

立法會
Legislative Council

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Panel on Financial Affairs

**Minutes of special meeting
held on Saturday, 15 November 2003 at 10:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, JP

Non-Panel Members : Hon Fred LI Wah-ming, JP
attending Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon CHAN Yuen-han, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon MA Fung-kwok, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon Bernard CHAN, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP

- Public officers attending** : Mr Henry TANG, GBS, JP
Financial Secretary
- Mr John TSANG, JP
Secretary for Commerce, Industry and Technology
- Mr Stephen IP, GBS, JP
Secretary for Economic Development and Labour
- Mr Frederick MA, JP
Secretary for Financial Services and the Treasury
- Mr Raymond YOUNG
Permanent Secretary for Commerce, Industry and
Technology (Commerce and Industry) (Acting)
- Ms Eva CHENG, JP
Commissioner for Tourism
- Mr Mike ROWSE, JP
Director-General of Investment Promotion
- Miss Yvonne CHOI, JP
Director of Information Services
- Attendance by invitation** : Mr James THOMPSON, GBS
Chairman
The American Chamber of Commerce in Hong Kong
- Mr Frank MARTIN, SBS
President
The American Chamber of Commerce in Hong Kong
- Clerk in attendance** : Miss Salumi CHAN
Chief Assistant Secretary (1)5
- Staff in attendance** : Ms Pauline NG
Assistant Secretary General 1
- Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Connie SZETO
Senior Assistant Secretary (1)4

Ms May LEUNG
Legislative Assistant

I. Hong Kong Harbour Fest

- (LC Paper No. CB(1)79/03-04(01) — Letter dated 14 October 2003 to the Financial Secretary seeking the Administration's clarification on the Rolling Stones' participation in the Hong Kong Harbour Fest
- LC Paper No. CB(1)110/03-04(01) — Reply dated 17 October 2003 from the Director-General of Investment Promotion
- LC Paper No. CB(1)111/03-04(01) — List of follow-up actions to be taken by the Administration for the special Panel meeting on 11 October 2003
- LC Paper No. CB(1)111/03-04(02) — Administration's response to item 1 of the list of follow-up actions (LC Paper No. CB(1)111/03-04(01)): "Economic Relaunch Programme - Summary of Approved Funding Allocations"
- LC Paper No. CB(1)162/03-04(01) — Administration's response to items 2 to 7 of the list of follow-up actions (LC Paper No. CB(1)111/03-04(01))
- LC Paper No. CB(1)201/03-04(01) — Press release and note to editors issued by the Administration on 28 October 2003
- LC Paper No. CB(1)124/03-04(01) — Letter dated 24 October 2003 from Hon SIN Chung-kai to the Chairman of the Panel

- LC Paper No. CB(1)224/03-04(01) — Reply dated 30 October 2003 from the Director-General of Investment Promotion with copies of the Memoranda of Understanding (MoU) signed between the Government and the American Chamber of Commerce in Hong Kong (AmCham) in relation to the Hong Kong Harbour Fest on 31 July, 29 August and 3 October 2003; and MoU signed between AmCham and Red Canvas Limited
- LC Paper Nos. CB(1)276/03-04(01) and (02) — Press release on “Government response on intellectual property rights and custodian of rights for Harbour Fest” issued by the Administration on 29 October 2003 and media statement issued by the Organizing Committee of the Harbour Fest on 4 November 2003
- LC Paper No. CB(1)304/03-04(01) — Supplementary Information on Hong Kong Harbour Fest provided by the Administration
- LC Paper No. CB(1)304/03-04(02) — Draft Hansard for oral question nos. 1 to 4 at the Council meeting on 5 November 2003
- LC Paper No. CB(1)305/03-04 — Draft minutes of special Panel meeting on 11 October 2003
- LC Paper No. CB(1)337/03-04(01) — A list of 16 questions raised by Hon Fred LI Wah-ming)

The Chairman advised that the purpose of the special meeting was for the Panel to discuss with the Administration and the American Chamber of Commerce in Hong Kong (AmCham) on the arrangements for and up-to-date account of the Hong Kong Harbour Fest (the Festival). The Chairman welcomed the Financial Secretary (FS), other representatives of the Administration, and representatives of AmCham to the meeting. He also reminded the representatives of AmCham that when addressing the Panel, they would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

2. The Chairman drew Members' attention to the provisional statement of out turn of revenue and expenditure of the Festival (the provisional statement of out turn) tabled at the meeting by the Administration. It showed the Original Budget as at 12 July 2003, the Interim Estimate as at 10 October 2003, and the Projected Actual as at 14 November 2003.

