

**Report of the
Independent Panel of Inquiry on the**

Harbour Fest

May 2004

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Legend of Abbreviations

ABC	America' s Broadcasting Company
AmCham	The American Chamber of Commerce in Hong Kong
BoG	Board of Governors
DGIP	Director-General of Investment Promotion
DoJ	Department of Justice
ERSG	Economic Relaunch Strategy Group
ERWG	Economic Relaunch Working Group
FC	Finance Committee
FS	Financial Secretary
HKTB	Hong Kong Tourism Board
InvestHK	Invest Hong Kong
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
LegCo FA Panel	Legislative Council Financial Affairs Panel
M&AA	Memorandum and Articles of Association
MoUs	Memoranda of Understanding
MTV	Music Television
NBA	National Basketball Association
PSDA Scheme	Professional Services Development Assistance Scheme
S & E Committee	Sports and Entertainment Committee
SARS	Severe Acute Respiratory Syndrome
TAA	Talent Acquisition Agreement
WHO	World Health Organisation

EXECUTIVE SUMMARY

Background

1. In response to the dire economic and social crisis facing the territory post-SARS, the Chief Executive announced on 23 April 2003 that an Economic Relief Package of HK\$11.8 billion would be made available to aid the community and revive the economy after SARS. Of this amount, HK\$1 billion was earmarked for large-scale publicity and promotional campaigns as an Economic Relaunch Programme aimed at restoring Hong Kong's reputation and communicating Hong Kong's recovery to the world. The Hong Kong Harbour Fest 2003 was funded from the HK\$1 billion.

2. The Harbour Fest proposal was the American Chamber of Commerce (AmCham)'s response to the Government's invitation to the business sectors and the community to participate in the economic relaunch campaign.

3. Hong Kong Harbour Fest 2003, originally known as the Hong Kong International Autumn Festival, was a proposal by AmCham to stage world-class entertainment and variety shows on four consecutive weekends from 17 October to 9 November 2003, at a customised venue to be built at the Tamar to accommodate audiences of up to 10,000 to 12,000 on each occasion to boost local morale, to attract short haul visitors and to show the world that Hong Kong was safe, thriving, and relaunched after the attack of SARS. Under the original proposal, the project was to consist of eight daytime festivals and eight night-time concerts featuring international performers. Ultimately, the event featured 13 popular music concerts, one classical concert and another two days of Family Festival, making up a total of 16 shows. Further, a television special on the festival highlights was produced for broadcast. The intention was to show it in the US during the peak viewing period and then to global markets to promote the relaunched Hong Kong.

4. The Harbour Fest first became a subject of negative publicity at the end of August 2003 when an article questioning the price to be paid to the Rolling Stones for performance at the Harbour Fest and the cost effectiveness of the Government supporting the AmCham initiative at

around HK\$100 million was published in the English press. As events unfolded, there was a host of other negative media reports raising further public concern over the project's cost-effectiveness and the manner in which it was organised.

5. On 5 November 2003, the Financial Secretary announced that the Chief Executive would appoint an independent panel of inquiry to investigate into the Harbour Fest event. The appointment of this Panel¹ took place on 12 December, 2003.

6. During the inquiry, the Panel has received written submissions/information from 63 individuals and organisations, and met with 28 individuals, some of whom on more than one occasion.

Major Findings

7. On 2 July 2003, the AmCham representatives presented their proposal on the Harbour Fest to the Economic Relaunch Working Group (ERWG), the Government ad hoc committee responsible for preparing and overseeing the implementation of the comprehensive economic relaunch programme. The ERWG gave in-principle approval to underwrite the event up to HK\$100 million, subject to InvestHK's scrutiny and satisfaction with the detailed budget. On 12 July 2003, ERWG gave its approval to underwrite the event up to a maximum sponsorship of HK\$100 million. The Government would act as a sponsor only and AmCham would plan, organise and implement the festival. ERWG also asked that ticket prices of the event should be pitched at market rate to reduce Government subsidy.

8. InvestHK and AmCham entered into three legally binding Memoranda of Understanding (MoUs) in relation to the event and subsequently entered into a full agreement on 10 October 2003. The event closed on 9 November 2003 after the last of the 16 shows. AmCham submitted the audited accounts of the event to InvestHK on 27 February 2004 in accordance with the agreement. After taking into

¹ The two-member Independent Panel of Inquiry comprised Mr Moses Cheng, a senior partner of a solicitors' firm, and Mr T. Brian Stevenson, a former president of the Hong Kong Society of Accountants.

account the Government sponsorship of HK\$100 million, the project ran a deficit of HK\$625,252.

Conclusions

9. Our conclusions are set out in the following paragraphs.

Conclusion No.1

Harbour Fest - A Good Concept

10. AmCham's concept to stage a series of concerts and festivals with a customised stage and venue to be constructed at the Tamar site in Central with the aim of boosting local morale, attracting short haul tourists and showing the world that Hong Kong had regained its strength after the SARS attack was a powerful one worthy of Government support.

Conclusion No. 2

Harbour Fest - Setting New Standards

11. The Panel concludes that the stage setting, venue and sound systems at the Harbour Fest provided an opportunity for pop music concerts in Hong Kong to reach new standards of excellence. Hong Kong was able to demonstrate to the world that it could meet the standards required by international talents for pop music concerts and could produce the highest standards of outdoor concert entertainment.

Conclusion No. 3

Inadequate Assessment by Government Prior to Approval

12. ERWG placed too much trust in the AmCham's ability and did not critically assess the organisational structure AmCham proposed for the event and the professional expertise it planned to use to successfully organise and administer the event.

13. ERWG did not ascertain the experience of AmCham in organising entertainment concerts and in engaging artistic talent. As it turned out, there was little concert organisation experience from within AmCham.

14. Furthermore, ERWG did not closely examine if given the short lead time, the Harbour Fest proposal should be downsized which would have been helpful to both the overall organisation of the event as well as the attendance rate and ticket sales.

15. In a similar vein, InvestHK had not properly assisted ERWG in the assessment process. It failed to follow the ERWG instruction to critically examine the details of the proposed budget for the event.

16. The Panel concludes that ERWG approved the Harbour Fest project without adequate assessment. InvestHK did not render adequate support to ERWG in the assessment process either.

Conclusion No. 4

Inadequate Involvement and Supervision by AmCham the Organisation

17. The Panel concludes that AmCham the organisation did not ensure that an appropriate organising committee was established to oversee the Harbour Fest event in order that a structured approach and an effective management and financial control framework for the event were in place. Further, AmCham the organisation should have been more actively involved in the organisation and implementation of the Harbour Fest since this was AmCham's responsibility under its agreement with the Government.

Conclusion No. 5

Inexperience of the Harbour Fest Organisers in Concert Promotion

18. The Panel concludes that the three-member Harbour Fest Organising Committee was handicapped by their lack of knowledge in concert promotion and their lack of acquaintance with experts in the field. The Panel is not satisfied that they conducted an appropriate search and went through an open process in relation to the talent acquisition co-ordinator appointment. We consider that they substituted expediency for due diligence and made a questionable choice in the appointment of East Art International Limited as the overall western talent co-ordinator.

Conclusion No. 6

Failure of the Harbour Fest Organising Committee to Implement an Appropriate Organisation and Control Structure

19. The system of financial control was inadequate and open to abuse as it lacked appropriate checks and balances, particularly in relation to the control of authorisation of expenditure. Nearly all cheques were signed by the former chairman of AmCham in a sole capacity. There was a similar lack of organisational control in the western talent handling process. The inexperience of the Harbour Fest Organisers made them in many ways hostage to their western talent co-ordinator who by default was able to make a host of decisions, resulting in the commissioning of services that were not good value for money.

20. To the Panel, we conclude that there was a failure on the part of the Harbour Fest Organising Committee to ensure there was an appropriate organising and financial control structure put in place to tightly manage and control the organisation process of the event, financially and operationally.

Conclusion No. 7

Professionalism of the Contractor for Acquisition of Western Talents

21. To the Panel, we conclude that East Art International Limited, the western talent co-ordinator for the Harbour Fest, was not as experienced and established as it represented to Red Canvas Limited per the talent acquisition agreement. This adversely impacted on the negotiation of the western talent contracts, the arrangement for the handling of the western talents as well as the costs of having to place service contracts overseas. All of these would directly affect the ability to control the costs and maximise the cost effectiveness of the Harbour Fest.

Conclusion No. 8

Fees Paid to Western Artists

22. The fees paid to the western artists of the Harbour Fest were benchmarked against their going rates for performance in the US as listed on a popular website. To the Panel, despite the caveat that artists might

charge much more than as shown on the site if they were to play outside the US and if they were not on tour in the region, the results of the benchmark exercise cause us to conclude that there appears to have been some degree of overpayment to most of the western artists for performing at the Harbour Fest.

Conclusion No. 9

Ticketing and Attendance

23. The Panel noted that the overall attendance rates and sale of tickets for the Harbour Fest were disappointing. The process of selling tickets to the public generally appeared to have been handled well but controversy emerged around corporate ticket sales which the Panel considers arose from the appointment of an inexperienced contractor to handle this aspect of ticketing.

24. The Panel concludes that the unsatisfactory corporate ticket sales had an adverse impact on ticket sales revenue.

25. The Panel is concerned that the number of free tickets handed out by the Harbour Fest which accounted for 30% of total attendance and the lack of consultation with the Government in this regard. Further, the large-scale distribution of free tickets had a trickle-down effect on the whole concert promotion industry in Hong Kong in that some concert-goers were hesitant to pay for tickets after the Harbour Fest.

26. The Panel considers that the Organising Committee had a duty to maintain tight control over all free ticket distribution decisions to ensure transparency and accountability of this process. Records should have been maintained and made accessible in this regard. The Panel considers it unsatisfactory that Red Canvas Limited could not provide a breakdown of the over 12,600 free tickets given away under the “Complimentary/ Other Category.”

27. The Panel agrees that the decision to change the ticket prices to market did affect what can be termed the ethos of the event. However, as evidenced by the analysis of ticket sales and attendance records, the

Panel does not consider that the change in pricing strategy necessarily impacted the unsatisfactory ticket sales.

Conclusion No. 10

Inadequate Monitoring by InvestHK

28. The Panel concludes that InvestHK did not diligently follow the instruction of ERWG to scrutinise and approve the evolving budget of the Harbour Fest.

29. InvestHK also failed to institute a proper monitoring framework for the event when discharging its responsibility as the subject department of the Harbour Fest. DGIP had failed to adequately discharge the role of Controlling Officer of the HK\$100 million sponsorship fee.

30. DGIP and InvestHK traded due diligence for expediency in unjustifiably hiding behind a narrow interpretation of sponsorship.

Conclusion No. 11

No Public and Media Buy-in

31. The Panel concludes that both the Harbour Fest Organising Committee and the Government had missed out on this one key success factor for the event, namely, to positively and pro-actively engage the public to buy in to the Harbour Fest, being an initiative to relaunch the economy of Hong Kong post-SARS, with strategic objectives to boost public morale, attract short-haul visitors and demonstrate to the world that Hong Kong was reinvigorated and back on the world map after SARS.

32. There was neither any attempt to proactively engage the media to rally support for the event as a Hong Kong people's event.

Conclusion No. 12

Inadequate Transparency and Accountability

33. The Panel concludes that the Harbour Fest Organising Committee failed to recognise the fundamental need for transparency and accountability in the disbursement of the \$100 million sponsorship fee,

three quarters of which were spent on western talent acquisition. The Organising Committee was not justified in claiming confidentiality over the talent contracts as the Panel has discovered that apart from the Rolling Stones contracts, none of the talent contracts carries a confidentiality clause.

34. The departure from good government practice by DGIP and InvestHK in forfeiting the reserve power of access to contracts and records of the Harbour Fest was also a failure in good stewardship expected of every level of Government.

Conclusion No. 13

Achievement of Deliverables

35. The Panel concludes that there was the physical delivery of a mega concert event consisting of the 14 concerts, a two-day festival and the production and broadcast of the television special on the US networks. Technically, the broadcast in the US had by and large reached the number of television households promised by the Organising Committee in July 2003, though likely of a different profile. But the estimated aggregate rating of the programme for the three airings on the US networks was low.

Conclusion No. 14

Non-Achievement of the Strategic Objectives

36. It appears that most of the 125,872 attendees at the Harbour Fest enjoyed the performances. But there was much negative publicity surrounding the event. Against such mixed feedback, it was inconclusive if local morale was boosted. There were some short-haul visitors attending the concerts but no statistics were available. The low rating of the programme when broadcast on the music networks in the US compromised the effectiveness of the “Hong Kong is back” message reaching to the US viewers.

37. The Panel concludes that the Harbour Fest did not achieve its three strategic objectives, namely to boost local morale, attract short-haul visitors and to show the world that Hong Kong had recovered.

Conclusion 15

Responsibilities

38. Against the foregoing, the Panel concludes that each of the parties involved in the Harbour Fest at the project assessment, approval, implementation and monitoring stages fell short of the Panel's expectation of good governance, business prudence and professionalism in the organisation of an event of such nature and magnitude. They were all responsible in their respective ways.

Recommendations

39. Our recommendations are set out in the following paragraphs.

Recommendation No. 1

Role of the Government in Similar Future Events

40. There is a definite role for the Government if similar events are to be staged in future. The Harbour Fest 2003 would not have been possible without Government support. For the future, we do not consider that the Government should take a sole sponsor role or underwriter role. We recommend that there must be a dedicated public-private sector partnership to ensure shared commitment, both financially and operationally, between the Government and the private sector. For its part, the Government should mobilise inter-departmental support of the relevant Government agencies and make it a joint effort within Government. The Government must be represented on the organising committee of the event, even if it is only playing the monitoring role.

Recommendation No. 2

Organisational Model for the Future

41. We recommend an organisational model comprising Government, private commercial sponsors, business and industry experts. Given the commercial nature of these events, we recommend that the finances should best come from the private sector, with the Government providing at most a minor part of the funding, as well as logistical and venue support and the business and industry experts providing

professional and operational input. This will ensure professionalism and synergy.

Recommendation No. 3

Need for Prudence

42. We recommend that before commitment, the Government must exercise prudence and duly assess the merit and feasibility of the proposal as well as the capability of the proponents, determine a clear scope of involvement by the Government commensurate with the level of financial support to be provided, institute a proper monitoring framework for the event, negotiate for a reserve power of access to the records and accounts of the event, and strive to achieve the maximum value for money.

Recommendation No. 4

Protection of Public Funds

43. We recommend that the Department of Justice must be consulted if the Government is to enter into legally binding agreements or to effect advance payments to support similar events. In no circumstances can urgency take precedence over due diligence.

44. We recommend that the Government should consider issuing advance payments by way of loans to be refunded in the event that the contracting party should fail in discharging his obligation. A definite time-frame for compliance and appropriate guarantee to ensure repayment to the Government should be specified.

Recommendation No. 5

Public Accountability and Transparency

45. We recommend that in funding an event of similar magnitude in future, the Legislative Council must be adequately and regularly briefed to ensure public accountability and transparency. We also recommend that Controlling Officers must be reminded on the need for transparency throughout the process and that all decisions made must be publicly defensible.

Recommendation No. 6
Leadership and Crisis Management

46. We recommend that the senior levels of Government should be better trained and prepared in crisis management so that when mishap falls, they will be better prepared to embrace the crisis, control the damage, demonstrate stalwart leadership and salvage the situation.

Recommendation No. 7
Engagement of the Public and the Media

47. We recommend that for similar future events, there must be put in place an early strategy to engage the public and the media to facilitate discussion, acceptance and buy-in and that they should better start on a modest scale and be allowed to grow over time.

48. We further recommend that by so doing, Hong Kong can aspire to have a pop music festival featuring on the Hong Kong events calendar in the same way as the annual Hong Kong Arts Festival.

CHAPTER 1 INTRODUCTION

The Severe Acute Respiratory Syndrome

1.1 The genesis of the Harbour Fest lay in the Severe Acute Respiratory Syndrome (SARS) outbreak that impacted a number of countries in Asia and first surfaced in Hong Kong in March 2003. Its impact upon the Hong Kong community was devastating. By the time the disease abated, a total of 1755 citizens had been infected and tragically, 300 of them had died.

1.2 The morale of the Hong Kong people was seriously eroded and so too was the territory's economy. Tourism statistics¹ evidenced that the number of visitor arrivals in 2003 plummeted from 1.3 million in March to 0.5 million in April and then to 0.4 million in May. Hotel occupancy rates collapsed from 79% in March to 22% in April and then to 18% in May 2003.

1.3 Retail business ground to a virtual halt with the population shunning public places. Schools were closed. Shopping malls and restaurants were deserted. Airlines drastically reduced their schedules of flights to and from Hong Kong. Unemployment and under-employment levels increased as businesses curtailed their activities to ride out the storm.

1.4 Business sentiment was that economic recovery from the crisis would be slow and there would be no meaningful pick-up in the territory's economy until the first quarter of 2004.

Economic Relief Package

1.5 In response to the dire economic and social crisis facing the territory, the Chief Executive announced on 23 April 2003 that an Economic Relief Package of HK\$11.8 billion would be made available to aid the community and revive the economy after SARS. Of this amount, HK\$1 billion was earmarked for large-scale publicity and promotional campaigns as an Economic Relaunch Programme aimed at restoring

¹ Source: Hong Kong Tourism Board website (www.partnernet.hktourismboard.com)

Hong Kong's reputation and communicating Hong Kong's recovery to the world.

Economic Relaunch Campaign

1.6 On 12 May 2003, the then Financial Secretary (FS), Mr Antony Leung, advised the Legislative Council Financial Affairs Panel (LegCo FA Panel) of the Government's planned approach to relaunching the economy. To strategise, prepare for and oversee the economic relaunch programme, two ad hoc committees had been set up. Both committees were to be chaired by the FS, with the Director-General of Investment Promotion (DGIP) of Invest Hong Kong (InvestHK), Mr Mike Rowse, serving as secretary to both groups.

1.7 The first ad hoc committee, the Economic Relaunch Strategy Group (ERSG), would focus on the strategic aspects of the relaunch campaign. Its membership comprised six senior Government officials and 19 business, community, and academic leaders. Mr James E. Thompson, in his then capacity as Chairman of the American Chamber of Commerce (AmCham), was a member of this group.

1.8 The second ad hoc committee, the Economic Relaunch Working Group (ERWG), comprised the same six senior Government officials on the ERSG. Its function was to prepare and oversee the implementation of a comprehensive programme of economic relaunch activities. The membership and terms of reference of ERSG and ERWG are set out at *Annex 1* and *Annex 2* respectively.

1.9 DGIP, as secretary of both groups, was tasked to co-ordinate the relaunch proposals from the member bureaux, put together a comprehensive programme, supplement it with mega events, and submit it for funding approval by the LegCo Finance Committee (FC) within May 2003. ERWG would be the central control and approving authority for the budget for each event under the programme. As head of InvestHK, DGIP was the vote controller of the HK\$1 billion relaunch fund.

1.10 On 23 May 2003 the World Health Organisation (WHO) lifted the travel advisory on Hong Kong. The Administration then briefed

the LegCo FA Panel on 29 May 2003 on their proposal to seek the FC's approval to create a non-recurrent HK\$1 billion fund under the vote control of InvestHK to support the economic relaunch campaign. The FC duly approved the funding proposal on 30 May 2003. Included in the breakdown of the campaign fund² was a sum of HK\$200 million for major cultural, sports and other international events. The proposal for the Hong Kong Harbour Fest 2003, although not developed at that time, would form part of this last category.

1.11 The LegCo FA Panel and the FC were informed on the following characteristics of such major events, "In addition to providing an outlet for local people, thereby restoring the feel good factor, these will bring additional visitors to Hong Kong and also indirectly attract positive publicity. Because such events depend on the availability of a limited number of heavily committed world famous acts, and negotiations are commercially sensitive, it is not possible to give further details at this stage."

1.12 While the ERWG member bureaux were working on a comprehensive economic relaunch programme in May 2003, members of ERSG were encouraged to offer their suggestions on other proposals to relaunch Hong Kong. As early as 12 May 2003 when the Government briefed the FA Panel on the approach for relaunching Hong Kong, the then FS stressed that "participation of business sectors and the whole community would be necessary for the success of the campaign." This subsequently inspired the AmCham initiative of Harbour Fest.

1.13 As stated in the Government's submission to the LegCo FA Panel meeting on 11 October 2003, ERWG would not accept direct funding applications for relaunch activities initiated by an outside party. A subject bureau or department would be identified to scrutinise any proposal received. It would take up the project, where appropriate, either as the organiser, a co-organiser or a sponsor. The subject bureau or department would submit a funding application to the ERWG for approval.

² The breakdown of the campaign budget is as follows. The budget for initiatives to boost business and investment were estimated at HK\$90 million, initiatives on tourism and local consumption at HK\$417 million, initiatives on culture and community programmes at HK\$125 million and initiatives on media and publicity programmes at HK\$83 million.

Hong Kong Harbour Fest 2003

1.14 Hong Kong Harbour Fest 2003, originally known as the Hong Kong International Autumn Festival, was a proposal by AmCham to stage world-class entertainment and variety shows on four consecutive weekends from 17 October to 9 November 2003, at a customised venue to be built at the Tamar site in Central, to accommodate audiences of up to 10,000 to 12,000 on each occasion to boost local morale, to attract short haul visitors and to show the world through a televised programme that Hong Kong was safe, thriving, and relaunched after the attack of SARS.

1.15 The idea for Harbour Fest was conceived by Messrs Mike Denzel and Jon Niermann, Chairman and Vice-Chairman of the AmCham Sports and Entertainment Committee (S&E Committee) respectively, in response to an invitation by Mr Thompson, then Chairman of AmCham, to the Chamber's various Committees to generate ideas as to how AmCham might help the Government relaunch Hong Kong after SARS.

1.16 At the suggestion of Mr Thompson, the two presented a conceptual plan of Harbour Fest to DGIP on 5 June 2003 who expressed interest in the concept and arranged a meeting for the three AmCham representatives with various Government departments likely to be involved in such a project. At that meeting, a proposal and budget for the event were presented. The departments' initial response to the concept was positive but they considered it rather ambitious and so recommended that the proposal should be presented directly to the ERWG. This direct approach to the ERWG by an outside party was in fact contrary to the established procedures for handling funding applications for relaunch activities but the Panel has been advised that the Harbour Fest proposal was treated as an exception given its scale and the degree of funding sought.

1.17 The ERWG considered the proposal at its meetings on 2 and 12 July 2003. At the first meeting the ERWG, received a presentation from AmCham on the proposal and gave its support to the project in principle subject to InvestHK's scrutiny and satisfaction with the detailed budget. At the second meeting, the ERWG formally 'approved a

maximum of HK\$100m to InvestHK for underwriting' the Harbour Fest to be organised by AmCham. Three legally binding Memoranda of Understanding (MoUs) in relation to the Harbour Fest were entered into between InvestHK, on behalf of the Government, and AmCham on 31 July, 29 August, and 3 October, 2003. The formal agreement between the two parties covering the organising and underwriting of the Harbour Fest was concluded on 10 October, 2003. A chronology of the major events that took place since 5 June 2003 is set out at *Annex 3*.

Controversy over the Harbour Fest

1.18 The Harbour Fest first became a subject of negative publicity at the end of August 2003 when an article questioning whether it was money well spent for the Government to underwrite the AmCham initiative up to HK\$100 million was published in the English press. The article also alleged that AmCham was paying the Rolling Stones more than twice what they would have been paid by another event promoter who was originally preparing to bring them in.

1.19 The timing of this press article was particularly unfortunate for the event organisers as it preceded only by a matter of days the official press conference to announce the arrangements for the Harbour Fest. As a result, from the outset, the organisers found themselves embroiled in controversy and put on the defensive.

1.20 As events unfolded, there was a host of other negative media reports on the event raising public concern over its cost-effectiveness and the manner in which it was organised.

Government Responses to Public Criticism of Harbour Fest

1.21 In response to the public concern over the Harbour Fest in late October 2003, the Audit Commission commenced a review of the Government's role in the planning, monitoring and implementation of the Harbour Fest. It submitted its report to LegCo on 21 April 2004. On 5 November 2003, the FS announced at the LegCo meeting that the Chief Executive would appoint an independent panel of inquiry to investigate

into the Harbour Fest event. The appointment of this Panel³ took place on 12 December, 2003.

The Independent Panel of Inquiry

1.22 On 12 December 2003, the Chief Executive, Mr Tung Chee Hwa, appointed the Panel to look into the approval, organisation and monitoring processes of the Harbour Fest event with the following terms of reference -

- To examine the procedures for assessing and approving the proposal by AmCham for the Harbour Fest in the Economic Relaunch Working Group;
- To evaluate the organisation, administration and implementation of the Harbour Fest by AmCham and the Government's role in overseeing AmCham's actions in this regard;
- To identify deficiencies, if any, of such procedures and processes, and where appropriate, the responsibility of any party for such deficiencies;
- To make recommendations, where appropriate, on improvements for any similar future events that might require Government sponsorship; and
- To make a report with conclusions and recommendations to the Chief Executive by 31 March 2004⁴.

The Panel's Mode of Operation

1.23 The Panel has conducted its work through a combination of meetings with and examination of written submissions and documentary

³ The two-member Independent Panel of Inquiry comprised Mr Moses Cheng, a senior partner of a solicitors' firm, and Mr T. Brian Stevenson, a former president of the Hong Kong Society of Accountants.

⁴ On 10 February 2004, the Panel announced that it obtained approval from the Chief Executive to extend the deadline for its submission of report to 30 April 2004. On 26 April 2004, the Panel announced that it sought approval for a further extension to 15 May 2004.

evidence from the relevant and interested parties, locally and overseas. These parties include all the major personalities involved in the planning, organisation and administration of the Harbour Fest from within the Government, the AmCham, Red Canvas Limited (Red Canvas) and a number of the key contractors of the Festival.

1.24 The Panel has also invited views and comments on the event from members of ERSG and ERWG, Legislative Councillors, industry experts and the public⁵.

1.25 On specific issues, the Panel has sought the advice of experienced event organisers, namely, the Home Affairs Bureau, the Leisure and Cultural Services Department (LCSD), the Hong Kong Rugby Football Union, the Hong Kong Arts Festival Society Limited, the Ontario Provincial Government with regard to their experience in the organisation of the Toronto Rocks Concert of 30 July 2003 to relaunch Toronto, and leading local entertainment promoters.

1.26 The Panel has further sought and reviewed press reports on the event available from Government sources.

1.27 The Panel has received written submissions or information or contributions on the event from 63 individuals and organisations, and met with 28 individuals, some of whom on more than one occasion. An acknowledgement list showing all the contributors to the report who submitted written views, and/or met with the Panel is at *Annex 4*.

1.28 Throughout the inquiry, the Panel has been very conscious of its administrative non-statutory status and its dependence on the goodwill of the invited parties to respond to its inquiries and requests for information. While this method of operation has proved successful in most instances with the parties co-operating, there have been instances where the parties have proven less co-operative and hence the process, less effective and time-consuming. As at the point of report writing, there are still a number of questions remaining outstanding from some quarters.

⁵ The Panel issued a press release on 22 December 2003 and an advertisement on 29 December 2003 to solicit public submissions on the Harbour Fest.

In these instances, we have no alternative but to come to conclusions without the level of certainty that we would have preferred.

1.29 The Panel also wishes to place on record that the work of the Audit Commission and the inquiry of this Panel were carried out completely independent of each other. We have had the benefit of receiving copies of the Director of Audit's report after it was tabled in LegCo. As our inquiry is an independent exercise from that of the Director of Audit's study and we work to our specific terms of reference, we do not consider it appropriate to comment on the findings of the Director of Audit's report.

Structure of Report

1.30 We have structured the following chapters of the report in the order of our terms of reference.

CHAPTER 2 ERWG'S ASSESSMENT AND APPROVAL OF THE HARBOUR FEST PROPOSAL

2.1 This chapter examines the ERWG's assessment and approval process at their meetings of 2 and 12 July 2003 of the Harbour Fest proposal.

In-Principle Approval of 2 July 2003

2.2 The AmCham representatives, Messrs Thompson, Niermann and Denzel gave a power-point presentation on the proposal to ERWG at its meeting on 2 July 2003 similar to that presented to the inter-departmental meeting of 26 June 2003. In the presentation to ERWG, the estimated expenditure for the event was put in the region of HK\$100 million to HK\$120 million with estimated revenues of HK\$10 million to HK\$20 million from ticket sales at HK\$100 per ticket for Friday nights and at HK\$100 per pass for Saturday/Sunday. Hence, there was a projected funding deficit in the range of HK\$100 million. AmCham would stage world-class entertainment and variety shows at a customised stage and concert setting constructed on the Tamar site in Central on four consecutive weekends from October to November 2003. The variety of programmes would include night time concerts of international singers and daytime festivals. Further, a television special on festival highlights would be produced and broadcast in the US on the network of America's Broadcasting Company (ABC) during the peak viewing periods. In the AmCham presentation, the focus was on creating an entertainment showcase in support of the Government's efforts to revitalise Hong Kong. The plan was for tickets to be inexpensively priced in order to attract capacity crowds post-SARS to a public venue in the heart of the city and hence for a vibrant image of Hong Kong and its citizens to be projected internationally.

