

Executive Summary

Direct Investigation Administration of Government Policy on Private Recreational Leases

Background

For many years, in order to meet the shortage of recreational and sports facilities in Hong Kong, Government has granted land at nil or nominal rent to some organisations to establish and operate sports clubs. Such organisations comprise private bodies committed to promoting sports development and providing recreational facilities, social welfare organisations, uniformed groups, national and district sports associations and civil servants associations. Grants are made under Private Recreational Leases (“PRLs”). The facilities of the sports clubs are dedicated for use mainly by their members.

2. These sports clubs are funded by fees collected from members or facility users, or money raised by the clubs themselves. At present, there are altogether 73 PRLs granted to various sports clubs, with a membership of over 700,000.

3. PRLs were generally for a term of 15 years. As at 30 June 2012, 55 of the 73 PRLs had expired. Most of the sports clubs concerned had applied for renewal of their leases. These expired PRLs are currently on temporary extension, pending the conclusion of negotiations with the Home Affairs Bureau (“HAB”).

4. HAB is responsible for administering the policy on granting land by way of PRLs for establishing and operating sports clubs (“PRL policy”). The PRL policy and lease conditions stipulate that all sports clubs shall open their sports facilities for use by “eligible bodies” when requested by “competent authorities”*. The competent authorities are responsible for vetting the applications to use the sports facilities of the sports clubs submitted by eligible bodies within their respective purview.

5. This direct investigation aims at assessing:

- (1) the PRL policy hitherto administered by HAB;
- (2) at the juncture of the current PRL renewal exercise, the merits of the arrangements proposed by HAB to enhance public access to sports

* “Eligible bodies” include schools as defined in the Education Ordinance, social and welfare organisations receiving subvention from the Social Welfare Department, national sports associations eligible for subvention from the Leisure and Cultural Services Department, Government departments, and youth and uniformed groups receiving subvention from HAB. Their respective “competent authorities” are the Education Bureau, the Social Welfare Department, the Leisure and Cultural Services Department, the Civil Service Bureau and HAB.

club facilities.

Our Findings

Rationale for Access to Facilities

6. According to HAB, the object of requiring the sports clubs to make available their facilities to eligible bodies was to motivate the public to do more physical exercises, and thus promote sports development, by providing through the sports clubs the types of sports facilities not commonly provided by Government itself. HAB considers that while the sports clubs' contributions should be recognised and the right of their own members to priority use of their facilities should be respected, the sports clubs should benefit the public by making available their facilities to use by non-members.

Past and Present Situations

Opening Hours Grossly Inadequate

7. The current lease conditions stipulate that the sports clubs shall open their sports facilities to eligible bodies for *no more than three sessions of three hours each per week*. There is no minimum requirement.

8. In Hong Kong, land is a precious resource. We note that in granting land at nil or nominal rent under the PRL policy, Government is in effect giving the sports clubs significant subsidies on a long-term basis. In particular, some sports clubs are located on prime sites of very high value. The present scale of eligible bodies' access to their facilities is not commensurate with such subsidies enjoyed by the sports clubs.

Ineffective Monitoring

9. HAB admitted that before July 2010, it had not laid down any criteria or procedures with the competent authorities for vetting applications from eligible bodies to use the facilities of the sports clubs. Nor had the Bureau required the sports clubs to regularly report on the use of their facilities by eligible bodies to facilitate its monitoring.

10. HAB's past efforts in monitoring the enforcement of the lease conditions were clearly inadequate.

Lack of Publicity

11. HAB admitted that apart from reminding all competent authorities in 2001, 2010 and 2011 to inform eligible bodies that they might apply for using the sports facilities of the sports clubs, there had been no further publicity or promotion on the

opening of their sports facilities.

12. In the absence of Government publicity, it is no wonder that no eligible body had ever applied to the competent authorities for using the sports facilities of the sports clubs.

Arrangements on Renewal

Arrangements for Opening Facilities

13. In the current exercise of renewing the PRLs, HAB has focused only on the sports clubs' contributions in respect of "promoting sports development" and "continuing to provide job opportunities", but paid little attention to whether the clubs should make adequate repayment to society after enjoying all the land subsidies. It is indeed only reasonable for the community to expect that the sports clubs would reciprocate by enhancing public access to their facilities.