(Post-meeting note: The provisional statement of out turn was issued to Members vide LC Paper Nos. CB(1)342/03-04(01) (English version) and CB(1)350/03-04 (Chinese version) on 17 and 18 November 2003 respectively.)

Briefing by the Financial Secretary

3. FS pointed out that the Festival was part of the \$1 billion "Campaign to Relaunch Hong Kong's Economy" (the Campaign) carried out after the outbreak of the Severe Acute Respiratory Syndrome (SARS). Over the past few months, there had been signs of recovery in the economy. This demonstrated that the various activities under the Campaign had, to a large extent, achieved the objective of relaunching Hong Kong's economy.

4. FS also pointed out that a key part of the Festival would be a one-hour television (TV) special to be broadcast in overseas countries, highlighting various concerts and performances of the Festival to showcase Hong Kong as a vibrant international city. While the one-hour TV special was under production, the Administration had prepared an eight-minute video programme to show Members the highlights of the event. FS then invited Members to watch the video programme.

Government's financial support for the Festival

5. Members expressed grave concern about the appropriateness for the Government to underwrite the shortfall between the organizing expenses for and the revenue generated from the Festival in a sum not exceeding \$100 million. Referring to the provisional statement of out turn tabled at the meeting, Mr James TIEN pointed out that according to the Original Budget as at 12 July 2003, the estimated shortfall was \$100.1 million. It seemed that from the outset, the Administration was prepared to underwrite \$100 million for the Festival. However, the Original Budget had been worked out on the assumptions that the Government would make the site available free and that all travel/hotel expenses would be covered by sponsorship. In other words, the shortfall could be more than \$100 million if the two assumptions turned out to be not valid. Mr TIEN considered it different from the general understanding of Members that the Government would underwrite less than \$100 million if more sponsorship could be secured for the Festival. Mr CHAN Kam-lam and Mr LEE Cheuk-yan commented that the Government's undertaking to underwrite the shortfall might have given AmCham little incentive to reduce costs in organizing the

Festival. Mr Henry WU pointed out that \$100 million was a huge sum of money which could have been used for more meaningful purposes for the benefit of the community.

6. In response, ES pointed out that AmCham presented to the Economic Relaunch Working Group (ERWG) on 2 July 2003 its proposal to organize the Festival. The main objectives of the Festival were to encourage the return to normal economic activities, promote tourism and business, as well as boost morale and confidence in the local community after the outbreak of SARS. Having regard to the substantial benefits the Festival would bring to Hong Kong and after examining the Original Budget submitted by AmCham, ERWG considered that the proposal worth supporting and approved on 12 July 2003 for the Government to underwrite the net deficit of the Festival in the form of a sponsorship fee not exceeding \$100 million. The sum of \$100 million was the then estimated shortfall. ERWG also considered that the ticket prices proposed by AmCham were below market levels and had therefore suggested that the prices be adjusted upward. Based on the revised pricing strategy, assuming only 50% of the tickets were sold and that commercial sponsorship was limited, the Administration anticipated that the call for public funds would be in the order of \$80 million, i.e. close to the estimated shortfall of \$77 million as shown in the Interim Estimate as at 10 October 2003. This had been relayed to Members at the special meeting of the Panel on Financial Affairs held on 11 October 2003.

7. As regards why ERWG had decided to sponsor the Festival by way of underwriting the net deficit subject to the cap of \$100 million instead of pitching at a fixed sum of sponsorship fee, the Director-General of Investment Promotion (DGIP) explained that the intention was to limit the Government's financial outlay and gain some flexibility at the same time so that Government's financial support could be reduced should actual revenues be higher than the original estimates and/or should actual expenditures be lower than the original estimates.