2.3 At this meeting, ERWG gave in-principle approval to underwrite the event up to HK\$100 million, subject to InvestHK's scrutiny and satisfaction with the detailed budget. AmCham was also asked to try to make the event as commercially viable as possible to reduce Government subsidy.

Assessment by ERWG on 2 July 2003

2.4 The Panel has learned from the Members of the ERWG that the presentation and subsequent discussion lasted for about 45 minutes and that a number of issues relating to the feasibility and other aspects of the proposal were raised with the AmCham representatives. The FS who was then Secretary for Commerce, Industry and Technology also recalled having commented on the substantial amount of public money involved and suggested that InvestHK should scrutinise the detailed budget carefully to reduce Government exposure.

2.5 While there is no written record of the matters raised with the AmCham representatives other than the need for budget scrutiny, the Panel has determined it appeared that the following matters were considered.

AmCham's Lack of Past Experience in Organising Entertainment Events

2.6 On this point, the AmCham representatives advised ERWG that the AmCham membership included a number of world-class entertainment companies and other companies in entertainment marketing, entertainment-related legal services, television and media entertainment networks etc. and that these 'in-house' sources of expertise and knowledge would be tapped in the planning and organisation of Harbour Fest. Further, the aim was for AmCham members to provide their services on a pro-bono or discounted fee basis, backed up, where necessary, by external professional expertise.

The Programme Line-Up

2.7 ERWG was aware that the line-up presented by AmCham was only indicative and subject to availability of and negotiation with the proposed performers but the list provided a feel for the level of performing talents that AmCham was aiming at, and the intention to feature international, regional and local artists in the event.

The Ambitious Nature of the Harbour Fest Proposal

2.8 In this regard, it appears that the Members of the ERWG were impressed with the concept as well as the credentials of the AmCham team who made the presentation, two of whom were professionals in internationally renowned entertainment companies and the third of whom, the then Chairman, was recognised as one of Hong Kong's leading business entrepreneurs.

2.9 At its meeting on 2 July 2003, the ERWG did not appear to have asked specific questions on important issues such as the planned organisation and management structure for the event; possible challenges imposed by time constraint; nor issues such as concert industry expertise and specifically, who would be responsible for the key area of talent acquisition.

2.10 To the Panel, it appears that the ERWG, in assessing the proposal, primarily relied on the visual presentation given to them by the AmCham representatives and their verbal undertakings as to the involvement of AmCham member companies, being US entertainment industry leaders, backed up by external professional expertise as appropriate.

Approval of the Funding Proposal on 12 July 2003

2.11 The matter then progressed with InvestHK submitting a funding proposal on Harbour Fest to ERWG on 12 July 2003. The estimated expenditure for the festival was set at HK\$116.2 million and the estimated revenue, HK\$16.1 million, again with a projected HK\$100 million deficit. An extract from the funding paper, ERWG Paper No. 32/03, is at *Annex 5*. The funding proposal was largely based on the 2 July 2003 power-point presentation as well as the budget seen by the inter-departmental meeting on 26 June 2003.

2.12 It was submitted in the funding paper that the event would achieve the following strategic objectives of economic relaunch: boost morale in Hong Kong; encourage return to normal economic activities; get the local economy growing again by boosting local consumption and

tourism; convince international and Mainland communities that they should come to Hong Kong for business and leisure.

2.13 When ERWG gave its approval to the project on 12 July 2003, it was decided that the Government would act as a sponsor only of the event and sponsorship would be capped at HK\$100 million of the net deficit of the festival. AmCham would plan, organise and implement the festival in accordance with commercial principles having regard to the overall objectives of the festival.

2.14 The FS has advised the Panel that the intention was for the Government to maintain an overview of AmCham's preparation of the festival to ensure that the items as promised would be delivered and the objectives met. The Government would not micro-manage the detailed planning and organisation, being the responsibility of AmCham. At the same meeting, ERWG asked that ticket prices of the event should be pitched at market rate to reduce the level of Government subsidy. It also suggested that there should be concessionary tickets for senior citizens and students.

2.15 The conditions of approval were unequivocally set out in the email dated 14 July 2003 from Ms Ophelia Tsang, ADG3 of InvestHK, to the AmCham representatives -

“...the ERWG has agreed at its meeting last Saturday to underwrite the event up to the maximum of HK\$100 million, on the understanding that –

- (a) If by the close of account the overall deficit is less than HK\$100 million, the Government will cover the cost of the actual deficit in full. All revenues generated will be used to offset the operation costs. However, if it happens that the overall deficit is more than \$100 million, the Government will in any case settle \$100 million only. The event organiser, namely the AmCham, will have to bear the rest of the deficit.
- (b) The detailed budget and all statements of account in relation to the Festival will be subject to scrutiny and approval by InvestHK.

- (c) The event organiser (i.e. AmCham) shall be fully responsible for the organisation, operation and implementation of the Festival.
- (d) The pricing strategy should be critically reviewed, having regard to the nature and attractiveness of the shows, with a view to making the Festival as commercially viable as possible.
- (e) Efforts should be stepped up to explore and secure more commercial sponsorship in order to increase the revenue opportunity.”

The Panel's Observations

Merits of the Harbour Fest Concept

2.16 The Panel has had the opportunity of viewing the power-point presentation given to the ERWG and meeting with its presenters. Their concept of a morale boosting, post-SARS world-class mega event to be held in the heart of the city of Hong Kong was, we consider, a powerful one worthy of Government support. A similar post-SARS event in Canada, the Toronto Rock Concert of 30 July 2003 featuring the Rolling Stones, attracted an attendance of 450,000 audience not only from Canada but also from the US, and was widely broadcast in North America and web-cast globally. It appeared to have been a definite success. However, concept is one thing, implementation another.

Government's Assessment of the AmCham Proposal

At the level of the ERWG

2.17 While some pertinent questions were put to the AmCham representatives at the ERWG meeting on 2 July 2003 regarding the feasibility of the proposal as well as the need for detailed budget scrutiny, given the size of public funds involved, the Panel is of the view that the ERWG assessment of the AmCham proposal was inadequate. It lacked depth and was somewhat cursory in nature.

2.18 The Panel well understands the trust that the ERWG could readily place in the three AmCham representatives who made the proposal and their capability to carry the project through in view of their personal success, the entertainment business background of two of them and the reputation of AmCham as a well-respected and leading international chamber with membership of a number of world-class entertainment and entertainment-related companies. ERWG was also keen to see a public-private sector partnership to relaunch Hong Kong as quickly as possible. However, to the Panel, trust and goodwill are no substitute for due diligence, particularly given the degree of public funding sought for the proposal, and the fact that the Harbour Fest would be *the* mega event of the SARS Relaunch Programme.

2.19 The Panel considers that an impression that the project would be placed in good hands was not adequate. Given the nature of AmCham being a non-profit making trade organisation with limited staff resources that had no past experience of organising similar mega events and no experience of dealing with Government sponsorship, the ERWG should have recognised the need to closely scrutinise the AmCham proposal and to raise with the AmCham representatives queries on a number of key issues.

Organisational and Administrative Structure

2.20 An appropriate organisation and administrative structure, in the Panel's opinion, is critical for an event such as the Harbour Fest. This should comprise individuals with an appropriate mix of business, professional and entertainment industry skills to ensure that all major decisions were properly debated, planned, authorised, controlled and executed. ERWG explained to the Panel that they understood that the Organising Committee for the Harbour Fest would be led by Mr Thompson and supported by Messrs Denzel and Niermann but beyond that, there was no discussion on the administrative structure to be set up by AmCham to take forward the project.

2.21 As it turned out, the Harbour Fest Organising Committee comprised precisely only these three gentlemen. To the Panel, they were part-timers who worked magnificently hard, but they were stretched to

their limits to carry through the task at hand. They were in turn supported by a number of key contractor companies some of whom were AmCham members. At a later stage, the AmCham Board of Governors (BoG) did set up two ad hoc committees to help. However, notwithstanding these late efforts, all the planning and organisation decisions taken in relation to the event rested with these three gentlemen or, more specifically, as we shall see, with either one of them, depending on the subject, and in some cases, even with a single contractor.

2.22 In the Panel's opinion, at the proposal stage, given the nature of the event and the size of the budgetary request, it was incumbent on the ERWG to determine if an appropriate organisation structure was in place to adequately manage and control the event.

Concert Organisation Experience

2.23 Given the substantial concert element of the programme that was presented to ERWG on 2 July 2003, experience in organising entertainment concerts and engaging artistic talent was critical to the success of the venture. As it turned out, pop concerts became almost the one single feature of the Harbour Fest after the subsequent cancellation of the festivals and so industry experience became all the more critical. In fact, there was little concert organisation experience from within AmCham, even in the case of Disney Hong Kong, and so the AmCham representatives became heavily reliant on the talent acquisition company that they engaged for the event. The professionalism or otherwise of this company would make or break the festival.

2.24 To the Panel, ERWG should have recognised at the proposal stage the importance of concert organisation experience to the success of the Harbour Fest and so should have made specific inquiries of AmCham in this regard.

Timing Constraint

2.25 ERWG did not appear to have considered the challenges posed by time constraint in organising such a mega event within such a short period of time, particularly, in relation to aspects such as securing

talent, marketing the event and organising ticket sales. Experienced professional concert organisers have advised us that a lead in period of nine months to one year would be normal for organising such an event.

2.26 However, in the Panel's view, the single most important issue that should have been considered by the ERWG in relation to the time constraint point was the scale of the festival and the number of concerts to be staged. A closer scrutiny of this point, particularly once the event became virtually concert-dominant, should have led to a downsizing of the scale of the event which in turn could have been helpful to both the overall organisation of the event as well as the attendance rates and ticket sales.

2.27 We do not consider though that the timing difficulty was so great that a closer scrutiny of the question would have led to an abandonment of the project altogether. We state this since firstly we recognise that the Government was keen to host a mega cultural event to boost local morale and promote a vibrant image of Hong Kong overseas. We considered this a good justification for the Government supporting the AmCham concept.

2.28 Secondly, we note that despite the time constraint, AmCham delivered on its contractual commitments and a series of high quality concerts were delivered on time. Admittedly, though not without controversy. But the Panel considers that this was more due to administrative failings than time constraint.

2.29 Finally on this point, the Panel is mindful of the fast track success of the Toronto post-SARS rock concert which was organised with only a six to seven weeks' lead time, proving that in crisis situations, it is possible to fast track events such as Harbour Fest provided that the appropriate organisation structure, skills and expertise are in place.

ERWG's Decision to Act as Sponsor with AmCham as Organiser of the Harbour Fest

2.30 The Panel is of the view that the Government should have requested involvement on the organisation committee of the event. The

request could have been made either at the approval stage by ERWG or at the monitoring stage by InvestHK. It was unfortunate that no such request was ever made.

2.31 To the Panel, this need not have amounted to the Government being involved in micro-managing the event. Instead, it would have enabled the Government to be better informed as to the progress of the event and how its investment in the festival was being managed. Further, this would have evidenced commitment on the part of the Government to the organisers and would have given them a direct conduit to assist in resolving Government related challenges specifically regarding the event venue and public relations and promotional matters. Regardless of what the official Government policies are regarding sponsorship matters, the Panel considers that given the degree of public funding involved in the event, the fact that the Government was the principal sponsor of the event, and the fact that the event was the single most significant one in the Relaunch Programme, it justified a more ‘hands on’ approach on the part of the Government.

ERWG’s Choice of Subject Department for the Harbour Fest

2.32 Pursuant to its decision that the Government would act only as a sponsor of the Harbour Fest and that AmCham would be responsible for both its organisation and implementation, the ERWG appointed InvestHK as the subject department for the event given that it was the department working with the AmCham representatives on the proposal from the start. The Panel has asked the ERWG if any thought had been given to the involvement of the Leisure and Cultural Services Department (LCSD) in the project as it would appear to be the Government department with the most practical experience in organising cultural events and concerts. The response of the ERWG was that no consideration was given to this point pursuant to the decision that the Government would limit its role to that of a sponsor only. Further, ERWG made the point that InvestHK should have sought assistance if at any time, it had concerns over its lack of capability or resources to act as the subject department for the event. While we agree that the onus is on InvestHK to seek help if necessary, we also consider that at the assessment stage, consideration should have been given to the

involvement of LCSD as the Government department best equipped to oversee a mega concert event.

At the Level of InvestHK

2.33 InvestHK became the subject department on 2 July 2003 and was specifically tasked by the ERWG to scrutinise and satisfy itself with the detailed budget of the Harbour Fest before submission of the funding proposal to ERWG on 12 July 2003.

Budget Scrutiny

2.34 According to records provided by InvestHK, there were two budgets for Harbour Fest drawn up by the AmCham representatives between 5 June 2003 and 12 July 2003. The first budget was the one presented to the inter-departmental meeting on 26 June 2003 and the second one was a revised budget submitted by Mr Niermann to InvestHK on 6 July 2003 for the purpose of the funding application. A comparison of the budget of 26 June 2003 with the budget submitted to ERWG on 12 July 2003 depicted only two minor changes. An adjustment of approximately US\$100 on the total expense budget of just over HK\$116 million and the inclusion of an estimated revenue figure of HK\$16.1 million, there being no revenue figure included in the first budget.

2.35 InvestHK has explained that at that time, the budget was very much indicative only. Accordingly, they had adopted what they termed ‘a common sense approach’ in scrutinising the budget to ensure that no obvious matters had been overlooked.

2.36 The revised budget of 6 July 2003 is set out at *Annex 6*. It categorised expenditure under five major headings and there were supporting breakdown for three of these headings, namely: Venue Construction/ Facilities; Venue Operations; and Talent. No breakdown was provided under the headings of Television Production and Marketing/Promotions.

2.37 The Panel has reviewed the emails provided by InvestHK in relation to the budget and has noted that there were only two during the

material time and these raised minor questions. There were no material questions raised on the basis of any of the expenditure items. Further, no breakdown was sought on the estimated expenditure on television production and marketing/promotions.

2.38 Further, the Panel has noted that when submitting the budget on 6 July 2003, Mr Niermann had the following rider in his email to InvestHK, “ ...The budget does not include costs for Tamar site lease or utilities, Government permits, or police force for perimeter security. We’d also look to Government marketing channels ..” The exclusions named in this rider, such as rental for the Tamar site, invariably translated into subsequent costs to the Harbour Fest not originally budgeted for. The Panel is of the view that the exclusions in this rider should not have been disregarded when InvestHK made the funding submission to ERWG. In addition, the 6 July 2003 budget did not include estimates for airfare and hotel costs which the AmCham representatives considered as areas for sponsorship in their 2 July 2003 presentation to ERWG. InvestHK should have also reminded ERWG on this assumption in the funding application.

2.39 The Panel also has queries on how InvestHK checked the budget in relation to talent costs. They advised “the total forecast for artist fees seemed reasonable having regard to the class of international artists being sought”. The Panel cannot find any basis for this observation because it is the Panel’s understanding that InvestHK has no experience with artist fees. Further, the Panel cannot find any evidence that InvestHK had checked with industry sources or with other Government department sources that had experience in event organisation for the reasonableness of the fees estimated for the indicative list of artists. Neither did they ask the AmCham representatives the basis of their estimated fees, such as whether they were past rates paid to these artists.

2.40 Based on the above, the Panel considers that InvestHK’s common sense approach in the budget scrutiny process was wholly inadequate. InvestHK did not conduct a rigorous enough review of AmCham’s budget for the Harbour Fest. Accordingly, it did not exercise due diligence when carrying out the explicit instruction of ERWG to

scrutinise and satisfy itself with the detailed budget of the Harbour Fest proposal before its submission to the ERWG on 12 July 2003.

Assessment of Merit and Feasibility

2.41 ERWG has advised the Panel that once InvestHK became the subject department for the project on 2 July 2003, it was expected to examine and scrutinise the AmCham proposal in the same way the other subject departments would do when they submitted the other 90 plus applications under the relaunch campaign before putting it up for ERWG's further consideration and approval on 12 July 2003. This expectation would go beyond a vetting of the finances of the project. In other cases, this would have entailed an assessment of the merit and feasibility of the proposal.

2.42 Given that the ERWG had already given in-principle approval to the proposal on 2 July 2003, the Panel considers that it would not be possible for InvestHK to re-assess the merit and the feasibility of the proposal at the concept level. However, we consider that ERWG could still look to InvestHK conducting an assessment of the merit and feasibility of the project for its cost effectiveness. This should be part and parcel of the explicit instruction for InvestHK to scrutinise and satisfy itself with the budget of the project. The Panel considers that between 2 July 2003 and 12 July 2003, InvestHK should have satisfied itself as to whether, and if so, how the strategic objectives intended by Harbour Fest might be achieved at a lower cost, for instance, by any possible reduction of the number of concerts.

2.43 The Panel has not seen any assessment conducted by InvestHK on the cost effectiveness of the Harbour Fest proposal. InvestHK advised the Panel in their letter of 18 February 2004 that “ ..as sponsor, we first satisfy ourselves that the level of sponsorship fee sought is commensurate with the benefits offered ..We took the ERWG's decision to sponsor the event as satisfying the first part of the sponsor's duties (i.e. concluding that the benefits were commensurate with the fees) ..” It is clear to the Panel from this statement that InvestHK did not consider it their call to assess the cost effectiveness of the Harbour Fest event. Given that there was clear instruction from ERWG for

InvestHK to scrutinise and satisfy itself with the detailed budget of the project, the Panel considers that InvestHK should have assessed the cost-effectiveness of the proposal before submission of the funding proposal to ERWG.

Change in Ethos of the Event?

2.44 The Panel has another observation on the approval process at the ERWG meeting on 12 July 2003. ERWG asked AmCham to revise the ticket prices of the festival from the HK\$100 to HK\$150 range to market rate so as to raise revenue and reduce the subsidy by Government. When asked by the Panel, ERWG explained that there was no discussion on the impact that such change in ticket pricing would have on ticket sales. When making the recommendation on ticket pricing, ERWG also put in a rider that differential pricing could be adopted, with concessionary tickets for senior citizens and students.

2.45 To the Panel, the ticket sales concern arising from the change in ticket pricing strategy was only subordinate. With the change in pricing the tickets to market, we are more concerned about the change in ethos of the event. Under the original proposal, tickets were to be priced at \$100 to \$150 across the board. The message under the original pricing policy could have been that the Government was paying for a mega festival-cum-concert event for the community so that the average Hong Kong citizen could, at a token price, come out of their homes and participate in world class concerts in celebration of the return of a healthy, safe and reinvigorated Hong Kong. Public buy-in might have been more readily achieved. The change in ticket pricing strategy to market rate somewhat changed that ethos.

2.46 The success or otherwise of the event in attracting local audiences would then rely on the attractiveness of the acts on a commercial basis. We are not suggesting that it was wrong to have changed the ticket pricing strategy since we recognise that for commercially attractive acts, it is reasonable for the Government to aim to recoup a certain percentage of their costs by market pricing.

2.47 We are mindful that if the original ethos were to draw people out with cheap tickets, then under the same budget, the quality of artist line-up would have to be sacrificed. The Panel recognises that despite the market pricing of tickets, they were still subsidised by Government and, despite the high prices of the Rolling Stones tickets, they still sold full house.

2.48 When posed the question, DGIP advised the Panel that he disagreed with the ERWG decision in hindsight. But he nonetheless accepted it then as a policy decision. When posed the question, AmCham representatives indicated that they considered the change in ticket pricing strategy would make it more difficult for them to sell tickets. But neither did they re-open the issue with the ERWG.

2.49 What is more unfortunate is that AmCham did not follow the ERWG rider to provide concessionary tickets to senior citizens and students nor did Government representatives pursue the issue with them. Only bulk purchase discounts were offered. We consider that this omission further reduced the community involvement potential for the event. On this point, the ERWG advised the Panel that the wide range of ticket prices with lower end tickets in the \$158 range had made the event affordable to the public. To the Panel, however, lower end tickets would be offered under any commercial pricing strategy. This could not be regarded as an incentive to encourage public buy-in.

Conclusions

2.50 Having regard to the points considered above, the Panel is of the view that the ERWG was correct in reacting positively to the concept of the Harbour Fest as set out in the AmCham proposal but it did not conduct an adequate assessment of AmCham's capabilities to successfully carry out their undertakings under the proposal. In short, there was too much reliance placed on trust in the capabilities of the AmCham presenters of the proposal and too little due diligence on their plans for the organisation and management of the festival. Neither did InvestHK discharge its responsibility to support ERWG in the process as it did not adequately scrutinise the detailed budget of the Harbour Fest in accordance with the ERWG instruction of 2 July 2003.

CHAPTER 3 ORGANISATION OF THE HARBOUR FEST BY AMCHAM

3.1 This chapter deals with the Panel's evaluation of the organisation, administration and implementation of the Harbour Fest project by AmCham.

AmCham's Administrative Structure for the Organisation and Implementation of the Harbour Fest

Background

3.2 As explained earlier in this report, the concept for the Harbour Fest was developed by the Chairman and the Vice-Chairman of AmCham's Sports and Entertainment Committee. They are Mr Michael Denzel, Vice President and Managing Director (Asia) of NBA Asia Ltd and Mr Jon Niermann, then President and Managing Director of Walt Disney (Asia Pacific) Ltd. This was in response to a request from the then Chairman of AmCham, Mr James Thompson, for ideas whereby AmCham could assist to relaunch Hong Kong after SARS.

3.3 The three took the proposal to Mr Mike Rowse of InvestHK who subsequently arranged the interdepartmental meeting of relevant Government departments on 26 June 2003. The decision of that meeting was positive but given the size of the project, it was recommended that the proposal be referred to the ERWG.

3.4 Mr Thompson then advised the regular AmCham Board of Governors (BoG) meeting held on 30 June 2003 of the broad outline of the proposal and of the planned meeting with the ERWG to seek Government backing and funding for the project. At the next AmCham BoG meeting held on 28 July 2003, the trio of Messrs Thompson, Denzel and Niermann gave the same power-point presentation on the project that had been used in the prior meetings with the Government officials and advised the BoG of their success in securing Government backing and funding for the project.

3.5 Thereafter, until public criticism of the project arose, other than updates at the monthly Board meetings and a very minor involvement of the AmCham President, Mr Frank Martin, the arrangements for Harbour Fest were left with Messrs Thompson, Niermann and Denzel.

3.6 While the Panel recognises and respects that the Harbour Fest event was very much in line with the other AmCham efforts since the end of May 2003 to help spread the message to their contacts worldwide that Hong Kong was bouncing back from SARS, however, equally it recognises that AmCham did not have any prior experience with organising mega events like the Harbour Fest nor did it have any experience with receiving Government sponsorship to organise events.

3.7 Accordingly, the Panel asked the incumbent Chairman of AmCham, Ms Lucille Baralle, then Deputy to Mr Thompson, and the AmCham President, Mr Frank Martin, if concerns were expressed at the Board level about AmCham's ability to carry out such a massive project given the lack of past experience of event organisation and also if any thought was given to the setting up of a reporting structure under the AmCham BoG to organise the event.

3.8 The Panel was advised that the AmCham BoG was content to have put the matter in the hands of Messrs Thompson, Niermann and Denzel with them updating the Board at its regular monthly meetings. Per Ms Baralle and Mr Martin, the basis for this was firstly, the proven successful business style of Mr Thompson who had always successfully brought off projects in a lean and mean fashion. Secondly, it was considered that the tight timeframe would have rendered it impossible to work on an elaborate structure rather than the structure that had taken place. It was admitted though that this meant that there was a lot of trust placed on the Chairman and his two colleagues and their ability to deliver the project. They considered that it was trust well placed.

De Facto Organising Committee

3.9 In effect, therefore, there was no formal resolution on the part of the AmCham BoG that an Organising Committee be set up to

administer Harbour Fest but rather, a de facto Organising Committee emerged comprising the trio of Messrs Thompson, Niermann and Denzel. Further, there was no formal structure within AmCham to support the Organising Committee which acted as a core group which then drew support from their contractor team, which comprised a mix of AmCham and non-AmCham companies.

3.10 The modus operandi of the Organising Committee as agreed among its three members was as follows. Mr Thompson would act as the interface with Government and AmCham and be responsible for finance; Mr Niermann would be responsible for operations, venue and site and talent; and Mr Denzel would look after marketing, public relations and sponsorship. Ticketing was a shared responsibility between Messrs Denzel and Niermann.

3.11 The Panel was given to understand that initially, the group met on virtually a daily basis and major decisions were discussed and agreed on a collective basis. Further, there were extensive daily telephone conversations and exchange of e-mails. However, as they got further into the process, in the words of Mr Denzel, they could not “..meet and go down on every decision.” In other words, each of the three had authority to make decisions and commit the Harbour Fest in respect of their individual areas of responsibility. Specifically, on financial control, Mr Thompson confirmed to the Panel that the issue of internal control on financial commitments had not been considered by the Organising Committee as he considered the ultimate control rested in the fact that he was the only person who could sign cheques for payment. Furthermore, there was an implicit trust among the three parties.

Red Canvas Limited

3.12 Central to AmCham’s administration of the Harbour Fest was the appointment of Red Canvas Limited as effectively its vehicle to carry out the Harbour Fest event under the latter’s sponsorship agreement with the Government. Under a Memorandum of Understanding (MoU) with AmCham signed on 13 August 2003, Red Canvas would be the special purpose vehicle responsible for “organising, managing, convening and promoting the Festival in the manner agreed with AmCham.”

3.13 Given the nature of AmCham as a trade association, the Organising Committee considered it necessary to set up a special purpose vehicle to convene the Harbour Fest event. The Panel has been advised that rather than incorporate a new company and in order to save time and money, Mr Thompson volunteered the use of a family company, which was a dormant shell company that had never been activated. That company was Red Canvas Limited which had been incorporated in May 2000 with Mr Thompson and his wife being its directors and beneficial owners.

3.14 The intention was that Messrs Niermann and Denzel would replace Mrs Thompson both as directors and shareholders. Given the lengthy and time consuming approval process this would have entailed from these individuals' US employer organisations, the change was not pursued. The failure to pursue the changes gave rise to conflict of interest concerns being raised in the media when the press reported on the ownership of Red Canvas Limited in October 2003.

3.15 As regards the AmCham BoG, the Panel has been advised by Mr Frank Martin, President of AmCham, that it was aware that there would be a special purpose vehicle set up to implement the Harbour Fest but it was not consulted on the actual use of Red Canvas nor on the terms of the MoU between AmCham and Red Canvas. These were concluded by Mr Thompson on behalf of Red Canvas and Mr Frank Martin as President of AmCham.

3.16 Further, there was no consultation with the BoG on the terms of the sponsorship agreement that Mr Thompson signed with the Government on behalf of AmCham on 10 October 2003 nor on the preceding MoU's with the Government. Specifically, the BoG was not made aware that AmCham would be responsible for any cost overrun in excess of HK\$100 million. Once this challenge was identified, Mr Thompson undertook to pay for any cost overruns.

The Panel's Observations

3.17 The Panel is of the view that the administrative arrangements put in place by AmCham in relation to the organisation of Harbour Fest were inadequate.

3.18 Given the size and complexity of the event and the degree of public funding involved in the project, the Panel considers it critical that an appropriately structured Organising Committee should have been put in place to oversee the event. Such a committee would have comprised individuals drawn from AmCham's BoG and membership with an appropriate mix of professional skills, business expertise and experience, supplemented with entertainment industry experience and Government representation. Such a Committee would have provided broader input into the organisation of the event and a degree of checks and balances in relation to its management. Further, this would have provided a link from the Organising Committee to the AmCham BoG.

3.19 The Panel does not accept the view that time constraints made such an approach impracticable. Just as the three members of the Organising Committee made tremendous personal commitments to the project, the Panel considers that other AmCham members, given the opportunity, would likely also have made similar commitments and that would have had the added benefit of involving more AmCham members in the project. This is in fact what happened at a later stage once the Chamber was mobilised when the project hit difficulties.

