

LCQ7: Non-disclosure of information involving commercial secrets

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (June 17):

Question:

Earlier on, the Government sought the approval of the Finance Committee (FC) of this Council to provide funding of over \$5.4 billion to the Ocean Park Corporation for purposes such as repayment of commercial loans of over \$3 billion and maintaining operation for one year. The Government refused to disclose to Members of this Council the details, e.g. the interest rates, of the loan agreements on grounds of commercial secrets being involved. In the past, the Government refused to respond, also on grounds of commercial secrets being involved, to the questions that I repeatedly raised about the information of the income and expenditure of the Kai Tak Cruise Terminal. Furthermore, when being questioned by Members of this Council about the Hong Kong Disneyland Resort, in which the Government has invested a huge amount, making consecutive years of losses, government officials were reluctant to disclose the details of the agreement signed between the Government and the Walt Disney Company, also on grounds of commercial secrets being involved. On the other hand, regarding the details of the operation of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (including the mechanism for the Government to bear the losses), the Government refused to disclose the details of the relevant agreement, once again on grounds of commercial secrets being involved. Some members of the media and the public have criticised that the above situations show that the Government, in its management of public finance, often overemphasises commercial interests and ignores the interests of the public, in particular taxpayers' right of access to information on public expenditures. In this connection, will the Government inform this Council:

(1) whether it will assess the negative perception brought to members of the public by the Government's practice of repeatedly refusing, on grounds of commercial secrets being involved, to disclose the details of the loans or cooperation agreements with commercial partners in respect of the aforesaid projects which recorded losses over a long period of time, and whether this will deepen public distrust of the Government's ability in policy implementation; if it will not assess, of the reasons for that;

(2) as some members of the public hold views and have perceptions of distrust of the Government such as that "the Government overemphasises commercial interests and ignores the interests of the public and their right of access to information", whether it will study if this situation will cause the Government to encounter greater resistance in the future when it seeks funding approval from FC for projects with losses as well as a higher risk of

such funding applications being rejected; and

(3) whether it will review and change the practice that "the Government overemphasises commercial interests and ignores the interests of the public and their right of access to information", so as to boost public confidence in the Government's proper monitoring and use of public monies?

Reply:

President,

In response to the Hon Paul Tse's questions, in consultation with relevant policy bureaux, the consolidated reply is as follows:

Not long ago, the Commerce and Economic Development Bureau (CEDB) has sought the approval of the Finance Committee (FC) of the Legislative Council for the funding provided to the Ocean Park Corporation (OPC) and amended the repayment arrangements under Loan Fund, of which, \$3,090 million is for the repayment of commercial loans and related financing costs. The CEDB has disclosed information including the loans amount, related interest, financing costs for interest rate swap contracts, date of borrowing and repayment, security, etc. As for the Kai Tak Cruise Terminal, the CEDB has been disclosing information including the rent arrangement and income source according to the tenancy agreement with the terminal operator. As regards Hong Kong Disneyland Resort (HKDL), it has reported the key operating and financial results to the Legislative Council on an annual basis since fiscal year 2008 (including attendance, revenue, expenses, earnings before interest, taxes, depreciation and amortisation (i.e. EBITDA), net income, net asset/liability, etc.). Also, when the FC scrutinised the Government's investment in HKDL in the past, Government did clearly set out the investment details (including shareholding and loan arrangements). Therefore, there is transparency in the investment and operating situation of the above organisations.

As regards to the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) as mentioned in the question, it has been taken forward and operated under the concession approach. Before the commissioning of the XRL, the Transport and Housing Bureau has briefed the Legislative Council Panel on Transport on August 31, 2018 on the operating arrangements and business case of the XRL, including key content of the supplemental agreement to the service concession agreement signed between the Kowloon-Canton Railway Corporation and the MTR Corporation Limited (MTRCL) and the mechanism to bear risk or share the return, details could be found in the Legislative Council paper CB(4)1500/17-18(01). Being a listed company, the Government is required to disclose relevant commercial information of the MTRCL according to the general listing rules.

Overall speaking, when the Government submits funding applications to the FC, it will set out the key features and financial arrangements of the projects, justifications for the use of public money and other relevant information to facilitate Members' consideration and approval. Depending on

the circumstances and requirements of individual projects, the relevant bureaux will also brief and report to the respective panels of the Legislative Council as and when appropriate. When commercial information is involved, we will take into account factors including policy and legal considerations, contract terms, as well as the public's right to know, etc. in deciding whether and how such information should be disclosed. The Government's decisions will be guided by public interest.