8. Mr James THOMPSON, Chairman of AmCham, said that it was not uncommon for overseas governments to sponsor events to rejuvenate the economy and boost the spirit of the community having gone through crisis. The 9-11 incident in the United States (US) was an example. As regards Hong Kong, the Government had been providing financial support to the Arts Festival for over 30 years by subsidizing about 30% of the cost for organizing the event. AmCham found that the concept of organizing a popular music festival with international and local artists a novel idea to renew Hong Kong people's spirits after the outbreak of SARS. Knowing that the Government was seeking ideas to bring the city back to life in the post-SARS period, AmCham put forward the proposal to ERWG. As the Festival was an event new to Hong Kong, AmCham considered that Government's financial support was vital in making it successful. It was also AmCham's intention to bring more ticket income and commercial sponsorship so that the call for public funds could be reduced.

Cost-effectiveness of the Festival

9. Members expressed grave concern over the cost-effectiveness of the Festival. They were concerned about the low attendance for the concerts and whether AmCham had organized the Festival in a cost-effective manner. Given the overall low attendance rate, Mr Fred LI queried whether the Festival had achieved the objectives of promoting tourism and boosting the local economy. He also expressed strong dissatisfaction about the poor publicity arrangements for the Festival. He referred the Administration to the 16 questions raised by him (LC Paper No. CB(1)337/03-04(01)) and urged for an early written response.

(Post-meeting note: The Administration's written response to the 16 questions raised by Mr Fred LI was issued to Members vide LC Paper No. CB(1)422/03-04(01) on 25 November 2003.)

10. Recognizing that there had been a number of shortcomings in the organization of the Festival and concerns about the Government's role in the process, ES advised that the Administration had announced that a panel of inquiry would be established to look into the various issues relating to the Festival. The panel of inquiry, to be appointed by the Chief Executive (CE), would report its findings to CE. In view of the wide public interest, the Administration would make public the report. ES stressed that the various concerns and problems raised by the public and Members would be reviewed by the panel of inquiry.

11. DGIP supplemented that AmCham was required under its contract with the Government (the contract) to organize the Festival on sound and proper commercial profit making principles, and to submit to the Administration a full set of audited accounts for the Festival not later than 28 February 2004.

12. On concern about whether AmCham had organized the Festival in a cost-effective manner, Mr James THOMPSON advised that AmCham had engaged some 32 contractors, which were mostly local companies, for providing various paid services for the Festival. It had assessed contractors' ability to ensure that they had the relevant experience and expertise in providing the required services before their appointment. Moreover, AmCham had endeavoured to obtain the best rates from contractors through negotiations and, where appropriate, tenders. For instance, AmCham had negotiated with talent agents on the performances, and TV production companies on the production of the TV special, to get the best deals as far as possible. It had also invited tenders from insurance agents in respect of the insurance coverage for the Festival. Even for the publicity and marketing services, such as advertisements in newspapers and TV, where charges were usually fixed, AmCham had negotiated with the contractors for discount rates.

13. DGIP said that the Administration appreciated that AmCham had made substantive efforts to control expenditure and solicit commercial sponsorship for the Festival. It also noted that in the selection process for contractor services, AmCham had arranged competitive tendering and evaluated contractors' experience and expertise. DGIP remarked that given such a large-scale event and the short lead time, if the organizer had to follow all the stringent tender procedures, the Festival might not have taken place.

14. Members were unconvinced of the Administration's explanation. They expressed concerns over the lack of an open tender exercise for selecting the organizer for the Festival, and whether AmCham had adopted appropriate measures to ensure the cost-effectiveness of the Festival. Mr SIN Chung-kai commented that the Festival should be regarded as a procurement of entertainment services from the private sector. Given that AmCham was not an expert in the entertainment industry, he queried why the Administration had not considered selecting a suitable organizer for the Festival through an open tender exercise. Mr CHAN Kam-lam and Mr Abraham SHEK considered that the Administration should review the appropriateness of entrusting the private sector for organizing such a large-scale event.

15. In response, ES stressed that from the outset, it was the Administration's intention that the Campaign should be a joint effort involving the community at large, the business sector and the Government. The Festival was an example of efforts by the business sector. DGIP supplemented that the Festival was an initiative from AmCham and therefore the Administration had not considered appointing another organizer nor conducting a tender exercise for the Festival. He also pointed out that when approving AmCham's proposal, ERWG was fully aware that organizing entertainment events was not the core business of AmCham. However, ERWG noted that AmCham's membership included half a dozen world-class entertainment companies and other companies in entertainment marketing, entertainment legal services, TV and media entertainment networks, etc. ERWG believed that AmCham would draw on the expertise and services of these member companies in the planning and organization of the Festival. This had indeed turned out to be the case.