3.20 It was only in September 2003 when negative publicity set in that AmCham set up two ad hoc committees to help. The first was the Ad Hoc Strategic Communications Committee which was brought in to assist in the damage control process and a number of AmCham members who are well known in the public relations and crisis management field joined this committee. The second was an Ad Hoc Legal and Finance Committee whose focus was three-fold. Firstly, AmCham's liability to the general public; secondly, AmCham's liability arising from its contract with the Government and any claims against AmCham from contracts by Red Canvas or its intermediaries; and thirdly, on the financial side, the task was to make sure the event would be completed in time as that was the legal obligation flowing from the agreement signed with the Government.

3.21 The establishment of these committees, albeit for damage control purposes, and the commitment of many AmCham member volunteers to serve on them evidences to the Panel the need for an

organisation structure that should have been set up in the first place and the willingness of AmCham members to be involved in the Harbour Fest project.

3.22 However, the opportunity for participation in this manner was not afforded them. The Panel considers that this bringing together of a wide array of AmCham membership talent could have helped provide the expertise and exchange of views that in turn could have helped to avoid many of the challenges the event encountered.

3.23 The Panel considers that the AmCham BoG did not inquire adequately into the commitments the three members of the Organising Committee had made to the Government in respect of the Harbour Fest on behalf of AmCham. They placed too much reliance on trust as a substitute for due diligence and this did not match the expectation of the ERWG that the project placed in the hands of AmCham would have guaranteed good stewardship and professionalism.

3.24 To the Panel, a closer involvement of AmCham at the BoG level would have ensured a better management and control structure for the Harbour Fest in all aspects, including financial control. This is the degree of professionalism and participation by AmCham that the Government expected under the agreement governing the Harbour Fest. Specifically, in this regard, we consider that Mr Thompson as then Chairman of AmCham, Mr Martin, its President, and the BoG collectively as a group had the responsibility to put an appropriate organisational structure in place.

3.25 As to Red Canvas, the Panel considers the use of Mr Thompson's family company as AmCham's special purpose vehicle to convene the Harbour Fest and the failure to involve AmCham members as its directors and shareholders, despite the best of intentions, to be serious errors of judgement that brought unnecessary adverse publicity to the Harbour Fest.

3.26 In relation to the MoU with Red Canvas and the Sponsorship Agreement and related MoU's with the Government, the Panel considers that Mr Thompson, given his roles as Chairman of the Organising

Committee and of AmCham, and Mr Martin as President of AmCham, should have ensured that the AmCham BoG was kept fully informed of these contracts prior to their conclusion.

AmCham's Organisation and Implementation of the Harbour Fest

3.27 Messrs Thompson, Denzel and Niermann had offered their own services to the festival pro-bono and in their presentation to the ERWG, they advised they would mobilise the AmCham membership for support by way of pro-bono services or services provided at discounted rates. Where necessary, they would engage external professional expertise.

3.28 As regards their own organisations, Mr Thompson's Crown Worldwide Group was mobilised on a pro bono basis with its back office acting as back office to the event. The involvement of NBA Asia as a company was scaled back when it was clear in August 2003 that there would not be a sports festival but Mr Denzel continued to be one of the trio organising the event. As for Mr Niermann's employer Disney, there was a contract covering their services which will be discussed later.

3.29 As for other AmCham members, there appears to have been very little involvement on a pro bono basis until later when the event began to hit difficulty and support was rallied from within the Chamber. AmCham members' involvement appeared more to be on a discounted fee basis. There being no formal support structure from AmCham the organisation, the Organising Committee as a core group drew their support from their contractor team. This comprised a mix of AmCham and non-AmCham members all of which, other than Disney, were engaged on a discounted fee basis.

3.30 The Disney team in Hong Kong was engaged to build the stage and venue; East Art International Limited was engaged to secure western talent; Bird and Bird rendered legal services; Leo Burnett Limited worked on advertising; Pro-Marketing Services Company worked on public relations and International Management Group (IMG) on sponsorship solicitation. Of this contractor team, Mr John Berrick of the Disney team and Mr Ray Garman of East Art, given their

responsibilities, would be the closest to and could be said to be part of the core group engaged in organising and implementing the festival.

3.31 We shall discuss the major contractor services one by one.

Stage and Venue – Buena Vista Live Entertainment Division of Disney

3.32 From the outset, one of the key components of Harbour Fest was the holding of the festival in the heart of Central at the Tamar site in a Hollywood Bowl type arena. The local Disney Events Team had experience in constructing stage and concert settings throughout Asia and were involved in the conceptualisation and design of the proposed Tamar venue and in working out the detailed budgets that were submitted to InvestHK to support the costing of this element of the Harbour Fest.

3.33 Thus, once the project was approved, Red Canvas contracted with The Walt Disney Company (Asia Pacific) Limited for the latter's Buena Vista Live Entertainment Division (Buena Vista) to provide advisory and consultancy services to help procure the construction of the stage and venue for the Harbour Fest as well as to arrange for the performance of the local and Asian artists at the event. The contract provided for a budget of up to HK\$31 million for the venue construction with a 5% service fee payable to Disney in respect of actual expenditure incurred.

3.34 According to financial information provided by Red Canvas Limited, the total expenditure for site preparation and management payable to Buena Vista ended up at HK\$25.7 million and Disney waived the 5% service charge. Mr Niermann advised the Panel that the 5% service charge was a term in the standard Disney contract and there was a need to maintain this to ensure consistency with other contracts but there was never any intention to charge it and hence the waiver. Thus, Disney provided extensive service through their specialist Events Team on a pro bono basis to the Harbour Fest.

3.35 All who offered their views to the Panel, including those who might be critical about the Harbour Fest in other aspects, praised highly the quality of the stage, the Tamar venue and the sound effects of

the concerts. On the question of cost, the Buena Vista representative Mr Berrick who was responsible for site and stage construction, admitted to the Panel that due to the time constraint, the construction was more expensive than it should have been. As the Tamar site was only handed over on 1 October 2003, they just had two weeks' time to build it and further, quite a bit of remedial work had to be carried out on the site given the poor condition of the site at handover before construction work could begin. This necessitated additional worker shifts at higher costs.

3.36 As it turned out, all the works involved were contracted through Pico and BizArt Asia Limited who were Disney contractors from previous project co-operation. According to Mr Berrick, there was no tendering process in relation to the engagement of these companies as there was no time to conduct one and the engagement stemmed from a confidence call to ensure timely quality delivery. The Panel has noted that there was an engagement management fee paid to Pico covering the arrangements for the construction project but all pricings and contractor appointments were scrutinised by Buena Vista.

3.37 The Panel has observed comments that building the stage and venue for one-off use at the Tamar site was far too expensive. There can be no argument with that but in the Panel's view, the comment misses the point that creating a world-class stage at Tamar was one of the key elements of and thus part and parcel of the Harbour Fest concept.

3.38 To the Panel, Buena Vista's explanations and the fact that their services were provided on a pro-bono basis, to a great extent, addressed the criticism of layers of middlemen in the process. The Panel is satisfied that given the short time available, a world-class venue and a world-class stage were constructed to high professional standards within budget.

Talent Acquisition

3.39 Talent acquisition costs were the single largest expense item for the Harbour Fest. Expenditure on artist fees alone, including talent acquisition, third party payments, and expenses arising from talent contract riders and talent tax payments, accounted for HK\$89.1 million,

exclusive of ancillary expenses such as airfares and hotel bills. There were two aspects of talent acquisition for the Harbour Fest, one for local and Asian artists and the other for western artists.

Local and Asian Artists

3.40 The Walt Disney Company (Asia Pacific) Limited was the overall co-ordinator for local and Asian artists and they provided their services on a pro-bono basis. The Panel has confirmed that local artists were asked and did perform at concessionary rates as a gesture of support to the efforts to relaunch Hong Kong.

3.41 The Panel has tried to ascertain rumours about inferior treatment of local artists vis-à-vis the western artists. The Harbour Fest Organisers admitted that the changing rooms of the western artists were decorated differently from those for the local artists but advised that this was a contractual matter on the basis of the specific furniture requirements spelt out in the western artists' contract riders.

3.42 The Panel also considered criticisms on the arrangement of staging local artists as the opening acts for the western artists. The opening act arrangement put local artists in a somewhat awkward position as the audience who bought tickets for the western act would arrive late, sometimes leaving the local opening act playing to empty seats. Further, there were complaints about the confusion over the arrangements for the local artists' performances.

The Panel's Observations

3.43 From the Panel's inquiries, it appears that inadequate attention was given to the handling of local artists and it may well have been better to have had specific nights dedicated to local and Asian artist shows. The Disney team did not do a particularly good job in this area and their Mr Niermann admitted that with the benefit of hindsight, the Harbour Fest Organisers should have been more sensitive to the artists' sentiments and approached them early enough so as not to give a wrong impression of disrespect. The Panel accords with this observation.

Western Artists

3.44 East Art was appointed as the overall co-ordinator for the acquisition of western talents under a Talent Acquisition Agreement (TAA) signed with Red Canvas Limited on 1 September 2003.

Engagement of East Art International Limited as Talent Co-ordinator

3.45 Under the TAA, there was a talent budget of US\$7.4 million based on a specified list of artists. East Art would receive a fixed fee of US\$50,000 for their services plus a bonus fee of 25% of any savings achieved in engaging the specified artists. Ultimately, none of the listed artists were engaged and no bonus fee was paid as the fees spent on western talents arranged through East Art amounted to US\$9.72 million. Red Canvas also contracted to reimburse East Art up to an aggregate amount of US\$110,000 in respect of third party payments, examples of which were categorised. Further, Red Canvas contracted to reimburse East Art for specified types of out of pocket expenses. There was no set limit to cover the latter.

3.46 East Art is a local Hong Kong company incorporated in Hong Kong on 18 July 2003 with a nominal authorised and issued capital. Its directors are Mr Ray Garman, who was appointed on 4 August 2003 and is the company's founder, and Messrs Stephen Hill, Joseph Poon and Ms Karen Au Yeung Pui Shan who were appointed on 25 September 2003. Mr Joseph Poon is the chief executive officer and executive director of Vertex Communications and Technology Limited, a company listed on the GEM board, which acquired 51% of East Art around September 2003.

3.47 The Panel consulted a number of experienced promoters who are in the business of staging western artists in Hong Kong and a number of local entertainment industry experts. None of them considered Vertex, East Art or Mr Garman to be in the industry prior to the Harbour Fest event.

3.48 At the Organising Committee level, Mr Niermann was in charge of the talent acquisition area and it was he who introduced

Mr Garman to his two colleagues on the Organising Committee. We read in an email from Mr Niermann to the others on the Organising Committee dated 18 July 2003 that “...Ray initially came into the scene not only due to he and I knowing each other, but also due to his association with the Stones and their previous negotiation with Rowse prior to our Festival pitch as well ...”

3.49 Mr Niermann advised the Panel that he made the acquaintance of Mr Garman in 2002 when Mr Garman was working with a local bank. We understand that Mr Garman was a merchant banker in the US before coming to Hong Kong.

3.50 Further, we have established that Mr Garman is acquainted with Miss Colleen Ironside of Live Limited, a well established promoter of concerts locally. Ms Ironside was the original promoter of the Rolling Stones concert in Hong Kong in March 2003 which was aborted due to SARS. We understand that Mr Garman provided accounting support, in a volunteer capacity, to that same promoter when she staged the Rolling Stones show in Singapore in 2003.

3.51 We asked Messrs Thompson and Niermann the rationale for their engagement of East Art and Mr Garman, both of whom had no proven professional industry experience in Hong Kong before the Harbour Fest. Mr Niermann advised that originally, there were discussions with Miss Ironside of Live Limited, whom he had met through the introduction of Mr Garman, about the possibility of engaging her as the overall talent co-ordinator for the Harbour Fest. From correspondence, it is clear that in the early stages of the event, Miss Ironside had started making contacts with top western artists and reporting back on their availability to Messrs Niermann and Garman.

3.52 Mr Niermann advised that negotiations fell apart when he was advised by Mr Garman that Miss Ironside had asked for a fee at 10% of the total talent budget. This was considered unacceptable as the Harbour Fest was in effect a ‘no-risk’ event with sponsorship being provided by the Government and hence there was no commercial risk to the promoter. Mr Niermann then took the decision to recommend to his colleagues on the Organising Committee that Mr Garman be offered the

job of talent-co-ordinator. His explanation was that Mr Garman, unlike other promoters, was independent and ready to offer his services at a low fee. As to Mr Garman's experience in the live entertainment business, Mr Niermann advised that he understood from Mr Garman that he had worked with Miss Ironside on the Stones March 2003 concert and that was sufficient proof of his experience in the field. Mr Niermann also took comfort in the fact that Mr Garman was acquainted with the two gentlemen, Messrs Bob Koch and Mike McGinley, whom the Panel was given to understand to be tour manager/accountant of famous bands in the US.

3.53 Mr Thompson confirmed that he was advised by Mr Niermann that Miss Ironside's possible engagement had fallen through because of the fee issue. He also made the following comment about Mr Garman " ..he made us feel comfortable enough that he could perform ...He had the phone book ..all the entertainment promoters ... you really don't know where to find them ...there was no one that had ever really done this kind of thing before ...we thought it had to be someone that we had to have total control of .."

3.54 Mr Niermann confirmed that after deciding not to engage Miss Ironside, no attempt was made to meet with or consider the engagement of other similarly experienced local promoters for the job before appointing Mr Garman.

3.55 We also inquired if any thought was given to fielding a Disney expert to be the talent co-ordinator. Mr Niermann advised that Disney was not in the pop concert business generally and specifically, the local Disney office did not have the expertise. Further, since the project was an AmCham one and not a Disney project, neither would he be able to get such resources from the Disney offices in the US.

3.56 We raised the fee issue directly with Miss Ironside and she advised that her discussions with Messrs Niermann and Garman had ever reached the fee discussion stage.

3.57 In the TAA, East Art was described as "a leading media and technology company that has substantial expertise in the acquisition of

musical and other talent for entertainment events such as the Festival...? The Panel met with Mr Garman on two occasions and asked him for proof of this representation in the agreement and advice as to his experience in the entertainment industry. Two weeks before the submission date for this report, we finally received information from Mr Garman.

3.58 In relation to entertainment industry experience, from the information provided by Mr Garman, he advised of two instances when he acted as ‘adviser to a promoter’ and these were the Rolling Stones concerts promoted by Miss Ironside of Live Limited in the first quarter of 2003 referred to earlier. His further involvements were with fan club management, ticketing system development or finance. He also claimed some venue promotion experience. In Mr Garman’s words, “I am not a promoter. East Art has many people who are experienced in this field ...”, “East Art represents the consolidation of previously existing companies and individuals with extraordinary and notable experiences and or businesses in live entertainment ... Further and as way of example, Mr Bob Koch has produced, participated in and promoted more significant live music events and in particular, more Rolling Stones shows, than anyone else in the region.”

3.59 Mr Garman provided the curriculum vitae of Mr Koch as part of the East Art team. From this, we note that he is the tour business manager of the group U2 and also has his own company Bob Koch Presents Ltd. As to the relationship between Vertex and East Art, Mr Poon, its Managing Director, advised us that he and Mr Garman had known each other for over four years and had been talking for sometime about Mr Garman joining Vertex. Once Mr Garman set up East Art and secured the Harbour Fest contract, they both agreed it would be good to link their business interests. Mr Poon considered live entertainment business a good business opportunity for Vertex, hence its acquisition of a 51% interest in East Art as Vertex had no experience or expertise in this area. He advised that the transaction was done for nominal value.

The Panel's Observations

3.60 The Panel has gone to some length to set out in detail the background information we have managed to obtain in relation to Mr Garman and East Art's appointment to the key role of western talent co-ordinator for the festival. We consider this necessary not only having regard to the heavy reliance of the organisers on the talent coordinator, but also because in the Panel's opinion, the genesis of many of the challenges and controversies that the festival subsequently encountered could be traced to artist engagement related issues.

3.61 Despite the Panel's repeated requests, Mr Garman had failed to establish his past experience of either directly engaging or co-ordinating the engagement of entertainment talents in Hong Kong or elsewhere. Further, while he may have had some contacts within the industry, his involvement with it was only on the periphery and he had no proven record of involvement with the organisation of concerts in a professional capacity. Despite Mr Garman's description of what East Art was and his and the company's connections to the likes of Mr Koch, it has not been proven to the Panel that at the time when it contracted with Red Canvas, East Art was "...a leading media and technology company that has substantial expertise in the acquisition of musical and other talent for entertainment events such as the Festival..." as represented in the TAA.

3.62 Most importantly, the Panel is not satisfied that the Harbour Fest Organising Committee conducted an appropriate search or went through an open process in relation to the talent acquisition appointment. In particular, they made little or no attempt to meet with and determine the qualifications, skills and experience of established local concert promoters. We consider that they substituted expediency for due diligence in the area of talent acquisition which was the "make or break" element of the whole event.

3.63 To the Panel, the lack of professional concert organisation experience as well as the lack of acquaintance with experienced local promoters and professionals engaged in the entertainment industry, on the

part of the Organising Committee and its talent co-ordinator, created a significant handicap in their ability to properly organise the Harbour Fest.

Artist Contracts – Confidentiality Clauses

3.64 It was not until the third week of March 2004 that the Panel was able to obtain copies of the artist contracts from Red Canvas Limited. All along, the Panel was told that due to the confidentiality clauses in the artist contracts, Red Canvas Limited would not be able to disclose them to the Panel. The Panel tried to obtain them from InvestHK but was told that they did not have the power of access to these contracts.

3.65 The Panel considered access to the artists' contracts to be central to its inquiry and so pursued the matter. Thanks to the assistance of one of the artists' agents, we were able to obtain two of the western artists' contracts in mid-March. In reviewing them, the Panel discovered that there was no confidentiality clause in these contracts. The Panel advised Red Canvas Limited of this finding and was subsequently given a full set of the contracts, except two that were not in their possession. Other than the contracts with the Rolling Stones, there were no confidentiality clauses in the other artist contracts.

3.66 Mr Thompson explained to the Panel that he had not reviewed the contracts and had relied on the advice of Mr Garman regarding the confidentiality clause. He only realised the absence of this clause upon being advised by the Panel. He was aware of a confidentiality clause in the TAA with East Art that required confidentiality on its contents and any agreement entered into pursuant to it. Mr Niermann's understanding of the confidentiality arrangements was similar to that of Mr Thompson.

3.67 The Panel raised this matter with Mr Garman and he confirmed that it was he who focussed Messrs Thompson and Niermann on the need for confidentiality in relation to the artists' remuneration and contracts based on the confidentiality clause in the TAA. He claimed that to do so was good industry practice and that it was entirely inappropriate to discuss or otherwise disclose artists' remuneration for these types of events. When queried further, he reaffirmed his justification on the need

to maintain confidentiality even in the light of LegCo questioning on the topic and negative publicity in the media on the matter.

The Panel's Observations

3.68 In the Panel's opinion, the issue of the confidentiality of artists' contracts and remuneration was one of the most controversial aspects of the Harbour Fest. It acted as a lightning rod for criticism of the Government and the festival's organisers on the grounds of lack of transparency and accountability given the substantial public funding of the event.

3.69 To the Panel, the presence of a confidentiality clause in the TAA between Red Canvas and East Art could not be interpreted to mean that there were confidentiality clauses in the individual artist contracts. Besides, we would regard East Art as a party internal to the organisation of the event and so Red Canvas could have readily persuaded East Art to waive the prohibition.

3.70 In the Panel's opinion, the failure on the part of the members of the Organising Committee to familiarise themselves with the exact contents of artist contracts in their possession on the issue of confidentiality has resulted in extreme embarrassment to the Government and unnecessary adverse publicity for the Harbour Fest. Given these issues, the Panel considers Mr Garman's continued insistence to rely on a confidentiality clause internal to the event's organisers to be unreasonable and untenable.

Western Artist Line-up and Talent Fees

Western Artist Line-up

3.71 The final artist line-up was very much different from the indicative list presented to ERWG in July 2003 and wholly different from that in the East Art contract signed in September 2003. Of the 12 major western acts who performed for the Harbour Fest, East Art engaged seven through other promoters and the remaining five through direct negotiation.

Eight of the artists engaged had already committed to other performances or activities in Asia around or close to the dates of the Harbour Fest.

3.72 The western artist line-up was not confirmed until quite late in the process; the first act being confirmed on 26 August 2003 and the last one, the Rolling Stones, only on 15 October 2003. This late confirmation in turn impacted on key areas of the event such as marketing, publicity and ticket sales. The principal reasons given by the Organising Committee and the talent co-ordinator for the delay in finalising the line-up was that of availability of artists given time constraints; interest or otherwise of artists in travelling to Asia; and the concerns of artists over SARS.

3.73 Another issue on the artist line-up as subsequently evidenced by poor ticket sales for some of the concerts was whether adequate planning had gone into the artist selection process or whether the organisers ended up being hostage to the availability of artists. The organisers were of the view that given time constraint, the final line-up was a good mix of well known international artists aimed at a market reach from young to classical and to more mature pop fans. Despite this, they did recognise to some extent that they were hostage to the availability of artists.

The Panel's Observations

3.74 The Panel is of the view that the ultimate artist line-up was on the whole a good international mix of well known pop and classical concert celebrities. Despite this, as evidenced by attendance rates and ticket sales which we shall discuss in greater detail later, clearly a number of the artists in the line-up did not appeal to local tastes and this raises the issue of whether there had been a conscious assessment of artists' likely popularity in the local market before they were firmed up. The responsibility in this regard very much lay with the talent co-ordinator who was totally relied upon by the organisers. The point is best explained in the words of Mr Thompson who told the Panel, "We certainly wished there would have been a huge proportion of the local population coming in ...if you ask the community, 'you want to come

and see Prince? They say who's Prince ...because he just wasn't part of their life, their culture so I think that's maybe another message here.”

3.75 The Panel agrees with Mr Thompson's remarks. Any artist selection process that might have been put in place had limited success. We consider that this reflected the lack of knowledge of the local market on the part of both the organisers and the talent co-ordinator. The Panel would add that it considers the disappointing attendance rates were also the result of the many other challenges the Harbour Fest faced.

3.76 The Panel recognises the challenges of time constraint but is not entirely convinced that this necessarily should have led to delays in artist engagement. We see evidence in the success of the Toronto Rock Concert of 30 July 2003 which featured the Rolling Stones and some 14 other different bands, organised over a six to seven week period playing to an audience of 450,000.

Talent Fees

3.77 Talent fees and the issue of whether international artists were paid in excess of their normal fees and/or were paid too much to perform at the Harbour Fest was the single greatest controversy that surrounded the event. It had dogged the Harbour Fest and its organisers and had shrouded the event in negative publicity as early as the end of August 2003 with a press article alleging that the Rolling Stones were being overpaid.

3.78 The Panel has determined from the Organising Committee and Mr Garman that most of the artist fees were agreed on a collective basis by the Organising Committee after first being sourced by Mr Garman. The Panel asked the members of the Organising Committee how they satisfied themselves that the artist fees quoted by Mr Garman were reasonable. Mr Thompson told us that he occasionally made checks with his contacts in the US. Mr Denzel assured us that he checked with NBA sources in the early stages of the event's organisation although later he was not too involved in the discussion of the artists that were finally lined up. Mr Niermann's points of reference tended to be Disney sources and record label companies.

3.79 None of the three appeared to have any specific industry benchmark reference point.

3.80 Further, the Organising Committee advised the Panel that it was difficult to get meaningful comparison of artist fees since in the case of Harbour Fest, each artist's contract contained a clause permitting two of their performed songs to be included in a video to be made of the Harbour Fest which would be used to promote Hong Kong.

3.81 The Panel was also advised in their recent final meeting with Mr Garman of another exceptional element, which had not been mentioned previously, that he said added to the cost of the Harbour Fest talent fees and that was what he termed "the cost of the promotional campaign and spokesperson status of each of the artists". When asked to exemplify what he meant, Mr Garman responded, "When Carlos Santana came to Harbour Fest, he was speaking directly for the Hong Kong Government, and when he made his ten minute interview and gave his promotional piece, he made that for the Hong Kong Government so that the Hong Kong Government can forever associate itself with Carlos Santana. That is a cost...."

3.82 The Panel had never heard of this suggestion before during the course of the inquiry, either from the members of the Organising Committee or from local concert promoters.

3.83 During the course of this inquiry, the Panel has met and received written submissions from a number of members of the local entertainment industry, particularly those involved in the concert promotion business. Some were adamant that the Harbour Fest was paying excessive fees for the engagement of artists. Conversely, some in fact benefited from the Harbour Fest in that they acted as agents for artists who were engaged to perform at the event.

3.84 Having obtained access to the artist contracts and their fees, and bearing in mind the controversy over the fee issue, the Panel sought to benchmark the fees paid with available information on the fee range of artists. After a little research, we learned of a relevant industry website. Set out at *Annex 7* is a comparison table of the fees paid with the

available fee range of the artists quoted on a popular industry website in the US. According to the website, the performance fees listed tend to reflect fees for performances in North America, and are typically before any travel, freight, hotel and ancillary fees for performance in another territory. Fees outside the US can be much more than as shown on the site depending on a number of factors, a prominent one being whether an artist is already on tour in the region of the potential new engagement. In this connection, we have inserted in the table information on whether the artist was on tour in the region during the material time. We are mindful that the fee range listed has not accounted for any premium that artists might seek for the television rights that applied to the Harbour Fest contracts.

3.85 Bearing in mind the abovementioned caveats, we observe that for those artists whose fee ranges are available from the industry website, save for Michelle Branch and the Rolling Stones, the other artists were paid considerably higher than their listed US performance rates for performing at the Harbour Fest.

3.86 As to television rights, the Panel accepts that a reasonable premium would have to be paid to the western artists to acquire the television rights for two of the songs they performed at the Harbour Fest and this would impact on the artist fees. We have reviewed the contract that Red Canvas signed with the production company for the television programme and noted that the contract only made reference to filming two songs each of six selected artists. As such, there appears to have been no necessity to include the television rights clause in all the artists' contracts with the attendant increased costs.

3.87 Another point for consideration on the talent fee issue is that it is industry practice that an artist will pay around 10% of his artist fee to the promoter who stages him. We understand that the four promoters who were contracted by East Art to bring in seven of the 12 acts in the Harbour Fest did receive their promoter fees. As for the five artists whose performances East Art negotiated directly with their respective managements, Mr Garman has assured the Panel that neither he nor East Art nor any of his associates received the 10% promoter fee. Mr Garman confirmed to us that this 10% was therefore a saving for the benefit of the

Harbour Fest in relation to the agreed fee levels of these five artists. The artists concerned were the Rolling Stones, Prince, Santana, Neil Young and tATu.

The Panel's Observations

3.88 The Panel was surprised to find that the Organising Committee had not sourced an independent benchmark of artists' fees in order to better equip itself when considering the talent fees submitted to it by the talent co-ordinator.

3.89 On the question of whether the Harbour Fest paid too much in respect of talent engagement fees, this evaluation is somewhat muddled by the television rights issue. However, any additional costs in regard issue to these matters should only have been incurred on a few of the artists, but not all, given that it has not been the intention to feature all of them in the television special.

3.90 Despite all the caveats, the differences highlighted by the benchmarking exercise do raise considerable concerns that the Harbour Fest overpaid a number of the visiting artists. This further evidences the concerns that the key role of talent co-ordinator was not placed in the hands of an operator who has direct personal experience or track record of negotiating and contracting with international artists.

The Engagement of the Rolling Stones to play Harbour Fest

3.91 From the outset, media controversy surrounded the engagement of the Rolling Stones to play at the Harbour Fest. The Panel therefore considered it important to understand the circumstances behind their engagement and what transpired in this matter.

3.92 The Rolling Stones were not in the original line-up of the Harbour Fest. Miss Colleen Ironside of Live Entertainment had originally arranged to stage the Rolling Stones in Hong Kong as a private commercial undertaking around March 2003 but was forced to cancel the show due to SARS. In early June 2003, she approached InvestHK for Government sponsorship to stage the Rolling Stones at the Hong Kong

Stadium at around October/November 2003 as an initiative under the economic relaunch campaign. She requested sponsorship in the region of HK\$6 million to stage one show at the HK Stadium.

3.93 For practical considerations which we shall explain in a later chapter, InvestHK referred Miss Ironside to the Organising Committee to discuss staging the Stones as part of the Harbour Fest at Tamar. According to Mr Niermann, during the negotiation, Miss Ironside had asked to be paid a promoter fee of US\$2 million to stage the Stones and insisted that the Stones would only want to play at the Hong Kong Stadium. Mr Garman then arranged for his contacts in the US to speak with the Stones management direct and confirmed that the Stones would not mind playing at Tamar. The Panel was advised that the Stones management then approached Mr Garman some time later to discuss performing at the Harbour Fest at Tamar after learning that the Stadium show would not go ahead.

