not be kept in future to other organisations in or outside Hong Kong as appropriate. OPC will pay close attention to the welfare of its animals.

#### **Resumption of Second Reading debate**

23. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 25 August 2021. The Administration and the Bills Committee will not propose any amendments to the Bill.

## **Consultation with the House Committee**

24. The Bills Committee reported its deliberations to the House Committee on 13 August 2021.

Council Business Division 4  
Legislative Council Secretariat  
17 August 2021



**Bills Committee on Ocean Park Corporation (Amendment) Bill 2021**

**Membership list**

**Chairman** Hon Jimmy NG Wing-ka, BBS, JP

**Members** Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon YIU Si-wing, SBS  
Hon KWOK Wai-keung, JP  
Hon Elizabeth QUAT, BBS, JP  
Ir Dr Hon LO Wai-kwok, GBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai, JP  
Hon YUNG Hoi-yan, JP  
Hon LUK Chung-hung, JP  
Dr Hon CHENG Chung-tai  
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 15 members)

**Clerk** Ms Shirley CHAN

**Legal Adviser** Mr Mark LAM