16. As regards concern about AmCham's ability in organizing large-scale entertainment events, Mr James THOMPSON emphasized that two members of the organizing committee of the Festival were very experienced in event management. AmCham considered that it had assembled one of the finest teams of experts for staging the Festival. He remarked that the venue was impeccable and the event was a success given that more than 100 000 people had seen and enjoyed the concerts. It was recognized that there was some disorganization in the process. For instance, there had been problems in the crowd control arrangement in the first two concerts. However, the situation had improved in subsequent concerts after security arrangements had been stepped up. Mr THOMPSON added that a number of AmCham member companies had provided free services and contributed in organizing the Festival. He appreciated their efforts and hard work.

17. Mr Abraham SHEK, Mr CHAN Kam-lam, Mr MA Fung-kwok, and Ms CHAN Yuen-han commented that while AmCham's initiative and efforts in organizing the Festival were commendable, the many problems and much confusion surrounding the Festival had aroused considerable public concern and needed to be addressed.

18. Mr LEE Cheuk-yan queried the need for organizing 17 concerts given the low attendance rate attained. Mr James THOMPSON responded that AmCham had once considered organizing even more concerts with some staged in weekday evenings. He agreed that, with hindsight, it was ambitious to organize 17 concerts during four weekends given that tourists' awareness of the Festival was low. In respect of the attendance for the concerts, Mr THOMPSON confirmed that the overall attendance were over 100 000 people and remarked that he was quite comfortable with the figure. AmCham was working on the actual audience turn out for the concerts and would provide the figures to the Administration once available.

Provisional out turn of the Festival

19. Referring to the provisional out turn tabled at the meeting, Members noted that the estimated shortfall for the Festival as at 12 July 2003, 10 October 2003 and 14 November 2003 was \$100.1 million, \$77.1 million and \$100 million respectively. In other words, the most up-to-date estimated shortfall was \$100 million, which was equivalent to the sum underwritten by the Government. FS and DGIP advised that the Administration had just received the provisional out turn from AmCham the night before (i.e. 14 November 2003). Mr James THOMPSON said that he had been on business trip in US in the previous few days and had just returned to Hong Kong in the morning. The provisional out turn had been worked out in his absence. They stressed that the figures were provisional subject to independent audit.

20. Mr CHAN Kam-lam, Ms CHAN Yuen-han and Mr Henry WU noted that no expenditure for insurance, site rental, and air tickets and hotel rooms had been provided for in the Original Budget as at 12 July 2003, but \$6.6 million, \$2 million and \$10.3 million had been incurred for the three items respectively as shown in the Projected Actual as at 14 November 2003. On the other hand, they noted that there had been substantial increase in expenditures on artist fees and marketing services. Given that expenditures on the above five items should have been fixed in the early planning stage, they considered the increase in expenditures unreasonable and queried whether the projected actual expenditures had been inflated so as to make up the deficit to \$100 million.

21. DGIP explained that the difference between the estimated shortfall of \$77.1 million in the Interim Estimate as at 10 October 2003 and of \$100 million in the Projected Actual as at 14 November 2003 was accounted for by a few major items. On the revenue side, there was a decrease in estimated revenue of \$6.2 million. On the

expenditure side, as a result of the failure to obtain sponsorship for air tickets and hotel rooms, a projected expenditure of \$10.3 million was incurred. The Administration noted that AmCham had made substantial efforts in seeking sponsorship. The Administration had also offered assistance in identifying and approaching potential sponsors, including airlines and hotel groups as well as other general sponsors, in support of AmCham's work in this area. DGIP believed that the main problem encountered in soliciting sponsorship from airlines was that most companies had either slashed their marketing budget due to SARS or pre-sold their tickets a few months before in order to boost business. As a result, the outcome of commercial sponsorship was below expectation.