3.94 According to Miss Ironside, after she was referred to the Harbour Fest Organisers, she had asked for a seating plan of the Tamar site to work out her budget. The Organising Committee referred her to Mr Garman. She advised the Panel that her request for the seating plan was not properly acquiesced in that no legible seating plan was ever received. As a result, she did not have the opportunity to submit a budget. She then heard from the Stones management directly that Mr Garman on behalf of Harbour Fest had made an independent offer to the Stones and secured their broad agreement.

3.95 Miss Ironside, not surprisingly, advised the Panel that she was very displeased to receive this advice.

3.96 Mr Niermann explained to the Panel his understanding of events was that Miss Ironside had demanded a US\$2 million sponsorship fee. Mr Niermann also confirmed that Mr Garman on behalf of Harbour Fest initiated negotiations directly with the Stones management. “ ... Ray ...was talking to Bob Koch and Mike McGinley, and Bob Koch and Mike McGinley talked to the Stones people ... We did speak to them directly ...”

3.97 To the Panel, given conflicting stories, it is not possible to determine exactly why negotiations between Miss Ironside and the Harbour Fest Organisers collapsed and whether it was a fee issue or the HK Stadium/Tamar issue or a combination of both. What is undisputed, though, is that Miss Ironside was the promoter of the Rolling Stones' planned visit to Hong Kong in March 2003 that was aborted because of the SARS outbreak. Further, it was she who initiated the idea of the Stones coming to Hong Kong post-SARS and had cleared this idea with the Stones management before contacting InvestHK. It is equally clear that after taking the proposal to the Harbour Fest Organisers, in the midst of ongoing discussions with them, she was advised that a deal had been concluded directly through the Harbour Fest's talent co-ordinator Mr Garman after his US based associates made contact with the Stones management team.

3.98 In the Panel's view, it is developments such as those described in these paragraphs that might have contributed towards strained relations between the Harbour Fest Organisers and local concert promoters and members of the local entertainment industry which were detrimental to their acceptance of the Harbour Fest.

Publicity and Promotion

3.99 Within the Organising Committee, the responsibility for publicity and promotion lay with Mr Denzel. After a tender selection process, Pro-Marketing Ltd was appointed to handle public relations and Leo Burnett Ltd to handle the advertising aspects of promoting the Harbour Fest. The latter was an AmCham member, the former was not but both offered their services on a discounted fee basis. Both companies are well established in their respective sectors in Hong Kong.

Advertising Strategy

3.100 The Harbour Fest spent around HK\$6 million on marketing, publicity and public relations. A detailed plan was drawn up and agreed to by the Organising Committee for a broad publicity campaign through

the paid media channels of the print media, radio, television¹, websites and video news releases. There also were promotion efforts through emails to the AmCham members, other business chambers in Hong Kong, and the 23 American Chambers in the Asia-Pacific Region. This was an area where Mr Martin and his colleagues in the AmCham executive office rendered support.

3.101 In relation to Government support, we understand from DGIP that the Hong Kong Tourism Board listed the concerts on its website; the Information Services Department helped by the provision of Government airtime on local television stations to broadcast a Harbour Fest promo in early October 2003 and it also helped to distribute the Harbour Fest posters for display in Government poster sites and arranged event bunting around Tamar.

The Panel's Observations

3.102 The Panel is of the view that there appeared to be a suitably planned programme in place for the advertising of the Harbour Fest, making use of a wide range of media communication channels. The fact that it was not particularly successful, evidenced by disappointing ticket sales, was, in the Panel's view, more the fault of other challenges the event generated than the advertising strategy per se. An area where the Panel considers that the advertising campaign could have been strengthened was in efforts to brand the event as a post-SARS initiative.

3.103 Besides, the Panel has received comments which pointed out that the advertisements of the Harbour Fest did not readily highlight the performing talents to the extent that they would catch the immediate attention of the potential audience. To these parties, this is a factor of vital importance in promoting a festival involving a large number of performing talents.

¹ TV advertising of the Harbour Fest was focused more on the regional Star television network than on the two local terrestrial television stations after the local stations expressed their discontent with free Government spots being used to air the advertisement on the Harbour Fest. The Harbour Fest advertisement was withdrawn shortly after early October. Paid advertising on the local television stations was not resumed until the week of November to promote the Rolling Stones shows.

Challenges to Publicity and Promotion

3.104 The Panel asked Mr Denzel for his opinion why the advertising campaign had not proven successful and he advised that there were several main contributing factors in this regard.

Inadequate Lead Time

3.105 Like most of the people the Panel consulted, Mr Denzel was of the view that the single most critical factor affecting the success of the publicity and promotion of the Harbour Fest was inadequate lead time. “..the whole month of August when we should have been plotting our marketing campaign, we were waiting until we had some names confirmed ..” The first western act was only confirmed on 26 August 2003 and of course there were the well publicised delays in finalising the last act, the Rolling Stones, which was concluded only on 15 October 2003. The late confirmation of a full artist line-up made it impossible to promote the full programme early enough to capture prospective audiences. The media campaign did not start until September 2003 in the print media. Exposure in the other media took place commencing the last week of September 2003 but did not come in full swing until October 2003. The late confirmation of talents was considered to have adversely affected the time required for publicity and marketing.

The Panel’s Observations

3.106 The Panel recognises that the lack of lead time, given the late finalisation of the artist line-up, was a crucial factor impacting the advertising campaign. This is crucial but not critical, as evidenced by what was achieved in a six to seven weeks' timeframe by the Toronto Rock Concert organisers. In the Panel’s view, the underlying issue was the ability of the event’s talent co-ordinator to conclude negotiations with artists and complete their line-up in a timeous fashion.

Reluctance of Artists to Help in Publicity

3.107 According to the Harbour Fest public relations consultant, another challenge quoted was the reluctance of the first few western acts

to take up media interviews. This in turn hampered the public relations activities in the critical build-up to the event. Nor could there be targeted promotion on individual acts. According to Mr Denzel, the only target promotions possible were the Family Fest and the act of Gary Valenciano.

The Panel's Observations

3.108 The use of artists to promote an event undoubtedly is important so the failure to achieve this in the early stages of the event was not helpful to the overall promotion of the Harbour Fest. Again, in the opinion of the Panel, it reflects on the western talent co-ordinator's ability in handling the artists and the extent to which the artists were prepared to be supportive of him.

Negative Press

3.109 The greatest challenge the organisers pointed to which plagued the Harbour Fest from the start was negative press which in effect hijacked the organisers' publicity efforts before they were even started. The first article on the Harbour Fest was a critique on the alleged overpayment of the Rolling Stones which appeared in a leading English newspaper on 31 August 2003, a few days before the first Harbour Fest press conference on 3 September 2003.

3.110 What followed were waves of mainly negative press coverage on a variety of topics so that whatever good the HK\$6 million spent on publicity was meant to bring to the Harbour Fest was largely eroded. Mr Denzel and his colleagues on the Organising Committee were united in their views that their problems with the negative public perception of the event stemmed from the Rolling Stones press article just prior to the official launch of Harbour Fest. They tried but they just could not turn around the negative sentiment that enveloped the event.

The Panel's Observations

3.111 The Panel agrees that the initial negative press resulted in the organisers having an uphill battle with publicity. But as we mentioned earlier, the appointment of East Art as the western talent co-ordinator for

the Harbour Fest, coupled with its apparent anonymity amongst the local promoter circle, not surprisingly strained relations with the local industry which the Panel considers might have fuelled discontent which came to the attention of the media.

3.112 To that extent, the negative publicity issue was somewhat self-inflicted and this observation also applies to a number of accurate revelations that subsequently appeared in press reports. All these added force to the negative publicity over the festival. The string of controversial revelations, one after the other, also gave the impression that there was a lack of transparency in the handling of the whole event, an impression that was not helped by what we have now established as a wrong assertion, and that is, that artist contracts contained confidentiality clauses.

Inadequate Branding of the Event as a Post-SARS Relaunch Initiative

3.113 The Panel asked Mr Denzel on the apparent absence of publicity efforts to brand the Harbour Fest as a post-SARS initiative that should have contributed positively to public buy-in to the event. Mr Denzel advised us that the message was lost on the media when delivered at the first Harbour Fest press conference on 3 September 2003 because of the overwhelming negative publicity on the alleged overpayment to the Rolling Stones a few days earlier. Secondly, in his view, the higher levels of Government should have got behind the event to give it this branding. Further, they did not have a respected, recognised Chinese spokesperson for the event despite their efforts to find one, resulting in the event being perceived as an expatriates' event.

The Panel's Observations

3.114 The Panel considers that the failure to recognise the importance of public buy-in and media buy-in to the event was one major pitfall in the publicity planning of the Harbour Fest event from the start.

3.115 All the factors quoted by Mr Denzel might have been to some degree valid observations but they in effect exposed the lack of a proper strategy to put a community participation spin to the Harbour Fest

event. The Panel would agree that it might already be some six months after the nightmare of SARS. Nonetheless, this was the starting point behind the Government sponsorship for the event. There was a need to brand the event as what it rightfully was and to build public and press support around it. This was very much the approach taken in the Toronto post-SARS rock concert which from the outset embraced SARS workers, the political elite, television networks, local civic groups and opinion making daily newspapers.

3.116 The Panel has read the press release of the first Harbour Fest press conference on 3 September 2003, a copy of which is at *Annex 8*. It was not clear from the press release that it was a post-SARS relaunch effort. Nor were there words to rally public support for the event in this light.

3.117 In this regard, the Panel is of the view that the strategic objectives of the Harbour Fest as stipulated in the ERWG funding paper and in the presentation to the Legislative Council were not adequately explained to the public. The spin of this press release failed to help the public relate to the event and support it and in turn, the media to explain it.

Ticketing and Attendance

3.118 The overall attendance rates for the Harbour Fest were disappointing and the particulars of ticket sales and attendance for the various concerts are set out at *Annex 9*.

3.119 It will be observed that the acts that sold best were those who had either been in Hong Kong before and proven to be popular like Air Supply, or Santana and the Rolling Stones, tickets for whose previously planned concerts in March/April 2003 had been sold out. The Panel would also add that despite the apparently poor ticket sales against capacity in the case of the classical concert featuring Jose Carreras and Charlotte Church, industry experts have advised that selling nearly 5,000 tickets for such a concert was in fact a considerable success. Notwithstanding, the opposite impression was projected in the media when photographs and articles focusing on the empty seats at the venue were featured.

3.120 Hong Kong Ticketing was appointed by the Organising Committee to be their ticketing agent for the public sale of tickets. This process generally appeared to have been handled well. This however cannot be said of the overall ticketing arrangement because controversy emerged around the corporate ticket sales.

3.121 In this connection, the Panel has determined that for every show in the Harbour Fest, the Organising Committee had arranged for some 3000 tickets to be reserved. This formed a pool to cater for corporate ticket purchases, sponsors' entitlement to tickets at every show, and for free distributions to the band, press etc. We have confirmed with the Harbour Fest Organisers that regardless of whether they were AmCham members, all corporate ticket orders would be matched with tickets from this pool. In the paragraphs to follow, we shall explain the technical problems in the arrangement for corporate tickets, our observations on the distribution of free tickets and our views on the impact of the decision to price tickets at market and finally, the impact of the short lead time to sell the tickets.

Corporate Ticket Handling

3.122 We read from an email dated 21 September 2003 from Mr Niermann to the others on the Organising Committee on the engagement of Covatta Communications Limited for corporate ticket sales, "The 3000 will be targeted to corporations. We're getting no movement from IMG ...Ray can mobilise his folks to get them sold at 2.5%. He used the same system that sold out the Stones concert last time, so let's go with experience on this one."

3.123 Following this recommendation, Covatta Communications, who were introduced to the organisers by Mr Garman, assumed the responsibility for corporate ticket sales and their allocation. The Panel have learned from various sources, including the Organising Committee, that this decision proved to be a mistake and that the Covatta team failed to respond to corporate bookings as they came in and as a result, a considerable back-log on corporate ticket order matching built up. This in turn led to considerable dissatisfaction amongst many who had ordered

tickets through the corporate channel and this in turn led to more negative publicity and controversy over the Harbour Fest in the media.

3.124 To address the challenge, Mr Garman arranged for a Mr Jim McCafferty to be flown in from the US to handle the problem. Mr Martin and his colleagues in the AmCham executive office were also mobilised to help. As we read from an email of 24 October 2003 from the AmCham office, “...no email has been sent out with the new phone number for ticketing. This is because Jim McCafferty and his team first needs to clear the stacks of requests that have come in through gworld first...”. The gworld reference was to the corporate ticket booking email address provided by Mr Garman and Covatta Communications. It was not until 28 October 2003 that Mr McCafferty cleared the backlog and started entertaining new requests.

The Panel’s Observations

3.125 Given the confusion and the number of people involved in dealing with corporate ticket sales, the Panel can well understand how complaints and controversy arose in this regard. In the Panel’s view, the challenge arose at the outset once the Organising Committee decided to handle the 3000 tickets separately from Hong Kong Ticketing. This was compounded by the involvement of Covatta Communications and ultimately, only resolved by the involvement of Mr McCafferty and members of the Am Cham executive staff. The Panel is of the view that the Organising Committee should have left the matter in the hands of Hong Kong Ticketing who could have easily handled the job. This would have avoided the controversies that arose and avoided the expenses incurred in relation to Covatta Communications and Mr McCafferty.

Free Tickets

3.126 As shown at *Annex 10*, excluding the free concert, the number of free tickets handed out by the Harbour Fest accounted for 22% of the total attendance. We understand that the Government was involved in the decision on the distribution of free tickets for the first three shows. Before the first concert, in view of the sluggish ticket sales, it was a joint Government and AmCham decision to “paper the house”, meaning, in

industry terminology, to fill the seats. Accordingly, 1,500 free tickets were given away to Hospital Authority staff in recognition of their service during SARS. Sponsors also got more bonus tickets for the first three shows. Similarly, there were over 4,000 free tickets of the Family Festival given away to the charities and underprivileged children. Another 2,000 were given away to the Community Chest. When Atomic Kittens cancelled their performance, AmCham and the Government jointly decided that the show should go on free.

3.127 To the Panel, we are more concerned about the free distributions that went beyond the above instances. We have confirmed with DGIP that he was aware of the distribution of a limited number of tickets for each show to the performing talents, being a usual industry practice. He has advised the Panel that he was neither consulted on the criteria to be adopted in the distribution of free tickets nor on the quantum of free tickets to be distributed.

3.128 Free distributions under the “Complimentary/Other Category” accounted for 12,676 tickets (or 51.1%) out of the 24,823 free tickets distributed throughout the Harbour Fest (excluding the distribution for the free show). The Panel asked Red Canvas to provide specific details of how and to whom these complimentary/other tickets were distributed. They responded to advise that this category could have included supporters of the Harbour Fest such as restaurants and shops that distributed Harbour Fest flyers or hung up posters etc. Such an answer was clearly unsatisfactory and we repeated our request for specific information in this regard. At the time of writing this report, we have still not received this information from them.

3.129 Another point that some of the promoters we have spoken to urged us to convey to the Government their view that in future, if the Government were to sponsor another similar event again, it should never give away so many free tickets. They considered that the large-scale distribution had a trickle-down effect on the whole concert promotion industry in Hong Kong in that some concert-goers were hesitant to pay for tickets after the Harbour Fest. They preferred to wait to see if they would get free tickets as what happened at the Harbour Fest.

The Panel's Observations

3.130 The Panel considers that the Organising Committee had a duty to maintain tight control over all free ticket distribution decisions to ensure transparency and made accountability of this process. Records should have been maintained and accessible in this regard. The Panel considers it unsatisfactory that Red Canvas could not provide a breakdown of the over 12,600 free tickets given away under the "Complimentary/Other Category".

Pricing Tickets at Market Rate

3.131 As mentioned in an earlier chapter, to the Panel, the decision to change the ticket pricing policy of the Harbour Fest was significant in that it changed the ethos of the event under the original proposal of cheap tickets. This change in the ticket pricing policy, and the lack of conscious efforts to tie the publicity of the event to the theme of post-SARS relaunch, made the Harbour Fest a pure commercial event. As such, the success or otherwise of ticket sales, as in any other commercial event, would depend solely on the attractiveness of the shows themselves vis-à-vis the prices at which tickets were pitched. The challenge to the organisers would be finding the correct market price for the respective shows to make them sell. As seen at *Annex 11*, the Rolling Stones shows for which ticket prices were the highest, virtually sold full house. So too did the Santana show, again priced at market.

The Panel's Observations

3.132 In the Panel's view, the decision to change the ticket prices to market did affect what can be termed the ethos of the event. However, as evidenced by the analysis of ticket sales and attendance records, the Panel does not consider that the change in pricing strategy necessarily impacted the unsatisfactory ticket sales. What is clear however is that the re-scheduling of the overall Harbour Fest from a mix of concerts and festivals to purely concerts, 14 in number, spread over four consecutive weekends, definitely glutted the market and the individual concerts were in effect competing against each other.

Lead Time for Ticket Sales

3.133 The other question we have considered is the correlation between the lead time available for ticket sales and the number of tickets sold. We have already mentioned our observation on the Toronto experience. Again, as shown at *Annex 11*, tickets for the Rolling Stones which were put on sale 24 to 26 days before show-time (two shows) achieved 89% attendance. Next down the line of good attendance were the Santana show and the Air Supply show which had 51 days and 31 days lead time respectively for ticket sales.

The Panel's Observations

3.134 To the Panel, the correlation between the lead time for ticket sales and ticket sales position is not conclusive. The same theory of attractiveness of the shows themselves applies.

3.135 All these observations point to the same direction and that is, the inherent problem with the Harbour Fest appears to have been more the questions of the attractiveness of the programme line-up to the local market and the numbers of concerts and the associated pressure of trying to sell 14 concerts staged over a consecutive four-week period.

The Television Special

3.136 In Motions Films Inc signed a contract with Red Canvas on 20 October 2003 to produce a television special on the Harbour Fest covering two songs of six artists performing at the event, namely, Prince, Craig David, Santana, Neil Young, Michelle Branch and the Rolling Stones. As it turned out, the special did not feature Neil Young.

3.137 According to the Red Canvas accounts, the television special cost HK\$7.7 million to produce. Of this amount, HK\$4.5 million was paid to In-Motion according to the contract. The rest was paid to two local companies who did the shooting. As part of the In Motion contract, apart from producing the special, it had to secure a US television broadcast for the special.

3.138 As submitted in the ERWG funding paper of 12 July 2003, the television special would be broadcast on the ABC network during peak viewing periods to 100 million television homes in the US. In the submission to the LegCo FA Panel in October 2003, the number was scaled back to 80 million television homes and 100 million viewers in the US. The programme was expected to reach 500 million television homes worldwide. At a subsequent LegCo FA Panel meeting on 15 November 2003, DGIP said that AmCham had already secured broadcast of the programme by the ABC Channel in the US which had access to 80 million television homes with a potential audience of 100 to 150 million viewers. As the programme would be made available to broadcasters in other places free of charge, it was expected that the programme would be brought to over 500 million viewers worldwide.

3.139 The television special was subsequently broadcast on MTV2 on 22 January 2004 (at 9:00 p.m.) and 25 January 2004 (at 11:00 p.m.) and on MTV on 8 February 2004 (at midnight). Only the rating for the third broadcast, that is, 224,000 television homes, was available from Nielsen Media Research.

3.140 The Director of Audit has assumed a similar rating for the first two broadcasts and put the estimated total viewership at 0.6 million television homes in the US, less than 1% of the original target reach of 100 million.

The Panel's Observations

(a) Effective Cost of the Television Special

3.141 To the Panel, the effective cost of the television special was well over HK\$7.7 million because the Harbour Fest Organisers were always explaining that the artist fees paid contained a premium for the television rights. We have discussed in an earlier section how the artist fees could have been negotiated downward at least for those artists whose television rights were not put to use.

(b) Need for a US Production House

3.142 As we heard from Mr Niermann, the need for an American producer and director was to give comfort to the US networks that the product would meet the US production standards. In Mr Thompson's words, '...for the US version, it had to be certain artists in certain ways which I won't be able to explain to you, so but these guys were pros.'" Mr Niermann has admitted that in hindsight, they should have commissioned a local producer with US network connections.

3.143 To the Panel, the decision to go for a US producer unnecessarily inflated the price of the job.

(c) Target Network

3.144 The value of this expensive television special lay in the value of showing to the US and the international audience a vibrant Hong Kong relaunched after SARS where celebrity artists came to perform. There is no question that this would have image building value for Hong Kong. However, how that would convince international communities that they should come to Hong Kong for business and leisure is more difficult to assess. One indirect measure provided by InvestHK is the audience reach of this programme.

3.145 We asked Mr Niermann the basic question as to why In Motion was tasked to produce and arrange broadcast of the television special when Disney itself makes movies and owns the ABC broadcast networks. Mr Niermann advised the Panel that In Motion, being an independent producer, is better placed than Disney to do pitching for broadcasts on other networks like Fox and MTV. In other words, at least from the point the Harbour Fest Organisers signed In Motion, they were already contemplating putting the television special on another network than ABC. We have noted in the In Motion contract that for this pitching effort, In Motion would be paid US\$12,000 which it received at the end.

3.146 The first target network contemplated by the organisers at the time of proposal submission in July 2003 should be the ABC Network. ABC is one of the major free national television networks in the US with

an audience reach of 99.9% of all US television households². According to Mr Thompson, Disney senior management in the US had promised in writing at that time to broadcast the show on their ABC network.

3.147 The Panel has observed that the organisers changed their mind in early August 2003 when they signed In Motion to be the production house for the television programme because as explained by Mr Niemann, In Motion would have the advantage of independence when pitching other networks for broadcast of the television special. In other words, consideration was already given to broadcasting the programme on another network than ABC at this time. According to Mr Thompson, when Disney finally offered the option to broadcast the programme on ABC Family which was a Disney cable network, the Harbour Fest Organisers took a conscious decision not to go for ABC Family but instead went for MTV which they felt excelled ABC Family in terms of audience reach, rating and profile.

3.148 We have also briefly compared the audience reach and audience profile of ABC Family and MTV. ABC Family ranks among the largest cable channels in the US with a home reach of 86 million. MTV in the US has a home reach of 85 million and MTV2, 48 million. As for audience profile, we note that the prime time median age watching ABC Family is 37 years old³ while that for MTV is 21⁴. Mr Niemann has advised the Panel that it is always best to show Hong Kong as an attractive place to a younger audience such as that of MTV as these young Americans will have ample chance to come to Hong Kong in future and even stay here.

3.149 To the Panel, the broadcast of the television special on the music networks has entirely changed the original positioning of the programme. The programme is now cast as a music programme. For the audience to note the comments on the vibrancy of Hong Kong made by the host in the margins of the programme will be quite remote.

² Source: Walt Disney Media Networks

³ Source: Cabletelevision Advertising Bureau (www.cabletvadbureau.com)

⁴ Source: Cabletelevision Advertising Bureau (www.cabletvadbureau.com)

(d) Rating

3.150 To the Panel, we find it disingenuous for the Harbour Fest Organisers to have only made reference to the US network reach figures but not their rating figures during prime time when presenting the estimated promotional value of the television special to ERWG. If the past prime time rating figures were drawn to the attention of ERWG, they might or might not have decided on the television special, which would have a bearing on the cost of the event. Even if there were no television special to be produced, the video news releases on the programme would still be carried by overseas networks, achieving some form of international publicity for the event.

(e) Short Window of Broadcast

3.151 Another comment we have is that despite all the fanfare surrounding the value of the television broadcast in the US, the window for broadcast of the television special in the US is all but over now because according to the artist contracts, only three broadcasts per region are allowed. If the Harbour Fest Organisers were to make any further good out of the broadcast clause which permits broadcast in other territories such as Europe and Asia, they have to hurry up because there is a 12-month broadcast time limit in the Rolling Stones contract. The other artists' contracts carry a longer window of 24 months, but so as not to infringe the contract with the Rolling Stones, to broadcast beyond 19 January 2005 would require a further editing down of the 45-minute programme.

3.152 In this connection, the Panel has also noted in the Rolling Stones contract that Hong Kong can only use the same video clipping for promotional purposes related to the image of the city during this 12 month window, "...subject to the approval of Company (Rolling Stones management companies) in each case." In other words, the video clippings on the Rolling Stones have no perennial promotional value to Hong Kong. Furthermore, the Santana contract is silent on other use of clippings on the artist. It is therefore unclear if the clippings of Santana can be used for other promotional use at all. In the case of Prince, under his contract, the clippings can be used for "local promotional activities".

It is therefore unclear if the clippings of Prince can be used for promotional use outside Hong Kong. If the Government were to capitalise on the general promotional value of the video, it should urgently clarify the legal position with AmCham.

(f) *Possible Revenue from Television Rights*

3.153 Given the premium paid for the television rights as well as for the production of the television special, the Panel is surprised that the organisers did not seek to sell it for revenue to the US networks.

3.154 To the Panel, the organisers should now seek to sell the television rights of the programme to networks in other regions in order to defray the cost of the production. Given that television rights were already secured from western artists other than these five featured in the television special, we also consider that the organisers should further explore selling separately the television rights for footage on the other artists not featured in the television special. On both counts, the organisers will have to act fast to maximise the remaining window of broadcast allowed in the artists' contracts.

Sponsorship

3.155 The International Management Group (IMG), a leading promotional firm, was appointed by the Organising Committee to be responsible for securing corporate sponsors for the event. There was a selection process before the assignment. Being an AmCham member, IMG undertook the work on a discounted fee basis.

3.156 The Harbour Fest secured a total of HK\$4.86 million from sponsorship. Only three corporate sponsors were secured although some other sponsors took up the chalets that were operated during the festival. In InvestHK's email to the AmCham representatives on 14 July 2003, they were asked to step up efforts to explore and secure more commercial sponsorship as one of the conditions of the HK\$100 million sponsorship.

3.157 The members of the Organising Committee were unanimous in their views that the lack of significant support from corporate Hong

Kong was a great disappointment to them which they attributed primarily to the negative public image the Harbour Fest had become burdened with due to bad press. The Panel has noted that the Financial Secretary signed an open letter in late September 2003 expressing Government support behind the Harbour Fest to help them in sponsorship solicitation.

The Panel's Observations

3.158 We have consulted event promotion experts and noted that as the Harbour Fest was new, sponsors might not have had a clear understanding of the event and were therefore hesitant to sponsor it. In this regard, a related challenge was the late finalisation of the artist line-up. Another practical reason was the timing of the event. The Harbour Fest was staged in October/November, approaching year-end, and sponsorship pitching did not begin until August/September 2003. Corporations would have most likely committed, if not exhausted, their budgets for corporate sponsorship by this time and of course budgets were tight given the negative economic impact of SARS. The Panel agrees with the Organising Committee that the most likely reason for lack of sponsorship was the negative press associated with the event.

Audited Financial Statements and Financial Information

3.159 In accordance with the Agreement between the two parties, AmCham has submitted to the Government the audited accounts of the special purpose vehicle, Red Canvas Limited, covering the Harbour Fest, on 27 February 2004. The Panel received a copy of these accounts which depicted income of HK\$155.2 million, inclusive of Government sponsorship, and expenditure of HK\$155.8 million, resulting in a net deficit from the event of just over HK\$600,000. More specific details of Red Canvas accounts are set out at *Annex 12*. In relation to these, it is worth noting that some payments went directly to the Government in relation to matters like artists' taxation at HK\$8.5 million, and rental in respect of the Tamar site at HK\$2 million.

3.160 The audit report is a standard clean report containing no qualifications. AmCham's involvement in the financial aspects of the event were negligible, with Red Canvas appointed under an MoU to

effectively administer all aspects of Harbour Fest on its behalf. AmCham, being the contracting party with Government, received into a separately designated bank account the sponsorship monies in tranches of HK\$25 million each, which it then passed over to Red Canvas. AmCham was not involved in any way in a financial control process over the disbursement of expenses or the receipt of income in relation to the Harbour Fest. This was all the responsibility of Red Canvas.

Financial Control

3.161 Since Red Canvas was a shell company, the Panel inquired with Mr Thompson as to how in fact the administrative and control systems for organising the Harbour Fest worked. He advised the Panel that quite a number of the staff at his Crown Worldwide office were heavily involved in handling communications, correspondence, receiving bills and requests for payment, drawing up cheques etc. almost on a full-time basis. Clearly, there was a major commitment by him on the part of his people and organisation to support the Harbour Fest.

3.162 As to Red Canvas' authorised signatories for its bank account, they were Mr Thompson in a sole capacity and some of his accounting staff whom he recalled had been authorised to sign cheques on a joint basis. In reality, Mr Thompson signed virtually all cheques on a sole basis. This is best explained in his own words “ ...I actually signed just about every cheque and I did that on purpose. I said because I am going to be ultimately responsible for this, to the Government and to the public and to the Chamber and whatever, and I want to have my name on them, right or wrong.”