14. The new leases will require the sports clubs to open their facilities for use by eligible bodies for *at least 50 hours per month* with no upper limit. HAB will also require the sports clubs to allocate certain sessions for priority use by eligible bodies.

15. Nevertheless, we notice that the requirement of opening the sports facilities for at least 50 hours per month actually refers to the aggregate total of all the sports facilities of a sports club. In other words, all it takes is for a sports club to open five of its sports facilities for ten hours each per month, and the minimum requirement in the new lease will be deemed met.

16. In our view, if all or most of the sports clubs just meet this bare minimum, it would be difficult to convince the public that the clubs' repayment to society matches the resources that they have enjoyed. Furthermore, given the different scales of operation of the sports clubs (some have only a few sports facilities, while others may have ten or more), HAB's across-the-board requirement for them to open their facilities for not less than 50 hours may constitute disparity of treatment.

17. Fortunately, the new leases also stipulate that sports club must set out a Scheme to Implement the Greater Access Requirements ("the Scheme"), giving details regarding the opening of their sports facilities (such as the available facilities, and the number of hours and sessions of opening) for HAB's approval. In addition, HAB has the power to revise the content of the Scheme at any time during the new lease. These two provisions serve to empower HAB to a certain extent to urge the sports clubs to make such arrangements for opening their facilities as to be more in accord with public expectations.

18. As the policy bureau responsible for the formulation and administration of the PRL policy, HAB is the final gatekeeper in ensuring that the sports clubs adequately open their facilities. We consider that in vetting and revising the Scheme of the sports clubs, HAB should always bear public interests in mind and ask the sports clubs to:

- (1) open all types of sports facilities as far as possible, especially the more popular ones; and
- (2) as far as the clubs' respective scale of operation permits, maximise the number of hours open to eligible bodies, the timing of which to be of convenience to the latter.

Monitoring Mechanism

19. According to HAB, the new leases will require the sports clubs to submit quarterly reports, so that the Bureau can monitor their compliance with the lease conditions and their implementation of the Scheme. Meanwhile, the Bureau is also planning to set up an electronic database to keep a watch over the use of the facilities of the sports clubs. Random checks will also be conducted at the sports clubs and follow-up actions will be taken in case of non-compliance.

Publicity Strategy

20. After renewing the leases, HAB will step up publicity. To enable eligible bodies to know the availability of the sports facilities, HAB will require the sports clubs to publish the relevant information on their websites. Eligible bodies will also have access to such information from the websites of HAB and the other competent authorities. Furthermore, HAB will release information to eligible bodies on a regular basis about the facilities available for their use.

Complaint Handling Mechanism

21. In case eligible bodies have any complaints about access to the sports facilities of the sports clubs, the relevant competent authorities will handle such complaints by way of "consultation and coordination". If the competent authorities could not resolve the disputes, HAB would intervene and start an investigation. However, HAB does not have the power to override the decisions of the other competent authorities.

22. We consider that HAB should develop a proper mechanism for handling complaints concerning the opening of the sports facilities of the sports clubs. There should also be clear stipulation as to who has the authority to make the final decision in case of disputes.

Policy Review

23. It is HAB's plan that when all the leases are renewed and the above arrangements implemented, it would conduct a comprehensive review on the PRL policy jointly with the relevant policy bureaux and departments in order to determine the future of the PRLs.

24. We expect HAB to conduct the review as soon as possible and hold wide consultation in the process so that the future policy would be more in keeping with public interests.

Our Recommendations

25. The Ombudsman urges HAB to:

- (1) take into account fully public interests when vetting and revising the Schemes of the sports clubs such that they would make their sports facilities as readily accessible as possible to meet the needs of eligible bodies;
- (2) strengthen the publicity arrangements concerning the opening of the sports facilities of the sports clubs, such as requiring the various competent authorities to disseminate the relevant information to those eligible bodies within their purview, while checking closely whether the competent authorities and the sports clubs have uploaded such information on to their websites;
- (3) implement with vigour its measures to monitor the sports clubs' compliance with the lease conditions and the Schemes, including the setting up of the electronic database, frequent random checks and immediate actions to rectify inadequacies where necessary;
- (4) enhance the mechanism for handling complaints regarding the opening of sports facilities and, in particular, stipulate clearly who has the authority to make the final decision in case of disputes; and
- (5) embark on a comprehensive policy review as soon as possible, involving wide public consultation.

**Office of The Ombudsman
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