Limited sponsorship

22. On concern about the limited sponsorship sought for the Festival, Mr James THOMPSON said that despite AmCham's efforts in soliciting sponsors (AmCham had engaged the service of IMG, a renowned public relations firm to undertake the task), the process had been more difficult than originally envisaged. This was partly due to the negative publicity arising from problems surrounding the Festival which might have scared away sponsors, and partly because the Festival was an entirely new event to Hong Kong where sponsors were hesitant to support. In respect of sponsorship from hotels and airlines, Mr THOMPSON said that there had been positive response from companies initially. However, probably because their business had picked up, some sponsors had finally declined to provide their support. As a result, while some free hotel rooms and discounts in room rates had been offered, AmCham was very disappointed that no airlines had provided any free tickets for the artists.

23. In response to enquiries raised by Mr Abraham SHEK and Mr James TO, Mr James THOMPSON explained that as the line-up for the concerts was yet to be confirmed in July/August 2003, it was impossible to book hotel rooms in advance at that time so as to secure lower rates. He also confirmed that AmCham had not booked hotel rooms for overseas artists for periods longer than actually required.

Marketing fees

24. As regards marketing fees for the Festival, Mr James THOMPSON advised that a sum of \$6.2 million was provided in the Interim Estimate for promotional and publicity activities. The majority of the sum had been spent on print advertisements in various local Chinese and English language newspapers, advertisements on local radio and TV stations, short videos for broadcast on TV stations overseas, posters and flyers etc. A number of radio and TV interviews had also been arranged. AmCham had engaged a number of public relations, media and advertising agencies to promote the Festival. Publicity of the Festival had been doing well until negative news started to spread around and offset the publicity efforts. Mr THOMPSON further explained that the increase of \$0.3 million in marketing fees as shown in the Projected Actual

was caused by additional publicity activities for boosting ticket sales for the last few concerts.

Rolling Stones and artist fees

25. On the increase in artist fees, DGIP advised that as the Rolling Stones was not included in the original line-up for the Festival, the fees for this group were not included in the artist fees shown in the Original Budget as at 12 July 2003. The Rolling Stones was subsequently brought into the line-up and this had partly accounted for the increase in artist fees and insurance fees in the Interim Estimate as at 10 October 2003 and the Projected Actual as at 14 November 2003.

26. Referring to AmCham's announcement on 10 October 2003 that the Rolling Stones would not participate in the Festival, Mr LEE Cheuk-yan opined that the withdrawal of the band might help lower the total cost of the Festival. He queried why the Administration and AmCham had accepted the reinstatement of the Rolling Stones concerts on 14 October 2003, and whether this decision was made to avoid legal action to recover the deposit from the Rolling Stones.

27. In response, Mr James THOMPSON said that AmCham believed that many people welcomed an opportunity to see the Rolling Stones performing live in Hong Kong. AmCham's announcement on 10 October 2003 to take the contract off the table might have prompted the Rolling Stones to conclude the contract. The band was a legend attractive to both local people and overseas visitors. In his opinion, it would be very difficult to bring such top-notch stars to perform in Hong Kong, as Hong Kong lacked a sufficiently large venue to bring enough audience to make the event commercially viable. With commercial sponsorship and Government subsidies, AmCham hoped to bring the Rolling Stones to Hong Kong. However, as commercial sponsorship was not as forthcoming as originally expected, the total cost of the Festival had been increased.

28. DGIP supplemented that he was present at the meeting when AmCham decided to accept the reinstatement of the Rolling Stones concerts. The major reason behind the decision was that AmCham considered that the Rolling Stones concerts would be the ultimate and most fitting climax to the Festival as the band was a world's icon in the entertainment industry. Moreover, having regard that the Rolling Stones had cancelled its shows scheduled in Hong Kong in April 2003 when Hong Kong was suffering from SARS in a high-profile manner, the best possible offset to that negative news was the Rolling Stones coming back to Hong Kong after SARS. Nonetheless, the reasons mentioned by Mr THOMPSON and Mr LEE Cheuk-yan above were also valid and had influenced AmCham's decision.

29. Referring to some media reports that AmCham had paid two to three times over market prices for the Rolling Stones to perform in the Festival, Mr James TIEN

and Mr LEE Cheuk-yan urged the Administration to disclose the fees paid to individual artists.