3.163 As to the authorisation of expenditure, the three members of the Organising Committee each had their respective areas of responsibility, and Mr Thompson advised that each was authorised to commit expenditure for their respective areas. For his part, when cheques were submitted to him for signing, he would first check with his colleagues if the expenditure had been authorised.

The Panel's Observations

3.164 The Panel is of the view that in relation to cheque signing, given the fact that Red Canvas was spending significant sums of the Government sponsorship monies, there should have been joint signing arrangements in place involving the other two members of the Organising Committee. We would however emphasise that there have been no suggestions of any financial impropriety on the part of Mr Thompson but in his own interest and in that of AmCham, who were the contracting party with the Government, proper controls should have been in place. Failure to do so invites criticism on a similar basis to that generated by the corporate structure of Red Canvas.

3.165 More importantly, in the Panel's view, there is the issue of control in relation to the authorisation of expenditure. As seen earlier in this chapter, despite Mr Thompson's above remarks, many of the major decisions were taken on a collective or at least joint basis by the members of the Organising Committee and that is the way it should be. On the other hand, as will be observed later when examining some examples of expenditure, this sole authority to commit expenditure on the part of the members of the Organising Committee was open to abuse and as such, pointed to a failure in the system of financial control of the Harbour Fest.

Red Canvas - Control of Expenditure

3.166 Having received the audited accounts of Red Canvas and in the knowledge that the Director of Audit had not been given access to their books of account and detailed financial records, the Panel requested Red Canvas to provide a detailed breakdown of their expenditure on the Harbour Fest. A number of the itemised schedules of their expenditure were subsequently received. The Panel examined them on a test check basis, raising queries and seeking copies of source documents on major or unusual items as considered appropriate.

3.167 The Panel would emphasise that, given its limited resources, the work in this area should not be construed as an audit of Red Canvas records. Rather, given the potential weakness in the authorisation of the expenditure process, it was a limited attempt to test the control system in

this regard. The Panel has determined that in relation to the western artists' related expenses, there were failures in the control system for authorisation of expenditure. The Panel's observations in this regard are set out below.

Other Contracts Related to Artist Handling

3.168 Apart from artist fees, East Art and Mr Garman were responsible for a number of related contracts. Mr Garman explained to the Panel that following his line of reporting in the Harbour Fest, these contracts were invariably authorised by Mr Jon Niermann. We have however understood from Mr Niermann that Mr Garman was entrusted to make many of the decisions himself. As such, the system of control of authorisation of expenditure failed.

Air Travel Arrangements

(a) US Travel Agent

3.169 On receipt of payment information from Red Canvas, the Panel was somewhat surprised to observe quite substantial payments for artists' air travel as the Panel was given to understand that the most usual method of contracting with artists was under what is termed all inclusive contract where an engagement fee is agreed and then artists' managements make their own travel arrangements. Non-inclusive contracts are also an acceptable method of contracting.

3.170 For the Harbour Fest, most of the contracts were non-inclusive. Air travel arrangements were mostly organised by a New York based travel company recommended to the Harbour Fest Organisers by Mr Garman. According to Red Canvas, "The arrangement of international artists' touring schedules and freight is a specialty service. Upward Bound (the New York based agent) is one of the largest and most active international tour travel co-ordinators in the world and as such has unique knowledge and skills that are not comparably available in Hong Kong." According to Mr Garman, "Upward Bound currently counts, among many other prominent artists ... as such, Upward Bound was uniquely suited for the service. Consideration was given to provision of

the contract to a local; however, no local firm has comparable experience of working with the artists in Harbour Fest.” According to the accounts of Red Canvas, this New York based agent handled some US\$400,000 worth of air travel for the Harbour Fest.

The Panel's Observations

3.171 Given the fact that Hong Kong is the air traffic hub in this part of the world and home to many large travel agencies, the Panel considers that local suppliers should have been given the opportunity to quote for this service. Further, the Panel was somewhat surprised that Messrs Thompson and Niermann did not seek to get their companies' air travel agents involved in such a process which could have led to a more competitive position in relation to this area of expenditure.

3.172 The Panel also considers that the Organising Committee should have been more involved in the process of determining whether the Harbour Fest should have adopted greater use of an all inclusive contract arrangement with artists given that talent fees were already quite generous.

(b) Charter Flight

3.173 From the payment information provided by Red Canvas Limited, the Panel noted that there was a chartered flight arranged for Miss Michelle Branch and her band and supporting entourage of a total of 14 persons from Hong Kong to Fukuoka, Japan, on the morning after her performance at the Harbour Fest on 7 November 2003 at a cost of US\$47,250. The airfare expenses on her account from Tokyo to Hong Kong and then from Hong Kong to Fukuoka thus reached HK\$497,905 with the charter costs being approximately three times the price of scheduled flights.

3.174 Mr Garman advised the Panel that Miss Branch was regarded as a very important addition to the overall line-up and because of previously arranged commitments to perform in Japan, the night after her appearance at the Harbour Fest, this could only be achieved through the use of charter arrangements to return her to Japan.

3.175 The Panel has determined that the charter flight was booked by the New York based travel agent through a Californian company who in turn engaged a charter broker in the United Arab Emirates who in turn engaged a Mainland charter company to be the operator. The New York travel company charged a service fee of US\$2,250 for their involvement in the booking exercise but, at the time of completing this report, we have been unable to determine what fees, if any, were received by the California and Middle East companies.

The Panel's Observations

3.176 The Panel cannot find any evidence that the Organising Committee was consulted about the need for these charter arrangements when they considered the talent line up. Miss Branch appeared on the same evening at the Harbour Fest as Neil Young and given the already high costs related to that evening, the Organising Committee should have decided that it was not commercially prudent to engage Miss Branch.

3.177 As to the method of booking the charter flight, the Panel is concerned that the use of the US travel agent for this transaction resulted in additional middleman costs to the Harbour Fest for a booking that could readily have been arranged more directly in Hong Kong.

(c) Double Booking and Double Payment

3.178 Another observation from the payment information provided by Red Canvas was a double booking and hence a double payment of airfare for part of the entourage of Miss Charlotte Church. On 7 October 2003, Red Canvas wired payment to the New York travel agent for three round trip tickets between US cities and Hong Kong for Miss Church's entourage. The invoice for these three tickets was subsequently provided by the agent and East Art on 24 October 2003. On the advice of East Art on 12 October 2003, Red Canvas paid a second time for the same travel requirement. This time, it was direct payment to William Morris Agency, the agency for Miss Church. We understand that Red Canvas Limited is now pursuing the New York travel agent for a refund of the amount of US\$13,210.

The Panel's Observations

3.179 In the Panel's view, this double payment evidenced the lack of due diligence on the part of the talent acquisition company in coordinating the flight arrangements for the artists since it was clear from the Charlotte Church artist contract that the talent agency would make their own air travel arrangements. Red Canvas should also have detected the double charging because both the invoice from the New York air travel agent and that from William Morris Agency showed the names of the same travelers.

Insurance Arrangement

3.180 From the Red Canvas payment details, the Panel has observed substantial payments in respect of insurance. The Panel has determined that the Harbour Fest Organisers took out insurance cover on public liability and on the cancellation and non-appearance of artists. There were two cancellation and non-appearance contracts, one on the Rolling Stones and the other on the other shows. Red Canvas paid an insurance premium of HK\$854,150 for the public liability cover and US\$726,224 for the artists' cancellation and non-appearance cover of which US\$350,000 was the premium for the Rolling Stones.

3.181 The public liability insurance was arranged through one of the large brokerages in Hong Kong. The two artist cancellation and non-appearance contracts were arranged through an Irish brokerage. We note that these two contracts were in turn placed in London through HSBC Insurance Brokers Limited (London).

3.182 We enquired with Red Canvas the circumstances surrounding the commissioning of the Irish brokerage. According to Red Canvas, in September 2003, the local brokerage that subsequently arranged public liability insurance cover for the Harbour Fest approached Red Canvas to offer to arrange both public liability insurance cover and artist cancellation and non-appearance cover for the event. While public liability cover was readily available, there were only a small number of underwriters globally involved in underwriting artist cancellation and non-appearance contracts. Accordingly, the local brokerage had no

difficulty with arranging public liability insurance cover but when it went to the few underwriters well known for underwriting artist cancellation and non-appearance contracts, the local brokerage noted that these underwriters had already been approached by another broker and were under obligation to work with that broker. In these circumstances, it could not provide competitive cover for artist cancellation and non-appearance for the event.

3.183 East Art then recommended two other insurance brokers for artist cancellation and non-appearance contracts to Red Canvas. The Irish agent was one of the two. The Irish agent came back and was able to arrange the cover. The other agent came back and could not find underwriters for the cover. Accordingly, Red Canvas had no choice but to settle for the Irish agent, Slattery Jermyn (known as Arachas since May 2004). The two contracts were taken out in favour of East Art who then assigned them to Red Canvas. As the arrangements were made through the Irish broker, a 2% Irish levy was charged in each case. The contracts were placed by HSBC Insurance Brokers Limited (London) with a number of global underwriters. According to Red Canvas, the Irish broker was able to have early knowledge of the insurance requirement of the Harbour Fest because Mr Garman and East Art had approached the Irish agent before the local agent approached Red Canvas.

3.184 The insurance cover in question was taken out to cover two components, namely, the artists' fees and the costs and expenses in the event of cancellation. In the case of the Rolling Stones' cover, the premium was high at 10% of the insured sum of US\$6 million. According to experienced promoters, they seldom take out insurance to cover artist fees because in the event of cancellation or non-appearance caused by the artists themselves, the artists will refund their fees. In this regard, even with the Harbour Fest, we have noted that Cher, who was originally lined up but who cancelled her Asian tour, returned the deposit to Harbour Fest.

3.185 We appreciate that for an outdoor event like Harbour Fest, there might have been a need to take out cancellation insurance to cover artist fees in case cancellation were caused by bad weather and not through the non-appearance of artists. However, we note that in the

contracts in question, cover was paid even for cancellation due to artists' illness. Such insurance cover taken on artist fees invariably increased the insurance premium payable. We also note that for two of the western acts, the Rolling Stones and Prince, it was indeed a rider in their respective contracts that the event organisers must arrange insurance cover for cancellation due to their illness. In turn, they undertook to refund the organisers for a portion of the premium paid for such insurance cover. According to Red Canvas, the Rolling Stones paid the broker their portion of the premium in the amount of US\$250,000, being 5% of the insured sum on artist guarantee.

The Panel's Observations

3.186 To the Panel, if not for the pre-emption of the potential underwriters by the Irish agent, the cancellation and non-appearance contracts could have been arranged by other large local brokerages and placed with the same global underwriters, perhaps also routing through a London network. As such, there could have been savings on premiums to the Harbour Fest and there would have been no need for the payment of the 2% Irish levy which cost the Harbour Fest nearly US\$20,000. Also, as we shall see below, the Irish broker started work on the Harbour Fest as early as June 2003 even prior to the ERWG approval for the event.

3.187 Besides, the Panel feels that the organisers should have explored the possibility of getting quotes from other major brokers in Hong Kong as there is no shortage of such brokers. Business prudence would expect that to have been undertaken by the organisers in the discharge of their duties in managing such a large subsidy from public money.

Consultancy Fee to Bob Koch Presents Limited

3.188 When looking into the insurance issue, the Panel has enquired with the Irish broker if there were any rebates or commissions paid for these two insurance contracts. We were advised that they had paid *Bob Koch Presents Limited* a fee of US\$35,000 against an invoice dated 30 June 2003. In the broker's words, "there was one agency which was paid fees by our office in connection with the Harbour Fest and that

was Bob Koch Presents Ltd. who were paid the sum of US\$35,000 as per the attached invoice dated 30 June 2003.” The invoice referred to a consultancy arrangement for the two years 2002 and 2003 at US\$17,500 per annum. We wrote to the Irish broker to confirm the correctness of the invoice date and the broker’s confirmation stated that, “ ...While the cover was placed on the 17 September 2003, the work on the file began in the summer of 2003. The coverage arranged by our office referred to all acts appearing at the Hong Kong Festival ...”

3.189 At this juncture, we wish to state that as advised by Mr Garman during his meeting with the Panel, “ ..Bob Koch was the project manager for East Art. He was responsible for all operational capacities of East Art.” In his written communication with the Panel, Mr Garman described Mr Koch as “a consultant adviser at the relevant time.” Mr Garman has also confirmed to the Panel that neither East Art nor any of its associates received fees or commissions in respect of the Harbour Fest.

3.190 When the Panel sought final clarification with Red Canvas on the final days of the inquiry, Red Canvas once again advised the Panel that it knew nothing about rebates or fees. Immediately after this clarification with Red Canvas, the Irish broker wrote in to explain that Bob Koch Presents Limited was his industry consultant retained on an annual basis, and that, “ ..During 2003 this consultancy included (amongst other projects) the Hong Kong Harbour Fest.” To the Panel, despite this clarification, still we are puzzled as to why the annual retention fee payable on 30 June 2003 included the consultancy fee on the Harbour Fest before the project was even approved by the ERWG. The timing of this invoice however tied in with the timing of advance knowledge about the event mentioned in the section above.

The Panel’s Observations

3.191 The Panel considers the receipt by Mr Koch of a consultancy fee, part of which being related to the insurance cover for the Harbour Fest, should have been declared to Red Canvas. Apart from the fee issue, it appears that the actions of Mr Koch in making contact with the Irish broker as early as June 2003 pre-empted any possibility of local Hong

Kong based brokers arranging the desired insurance coverage and necessarily meant that the Harbour Fest had to meet the 2% Irish levy and further denied the Harbour Fest of possibly reducing the cost of its premiums through more competitive local arrangements.

Contracts with Local Handlers

3.192 As mentioned earlier, the talent acquisition agreement of East Art provided for “Third Party Payments”, entitling East Art to reimbursement up to *US\$110,000* in respect of payments that East Art made to third parties which would include, inter alia, fees for local handlers whose function is to attend to the artists personally during their stay in Hong Kong. We understand this responsibility normally entails looking after artists and their needs from the time they arrive in the territory to the time when they depart. The Panel has noted that there were two local handlers engaged by East Art, International Fixer (Asia) Limited (International Fixer) and Covatta Communications.

3.193 The Panel has understood from local promoters that International Fixer is well known and experienced in the field whereas they have no knowledge of and have never worked with Covatta Communications. We met with Miss Alex Ng, Production Director of International Fixer, and she clearly had extensive knowledge and experience in her area of expertise and had acted as the local handler of many concerts involving local and international artists. Miss Mary Covatta of Covatta Communications declined to meet with the Panel but wrote to us advising that the company was experienced in supporting general corporate events that featured international artists. There was no mention of any concert handling experience.

3.194 Covatta Communications has advised the Panel that it was contracted to provide the following services for the Harbour Fest event, namely, artist liaison management; design and development of “welcome packages” for the artists upon arrival; to be the artist concierge office and 24 hour support desk for the artists and to provide corporate ticketing support. According to the contract of International Fixer, they would attend to the non-technical production matters including artist liaison services, ground transportation co-ordination etc. and technical

management including staging, freight etc. Mr Garman has explained to the Panel that Covatta Communications was engaged for service to the artists inside the hotel, that is, hospitality, while International Fixer, outside the hotel, namely, logistics.

3.195 International Fixer billed East Art for its services in accordance with their contract and East Art then raised a separate bill to Red Canvas under the heading ‘ Artist Fees – Riders’ , in effect a claim for reimbursement of out of pocket expenses per East Art's contract with Red Canvas. International Fixer received a total of around HK\$1 million in respect of their fees and disbursements.

3.196 After some inquiry, we have determined that the payments to Covatta Communications were covered under East Art's contractual entitlement to reimbursement for an aggregate amount up to US\$110,000 for third party fees, the description of which included payments in respect of local handlers. East Art billed Red Canvas and was paid HK\$778,928 for “Artist Fee – Third Party” corresponding to this US\$110,000 cap. These were all payments to Covatta Communications amounting to US\$108,609.

The Panel's Observations

3.197 The Panel is concerned that there was duplication in relation to the handling of artists with the engagement of two local handlers and that this could have resulted in the Harbour Fest, through Red Canvas, in effect being over-billed in relation to the contractual commitments regarding expenditure for local handlers.

3.198 The contract of International Fixer depicted a much wider portfolio of responsibilities than the advice received from Covatta Communications as to their responsibilities. International Fixer's duty list was effectively in line with most of what the Panel understands to be the responsibilities and duties of the business of local handlers.

3.199 Despite this, the Covatta bills were submitted to Red Canvas and covered by the entitlement of East Art to reimbursement of third party fees for local handlers whereas the engagement fee and expenses of

International Fixer, another local handler, was billed to Red Canvas under the description of out of pocket expenses and grouped under “Artist Fee – Rider”. We consider this to be tantamount to opening a backdoor for “Third Party Payments” and circumventing the cap of US\$110,000. If there were a genuine need to increase the amount of "Third Party Payments", Red Canvas and East Art should have negotiated an addendum to the agreement.

3.200 The Panel would also add that it would have expected Red Canvas to have spotted this point and raised queries with East Art on receipt of the International Fixer bills and that in turn would have focused Red Canvas on the nature of services provided by Covatta Communications and whether these could be construed as being the business of a local handler.

Engagement of Experts

3.201 We have identified from the Red Canvas accounts that there were payments made to a number of individuals brought in by Mr Garman as experts for the event.

(a) Mr Bob Koch

3.202 The first was the engagement of *Mr Bob Koch*. As mentioned earlier, Mr Garman advised the Panel that Mr Koch was part of the East Art team and it is clear he was actively involved in the process of engaging certain of the western artists.

3.203 Red Canvas advised, “Mr Koch’s engagement was arranged by East Art International Limited.” According to Mr Garman, “Mr Koch was the off-site co-ordinator for East Art whose role was significantly expanded at the request of Red Canvas, to include his participation on-site when it was deemed that Red Canvas did not have the requisite experienced personnel in Hong Kong to manage the scope and size of such an endeavour as Harbour Fest”. Mr Koch was paid a fee of HK\$78,000 and his air fares and hotel expenses were paid by Red Canvas. The latter amounted to HK\$87,575 and the Panel first spotted this expenditure entry since it was booked as “unknown” in the ledger of Red

Canvas under a reconciliation entry on East Art. Upon the Panel's further enquiry, a simple supporting invoice, in the format of a claim for reimbursement by Mr Garman, was produced.

3.204 When the Panel asked Mr Niermann, the member of the Organising Committee responsible for supervising Mr Garman, who Mr Koch was and his role in the Harbour Fest, he responded "He was one of Ray's third parties. I do not think we paid for Bob."

The Panel's Observations

3.205 Despite Mr Garman's description of Mr Koch's involvement with the Harbour Fest, clearly there was confusion at the level of the Organising Committee in this regard. Secondly, the Panel is concerned that East Art was initially reimbursed by Red Canvas without supporting documentation. Thirdly, and most importantly, there is the question of whether Mr Koch's expenses and fee should have been charged against the Harbour Fest as he was described as being part of East Art and so there should have been no charge for his services outside the agreed contract fee to East Art of US\$50,000.

(b) Mr Angus Yeung

3.206 Mr Angus Yeung was paid a fee of HK\$45,445 by Red Canvas who, when responding to a Panel enquiry, indicated that "Angus was contracted by East Art International Limited to assist with meeting the demands of artists." We have asked Red Canvas to distinguish his service from that rendered by Covatta Communications and International Fixer but have not received any advice as at the point of writing. The Panel has determined that Mr Yeung is the General Manager of the Shanghai office of Vertex, the parent company of East Art. We were advised by Mr Poon of Vertex that Mr Yeung took no pay leave from Vertex during the material time to work for the Harbour Fest.

The Panel's Observations

3.207 The Panel has been unable to determine the expertise that Mr Yeung brought to the Harbour Fest. Further, given the link between

East Art and Vertex, this raises the question of whether there should have been a separate charge against the Harbour Fest outside East Art's contracted fee.

(c) Ms Carmen Chan

3.208 Ms Carmen Chan was paid HK\$129,000 for marketing and public relations work. As she was not a person brought in by Mr Denzel who was in charge of publicity and marketing, we queried her engagement with Red Canvas and in turn, Mr Niermann.

3.209 We have been advised that it was Mr Garman who brought Ms Chan in. As advised by Red Canvas, "Carmen Chan dealt with press-related PR issues." We have asked for a distinction between Ms Chan's service and that of Pro-Marketing, the public relations agent of Harbour Fest. According to Red Canvas, "In the case of Ms Carmen Chan, East Art retained Ms Chan as a contract service provider. The selection was based upon the unique skills of Ms Chan and no competitive tender was requested nor required."

The Panel's Observations

3.210 To the Panel, we have yet to be persuaded on Ms Chan's unique skills over and above the event's official public relations agent such that the Harbour Fest should be charged the additional HK\$129,000 for her services. In the Panel's view, this again demonstrates the lack of control over the event organisation process by the Organising Committee such that Mr Garman, who was contracted for talent acquisition, had the power to hire experts in other areas as he considered fit. As we shall see, apart from talent acquisition, Mr Garman was able to commit spending under the publicity budget as in this case of engagement of Ms Carmen Chan and also under the ticketing budget as in the case of Mr Jim McCafferty described below.

(d) Mr Jim McCafferty

3.211 Mr McCafferty was engaged at a fee of HK\$65,358 for involvement in ticketing operations. His air fares from and to the US and

his hotel expenses while in the territory were charged to the Harbour Fest. Mr Thompson advised the Panel that Mr McCafferty was a ticketing expert brought in by Mr Garman to help when problems arose in the handling of corporate ticket orders.

The Panel's Observations

3.212 The Panel is not convinced of the need to fly in Mr McCafferty at a cost to the Harbour Fest to handle corporate ticket orders. In effect, he was engaged to sort out the problems arising from Covatta Communications' failure to effectively handle this assignment (Covatta Communications was another introduction by Mr Garman), Mr Garman advised the Panel that it was necessary to fly Mr McCafferty in as Hong Kong Ticketing "was overwhelmed by the number of tickets ..."

3.213 The Panel disagrees with Mr Garman's remarks. As we have understood from experienced promoters and from Hong Kong Ticketing themselves, they have never had any difficulty on the numerous occasions in the past in handling public as well as corporate ticket sales. All the experienced promoters were satisfied with their service. While we understand that Mr McCafferty did help to clear the corporate ticket orders that were stacked up during the time when Covatta Communications was at the job, Mr Niermann himself also agreed in hindsight with the Panel's observation that instead of flying in Mr McCafferty, they should have handed the job directly to Hong Kong Ticketing at that stage.

(e) Mr Mike McGinley

3.214 Apart from the above-named experts, the Panel has also noted that there was the payment of airfare at HK\$96,803 to bring in from the US, Mr Mike McGinley, another member of Mr Garman's East Art team. According to Red Canvas, "Mike McGinley was brought over to help with the Press/Artist issues after the CNN World Report on the Harbour Fest was aired. Mike helped get us the great press around Neil Young and the Stones." We understand from Mr Niermann that it was Mr Garman who had brought in Mr McGinley. We have asked for the

specific scope of Mr McGinley's duties. Red Canvas has subsequently explained that "Mr McGinley was a consultant with the Rolling Stones and Neil Young. Mr McGinley's ticket was requested on an emergency basis because both Rolling Stones and Neil Young were extremely concerned about the negative press."

The Panel's Observations

3.215 The Panel has noted Red Canvas' response and would only add the observation that once again, it was considered necessary to bring another of Mr Garman's East Art associates from the US to Hong Kong at an expense to the Harbour Fest to assist in an area where already the organisers had engaged professional support.

Contractor for Merchandise

3.216 We have also noted from the invoices supporting the Red Canvas account entry of "East Art – Reconciliation" a payment of HK\$28,000 for "Vernon's housing". Upon enquiry with Red Canvas, we were advised that "Vernon is the representative of the merchandise company and as such, his housing is an expense of the merchandise budget. East Art assisted Mike Denzel, at Jon Niermann's request, in securing an appropriate merchandise provider."

The Panel's Observations

3.217 This matter is clearly a small one and the Panel does not want to be petty.

3.218 However, given the reply we received, we feel obliged to comment that we cannot be persuaded that a contractor for merchandise production for the Harbour Fest was entitled to housing allowance from the Harbour Fest event. We have commented on it since this expense was a claim for reimbursement by East Art. It again demonstrates the lack of control by the Harbour Fest Organisers and Red Canvas in relation to a process of control of authorisation of expenditure.

Conclusions

3.219 In accepting the proposal of AmCham and appointing it to promote and organise the Harbour Fest, the Government expected a high degree of professionalism and commitment from such an eminent organisation and its members.

3.220 Whilst acknowledging the efforts and commitment of the de facto organisers of the Harbour Fest, the Panel cannot find the requisite organising structure and the total involvement of AmCham as an organisation until the late stage when things started to go wrong.

3.221 The Panel felt that the decision to appoint East Art to be the talent co-ordinator was a critical error based on the analysis set out herein before.

3.222 The magnitude of the project, the tight time constraints, the absence of a good system of management and internal control dictated the over-reliance on the talent co-ordinator and therefore the non-functioning of the necessary checks and balances.

3.223 All these, together with the manner in which the talent co-ordinator has been handling the different aspects of talent acquisition and related services, led to much of the public outcry and criticism on the organisation of Harbour Fest.

CHAPTER 4 THE GOVERNMENT'S ROLE IN THE HARBOUR FEST

4.1 The Panel has found it necessary to define the role of the Government from the start not only because the role determines the level of Government involvement but also because it appears to the Panel that the ERWG and InvestHK had different understanding of the intended level of Government involvement in the process.

4.2 To determine the role of the Government, the Panel has examined the terms under which approval for sponsorship of the Harbour Fest was given by the ERWG; any applicable Government guideline that gives guidance on the Government's monitoring role for a sponsored event; the general understanding on the role of a subject department for any economic relaunch project; and the position under the law regarding the role of the Controlling Officer in respect of public funds under his control.

4.3 The Panel has examined the monitoring framework that the Government put in place for the Harbour Fest, namely, the three Memoranda of Understanding (MoUs) and the formal agreement, and considered their adequacy for the purpose.

Conditional Approval of 12 July 2003

4.4 At the ERWG meeting on 12 July 2003 when approval was given to the underwriting of the Harbour Fest up to HK\$100 million, ERWG decided that the Government would act as sponsor only. AmCham was to plan, organise and implement the whole event. The Government would not be involved in micro-managing the event.

4.5 As mentioned earlier, ERWG did stipulate unequivocal conditions when approving the Harbour Fest proposal on 12 July 2003 to guide the subsequent monitoring role of InvestHK –

“...the ERWG has agreed at its meeting last Saturday to underwrite the event up to the maximum of HK\$100 million, on the understanding that –

- If by the close of account the overall deficit is less than HK\$100 million, the Government will cover the cost of the actual deficit in full. All revenues generated will be used to offset the operation costs. However, if it happens that the overall deficit is more than \$100 million, the Government will in any case settle \$100 million only. The event organiser, namely the AmCham, will have to bear the rest of the deficit.
- The detailed budget and all statements of account in relation to the Festival will be subject to scrutiny and approval by InvestHK.
- The event organiser (i.e. AmCham) shall be fully responsible for the organisation, operation and implementation of the Festival.
- The pricing strategy should be critically reviewed, having regard to the nature and attractiveness of the shows, with a view to making the Festival as commercially viable as possible.
- Efforts should be stepped up to explore and secure more commercial sponsorship in order to increase the revenue opportunity.”

4.6 It is clear from this conditional approval that ERWG had expected InvestHK to keep close track of the evolving budget of the event and to be involved in the ticketing decisions as it monitored the organisation of the Harbour Fest. These will be the first parameters of the monitoring role for InvestHK under specific instruction by ERWG.

Sponsorship

4.7 The next set of parameters for the monitoring role of InvestHK will be the role expected of a sponsoring department for an event funded by Government, or more specifically, by the economic relaunch campaign fund.

InvestHK's Interpretation

4.8 InvestHK repeatedly pointed out to the Panel that the Government's role in the Harbour Fest was that of a sponsor as distinguished from that of an organiser or co-organiser. The role of a sponsor, as pointed out in InvestHK's letter to the Panel of 18 February 2004, is that it would first satisfy itself that the level of sponsorship fee sought would be commensurate with the benefits offered, and then it would have to ensure that the deliverables materialised. It would not however seek details of individual expenditure items.

4.9 DGIP advised the Panel that on the first part of the sponsor's duties, that is, to assess whether the benefits promised were commensurate with the fee, ERWG had made the assessment itself when it decided to sponsor the Harbour Fest.

