

Summaries of Direct Investigations

LEISURE AND CULTURAL SERVICES DEPARTMENT (“LCSD”)

Case No. OMB/DI/156

Mechanism for Handling Conflict of Interests in Organisations Subvented by LCSD

(Investigation commenced on 5 February 2007 and completed on 12 November 2007)

Background

In March 2006, the media reported that the Hong Kong Amateur Athletic Association (“HKAAA”) had awarded a service contract to a company owned by its Chairman. As HKAAA receives subvention from LCSD, The Ombudsman was concerned whether LCSD had appropriate mechanism to monitor its subvented organisations for conflict of interests.

Subvention and Financial Support

2. LCSD grants can be broadly divided into two categories: annual subvention and project-based financial support. From 2004/05 to 2006/07, LCSD granted a total of \$1,085 million.

Annual Subvention

3. Organisations receiving annual subventions include:
- (a) national sports associations;
 - (b) non-governmental organisation holiday camps and sea activities centres; and
 - (c) performing arts groups (the Home Affairs Bureau had taken over funding responsibility for these groups since 1 April 2007).

Project-based Financial Support

4. Project-based financial support is provided for a number of organisations to present cultural programmes and to undertake “greening Hong Kong” and “greening school” activities.

Monitoring Mechanism

Annual Agreement

5. Under an annual Agreement with Government, national sports associations and performing arts groups undertake, among other things, to observe fair and transparent procedures for

procurement and tendering and to avoid conflict of interests in their operational practices and decision-making processes.

Code of Conduct

6. LCSD issues a sample Code of Conduct (“the Code”) for subvented national sports associations. The performing arts groups have devised their own Codes. These Codes set out standard of conduct on such matters as acceptance of advantages and conflict of interests.

Subvention Principles

7. Subvention Principles set out the parameters for holiday camps and sea activity centres on such matters as entry requirements for managerial staff, use of income, need for submission of annual budget and audited accounts.

Engagement of Services

8. For project-based financial support, the notification letter or agreement conveying approval for funding prescribes obligations for preparing evaluation reports and certified accounting records.

Quality Audit

9. LCSD conducts random audit on annual audit reports, funding records and compliance with the Code and terms of the Agreement or notification letter.

Our Observations and Opinions

HKAAA Case

10. LCSD initiated its own inquiry on the HKAAA case and implemented a series of improvement measures:

- (a) requiring HKAAA to review its procurement procedures and engage independent third parties such as auditors in its procurement committee;
- (b) holding a joint seminar with the Independent Commission Against Corruption (“ICAC”) for all national sports associations on declaration of interests, promulgation of procurement guidelines and proper payment methods;
- (c) issuing a sample Code (revised by ICAC) and procurement guidelines (devised by ICAC) to all national sports associations;
- (d) requiring all national sports associations to review their internal ethical code and to draw up procurement procedures for submission to LCSD; and
- (e) engaging professional bodies for thematic seminars to promote good practices to subvented organisations for better corporate governance.

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11. For HKAAA, the term of the Chairman concerned expired and he ceased to hold office in January 2007. The service contract in question expired in September 2007.

Code of Conduct and Procurement Guidelines

12. The contents and provisions of the Codes devised by the performing arts groups vary from each other. Holiday camps, sea activity centres and grantees of the greening schemes are not governed by a Code. It is crucial that uniform standards, controls and safeguards be applied across all subvented activities, whether leisure or cultural in nature.

Quality Audit

13. The subvention agreement gives LCSD, as the subvention authority and custodian of public funds, the right to ask the subvented organisations to account for any suspected breach of the Code. To ensure effectiveness, LCSD should consider set out this right in the agreement.

14. LCSD should refine its compliance checking system by specifying the types of records subvented organisations should keep for declaration of interests.

Sanctions

15. Provision for sanction, including termination of agreement, is included in Agreements. However, such sanction does not apply to holiday camps and sea activity centres for breach of Subvention Principles or the guidelines on invitation of quotations, calling of tenders and accounting arrangements.

Recommendations

16. The Ombudsman made a number of recommendations for LCSD and the Home Affairs Bureau (for the performing arts group only):

- (a) In consultation with ICAC, to devise a scheme to manage conflict of interests properly for award of contracts and to deal with circumstances where conflict of interests has arisen.
- (b) In consultation with ICAC, to formulate or review the Code and procurement procedures, as necessary.
- (c) To request the subvented organisations to circulate the revised Code and Procurement Guidelines among their officials and staff periodically.
- (d) To consider enshrining in the Agreement the right to request the subvented organisations to account for any suspected breach of the Code.

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- (e) To specify the type of records the subvented organisations should keep for declarations of interests.
 - (f) To consider introducing a sanction clause for holiday camps and sea activity centres.
 - (g) To lay down procedures for remedial action if compliance checking reveals possible breach of the Code or the Agreement.

17. LCSD and the Home Affairs Bureau accepted all our recommendations.