30. Mr James THOMPSON rejected claims that the artist fee for the Rolling Stones was excessively higher than the market level. In this connection, DGIP said that the media reports referred to by Members were false. He further confirmed that there was an alternative proposal put forward by a talent agent at that time. The proposal only included two concerts by the Rolling Stones in Hong Kong without any TV rights. The fee quoted in that proposal was US \$1 million higher than that paid by AmCham. To the best knowledge of AmCham and the Administration, the deal secured by AmCham with the Rolling Stones was the best and reasonable one.

31. In respect of fees for international artists, Mr James THOMPSON stressed that the amounts paid were generally in line with the market prices. It was worth noting that the fees paid had already included rights to use the concert performances and other activities the artists had participated during their stay in Hong Kong in the TV special. Such TV rights, which were costly, normally needed to be negotiated separately with the artists concerned. Mr THOMPSON added that AmCham was able to assess whether artists fees asked for were reasonable through the two organizing committee members who had extensive experience in the entertainment industry and his personal contacts in US. AmCham noted that some artists who came to Hong Kong just for performing in the Festival might have asked for higher fees. There were also cases where intended artists had been declined due to the high fees involved. Responding to Mr James TIEN's further enquiry, Mr THOMPSON explained that as negotiations with artists were done through agents, AmCham had no information on the sharing of the fees between agents and their artists. He understood that it was a practice in the entertainment industry that agents would get shares from the fees.

32. Regarding Members' request for disclosing fees of individual artists, Mr James THOMPSON confirmed that such information was subject to the confidentiality clause in the agreements signed between AmCham and its agents and/or between the latter and the artists concerned. Breaching of the clause would expose AmCham or himself to legal suits. Nonetheless, he would consult AmCham's legal adviser on whether the independent auditor could have access to the relevant information in conducting the audit check for the Festival.

33. Pointing out that the confidentiality clause (clause 9.2) of the contract provided that the clause "shall not apply to disclosures made by the Government to the Executive Council and/or the Legislative Council of Hong Kong", Mr James TO requested the Administration to provide a breakdown of the artist fees to Members.

34. DGIP explained that the Administration had not sought to know from AmCham the individual artist fees paid. He said that this was in line with the Administration's stated policy that its role should be the sponsor instead of the organizer of the Festival.

LegCo
Secretariat

35. Mr Fred LI and Mr James TO were surprised to learn that the Administration had not sought to know the details of the artist fees. They considered this an evidence of the Administration's failure in monitoring the Festival. Mr LI requested the Legal Service Division of the LegCo Secretariat to look at clause 9.2 of the contract. He also expressed serious doubt on whether the auditor for the Festival's account could have access to the confidential information for the purpose of examining the cost-effectiveness of the Festival.

Operations and insurance fees

36. Responding to Members' enquiries about the details of the operations fees of \$31 million as shown in the Project Actual as at 14 November 2003, Mr James THOMPSON explained that the amount involved the complete set up of Tamar site, such as erection of the stage and seating where Australian and Malaysian contractors had been engaged for the services respectively; and the running of the concerts, such as lighting and sound systems. As regards insurance fees, Mr THOMPSON advised that the increase in expenditure was a result of the need to take out additional coverage for the Rolling Stones concerts on the advice of the insurance agent.

Revenue from ticket sales

37. Mr LEE Cheuk-yan noted that revenue from ticket sales had increased drastically from \$11.2 million in the Original Budget as at 12 July 2003 to \$52.5 million in the Interim Estimate as at 10 October 2003. He queried whether the increase in ticket prices was to address the anticipated increase in expenditure.

38. In response, DGIP confirmed that the decision made by AmCham on 12 July 2003 to raise the ticket prices for the Festival was not an attempt to address the anticipated deficit in the budget. He explained that when ERWG approved the proposal on 12 July 2003, the then projected ticket revenue of \$11.2 million was made on the assumption of a close to full-house attendance (80%-100% of around 12 000 seats) for performances every Friday to Sunday for four weeks, with tickets priced at a relatively low level between \$100 and \$150. On the advice of ERWG, AmCham decided to review its pricing strategy and go for a wider range of ticket prices, with the higher end comparable to market prices for similar concerts held in Hong Kong to maximize revenue, and the lower end sufficiently affordable by the majority of the general public to encourage attendance by more people. In making the decision, AmCham was prepared to accept the likely consequence of lower attendance for the concerts. ES added that ERWG's advice was made on the belief that the concerts would be attractive to the public at large and with the hope to reduce Government's sponsorship.