ERWG's Intention

4.10 We understand from ERWG that they agreed that the Government's involvement in the Harbour Fest would be to maintain an overview of AmCham's preparation of the festival to ensure that the deliverables were fulfilled and the objectives were met, but not to micro-manage the detailed planning and organisation by AmCham.

4.11 ERWG was apparently using the term sponsorship in a generic manner as opposed to the term organisation or co-organisation which would spell micro-management. To the Panel, such innocuous though admittedly brief instruction might have been unclear but given that instructions of this brevity did not lead to problems with the other economic relaunch projects, we can understand why there was no further instruction given to InvestHK on how to be a sponsor in respect of the Harbour Fest project.

The Panel's Observations

4.12 Given the interpretation of InvestHK on the term "sponsorship", the Panel has researched into its specific meaning in Government parlance.

4.13 First, it has been confirmed to the Panel that the ERWG had not developed any specific guideline on the role of the sponsoring department for an event funded by the economic relaunch campaign. Nor was there a specific guideline on how the Government should sponsor mega events like the Harbour Fest. The Panel has noted the existence of departmental guidelines at the Leisure and Cultural Services Department (LCSD) but these are specific to the procedures to follow at the stage of engagement of artists but not at the monitoring stage.

4.14 The closest explanation on the role of sponsor that the Panel has managed to find is in the Government guideline, “Miscellaneous Subventions – Guidelines on the Management and Control of Government Subventions” issued in 1988. However, as we shall see, the concept of sponsorship under this guideline is not applicable in the case of the Harbour Fest.

4.15 The said guideline contemplates sponsorship to organisations on a recurrent basis. Under the guideline, sponsorship refers to a contribution, usually of a token amount, to help meet part of an organisation’s operational expenses and to demonstrate support for the organisation’s objectives. By its very nature, the type of sponsorship under the guideline forms only a small percentage of the organisation’s total income. The Controlling Officer only has to assess if the sponsorship is good value for money and to make sure that the objectives of the sponsorship are met.

4.16 This less stringent form of control does not apply to those organisations receiving Government subvention to meet a substantial part of their operating deficits. As explained in the same guideline, in these other cases, the Controlling Officer has to ensure that an effective management structure and effective management systems are in place to maximise the value of money provided by the Government. The Controlling Officer and the Director of Audit will have unrestricted access to the records and accounts of this latter type of subvented organisations.

4.17 After carefully considering the above, the Panel is not prepared to accept that the control framework for sponsorship as

contemplated under the guideline is appropriate in the case of the Harbour Fest because here, the Government was the major sponsor funding the bulk of the estimated expenditure of the event up to HK\$100 million.

4.18 The Panel has looked for further guidance on what the role of a sponsor is commonly perceived both in the private sector and by Government agencies elsewhere. As the Panel understands from the Hong Kong Rugby Football Union, sponsors of the annual Rugby Sevens will sit on their organising committee to keep an eye on the event to make sure that it will be a quality event worthy of their sponsorship. In other words, in the private sector, sponsorship still entails close involvement on the part of the sponsor. The Panel has also noted the comment of the New Zealand sports department, Sports and Recreation New Zealand, on what they see as the meaning of sponsorship, “Today, sponsors are seeking more than just some free tickets and t-shirts. Increasingly, they are seeking to ‘own’ an event or activity and be perceived as an integral part of it ..” Sponsorship comes with it an element of ownership under the New Zealand interpretation.

4.19 To the Panel, the common element in both examples cited above is the call for involvement and ownership even when it is only a sponsor’s role, the simple reason being that by putting one’s name to a project as a sponsor, one’s reputation is at stake. We have identified that in effect, our Government has been supporting many projects by specific “Project Funding” models under which specific control frameworks are developed. In these cases, the Government is neither the organiser nor the co-organiser. But the department administering the project is invariably capable of developing tailor-made framework to ensure adequate control of public funds and at the same time, co-operating well with the recipients of public funds.

4.20 The Panel has made reference to one such project funding framework in the case of the Professional Services Development Assistance Scheme (PSDA Scheme) where dollar-for-dollar matching grant is provided for projects that aim to increase the competitiveness of Hong Kong’s professional services.

4.21 In spirit, the project funding model is akin to the Harbour Fest in which the Government funds a project on a one-off basis based on the ultimate benefits that the funded project will be able to bring to Hong Kong. A quick reference to the guidelines for the Scheme will demonstrate that the department administering the PSDA scheme will ask for regular progress reports from the successful applicant regarding the use of funds, the keeping of proper books and records by the successful applicant and the power of access to these records by the administering department. To the Panel, a form of control and monitoring comparable to that used under the project funding model should have been put in place for the Harbour Fest.

4.22 The Panel considers it disappointing for DGIP and InvestHK to have over-leveraged on the concept of sponsorship. We are not convinced that ERWG had the narrow sponsorship concept in mind when so instructing InvestHK on 12 July 2003. Even if ERWG were so minded, DGIP, as a senior Government official and as we shall see, being the Controlling Officer for the HK\$100 million, was duty bound to counter-propose a more responsible approach to ERWG.

The Role of “Subject Department” for an Economic Relaunch Project and the Role of Controlling Officer under the Law

4.23 Given that InvestHK was the designated subject department for the Harbour Fest event as from 2 July 2003, we also draw reference to what this role would entail as submitted in the Administration’s paper to the LegCo FA Panel on 11 October 2003 -

“... different policy bureaux and Government departments are responsible for the activities under the Relaunch Campaign within their respective scope of responsibilities;

... On the approval of ERWG, DGIP will transfer the amount of the approved fund by an allocation warrant to the respective Controlling Officer of the bureau/department concerned, which will oversee the implementation of the project, and monitor the performance of the outside party, who has been commissioned to carry out the project ...

... Upon completion of the project, the subject bureau/department will evaluate its effectiveness vis-à-vis the stated objectives, and provide a full statement of accounts vis-à-vis the approved budget ...”

4.24 As InvestHK was the subject department for the Harbour Fest event, DGIP had the Controlling Officer’s role of a subject department in respect of the Harbour Fest. According to section 12 of the Public Finance Ordinance (Cap. 2), a Controlling Officer shall be responsible and accountable for all expenditure from any Head or Subhead for which he is the Controlling Officer. The Government’s Financial and Accounting Regulations and Standing Accounting Instructions require the Controlling Officer to ensure, inter alia, strict economy in the expenditures under his control. In other words, DGIP should have adhered to this guiding principle of responsibility and accountability when discharging his monitoring role over the spending of the HK\$100 million.

Summary of Monitoring Parameters

4.25 Based on the foregoing, we consider that the following should be the monitoring parameters for the Harbour Fest. They are either derived from the specific instruction of ERWG, the proper controls expected of a project funded by the Government, the controls expected of a subject department when administering an economic relaunch project or the due diligence call on a Controlling Officer as mandated under the Public Finance Ordinance (Cap. 2) –

- Scrutiny of the evolving detailed budget having regard to its reasonableness and appropriateness;
- Scrutiny of the ticketing strategy and ticket pricing strategy of the event;
- Regular progress review of the event;
- Ensuring achievement of the strategic objectives of the event;

- Providing support to the organiser on Government related issues such as site allocation and licensing requirements; and
- Ensuring that the public funds are duly protected.

Monitoring Framework

4.26 We now turn to the monitoring framework that was put in place for the Harbour Fest event.

4.27 InvestHK had signed three MoUs and a formal agreement with AmCham on 31 July 2003, 29 August 2003, 3 October 2003 and 10 October 2003 respectively. These legally binding documents formed the legal basis for project monitoring. These three MoUs and even the formal agreement however failed to act as an adequate monitoring framework. Further, the loose wording of the MoUs and the late signing of the Sponsorship Agreement left a lacuna in the period between project approval on 12 July 2003 and the signing of the agreement on 10 October 2003.

The Three MoUs

4.28 The three MoUs are identical except for the dates and the cumulative advance payments having been made to AmCham as at the date of the respective MoUs. DGIP confirmed that the Department of Justice (DoJ) had not been consulted before the signing of these legally binding documents. As explained to the Panel, there was perceived urgency to transfer money to AmCham who would need to “...settle some upfront payments for the preparation of the festival...”. When DGIP returned from leave and signed the third MoU, he considered it beside the point to consult DoJ then because two instalments were already advanced to AmCham with the execution of the first two MoUs.

4.29 According to bank statements supplied by AmCham, the first advance payment of HK\$25 million from InvestHK was effected on 4 August 2003. The first transfer of fund from AmCham to Red Canvas did not take place until 13 August 2003 at HK\$7 million. Another \$17 million of the first advance payment was not required until 29 August

2003. The second advance payment of HK\$25 million was effected on 1 September 2003. The transfer of fund to Red Canvas did not take place until 9 September 2003 at HK\$18 million.

The Panel's Observations

4.30 The Panel is astonished to note that InvestHK could and did, on behalf of the Government, enter into binding obligations with AmCham to the extent of HK\$100 million under three MoUs without consulting DoJ. This is quite inconceivable in the private sector for a business entity to enter into a legally binding contract involving such a substantive financial obligation without consulting the company lawyer.

4.31 The MoUs were used as vehicles to enable advance payments to be made to AmCham before the signing of the sponsorship contract. To the Panel, InvestHK should have made use of the three instances when the MoUs were signed and executed to seek updated budgets, including expenditure positions, of the event from the organisers.

4.32 We reckon the need for advance payment to AmCham to provide cashflow to kick-start the project. However, we have not seen any documentation on InvestHK's request to AmCham to substantiate the need for advance payment on each occasion of transfer. As the Controlling Officer of the HK\$100 million, DGIP should have exercised more stringent monitoring of the cashflow position of the event before each transfer. The submission of updated budgets, including expenditure positions, should have been made conditions precedent for each of the three advance payments.

4.33 We also consider that the wording of the MoUs failed to protect the Government position with regard to the monies advanced. We note that the only obligation clause in the three MoUs was “ ..AmCham and the Government expect to enter into a full agreement setting out in detail each party's obligations with regard to the convening and underwriting of the Festival. The purpose of this MoU is to record AmCham's and the Government's respective general understanding with regard to the convening and the underwriting of the Festival, and to provide for payment of the ..instalment ...”

4.34 There was no reference in the MoUs even to the repayment of funds advanced in the event that the parties failed to enter into a full agreement; nor was there a time limit for doing so set out in the MoUs.

4.35 InvestHK should have consulted DoJ on the wording of the MoU to ensure adequate protection of the Government position. Judging from the timing when the first funds were transferred to Red Canvas, we think that there should have been enough turnaround time for InvestHK to consult DoJ on the MoU before signing and execution. As it turned out, the MoUs placed no reporting and consultation obligation on AmCham. Without a contractual requirement, InvestHK did not have an effective mechanism to ensure a proper monitoring of the event before 10 October 2003 when the sponsorship agreement was signed.

4.36 Even if there is insufficient time for DoJ to be consulted or if a longer period of time is needed for terms of the agreement to be negotiated and agreed, business prudence would require that -

- Only a small percentage of the total payment should be made;
- Such payment to be in the nature of a temporary advancement or earnest payment to the other party; and
- An express provision of full refund should be included in the MoU in the event of the parties not entering into a binding contract by a specified date.

Lack of Effective Monitoring Framework before 10 October 2003

4.37 One of the implications of the late signing of the agreement was the lack of binding legal obligations on the AmCham organisers towards the Government as the sponsor of the Harbour Fest in the interim which include –

- to consult InvestHK on changes to the project proposal and detailed budget;

- to report to InvestHK on the development of the programme line-up including the sourcing and confirmation of the performing talents for the concerts; and
- to report to InvestHK on other aspects of the implementation of the Harbour Fest.

4.38 The late signing of the Agreement had compromised the effectiveness of the monitoring by InvestHK. InvestHK advised the Panel that it maintained regular and frequent contact with the Harbour Fest Organisers to monitor the development of the programme and the implementation of the Festival. The consultations between InvestHK and the organisers pre-10 October 2003 might be frequent but there was no proper mechanism to ensure that InvestHK would have a chance to scrutinise and approve the Harbour Fest budget as it evolved, nor was there the legal basis for it. Furthermore, the MoUs failed to provide for InvestHK's legal right to monitor progress.

4.39 To illustrate our point, we outline two examples below. As seen from the emails provided by Red Canvas, the organisers knew as early as 1 September 2003 that the performance of Cher, who featured in the original talent line-up, would be cancelled as she was cancelling her tour in this part of the world. DGIP spotted this disappearance of Cher from the line-up two weeks later and had to ask for details from the organisers. He was not kept abreast of major cancellations in a timely manner.

4.40 We also read from emails that InvestHK was chasing the organisers for details on the programme and a realistic breakdown of the revised budget for reporting to the ERWG meeting on 20 August 2003. But we did not see any subsequent submission to InvestHK. As a result, there was no updating on the budget to ERWG on 20 August 2003 according to records.

4.41 More significantly, we understand that the organisers decided to cancel the sports and most of the other festivals when it became clear to them in late August 2003 that the road between the Tamar site and the helipad could not be closed for use. This significant

change to the original Harbour Fest programme was not reported to ERWG for consideration and approval. InvestHK should have known this when it happened but the absence of a formal approval or rejection process as required in the subsequent Sponsorship Agreement made the omission of formal consultation with InvestHK possible, in turn resulting in the corresponding omission of formal consultation with ERWG.

4.42 When the AmCham representatives introduced the proposal of the Harbour Fest to ERSG on 1 September 2003, there was no longer any reference to the festivals in their power-point presentation. However, this change was not highlighted to the ERSG meeting, nor was ERWG, the authority that approved the funding for the project, asked to formally consider and approve the change.

4.43 To the Panel, the failure to highlight the changed programme mix of the Harbour Fest to ERWG for conscious deliberation was quite inconceivable. While the original programme line-up already carried a substantial concert element, there were only eight night concerts. ERWG should have been afforded a chance to consider whether it would need to increase the number of concerts to 14 after the cancellation of the festivals. Given the decision to price tickets at market, to squeeze a few more concerts into the four-week period further aggravated the competition between shows, in turn impacting on the ticket sales of the concerts as a whole. It further changed the anticipated audience mix of the Harbour Fest and put to a greater test the pop concert organisational ability of the AmCham representatives

The Agreement of 10 October 2003

4.44 According to the Sponsorship Agreement signed between InvestHK and AmCham on 10 October 2003 (“the Agreement”), AmCham would be convening the Hong Kong Harbour Fest through a special purpose vehicle of AmCham wholly owned by members of AmCham. The following were the key obligations of both parties.

4.45 *First*, the Government’s sponsorship fee would be capped at HK\$100 million. *Second*, AmCham would, as necessary, develop the indicative proposal, attached as the first schedule to the Agreement

(copied at *Annex 13*), for adoption as the business plan for the festival. *Third*, AmCham would develop for adoption the indicative budget, attached as the second schedule to the Agreement (copied at *Annex 14*). If AmCham wished to materially alter the business plan or the budget, it would have to supply the Government with full written particulars of the alterations and the Government could accept, accept with modifications or reject the revisions. *Fourth*, AmCham would have custodianship of the intellectual property rights in relation to the Harbour Fest event for five years and would re-assign the rights and privileges back to the Government on 31 December 2008. *Fifth*, as set out in the fifth schedule to the Agreement (copied at *Annex 15*), AmCham would use its best endeavours to conduct the business on sound and proper commercial profit making principles in accordance with the Agreement. AmCham would also procure the production of a special TV programme to capture the highlights of the festival for airing and distribution to overseas markets. AmCham would also cause proper books of account to be kept, and submit to the Government the Business Plan, the Budget, a review of the Budget and audited accounts no later than 28 February 2004 (to include an analysis of revenue and a statement of the source and applications of funds).

The Panel's Observations

4.46 To the Panel, InvestHK did not exercise sufficient due diligence in the agreement signing process as well as in finalising the provisions of the Agreement.

No Due Diligence Checks on the Involved Parties

● **No Due Diligence Checks on Red Canvas Limited**

4.47 There were no due diligence checks conducted on Red Canvas when it was named in the draft agreement as the special purpose vehicle to convene the event. It was not until October 2003 when the press uncovered that Red Canvas was owned by Mr Thompson and his wife and raised conflict of interest concerns did InvestHK make enquiries with Mr Thompson.

4.48 The use of a special purpose vehicle would be necessary in view of the nature of AmCham. However, we would expect InvestHK to have enquired and confirmed that it was in keeping with the Memorandum and Articles of Association (M&AA) of AmCham to set up a special purpose vehicle to organise the event as well as to ascertain the necessary details of the special purpose vehicle. As it turned out, there was no prohibition in the AmCham M&AA on the setting up of special purpose vehicles. As to the details of the specific purpose vehicle, while the Agreement made reference to it being “wholly owned by members of AmCham”, meaning more than one AmCham member, in effect, it was not so. Only Mr Thompson is a member of AmCham but not Mrs Thompson. As mentioned earlier, the Panel has found out from Mr Thompson that the original intention was to have Messrs Denzel and Niermann replace Mrs Thompson to be directors and shareholders of Red Canvas. Due to the timing factor and the need to seek formal approval from the two gentlemen’s employers, the change was not pursued.

4.49 InvestHK indicated to the Panel that “InvestHK did not conduct any due diligence checks on Red Canvas as we did not perceive any need to do so. The MoUs and subsequently the Sponsorship Agreement were all signed between InvestHK on behalf of the Government and AmCham. The Government has not entered into any contractual relationship with Red Canvas.” Notwithstanding, we consider that InvestHK should have asked for details on Red Canvas Limited so as to forestall the unnecessary concerns raised by the press later. The incumbent office bearers of AmCham also share the Panel’s view that private ownership of the special purpose vehicle unnecessarily raised questions in the community as to whether there were motives of personal gain among those directly involved in the Harbour Fest event. They also consider that it would have been a better arrangement for the special purpose vehicle to be owned by AmCham the organisation rather than by private individuals. We consider that both AmCham and InvestHK should have ascertained the corporate structure of the special purpose vehicle at the time.

- **No Due Diligence Checks on the Financial Position of AmCham**

4.50 InvestHK also failed to conduct due diligence checks on AmCham's ability to pay in the event that the cost of the Harbour Fest exceeded the Government sponsorship of HK\$100 million. There is a clear provision in the Memorandum of Association of AmCham that "the liability of members is limited". Mr Thompson had committed in public during the course of the event that he would pay for any cost overrun should that happen. But as he told the Panel, this was not a question contemplated beforehand. In reply to the Panel, DGIP said that "We have not examined the M&AA of AmCham. The Sponsorship was signed personally by the Chairman who should be familiar with it." To the Panel, despite the responsibility of the then AmCham Chairman, it would be highly embarrassing to the Government if there should be non-payment to any contractor because of cost overrun in the Harbour Fest beyond the amount it sponsored.

4.51 The Panel queries why standard practice in the private sector of carrying out due diligence checks on the contracting parties before the execution of an agreement is considered unnecessary and not conducted before the signing of the Agreement.

Deficiencies in the Agreement

- **Omission of the Reserve Power of Access**

4.52 The Agreement has not empowered the Government or InvestHK to access the accounts, contracts and records in relation to the Harbour Fest. This is a significant omission since the Government was the major sponsor of the Harbour Fest. Such a reserve power is commonplace in private sector contracts. We note that this reserve power exists in the funding agreement between the Government and the Hong Kong Arts Festival Limited where the Government is one of the major sponsors of the annual Arts Festival. As pointed out earlier, this requirement also exists in the PSDA Scheme. In other words, it appears to be the rule rather than the exception to include this reserve power in a Government contract with third parties.

4.53 We also understand from DoJ that as the particulars of sponsorship arrangements are matters for negotiation between the parties and these in turn hinged on the degree of involvement preferred by the responsible department as a sponsor, this was essentially a policy matter for InvestHK. DoJ also advised the Panel that they did raise the need for the provision of this access to documents in AmCham's possession to InvestHK. However, InvestHK instructed DoJ that the requirement for AmCham to prepare proper books of account and to submit independently audited accounts of the event should instead be incorporated in the agreement.

4.54 DGIP, at his meeting with the Panel, indicated that he did not ask for the power of access because he did not have the manpower to check on the records and contracts of the Harbour Fest even if he were given access. We have posed this manpower problem to ERWG and have been advised that ERWG would have expected InvestHK to raise any difficulty it had with monitoring the project to ERWG. In his written communication to the Panel on why he did not raise the need for assistance to ERWG, DGIP said that he “..perceived the role of InvestHK was primarily to administer the sponsorship agreement with AmCham with a view to ensuring that all the contracted deliverables and benefits were realised ...the implementation of the whole event was a matter for the organisers, i.e. AmCham, ..we did not see any need for third party assistance in performing the role of a subject department in this context ...”

4.55 To the Panel, the absence of this reserve power had significantly impaired InvestHK's ability to effectively monitor the event.

● **Lack of Access to the Artist Contracts**

4.56 Without the reserve power of access to accounts, contracts and records in relation to the Harbour Fest, InvestHK was denied access to the artists' contracts. The power of access to artists' contracts is crucial for at least two reasons.

4.57 First, the western artists' fees accounted for about three quarters of the Government's HK\$100 million subsidy for the event. The

denial of access to these contracts rendered it impossible for InvestHK to check on the artist fees which in turn compromised the department's ability to scrutinise the detailed budget of the event in line with the instruction of ERWG.

4.58 Secondly, InvestHK had to rely on second-hand information from the AmCham representatives. This unfortunately became a cause of embarrassment to the Administration. DGIP had been saying both to LegCo and to the press that the artist fees could not be revealed as they were subject to confidentiality clauses in the artists' contracts. DGIP had relied on Mr Thompson who had in turn relied on Mr Ray Garman's advice when making this statement.

4.59 As the Panel has discovered, save the Rolling Stones' contracts, there are no confidentiality clauses in the other artist contracts¹. The absence of the reserve power of access to records and contracts of the Harbour Fest had made the monitoring department hostage to the goodwill of the organisers or, in the case of the confidentiality clause, the goodwill of one single contractor. The complete lack of transparency in the handling of public funds that has resulted is unacceptable to the Panel.

- **Inadequacy of Access to Audited Accounts**

4.60 We also wish to point out that the requirement in the Sponsorship Agreement for AmCham to submit independently audited accounts of the event is not adequate. As InvestHK would have learned, the audited accounts of a private company might only give minimum disclosure.

- **Custodianship of Intellectual Property Rights of the Harbour Fest**

4.61 The incumbent AmCham Chairman has recently made clear to the Government in a letter to DGIP that AmCham would be ready to assign the trade mark and domain name registrations of "Harbour Fest"

¹ The Panel has not received the contracts of Shine and Mick Gerace. According to Red Canvas Limited, they do not have copies of these contracts.

back to the Government in a manner best suited to the Government. AmCham's position to return the intellectual property rights is clear with this letter. In another recent communication to the Panel, AmCham has also commented that it was not the intent of the Board of AmCham that it or the special purpose vehicle or any private individual would retain any rights or interests in the Harbour Fest. Hence, regardless of any possible concerns over the five-year custodianship of the intellectual property rights for the Harbour Fest, the worry should have fallen away in the light of the clear position of AmCham now.

● **Lack of Provision on Involvement in Ticketing Decisions**

4.62 Under the terms of the conditional approval of the ERWG on the 12 July 2003, InvestHK was asked to critically review the pricing strategy of tickets with a view to making the festival as commercially viable as possible.

4.63 The Panel has noticed that there was no reserve power under the MoUs or the Sponsorship Agreement to empower InvestHK to require the Harbour Fest Organisers to consult it on the ticketing strategy and the ticket pricing strategy.

4.64 InvestHK was involved in the ticketing decisions for the event in the following manner. First, they conveyed to the AmCham representatives the ERWG decision on the ticket pricing strategy. That is, "...The pricing strategy should be critically reviewed having regard to the nature and attractiveness of the shows, with a view to making the Festival as commercially viable as possible." Secondly, they passed on to AmCham for reference information on ticket prices of recently staged pop shows.

4.65 We find InvestHK's monitoring of the ticketing arrangements deficient. First, there was no follow up on the ERWG recommendation for a differential pricing strategy with concessionary tickets to senior citizens and students. Only discounts up to 15% were offered for bulk purchases. This did not accord with the original intention of ERWG on concessionary tickets, which, if followed through, should have helped boost public participation in the event.

4.66 Secondly, InvestHK was not involved in a major ticketing decision, that is, the criteria for free ticket distribution and the number of free tickets to be distributed. The Government was only involved in the decision to give away free tickets for the first three shows and to make the 24 October 2003 concert free. While ERWG had not given explicit instructions on free tickets, as the subject department, InvestHK should have been sensitive to the need to oversee the criteria to be adopted in the distribution of free tickets and the quantum to be distributed as the concerts were largely funded by public money. The attendance rate at the Harbour Fest concerts, as set out at *Annex 10*, shows that in some instances, as in the Asian All Stars Night, free ticket holders amounted to as high as 58% of total attendance. As mentioned in an earlier chapter, we are in particular concerned about the class “Complimentary/Other Category” who received free tickets. This category accounted for 12,676 tickets (or 51.1%) out of 24,823 free tickets distributed throughout the Harbour Fest (excluding the distribution for the free show), as seen at *Annex 9*. As advised by Red Canvas, this category could have included supporters of the Harbour Fest such as restaurants and shops that distributed Harbour Fest flyers or hung up posters. This vague justification cannot adequately satisfy the Panel that it has been a reasonable decision. The Panel has sought but failed to obtain from Red Canvas the breakdown of these 12,676 tickets by recipient.

Other Monitoring Problems

● **Monitoring Attitude**

4.67 We are concerned about the monitoring attitude of DGIP as manifested in his over reliance on what he heard from the Harbour Fest Organisers without seeking documentary details.

4.68 The following were two notable examples of this over-reliance on the Harbour Fest Organisers. The first was the premature announcement of the Rolling Stones concerts. According to the chronology of events leading up to the signing of the Rolling Stones that DGIP submitted to the LegCo FA Panel on 17 October 2003, copied at *Annex 16*, AmCham and DGIP had announced the finalisation of the

Rolling Stones contract negotiation at the first press conference on 3 September 2003. At that time, there was only broad agreement with the Rolling Stones management. It was not until 15 October 2003 that there was a signed agreement on the performance by the Rolling Stones. The premature announcement had left the organisers and InvestHK in an unenviable position with the subsequent twist and turn of events. InvestHK should have ascertained from the AmCham representatives the actual state of play before rushing to a premature announcement on the Rolling Stones in early September 2003.

4.69 The second was the promise to broadcast the Harbour Fest television special on the ABC network in the US. At the LegCo FA Panel meeting of 15 November 2003, “..DGIP said that AmCham had already secured broadcast for the whole one-hour TV special by the ABC Channel in US ..” The programme in turn did not go on the ABC network. DGIP explained to the Panel that “...I was not aware of the contractual details at the time but subsequently learned of a letter of commitment from a senior executive of Disney (ABC’s parent). I recall the opinion of AmCham representative responsible for the video production that the ABC Family channel compared less favorably than MTV in terms of viewership and commitment for repeat airings ..” Given the various lessons learned from an over-reliance on what the organisers said without seeing documentary proof, DGIP should have confirmed that there did exist contractual agreement with the ABC network regarding the broadcast before advising the Legislative Council on this arrangement.

● **Handling the Staging of the Rolling Stones**

4.70 The first controversy over the Harbour Fest was traced to a report in the English press that the Rolling Stones might be overpaid for their appearance at the Harbour Fest. As mentioned in the previous chapter, the Rolling Stones were not part of the original line-up for the Harbour Fest. Instead, the promoter who had originally arranged for the Rolling Stones to perform in Hong Kong in March 2003 as a private commercial undertaking but who was forced to cancel the show due to SARS, approached InvestHK in early June 2003 for Government sponsorship to stage the event.

4.71 According to records supplied by InvestHK, the promoter first submitted a budget estimate in June/July 2003 to stage two concerts at the Hong Kong Stadium. When InvestHK indicated to the promoter that the Government would only consider sponsoring the event up to HK\$5 million to HK\$6 million, the promoter submitted a revised estimate seeking Government sponsorship at HK\$6 million to stage one concert at the Hong Kong Stadium, playing to a 32,000 capacity, which would be more than the capacity of two shows at Tamar.