Intellectual property rights relating to the Festival

39. Noting that the intellectual property (IP) rights associated with the Festival could generate income, Mr MA Fung-kwok and Mr Abraham SHEK queried why the Administration had granted IP rights of the Festival for the period from 2003 to 2008 to AmCham and whether AmCham would reimburse revenue from IP rights to the Government.

40. In response, DGIP said that as AmCham was the originator of the Festival, in the initial process of discussion it was intended that IP rights of the Festival should belong to AmCham. However, since substantial public funds were involved, the Administration was of the view that the Government should own all the rights connected with the Festival. As a result, both parties agreed that the Government was the owner of all rights for the Festival, but AmCham was the custodian of the rights up to end of 2008. This agreement had been reflected in clause 8 of the contract. In respect of IP rights, ES advised that it mainly referred to the brand name of “Harbour Fest”, the one-hour TV special and other recorded programmes on 2003 Harbour Fest to be broadcast overseas. The purpose of giving AmCham temporary custody of rights was to let it be associated with the brand name of “Harbour Fest”. However, this would not prevent other bodies from organizing similar events on a self-financing basis in future. Nor would it imply Government’s commitment to sponsor any future Harbour Fests. DGIP supplemented that it was not envisaged that such an event could happen without Government’s financial support and such financial support would be subject to the approval of the Finance Committee.

41. As regards revenues accrued from the 2003 Harbour Fest, ES advised that all the revenues would be added to the accounts for the Festival. As the Festival was not a profit-making event, the TV special and other programmes were not expected to generate much revenue. Should there be further revenues generated from the 2003 Harbour Fest after the submission of the audited accounts until end of 2008, they would be added onto the already audited revenue and be used to offset the costs of the event.

42. Mr Abraham SHEK was not convinced by the Administration’s explanation. He queried why the clause on custodian rights had been included in the contract if the Administration expected that there would not be further festivals in subsequent years.

43. Given the low estimated revenue of \$0.8 million from broadcasting the TV special overseas, Mr MA Fung-kwok was concerned that the programme might not secure favourable airtime. He opined that the Administration/AmCham should monitor the viewing scores for the programme and report to Members in due course. Mr James TO also expressed concern that overseas TV stations might edit the programme to cater for their own needs.

44. In response, DGIP said that AmCham had already secured broadcast for the whole one-hour TV special by the ABC Channel in US, which had access to 80 million TV homes with a potential audience of 100 to 150 million viewers. Moreover, AmCham was discussing with another interested network in US for broadcasting the programme. In addition, the programme would be available to other TV networks free of charge. The target was to bring the programme to over 0.5 billion viewers worldwide. On selecting the networks for broadcasting the programme, the organizer would take into account factors including the timing and expected number of viewers reached.

Government's role in monitoring the organization of the Festival

45. Members expressed great disappointment about the failure of the Government in monitoring the organization of the Festival. Mr Abraham SHEK criticized that the Government's handling of the whole event lacked planning and control, which had reflected badly on its governance.

46. FS and DGIP re-iterated that the primary task of the Government was to ensure that the overall objectives of the Festival were met. It was specifically provided in the contract that AmCham was the planner, organizer and implementer of the Festival in accordance with commercial principles and having regard to the overall objectives of the Festival. The Government was a major sponsor for the Festival but did not take up the role of a co-organizer. While AmCham was required to consult the Government on material changes to the programme line-up and budget for the Festival, it was not expected to seek the Government's approval on every detail relating to the Festival. The intention was for the Government to maintain an overview of AmCham's preparation of the Festival to ensure that the overall objectives were met, but not to micro-manage the detailed planning and organization by AmCham. DGIP supplemented that the Administration had, in monitoring the work of AmCham, followed the two major principles stipulated in the contract, i.e. the Festival was to be organized in accordance with commercial principles, and AmCham had to submit to the Government the audited accounts in relation to the Festival. Should the auditor of the Festival's accounts discover any misuse of public moneys, this should be reported to the Administration. He added that the Government had also rendered assistance and advice to AmCham from time to time. Invest Hong Kong (InvestHK) had maintained close liaison with AmCham and both parties had communicated on a daily basis in respect of the Festival. However, the Government had not stood over AmCham's shoulders watching the detailed operation of the Festival. It noted that AmCham had arranged competitive tenders for engaging contractors and had endeavoured to solicit commercial sponsorship. The Government had focused its monitoring work in ensuring the two deliverables were provided satisfactorily and on time. The Government had also fulfilled its obligations under the contract namely, facilitating the lease of the Tamar site and the issue of the relevant licences and permits to AmCham. The fact that InvestHK had been deployed to oversee the