4.72 InvestHK advised the Panel that when the promoter came up with the revised estimate, the AmCham representatives had already obtained approval from ERWG to stage the Harbour Fest event. Accordingly, InvestHK did not put up the promoter's proposal to ERWG because it would not make sense for the Government to sponsor two concert events at the same time. InvestHK in turn referred the promoter to the Harbour Fest Organisers so that they could consider co-operation. According to DGIP, "...I was on leave from 14 July to 15 August. During the week beginning 16 August I learned from Mr Niermann that he had reached agreement with Miss Ironside (the original promoter) to include the Stones as part of Harbour Fest at Tamar ...After I returned from an overseas duty visit in late August, I learned that for various reasons the deal had fallen through and that the Stones management had approached AmCham's agent Mr Garman direct. I was told that the indicated fee was lower than that previously quoted by Miss Ironside"

4.73 However, according to emails furnished to the Panel, Mr Niermann in fact reported to InvestHK on 16 August 2003 that they had been speaking with the Rolling Stones management direct without the knowledge of the original promoter to ascertain whether the band would only agree to play at the Hong Kong Stadium. When they found out that the Rolling Stones were agreeable to play at either venue, they sought InvestHK's view on whether they should pursue negotiation with the Rolling Stones on performance at Tamar or that they should give up further discussion with the Rolling Stones. What DGIP considered to be the position in the week beginning 16 August 2003 was not consistent with the email from Mr Niermann to InvestHK on 16 August 2003.

4.74 While we agree with DGIP that it might not be appropriate for InvestHK, as a sponsor, to get involved in the discussions with promoters, the case of the Rolling Stones appeared an exception to us. The Rolling Stones were not part of the original line-up of the Harbour Fest and were effectively an InvestHK *referral* to the Harbour Fest Organisers. While there could be no exclusive right over negotiation with an individual artist by a promoter, the original promoter would not have expected that her approach to InvestHK for sponsorship to stage the Rolling Stones would end up with the negotiation being taken over by another party coming from the same source of Government support. Furthermore, we understand that InvestHK itself was keen to stage the Rolling Stones as part of the relaunch to signify Hong Kong's return to normal after SARS given that the Stones concert in March 2003 was cancelled because of SARS. InvestHK should have made an effort to engage the original promoter and the Harbour Fest Organisers in a constructive dialogue to stage the Rolling Stones concert as part of the Harbour Fest.

- **Sensitivity to Artist Fee Concerns**

4.75 We have also noted that the original promoter had sent a letter to DGIP on 28 August 2003 complaining about the high fee for the Rolling Stones. In the same letter, jointly signed by another promoter, there was also a complaint on similarly high fee paid to another artist who, like the Rolling Stones, was originally scheduled to perform in Hong Kong in March/April 2003, but whose show was cancelled due to SARS. In the letter, the two promoters made reference to an earlier meeting with DGIP on 11 June 2003 when they offered to bring in the two artists to perform for the Harbour Fest. They had been working hard to secure the artists at fee levels well below those finally offered by Mr Garman.

4.76 In explaining his follow-up to the promoters' complaint, DGIP stressed that the Government's role for the Harbour Fest was a sponsor only. The acceptance or rejection of offers was a matter for AmCham as the organiser. He also pointed out that the original promoter's proposed fee did not include television rights and so it was not a cheaper quotation but a different proposal.

4.77 Given the serious allegation by the two experienced promoters regarding artist fees at this early stage, we consider that as the subject department, InvestHK should have made more rigorous enquiries on the level of artist fees offered by the Harbour Fest Organisers, in particular how they would value the premium for the television rights. InvestHK should have checked with these two experienced promoters the basis of their allegations and sought explanation from Mr Garman.

4.78 A second point we would wish to make in respect of the handling of the Rolling Stones controversy was InvestHK's failure to address the public concerns over the payment to the Stones. Given that the concern over payment arose as early as end-August 2003 before detailed terms were negotiated with the Stones, InvestHK should have at least asked the Harbour Fest Organisers and their relevant contractor to negotiate a "restricted disclosure" clause in the Rolling Stones contract so that at least that part of their contract in relation to fees could be disclosed to the public.

● **Reporting to the FS and to the Legislative Council**

4.79 We understand from the FS that upon reading the matter in the media, he had asked for an explanation from DGIP. He was told that the fee quotation by the original promoter did not contain television rights. DGIP had further assured him that the Harbour Fest Organisers had cross-checked the reasonableness of the fees for the Rolling Stones. We understand that the FS was only aware of the first fee quotation by the original promoter. He did not hear about the second one where the amount of sponsorship sought was only HK\$6 million. When asked by the Panel, the FS indicated that he would have appreciated a thorough briefing on the background to the Rolling Stones controversy once negative publicity set in. When asked by the Panel, DGIP said that he had doubts on the figures in the second quotation and so he did not submit it to the FS.

4.80 We have also read that at the LegCo FA Panel meeting on 15 November 2003, DGIP had indicated that the fee quoted by the original promoter was US\$1 million higher than that paid by AmCham ...” We have had the benefit of reviewing the two quotations of

the original promoter available to us vis-à-vis the contract that Red Canvas signed with the Rolling Stones. To the Panel, the quotations were hardly comparable because they were based on entirely different premises. For one, the financials of a concert to be staged at the Hong Kong Stadium with a capacity of 32,000 could never be the same as that for one staged at Tamar with a capacity of 13,000. If the same number of audience were to be entertained, the Rolling Stones would only need to perform for one concert if it were to take place at the Hong Kong Stadium. The other is of course the absence of television rights in the proposal of the original promoter.

Assessment of InvestHK's Achievement of the Monitoring Role

Scrutiny of the evolving detailed budget having regard to its reasonableness and appropriateness

4.81 As we have seen, the delay in the signing of the Sponsorship Agreement compromised the ability of InvestHK to scrutinise the evolving budget of the Harbour Fest. After 12 July 2003, InvestHK did not have adequate access to the evolving budget of the event. Records show that the only times when it had access was at the point of the press conference of 3 September 2003, when preparing for attendance of the LegCo FA Panel meeting in October 2003, and when the provisional out-turn of the event was provided to the LegCo FA Panel on 15 November 2003. In other words, it had never had an adequate chance to scrutinise the evolving budget, not to mention approve it or reject, or to use it as a basis to monitor the event.

4.82 InvestHK had also missed out on the opportunities of the MoUs to demand evolving budget details from the Harbour Fest Organising Committee.

4.83 The lack of access to artist contracts made it impossible for InvestHK to keep track of the one single largest expense item in the Harbour Fest budget as it developed.

Scrutiny of the ticketing strategy and ticket pricing strategy of the event

4.84 As we have seen, InvestHK did not actively participate in the ticketing strategy and the ticket pricing strategy of the event. It also failed to pursue with the Organising Committee the ERWG instruction regarding differential ticket pricing for senior citizens and students.

Regular progress review of the event

4.85 There was no proper reporting mechanism instituted by InvestHK. In the most significant instance, ERWG did not have a chance to critically assess and decide whether there should be additional concerts to replace the cancelled festivals. These additional concerts put further pressure on ticket sales and in turn, compromised the success of the festival.

Ensuring achievement of the strategic objectives of the event

4.86 According to the Sponsorship Agreement signed on 10 October 2003, the deliverables of the Harbour Fest were the 14 concerts, the two-day Family Festival and the television programme on the Harbour Fest. To the Panel, the organisers had duly delivered. Correspondingly, InvestHK had fulfilled its monitoring role on the delivery of these deliverables.

4.87 As regards the achievement of the three strategic objectives, we consider that for the first objective, there were mixed results, and the Harbour Fest had failed to achieve the other two strategic objectives. In turn, InvestHK failed in its monitoring role to ensure delivery of the strategic objectives of the event. While the total attendance at the Harbour Fest event reached 125,872, which was above the original target of 88,000 in the funding application, it was inconclusive if the event had contributed to boosting the morale of the local people. The Panel is convinced from what we have heard that those who attended found the quality of the shows commendable and enjoyable. However, the array of organisational problems and controversy had to a large extent eroded the “feel good” factor of the event. If we look at the performance measure targets as revised in the submission to the LegCo FA Panel on 10 October

2003, namely, to reach ticket sales of 50%, we note that there was overall attendance at 61% as seen at *Annex 9*, although only 43% were paying audience.

4.88 As regards the objective to attract short-haul tourists, we understand from the Hong Kong Tourism Board (HKTB) that there were many bookings for tickets made by their worldwide offices for the travel agents in their respective markets. But no statistics were available. We also understand from ERWG that there were some visitors from the neighbouring places as well as Europe and the US having attended the concerts. In the absence of statistics, we cannot conclude that the event has achieved this second strategic objective of attracting short-haul visitors. We also understand that while HKTB had helped to publicise the Harbour Fest on their publicity channels but the time available for publicity was tight. The lead time required for promotional events to draw short-haul visitors should be at least three months.

4.89 As regards the third strategic objective to relaunch Hong Kong internationally through the Harbour Fest event, we understand that there were considerable news clippings and video news releases on the event during the festival period. However, the television special promised to go on the ABC network was in turn broadcast on the MTV2 and the MTV network on 22 January 2004, 25 January 2004 and 8 February 2004 respectively. For all the fanfare over the value of this television programme, it only reached an estimated 0.6 million viewers in the US.

4.90 Given the time constraint on the television rights, namely 12 months in the case of the Rolling Stones clippings and 24 months in the case of the others, we do not think that the television programme will ultimately reach 500 million television homes worldwide as indicated by DGIP when addressing the LegCo FA Panel on 15 November 2003.

Providing support to the organiser on Government related issues such as site allocation and licensing requirements

4.91 InvestHK had duly assisted the Harbour Fest Organising Committee in all their interfaces with the Government departments.

Ensuring that the public funds are duly protected

4.92 The lack of access to the evolving budgets of the event and also the denial of information on artist fees rendered it impossible for DGIP as Controlling Officer to adequately discharge his statutory role to ensure that the public funds were protected.

4.93 Based on the foregoing, we cannot but conclude that InvestHK had not adequately discharged a proper monitoring over the organisation of the Harbour Fest.

Role for ERWG

4.94 While the responsibility to monitor the event should rest with the subject department, the Panel has tried to ascertain if there would have been a role for ERWG both at the outset and when negative publicity snowballed in September/October 2003 to salvage the situation. After all, apart from the series of tourism related programmes, the Harbour Fest was the one single most expensive project sponsored by the economic relaunch fund.

4.95 In considering InvestHK as the subject department, the Panel feels that perhaps ERWG should have examined the capabilities and suitability of InvestHK for the job. The job nature of DGIP would require frequent overseas visits and therefore absence from Hong Kong. The number of experienced staff on the InvestHK team in the field of financial management might be inadequate for a job in the magnitude of the Harbour Fest. Moreover, none of them had any experience with concert promotion.

4.96 Business prudence would indicate that there might be the need to evaluate the suitability of InvestHK to be the subject department despite that it had been the interface with AmCham from the start and that it did not see any need for third party assistance in performing the role of a subject department.

4.97 What ERWG could have done after deciding on InvestHK as the subject department was to ask InvestHK to seek the expert assistance of the like of the LCSD who were experienced in concert and event organisation to advise on an effective monitoring framework for the event.

4.98 When the event hit problems, there were several high level meetings convened specifically to address issues pertaining to the Harbour Fest. As a positive gesture of support, after the meeting on 22 October 2003, the Government issued a press statement that “the Government is fully behind the Hong Kong Harbour Fest”. The FS also drew the Panel’s attention to the support given to the Harbour Fest Organisers by other Government departments. The FS had also signed an open letter of support to the Harbour Fest on 25 September 2003 to facilitate sponsorship solicitation.

4.99 ERWG might not have been able to turn the tide in late September/October 2003 amidst the onslaught of negative publicity. As yet, we think that there should still have been a more structured crisis management strategy being put in place.

4.100 Regardless of the chance of success, we think that the ERWG, in collective leadership, should have come out with a concerted gesture such as a joint press conference with the AmCham to explain the basis of the Government support for the event to arrest the negative sentiments. Professional departments experienced in publicity and ticket sales should have been conscripted to help.

The Government’s Role Apart from Monitoring

4.101 For a Government project at a cost of HK\$100 million to the public coffers, it is crucial to have public and media support. Notwithstanding that it was a project organised by the AmCham, we consider it the Government’s call to join hands with AmCham to rally public support behind it as a post-SARS relaunch Hong Kong initiative. The Panel has posed the specific question to DGIP on how the theme of relaunching Hong Kong after SARS was clarified to the public to encourage public buy-in. In reply, DGIP said that “My impression is that AmCham’s PR efforts were somewhat handicapped by the lack of a

prominent local spokesman for communication on Harbour Fest, both to the public and the media ...When the festival was over-shadowed by some controversies and negative publicity, this inevitably further diluted its appeal to the public at large as a post-SARS economic relaunch initiative.” With this reply, we note that InvestHK had failed to reckon the Government’s responsibility to develop a public engagement strategy for the event at all.

Line of Command

4.102 We have confirmed that in relation to the Harbour Fest event, DGIP reported directly to the FS in his capacity as the Chairman of ERWG. We have understood from the FS and the Permanent Secretary for Commerce and Industry that in their respective capacities as the former Secretary for Commerce, Industry and Technology during the approval stage of the festival and the supervising officer for DGIP all along, they would have offered guidance and assistance to DGIP if such had been sought from them over the work in relation to the Harbour Fest event. This confirmation should have addressed any concern that the change of Financial Secretary in July/August 2003² might have presented a lacuna during the material time leaving DGIP with no supervisory guidance.

Reporting to the Legislative Council

4.103 As DGIP had indicated to the LegCo FA Panel meeting on 29 May 2003 when the proposed HK\$1 billion economic relaunch programme was introduced that “..the various bureau secretaries would arrange to brief relevant Panels when details of the programmes under their purview were ready.” When asked on a prompt follow-up to this undertaking, DGIP advised the Panel that the LegCo went into summer recess in mid-July shortly after the project was approved in principle.

² Mr Antony Leung was FS when the Harbour Fest, then known as the International Autumn Festival, was considered and approved at the two ERWG meetings on 2 July and 12 July. Mr Stephen Ip was the acting FS for the ERWG meeting on 1 August and the ERWG meeting on 2 August. Mr Henry Tang assumed office as FS on 4 August 2003 and chaired the ERWG meeting on 20 August, the ERWG meeting on 1 September and the ERWG meeting on 20 October. He also chaired the Special ERWG meeting in October and since attended all the Legislative Council meetings in the capacity of FS.

There was no opportunity to brief the LegCo FA Panel until October 2003. DGIP admitted that with the benefit of hindsight, there could have been a special meeting of the LegCo FA Panel convened to report on the preparation of the festival.

Conclusions

4.104 To the Panel, the problem with an inadequate monitoring of the Harbour Fest project stemmed from a misguided approach taken by DGIP and InvestHK in the monitoring process. We see expediency rather than due diligence. In short, DGIP had failed to adequately discharge the role of Controlling Officer of the HK\$100 million for the event as required under the law. InvestHK also failed to consider the role of the Government to engage public support for the event.

4.105 When the matter blew up, ERWG should have demonstrated the strength of collective leadership to help salvage the situation. Business prudence would have expected ERWG to be more pro-active and positive in their approach. This may be indicative of the need for further professional development on damage control and crisis management.

CHAPTER 5 CONCLUSIONS

5.1 In coming to our conclusions on deficiencies, we are mindful of the exceptional circumstances surrounding the approval of the event which was a time when Hong Kong was still reeling from the economic doldrums post-SARS and the Government was eager to do as much as it could and as quickly as it could to relaunch Hong Kong. It is again for this same reason that AmCham and the Harbour Fest Organising Committee had committed to a less than 100 days' delivery timetable.

5.2 In considering the question of responsibility, we are mindful that, to varying degrees, most of the parties involved were hostage to the exceptional circumstances surrounding the approval and organisation of the event. We understand that the ERWG considered 95 proposals for relaunch and approved 84 of them at the 13 meetings between May and October 2003.

5.3 We wish to emphasise again that, despite any responsibility concerns raised in the process, the AmCham and the Harbour Fest Organising Committee, in taking forward the proposal, and the ERWG, in approving the proposal, did so with every good intention at the material time.

Conclusion No.1

Harbour Fest – A Good Concept

5.4 The Harbour Fest was AmCham's proposal to stage a series of concerts and festival at the Tamar site with a customised stage and venue to be specially constructed for the event. This was also AmCham's initiative in response to the efforts of the Government to relaunch Hong Kong after SARS aiming at boosting local morale, attracting short haul tourists and showing the world that Hong Kong had regained its strength. This is a powerful idea worthy of Government support.

5.5 *To the Panel, we conclude that the idea of staging a mega concert event at Tamar to rally the people of Hong Kong, to boost local morale, to attract short haul visitors and to show the world that Hong*

Kong had recovered with international celebrities coming here to perform was a good concept to relaunch Hong Kong after SARS.

5.6 *AmCham deserved credit for putting the concept forward.*

5.7 *Professionals should however have been consulted and engaged from the start as to the best duration of the event and the best choice of artists to be staged. Equally important, there should have been a proper and early strategy to engage the community and the press.*

Conclusion No. 2

Harbour Fest - Setting New Standards

5.8 The Panel has heard from many having attended the Harbour Fest concerts that the event set new standards for pop music concerts in Hong Kong. The quality of the Tamar venue and the sound effects of the concerts were commended.

5.9 *To the Panel, we conclude that the Harbour Fest provided an opportunity for pop music concerts in Hong Kong to reach new standards of excellence. Hong Kong was able to demonstrate to the world that it could meet the standards required by international talents in pop music concerts and could produce the highest standards of outdoor concert entertainment.*

Conclusion No. 3

Inadequate Assessment by Government Prior to Approval

5.10 ERWG placed too much trust in AmCham's ability to successfully stage the event based on its reputation and its membership. It did not critically assess the organisational structure AmCham proposed for the event and the professional expertise it planned to use to successfully organise and administer the event.

5.11 ERWG did not rigorously ascertain the capability of AmCham in bringing off the event as proposed. Despite the substantial concert element of the programme, ERWG did not ascertain the experience of AmCham in organising entertainment concerts and in

engaging artistic talent. As it turned out, there was little concert organisation experience from within AmCham.

5.12 ERWG did not closely examine if given the short lead time, the Harbour Fest proposal should be downsized which would have been helpful to both the overall organisation of the event as well as the attendance rate and ticket sales.

5.13 In a similar vein, InvestHK had not properly assisted ERWG in the assessment process. It failed to follow the ERWG instruction to critically examine the details of the proposed budget for the event. InvestHK only raised minor questions on the budget submitted by the AmCham representatives on 6 July 2003. There were no questions raised on the basis for any of the expenditure items estimated. Nor did they seek the assistance of professionals in ascertaining the reasonableness and comprehensiveness of the expenditure items. Furthermore, the budget from AmCham carried a rider that the costs of the Tamar site lease, utility costs, and expenses on Government permits had not been factored into their budget. There was also the assumption that they could use the Government publicity channels. The exclusions in this rider invariably translated into subsequent costs to the Harbour Fest not originally budgeted for. For no good reason, InvestHK disregarded this rider in the submission to ERWG.

5.14 *To the Panel, we conclude that ERWG had approved the Harbour Fest project without adequate assessment. InvestHK did not render adequate support to ERWG in the assessment process either.*

Conclusion No. 4

Inadequate Involvement and Supervision by AmCham the Organisation

5.15 The AmCham Board of Governors (BoG) placed much trust in the abilities of their then Chairman and the Chairman and Vice-Chairman of the AmCham Sports and Entertainment (S&E) Committee to successfully organise the event.

5.16 The AmCham BoG were briefed on the initiative as early as June 2003. They did not proactively seek to ascertain the commitment expected of AmCham or the corporate structure of the special purpose vehicle convening the event for AmCham until the emergence of bad press in September 2003. They did not ensure that there was an appropriate organisation structure in place linking AmCham to the organisers, thereby ensuring that the AmCham BoG was fully aware of the progress of the event and had knowledge of the commitments the organisers were entering into. In so doing, they failed to be adequately involved in the organisation of the event and supervision of the disbursement of the \$100 million Government sponsorship notwithstanding that contractually, AmCham was responsible to the Government over the Harbour Fest event.

5.17 *To the Panel, we conclude that AmCham the organisation should have been formally involved in the organising committee for the event to ensure that a structured approach and an effective management and financial control framework were in place.*

Conclusion No. 5

Inexperience of the Harbour Fest Organisers in Concert Promotion

5.18 The three-member Harbour Fest Organising Committee was stretched. Despite their personal success, the three members were not in the business of concert promotion and organisation.

5.19 Due to their unfamiliarity with concert promotion and their lack of acquaintance with experienced promoters in the region, they in turn engaged East Art International Limited who had no proven track record in concert promotion in the key role as the overall western talent co-ordinator for the Harbour Fest. Their inexperience also led to their decision to substitute the originally proposed festivals, cancelled due to road closure problems, with more concerts, in turn increasing the number of concerts and intensifying the competition between them.

5.20 *To the Panel, we conclude that the three-member Harbour Fest Organising Committee made a questionable choice in the appointment of the overall western talent co-ordinator. The Organising*

Committee was handicapped by their lack of knowledge in concert promotion and their lack of acquaintance with experts in the field. It also failed to realistically assess the appetite of the local market for pop concerts priced at market over a short span of four weeks.

Conclusion No. 6

Failure of the Harbour Fest Organising Committee to Implement an Appropriate Organisation and Control Structure

5.21 The Panel has found that there was no proper organisation and financial control structure established by the Harbour Fest Organising Committee. Given the size and complexity of the event and the degree of public funding involved in the project, the Panel considers an appropriately structured Organising Committee should have been put in place to oversee the event. This would have provided a broader input into the organisation of the event and a degree of checks and balances in relation to its management.

5.22 In fact, the Organising Committee comprised only the three individuals from AmCham who had first presented the proposal to the Government.

5.23 The use of Mr Thompson's family company as AmCham's special purpose vehicle to convene the Harbour Fest and the failure to involve AmCham members as directors and shareholders, despite the best of intentions, were serious errors of judgement.

5.24 As to the control of authorisation of expenditure, each of the three members of the Organising Committee had authority to authorise and commit expenditure for their respective areas of responsibility. Nearly all cheques were signed by the former chairman of AmCham in a sole capacity. As a result, the system of financial control was inadequate and open to abuse as it lacked appropriate checks and balances. This lack of financial control was mirrored in a similar lack of organisational control in the western talent handling process. The inexperience of the Harbour Fest Organisers made them in many ways hostage to their western talent co-ordinator.

5.25 By default, the western talent co-ordinator, East Art International Limited, was able to make a host of decisions, resulting in the commissioning of services that were not good value for money.

5.26 To name a few, the air travel arrangements were unnecessarily arranged by a New York air travel agent, charging a service fee per passenger. This, the Panel understands, is not a standard practice, in the local market. In one case, a charter flight was engaged and there were three middlemen involved in the commissioning process. Artist non-appearance and cancellation insurance which could have been arranged through local brokerages was unnecessarily arranged through an Irish broker, incurring a 2% Irish levy. The regional General Manager of Vertex Communications and Technology Group, the parent company of East Art International Limited, was engaged at a fee to the Harbour Fest to help in artist handling when there were already two artist handler firms engaged. The Managing Director of an associated firm of East Art International Limited was engaged at a fee to the Harbour Fest to help in publicity when there was already a public relations agent engaged. A US expert was flown in and paid to handle corporate tickets when Hong Kong Ticketing, the ticketing agent for the Harbour Fest public ticket sales, could have easily taken on the matter.

5.27 *To the Panel, we conclude that here was a failure on the part of the Harbour Fest Organising Committee to ensure there was an appropriate organising and financial control structure put in place to tightly manage and control the organisation process of the event, financially and operationally.*

Conclusion No. 7

Professionalism of the Contractor for Acquisition of Western Talents

5.28 East Art International Limited was only formed in July 2003. Mr Ray Garman, director and founder of East Art, failed to establish his experience or track record in organising concerts or talent acquisition. Nor could he substantiate the representation made in the talent acquisition agreement between East Art and Red Canvas Limited that “East Art is a leading media and technology company that has substantial expertise in the acquisition of musical and other talent for entertainment events such

as the Festival’. Experienced industry experts in the region did not consider East Art or Mr Garman as being in the field of concert promotion or organisation.

5.29 Talent acquisition for the Harbour Fest was eventually arranged for through subcontracts with a number of experienced regional promoters as well as through two tour managers of famous bands in the US who rendered assistance at a fee to the Harbour Fest. Mr Garman claimed that the US tour managers were part of his East Art team. This, however, could not be proof of his own professionalism or that the newly formed East Art was, at the material time, an industry leader.

5.30 In turn, the western talent contracts had not been rigorously negotiated as reflected in most of the talent fees. The double engagement and double payment of talent local handlers also reinforced the finding of poor management and a lack of experience. The unnecessary placement of service contracts overseas further suggested East Art’s lack of knowledge and exposure in the local market. The company appeared to be not only new to the concert promotion business but also inexperienced in operating in Hong Kong.

5.31 *To the Panel, we conclude that the overall western talent coordinator for the Harbour Fest was not as experienced and established as represented to Red Canvas Limited per the talent acquisition agreement. This has adversely impacted on the negotiation of the western talent contracts, the arrangement for the handling of the western talents, as well as the costs of having to place service contracts overseas. All of these would directly affect the ability to control the costs and maximise the cost effectiveness of the Harbour Fest.*

Conclusion No. 8

Reasonableness of Fees Paid to Western Artists

5.32 The fees paid to the western artists of the Harbour Fest were benchmarked against their going rates for performance in the US as listed on a popular website. Taking into account the caveat that talents might charge much more than as shown on the site if they were to play outside the US and if they were not on tour in the region, the Panel has still

observed that most of the western artists were paid considerably higher fees than what they would charge for performance in the US. Only the fees charged by the Rolling Stones and by Michelle Branch were within their going fee range.

5.33 However, this evaluation is somewhat muddled by the consideration that a reasonable premium would have to be paid to the artists to acquire the television rights for two songs they performed at the Harbour Fest. As only five of the western acts were featured in the television special, there should have been no need to pay the premium for television rights of the others.

5.34 *To the Panel, despite the caveats, the results of the benchmark exercise cause us to conclude that there appears to have been some degree of overpayment to most of the western artists for performing at the Harbour Fest.*

Conclusion No. 9

Ticketing and Attendance

5.35 The overall attendance rates for the Harbour Fest were disappointing and the sales of tickets had not been satisfactory. The process of public sale of tickets generally appeared to have been handled well. This however cannot be said of the overall ticketing arrangement because controversy emerged around corporate ticket sales.

5.36 The Panel has learned from various sources, including the Organising Committee, that the decision to engage Covatta Communications introduced by Mr Garman to handle corporate ticket sales proved to be a mistake and that the Covatta team failed to respond to corporate bookings as they came in and as a result, a considerable back-log of corporate ticket order matching built up.

5.37 Mr Garman then arranged for a Mr Jim McCafferty to be flown in from the US to handle the problem. Mr Martin and his colleagues in the AmCham executive office were also mobilised to help. It was not until 28 October 2003 that Mr McCafferty cleared the backlog and started entertaining new requests.

5.38 Consequently, a lot of seats allocated to corporate ticket sale were not sold. This had adversely impacted the overall receipt from ticket sales and left a lot of empty seats at the various concerts.

5.39 *To the Panel, the challenge arose at the outset once the Organising Committee decided to handle the corporate ticket sales separately from the public ticket sales. This was compounded by the involvement of Covatta Communications and ultimately, only resolved by the involvement of Mr McCafferty and members of the AmCham executive staff. The Panel is of the view that the Organising Committee should have left the matter in the hands of the principal ticketing agent, Hong Kong Ticketing, who could have easily handled the job. This would have avoided the controversies that arose and avoided the expenses incurred in relation to Covatta Communications and Mr McCafferty.*

5.40 The number of free tickets handed out by the Harbour Fest accounted for 30% of the total attendance. To the Panel, we are more concerned about the free distributions that went without the Government being involved in the decision. We have confirmed with DGIP that he was aware of the distribution of a limited number of tickets for each show to the performing talents, being a usual industry practice. He has advised the Panel that he was neither consulted on the criteria to be adopted in the distribution of free tickets nor on the quantum of free tickets to be distributed.

5.41 The Panel was given to understand that the large-scale distribution of free tickets had a trickle-down effect on the whole concert promotion industry in Hong Kong in that some concert-goers were hesitant to pay for tickets after the Harbour Fest. They preferred to wait to see if they would get free tickets as what happened at the Harbour Fest.

5.42 *The Panel considers that the Organising Committee had a duty to maintain tight control over all free ticket distribution decisions to ensure transparency and accountability of this process. Records should have been maintained and made accessible in this regard. The Panel considers it unsatisfactory that Red Canvas could not provide a*

breakdown of the over 12,600 free tickets given away under the “Complimentary/Other Category.”

5.43 The decision to change the ticket pricing policy of the Harbour Fest was significant in that it changed the ethos of the event under the original proposal of cheap tickets. This change in the ticket pricing policy, and the lack of conscious efforts to tie the publicity of the event to the theme of post-SARS relaunch, made the Harbour Fest a pure commercial event. As such, the success or otherwise of ticket sales, as in any other commercial event, would depend solely on the attractiveness of the shows themselves vis-à-vis the prices at which tickets were pitched. The challenge to the organisers would be finding the correct market price for the respective shows to sell.