Festival had implied some degree of monitoring on the part of the Government. DGIP agreed that questions about the cost-effectiveness of the Festival and the depth of Government's monitoring in the process were valid and believed that these would be addressed in the context of the review by the panel of inquiry.

47. Mr Henry WU was concerned about whether any conflict of interests were involved for AmCham to organize the Festival through a private company, the Red Canvas Limited, with one of the company's owners being the Chairman of AmCham. He also queried whether InvestHK had consulted the Government legal adviser on details of the contract (signed on 10 October 2003) and the three Memoranda of Understanding (MoUs) (signed on 31 July, 29 August and 3 October 2003) entered with AmCham.

48. DGIP said that the Administration was aware that AmCham would conduct the business of organizing the whole Festival through a special purpose vehicle (SPV), the Red Canvas Limited, which was provided in the contract and MoUs. DGIP recalled from memory that the department first became aware of the Red Canvas Limited in late July or early August 2003. He explained that his deputy signed the first two MoUs when he was outside Hong Kong at that time. DGIP confirmed that while the draft contract had been vetted by the Department of Justice, the three MoUs, which were documents of similar nature, were not the subject of legal advice. DGIP stressed that it was an established commercial practice and was purely for operational convenience to appoint a SPV for organizing activities. Owned by a member of AmCham, the SPV sought to shield AmCham from all financial liability to any third party arising from the commercial activities of the Festival. AmCham and SPV entered into a separate MoU to set out the purpose, roles and responsibilities of SPV in relation to the Festival. However, nothing in that MoU would relieve AmCham of its responsibility to the Government, and the Government's sponsorship was capped at \$100 million.

49. Responding to Mr Henry WU's query, DGIP remarked that the monitoring bureau of InvestHK in respect of the function of promotion of investment was the Commerce, Industry and Technology Bureau. However, InvestHK was appointed by the former FS to be the agency responsible for co-ordinating and implementing the Campaign. DGIP said that he was required to report to FS and be accountable to him in work in relation to the Campaign.

50. Noting that it was not the Government's normal practice to provide the full sponsorship amount before the completion of a programme, Members queried why the Administration had advanced the entire sum of \$100 million to AmCham well before the end of the Festival on 9 November 2003.

51. In response, DGIP said that the \$100 million sponsorship fee was paid to AmCham in four installments with \$25 million each upon execution of the three MoUs. The fourth payment of \$25 million was made on 15 October 2003 in

accordance with the relevant provision in the contract. The Secretary for Financial Services and the Treasury confirmed that in accordance with provisions in the Public Finance Ordinance (Cap. 2), Financial and Accounting Regulations, and Standing Accounting Instructions, the Financial Services and the Treasury Bureau had issued four cheques for the four installments on 4 August, 1 September, 3 October and 15 October 2003 respectively.

52. DGIP also explained that the main reason for making advanced payments to AmCham was to address cash flow needs of the organizer. The Administration noted that upfront payments were required to secure many of the artists to appear for the Festival (the organizer needed to pay 50% of the artist fees in advance). In addition, a number of costs, such as erecting the stage and engaging various contractors for work, had to be paid before any revenue came in. DGIP emphasized that the advance payment would not affect the Government's ultimate liability, which was capped at \$100 million. If the audited final shortfall was less than \$100 million, the balance would be refunded to the Government.

Way forward

53. The Chairman said that as agreed at the Panel meeting on 28 October 2003, FS would attend another special meeting of the Panel to be arranged when the audited accounts of the Festival was available. Members would be informed of the details of the special meeting in due course.

II. Any other business

54. There being no other business, the meeting ended at 12:55 pm.