5.44 *To the Panel, the decision to change the ticket prices to market did affect what can be termed the ethos of the event. However, as evidenced by the analysis of ticket sales and attendance records, the Panel does not consider that the change in pricing strategy necessarily impacted the unsatisfactorily ticket sales. What is clear however is that the re-scheduling of the overall Harbour Fest from a mix of concerts and festivals to purely concerts, 14 in number, spread over four consecutive weekends, definitely glutted the market and the individual concerts were in effect competing against each other.*

Conclusion No. 10

Inadequate Monitoring by InvestHK

5.45 InvestHK did not diligently follow the instruction of ERWG to scrutinise and approve the evolving budget of the Harbour Fest after the funding approval on 12 July 2003. InvestHK did not have adequate access to the evolving budgets of the event. Records show that there were only three instances when details of the evolving budget were made available to InvestHK, twice for presentation to the LegCo FA Panel meetings in October and November 2003 and the other time before the first press conference of the Harbour Fest in early September 2003.

5.46 InvestHK failed to institute a proper monitoring framework for the event when discharging its responsibility as the subject department

for the HK\$100 million sponsorship fee. DGIP and InvestHK traded due diligence for expediency in unjustifiably hiding behind a narrow interpretation of sponsorship.

5.47 *To the Panel, we conclude that DGIP had failed to adequately discharge the role of Controlling Officer in respect of the HK\$100 million public funds for the Harbour Fest. InvestHK had failed to adequately discharge its monitoring role over the Harbour Fest event as the subject department for it. Furthermore, DGIP had been unjustifiably hiding behind his narrow interpretation of the concept of sponsorship.*

Conclusion No. 11

Absence of a Proper Strategy to Encourage Public and Media Buy-in

5.48 The Harbour Fest was an initiative to relaunch the economy of Hong Kong post-SARS. Its strategic objectives were to boost public morale, attract short-haul visitors and demonstrate to the world that Hong Kong was reinvigorated and back on the world map after SARS.

5.49 There was inadequate thought given to tying the event to its original theme to encourage public buy-in. Nor was there any attempt to proactively engage the media to rally support for the event as a Hong Kong people's event.

5.50 *To the Panel, we conclude that both the Harbour Fest Organising Committee and the Government had missed out on this one key success factor for the event, namely, to positively and pro-actively engage the public and media buy-in.*

Conclusion No. 12

Inadequate Transparency and Accountability

5.51 The Panel has determined that there were no confidentiality clauses in the artist contracts other than that of the Rolling Stones.

5.52 In claiming confidentiality, the Organising Committee relied on a confidentiality clause in the talent acquisition agreement signed between Red Canvas and East Art.

5.53 To the Panel, both of these parties were internal to the organisation of the event and the pressure of a confidentiality clause in an agreement between them could not be interpreted to mean that there were confidentiality clauses in individual artist contracts.

5.54 In a similar vein, DGIP and InvestHK departed from normal Government practice by giving up the reserve power of access to contracts and records in relation to the Harbour Fest in the Sponsorship Agreement, thus virtually closing the door on public access to information on talent fees.

5.55 *To the Panel, we conclude that the Harbour Fest Organising Committee failed to recognise the fundamental need for transparency and accountability in the disbursement of the \$100 million sponsorship fee, three quarters of which were spent on western talent acquisition.*

5.56 *The departure from good Government practice by DGIP and InvestHK in forfeiting the reserve power of access to contracts and records of the Harbour Fest was also a failure in good stewardship expected of every level of Government.*

Conclusion No. 13

Achievement of Deliverables

5.57 The Harbour Fest Organisers set out to organise a mega concert event at Tamar with a television special produced on the highlights of the event to be broadcast on the US networks and globally.

5.58 *To the Panel, we conclude that there was the physical delivery of the 14 concerts, a two-day festival and the production and broadcast of the television special on the US networks. Technically, the broadcast in the US had by and large reached the number of television households promised by the Organising Committee in July 2003, though likely of a different profile. But the estimated aggregate rating of the*

programme for the three airings on the US networks was low. The programme was also broadcast in Hong Kong on 1 May 2004 and on the regional Star TV in Asia on 5 and 6 May 2004.

Conclusion No. 14

Non-Achievement of the Strategic Objectives

5.59 The three strategic objectives of the Harbour Fest were to boost local morale, attract short haul visitors and to show the world that Hong Kong had recovered.

5.60 There was a 125,872 attendance at the Harbour Fest concerts exceeding the target of 88,000 as submitted in the funding application in July 2003. It appears most of those who attended enjoyed the performances. On the other hand, there was much negative publicity surrounding the event. Against such mixed feedback, it was inconclusive if local morale was boosted. There were some short haul visitors attending the concerts but no statistics were available. The low rating of the programme when broadcast on the music networks in the US compromised the effectiveness of the “Hong Kong is back” message reaching to the US viewers.

5.61 *To the Panel, we conclude that the Harbour Fest did not achieve its strategic objectives.*

Conclusion 15

Responsibilities

5.62 Against the foregoing, we conclude that each of the parties involved in the Harbour Fest at the project assessment, approval, implementation and monitoring stages fell short of the Panel’s expectation of good governance, business prudence and professionalism in the organisation of an event of such nature and magnitude. They were all responsible in their respective ways.

CHAPTER 6 RECOMMENDATIONS

6.1 The Harbour Fest has been a costly lesson for Hong Kong, not least for the parties who have been actively involved in the event. As the curtain falls, we think that we should all move on, learning the lessons from the event and making the best of what we have learned.

6.2 We set out below our recommendations on how the Government can be better involved in similar future events.

Recommendation No. 1

Role of the Government in Similar Future Events

6.3 There is a definite role for the Government if similar events are to be staged in future. The Harbour Fest 2003 would not have been possible without Government support. Apart from funding, the Government had provided the requisite logistical support with the involvement of the various departments to make available the site, and obtain the necessary permits.

6.4 For the future, we do not consider that the Government should take a sole sponsor role or underwriter role as it did in the 2003 Harbour Fest. For similar future endeavours, we *recommend* that there must be a *dedicated public-private sector partnership* to ensure shared commitment, both financially and operationally, between the Government and the private sector. For its part, the Government should mobilise inter-departmental support of the relevant government agencies and make it a joint effort within Government. The Government must be represented on the organising committee of the event; even if it is only playing the monitoring role.

Recommendation No. 2

Organisational Model for the Future

6.5 For any similar future event, we *recommend* an organisational model comprising Government, private commercial sponsors, business and industry experts. Given the commercial nature of these events, we recommend that the finances should best come from the private sector, with the Government providing at most a minor part of the funding, as well as logistical and venue support, and the business and industry experts providing professional and operational input. This will ensure professionalism and synergy. In so recommending, we are mindful of the successful model of the Toronto Rock Concert 2003 where

there was a smooth public-private sector partnership with financial support coming from both within and outside the Government as well as the participation of a successful event organiser and prominent industry promoters.

Recommendation No. 3

Need for Prudence

6.6 Before committing to support a similar event in the future, *we recommend that* the Government must exercise prudence and duly assess the merit and feasibility of the proposal as well as the capability of the proponents, determine a clear scope of involvement by the Government commensurate with the level of financial support to be provided, institute a proper monitoring framework for the event, negotiate for a reserve power of access to the records and accounts of the event, and strive to achieve the maximum value for money.

Recommendation No. 4

Protection of Public Funds

6.7 The Memoranda of Understanding (MoUs) the Government signed with the American Chamber of Commerce (AmCham) in the Harbour Fest were grossly inadequate and inappropriate. For the future, if the Government is to enter into legally binding agreements or to effect advance payments to support similar events, *we recommend that* the Department of Justice must be consulted. In no circumstances can urgency take precedence over due diligence.

6.8 For an adequate protection of public funds in future, *we recommend that* the Government consider issuing advance payments by way of loans to be refunded in the event that the contracting party should fail in discharging his obligation. A definite timeframe for compliance and appropriate guarantee to ensure repayment to the Government should be specified.

Recommendation No. 5

Public Accountability and Transparency

6.9 In the spirit of public accountability and transparency, *we recommend that* if the Government is to fund an event of similar magnitude in future, the Legislative Council must be adequately and regularly briefed. *We also recommend that* Controlling Officers must be

reminded on the need for transparency throughout the process and that all decisions made must be publicly defensible.

Recommendation No. 6
Leadership and Crisis Management

6.10 When the Harbour Fest turned from controversy to crisis beyond everyone's expectation, the various levels of Government did not come up with a robust response. For the future, *we recommend that* the senior levels of Government should be better trained and prepared in crisis management so that when mishap falls, they will be better prepared to embrace the crisis, control the damage, demonstrate stalwart leadership and salvage the situation.

Recommendation No. 7
Engagement of the Public and the Media

6.11 We share the view of many event organisers that a successful event has to be grown. An event cannot grow without adequate public and media buy-in. *We recommend that* for similar future events, there must be put in place an early strategy to engage the public and the media to facilitate discussion, acceptance and buy-in. *We recommend that* similar future events should better start on a modest scale and be allowed to grow over time so that in the longer run, Hong Kong can aspire to have a pop music festival featuring on the Hong Kong events calendar in the same way as the annual Hong Kong Arts Festival.

EPILOGUE

In the process of our inquiry, the Panel notes that Hong Kong was overwhelmed by negative feeling towards the Harbour Fest. We have not seen any acknowledgement of the positive aspects of the event that did exist. As the Independent Panel of Inquiry, we feel obliged, before signing off our report, to give credit where credit is due.

Goodwill on the part of AmCham

Hong Kong has always prided itself as Asia's world city, a city where people from all over the world come to visit, settle, work, and invest, a place where people of different nationalities live together in harmony and choose to be home. Over the years, Hong Kong has benefited from the dedication, hard work and co-operation of everyone, regardless of nationality, who was born here or chose to settle here. They work hard together to build and develop their businesses and career. They also join hands in voluntary organisations or chambers of commerce to serve and develop the community. This is undoubtedly a key element accounting for Hong Kong's success all along.

The American Chamber of Commerce in Hong Kong (AmCham), established in 1969, is among one of the earliest international chambers to set up a local chapter in Hong Kong.

The Panel reckons that it was with this same spirit of contribution to the good of Hong Kong that the Harbour Fest project was conceived, developed and championed by the AmCham representatives. In the words of Mr Thompson, then Chairman of AmCham, who put forward the Harbour Fest proposal to the Government, “..we felt that we could contribute in using the American Chamber as a conduit to bringing Hong Kong from a very, very difficult period, a period that I have never seen in my 25 years in Hong Kong and we just felt that deep sense of responsibility

as someone, a leader of the community, we could do something. So that's how the concept arrived ...”

It is the Panel's sincere wish that his spirit will continue to flourish so that we shall see closer collaboration between the expatriate community and the local community to further develop Hong Kong, and to promote Hong Kong to the world.

Hong Kong Harbour Fest 2003 – A Reality

For all the controversy and problems, the Panel takes note that the events promised under the Harbour Fest proposal, namely the 14 concerts and the two-day festival, were duly delivered at the customised venue of Tamar in Central drawing an audience of over 126,000. A television programme showing the highlights of the event was produced and broadcast in the US television networks as promised. We also had a chance to see the programme here in Hong Kong on Labour Day. Considering that the annual Arts Festival drew an audience of close to 100,000 in 2003 as well as 2004, with around 110 performances over some 30 days on each occasion, the Harbour Fest can be seen as a modest success.

The Panel acknowledges that a pop festival like the Harbour Fest is expensive. For all the value for money concerns, it would never have been made possible without the financial and logistical support from the Government as well as the personal commitment and efforts of AmCham, in particular, Mr James Thompson, their former Chairman, Mr Michael Denzel, their Sports and Entertainment Committee Chairman and Mr Jon Niermann, their Sports and Entertainment Committee Vice-Chairman.

New standards for Hong Kong

The Panel would also like to place on record the views we have heard from most who attended the concerts. The attendees thoroughly enjoyed the very high standard performances and were full of praise for the venue built on the unique location of the Tamar site. The Harbour Fest was truly the first ever festival of pop concerts organised in Hong Kong. We

also understand from the organisers that performers at the Harbour Fest invariably endorsed the Tamar site as being ideal for pop concerts. They were pleased with the very high standards of the technical and production staff of Hong Kong.

Festival Encore?

The majority of individuals whom we have met or who have written to us are supportive of the proposition that a similar festival of pop music should become an annual event on the calendar of Hong Kong. A suitably constituted organising structure will be necessary for a future event. Most feel that the Tamar site should be an ideal location. Some have expressed the wish for some basic infrastructure to be put in by the Government and for the site to be made available to the entertainment industry. If properly planned, promoted and organised, a pop music festival will go a long way to enriching the cultural life of Hong Kong as well as drawing inbound tourists.

Given time, Hong Kong may well aspire to be the hub of pop music and concerts in Asia.

**** End of Report ****

This report is furnished to the Chief Executive of the Hong Kong Special Administrative Region Government this 15th day of May, 2004.

(Moses Mo-Chi Cheng)

(T. Brian Stevenson)

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**Membership and Terms of Reference of the
Economic Relaunch Strategy Group**

- Chairman : Financial Secretary
- Members : Professor K K Chan
Mr Chan Wing Kee
The Hon Mrs Selina Chow
Mr Ivan C K Choy
Dr Victor Fung
Mr Ryota Honjo
Mr Victor Lo
Mr Norman Lyle
Mr Bertrand Michaud
Mr Anthony Nightingale
Mr Raymond Or
Mr James E. Thompson
Dr the Hon Philip Wong
Dr Rosanna Wong
Mr Peter Woo
Mr Yip Kwok Wah, Paul
Mr Yu Pang Chun
Mr George Yuen
Mr Zhou Jie
Secretary for Commerce, Industry and Technology
Secretary for Economic Development and Labour
Secretary for Financial Services and the Treasury
Secretary for Home Affairs
Director of the Chief Executive's Office
Director of Information Services
- Secretary : Director-General of Investment Promotion

Terms of Reference

1. To advise the Government on the measures needed to relaunch Hong Kong once the outbreak of Severe Acute Respiratory Syndrome has been brought under control.
2. To assist the Government to prepare and implement a comprehensive programme of relaunch activities.

Source : InvestHK

**Membership and Terms of Reference of the
Economic Relaunch Working Group**

Chairman : Financial Secretary

Members : Secretary for Commerce, Industry and Technology
Secretary for Economic Development and Labour
Secretary for Financial Services and the Treasury
Secretary for Home Affairs
Director of the Chief Executive's Office
Director of Information Services

Secretary : Director-General of Investment Promotion

Terms of Reference

1. To advise the Chief Executive on the measures needed to relaunch Hong Kong once the outbreak of Severe Acute Respiratory Syndrome has been brought under control.
2. To prepare and oversee implementation of a comprehensive programme of relaunch activities that will revive economic growth in Hong Kong.

Source : InvestHK

Chronology of major events of the Harbour Fest since 5 June 2003

Date	Event
5 June 2003	AmCham representatives approached Mr Mike Rowse, DGIP of InvestHK, on the conceptual plan to organize a large-scale international entertainment event at Tamar (later to be known as the Harbour Fest).
6 June 2003	DGIP informed ERSG at its 3 rd meeting that a spectacular event was under negotiation with AmCham.
11 June 2003	The promoter who originally arranged to stage the Rolling Stones concert in March 2003 but which was cancelled due to SARS together with another promoter met with DGIP proposing to Government to sponsor the return of the Rolling Stones later in the year.
20 June 2003	DGIP informed ERSG at its 4 th meeting of the AmCham proposal.
26 June 2003	At the arrangement of InvestHK, the AmCham representatives presented the Harbour Fest proposal (then called the “Hong Kong International Autumn Festival”) to DGIP and representatives of the Tourism Commission, the Leisure and Cultural Services Department and the Environmental Protection Department. The meeting suggested that AmCham should make a formal presentation to ERWG.
30 June 2003	The AmCham Board of Governors (BoG) meeting noted that the Sports and Entertainment (S&E) Committee was leading an initiative to organize the festival.
2 July 2003	At its 8 th meeting, ERWG approved in principle to underwrite the Harbour Fest event up to HK\$100 million, subject to InvestHK’s scrutiny and satisfaction with the detailed budget.

Date	Event
	<p>ERWG also asked that the event be staged in November instead of October and that AmCham should endeavour to make the event as commercially viable as possible. The Commissioner for Tourism said that sufficient lead time must be available for the marketing of the event.</p> <p>AmCham was notified of the approval in principle by InvestHK.</p>
6 July 2003	<p>Mr Niermann submitted a revised budget of the festival to InvestHK. He put on the rider that the budget did not include costs for the Tamar site lease, utilities, or government permits. They would look to utilizing government marketing channels for the event.</p>
7 July 2003	<p>InvestHK approached the Lands Department and the Territory Development Department (TDD) to obtain the Tamar site for the event.</p>
9 July 2003	<p>The original promoter of the Rolling Stones concert in March 2003, who had been in discussion with InvestHK, submitted a detailed budget to InvestHK, seeking government sponsorship to bring in the Rolling Stones to perform at the Hong Kong Stadium later in the year.</p> <p>Sponsorship was sought to cover two shows at the Stadium.</p>
9 July 2003	<p>InvestHK tried to clarify with Mr Niermann a few minor points in the revised budget.</p>
12 July 2003	<p>At its 9th meeting, ERWG approved a maximum of HK\$100 million to underwrite the Harbour Fest event. ERWG advised that the ticket prices should be pitched at market level so as to raise revenue and reduce government subsidy.</p> <p>It was also suggested that differential pricing should</p>

Date	Event
	<p>be adopted, with concessionary tickets for senior citizens and students.</p> <p>The Government would act as sponsor only. AmCham had to plan, organize, and implement the whole event.</p>
14 July 2003	Ms Ophelia Tsang, ADG3 of InvestHK, notified AmCham by email of ERWG's approval and comments.
17 July 2003	AmCham representative met ADG3 and updated her on the preparatory work, including the proposal for AmCham to set up a private company to organize the event.
18 July 2003	<p>Mr Niermann introduced Mr Ray Garman to the other two AmCham representatives via email explaining that Mr Garman was brought onto the scene "not only due to he and I knowing each other, but also due to his association with the Stones and their previous negotiation with Rowse prior to our festival pitch ..."</p> <p>He also mentioned that his colleagues at ABC and ABC Family were enthusiastic about the Harbour Fest event.</p>
22 July 2003	InvestHK wrote to the Secretary for Financial Services and the Treasury (SFST) to seek a waiver for the rental charge of Tamar.
24 July 2003	The AmCham representatives issued the first draft of the sponsorship agreement to InvestHK for comments.
25 July 2003	InvestHK indicated to AmCham that it would need a memorandum of understanding (MoU) to effect advance payment before a formal contract on the Harbour Fest was signed.
28 July 2003	Messrs Denzel and Niermann presented the Harbour Fest proposal to the AmCham BoG.
30 July 2003	InvestHK consulted the Department of Justice (DoJ) on the draft sponsorship agreement with input from InvestHK incorporated.

Date	Event
31 July 2003	InvestHK and AmCham entered into the first legally binding MoU.
31 July 2003	<p>The original promoter of the Rolling Stones provided a revised budget to InvestHK. The sponsorship sought was HK\$ 6 million to stage one show.</p> <p>The promoter said that the budget was a “re-send” as there was no response from InvestHK to the mail sent some time ago.</p>
31 July 2003	ADG3 asked the promoter if the scheduled date for the Rolling Stones to perform on 9 November 2003 could be advanced or deferred so as not to clash with the Harbour Fest. The promoter was told that this would be vital to InvestHK’s consideration of sponsorship.
1 August 2003	<p>The promoter reiterated that her discussion with DGIP had all along been that the Rolling Stones would be a concert separate from the Harbour Fest.</p> <p>The promoter asked for early confirmation on the sponsorship.</p>
1 August 2003	Mr James Thompson introduced the festival to ERSG at its 5 th meeting.
2 August 2003	ADG3 informed ERWG at its 10 th meeting that AmCham was in the course of signing talents and that cash was already advanced to AmCham.
4 August 2003	The Government made the first instalment payment of HK\$25 million to AmCham.
8 August 2003	InvestHK convened an inter-departmental meeting to co-ordinate the support of various government departments to the festival.
12 August 2003	<p>Mr Niermann emailed to InvestHK on their discussions with the original promoter of the Rolling Stones.</p> <p>Mr Niermann asked InvestHK to encourage the promoter to be part of the festival.</p>

Date	Event
12 August 2003	Mr Niermann advised InvestHK in a subsequent mail that he had tried to convince the promoter to stage the Rolling Stones at Tamar. Mr Niermann said that he was already in discussion with the Harbour Fest stage expert on the site configuration of Tamar to handle the Stones concert.
12 August 2003	ADG3 spoke to the original promoter who agreed to stage the Rolling Stones as part of the Harbour Fest. The promoter indicated that she still preferred a show at the Stadium as the costs would be lower for one show at the Stadium than two shows at Tamar. ADG3 told the promoter the noise exemption requirement at the Stadium.
13 August 2003	<p>AmCham entered into a legally binding MoU with Red Canvas Limited.</p> <p>Under the MoU, Red Canvas would be responsible for organising and promoting the Harbour Fest event in the manner agreed with AmCham.</p>
13 August 2003	InvestHK asked Mr Thompson for more details of the programme and a more realistic breakdown of the revised budget for the ERWG meeting on 20 August.
14 August 2003	DoJ advised InvestHK on the draft sponsorship agreement.
16 August 2003	The original promoter emailed ADG3 confirming that the Rolling Stones would only be available for 8 November 2003 and would want to play at the HK Stadium. The promoter added that Mr Niermann had agreed that the Harbour Fest would be sponsoring the Stones concert as the “finale” to the Harbour Fest.
16 August 2003	ADG3 wrote to Mr Niermann on her concerns about the HK Stadium and indicated her preference for the Rolling Stones to play at Tamar.
16 August 2003	Mr Niermann advised ADG3 that his team had been speaking directly with the Rolling Stones management and learned that the Rolling Stones did not insist on the HK Stadium as the concert venue.

Date	Event
	<p>It was suggested that InvestHK should give a formal pass to the original promoter. Further, either the Stones would play at Tamar or Hong Kong would pass on the Rolling Stones.</p> <p>He asked ADG3 for her view.</p>
20 August 2003	<p>DGIP informed ERWG at its 11th meeting that the line-up of talents for the festival, now renamed the Harbour Fest, would be finalized in the next 10 days and would be announced in early September.</p> <p>The Chairman, the newly appointed Financial Secretary, expressed concern that the performances should not only appeal to a certain age group but to a wider audience.</p>
20 August 2003	Mr Denzel advised InvestHK on the appointment of the advertising agent, the media agent and the sponsorship solicitation agent.
25 August 2003	Mr Thompson updated the AmCham BoG on the Harbour Fest at their August meeting.
28 August 2003	InvestHK returned a revised draft of the sponsorship agreement, having incorporated DoJ's comments, to AmCham.
28 August 2003	The original promoter of the Stones and another promoter wrote a complaint letter to DGIP on the expensive offers by Mr Ray Garman to the Stones and another artist to play at the Harbour Fest.
29 August 2003	InvestHK and AmCham entered into the second MoU. The second instalment of HK\$25 million was paid to AmCham on 1 September upon execution of the MoU.
31 August 2003	A leading English newspaper carried an article on an AmCham offer to the Rolling Stones to play at Tamar for US\$5 million when earlier in the month, the Stones were close to signing a deal worth US\$2 million with another organiser to play at the HK

Date	Event
	Stadium.
1 September 2003	<p>The AmCham representatives made a presentation of Harbour Fest to ERSG at its 6th meeting.</p> <p>Thompson told ERSG that he hoped that the event would generate sufficient public support to be commercially viable and become an annual event.</p>
1 September 2003	Red Canvas Limited and East Art International Limited signed the talent acquisition agreement.
2 September 2003	One local insurance broker approached Mr Thompson suggesting the need for artist cancellation and non-appearance insurance for the Harbour Fest.
3 September 2003	The AmCham representatives discussed the insurance requirements of Harbour Fest.
3 September 2003	<p>The AmCham representatives and DGIP conducted the first press conference announcing the Harbour Fest.</p> <p>DGIP briefed the media on the latest estimate of the festival at about HK\$130 million. The likely call on public money was put at HK\$80 million.</p>
5 September 2003	The District Lands Conference approved the short term tenancy of Tamar for the Harbour Fest.
6 September 2003	SFST rejected InvestHK's proposal to waive the rental of Tamar.
6 September 2003	DGIP sought Mr Niermann's assistance to respond to the complaint letter from the original promoter of the Rolling Stones.
10 September 2003	AmCham representatives met with DGIP to provide further update on the line-up of talents.
11 September 2003	InvestHK chased Mr Thompson for the updated budget.
11 September 2003	The AmCham representatives convened a second press conference, with DGIP participating. It was announced that the first tickets would be put on sale the next day.

Date	Event
	DGIP resisted disclosure of the talent fees paid by the Harbour Fest. DGIP also spoke on the fees for the Rolling Stones, explaining that AmCham was paying the Stones a flat fee which was a better deal.
12 September 2003	The first tickets were put on sale through Hong Kong Ticketing.
21 September 2003	Mr Niermann suggested giving the corporate ticket sales assignment to Mr Ray Garman who could mobilize his team to sell the tickets at 2.5% commission.
22 September 2003	Covatta Communications took over as the corporate ticket sales agent. Mr Ray Garman advised the AmCham representatives that all ticket requests must be submitted by email to a specified email address.
25 September 2003	To assist in the sponsorship solicitation, FS signed an open letter for the festival, confirming the Government's full support for the festival.
29 September 2003	The Harbour Fest legal advisers reverted with further proposed revisions to the draft sponsorship agreement.
29 September 2003	Mr Thompson made a written report on the Harbour Fest to the AmCham BoG.
30 September 2003	The AmCham representatives updated DGIP on the talent and programme lineup, the latest position on sponsorship, the short term tenancy at Tamar and the sponsorship agreement.
1 October 2003	The AmCham representatives took over the Tamar site for venue set up.
3 October 2003	InvestHK and AmCham entered into the third legally binding MoU. The third instalment payment of HK\$25million was effected the same day upon execution of the MoU.
6 October 2003	Bulk purchase discounts for the Harbour Fest were decided.
8 October 2003	DoJ provided further comments on the revised sponsorship agreement.
8 October 2003	The AmCham representatives updated DGIP on the

Date	Event
	talent line-up, publicity plan and sponsorship.
8 October 2003	DGIP joined the AmCham representatives' conference call to the Rolling Stones' representatives. The Stones were given a deadline of midnight on 9 October 2003 to confirm and sign the contract so that tickets could be put on sale and public announcement made on 10 October 2003.
9 October 2003	DGIP joined another late night conference call to the Rolling Stones' management to remind them on the deadline.
10 October 2003	<p>DGIP and the AmCham representatives confirmed the decision to pull the Rolling Stones contract. The Rolling Stones management was formally informed vide email.</p> <p>Formal announcement on the cancellation was made.</p>
10 October 2003	InvestHK and AmCham signed the sponsorship agreement.
11 October 2003	FS and the other officials attended the LegCo FA Panel meeting to brief LegCo members on the latest position of the economic relaunch campaign. It was the first time that the FA Panel was briefed on the Harbour Fest event. The Panel expressed grave concern over the cost-effectiveness of the project and the project arrangements.
13 October 2003	DGIP was further updated on the budget and programme line-up including the withdrawal of the Korean groups "Fly to the Sky" and "S".
14 October 2003	<p>Reuters quoted the Rolling Stones tour manager Mr Michael Cohl as saying that the group would perform in Hong Kong. The AmCham representatives and DGIP made a joint conference call to the Rolling Stones management to confirm their position.</p> <p>Upon receiving written confirmation from the Stones management, the AmCham representatives agreed to entertain the Stones' belated acceptance of the offer</p>

Date	Event
	on certain conditions, including their special assistance to marketing efforts.
15 October 2003	<p>The contract of the Rolling Stones arrived.</p> <p>Tickets of the Rolling Stones concerts were put on sale.</p>
15 October 2003	DGIP and Mr Thompson held a joint press conference to announce the reinstatement of the Rolling Stones concerts.
15 October 2003	InvestHK issued the final payment of \$25 million to AmCham, being the balance of the maximum sponsorship amount for the Harbour Fest.
16 October 2003	FS chaired an ad hoc meeting to discuss the ticket sales position for the opening show of the Harbour Fest. It was agreed that free tickets would be issued to the Hospital Authority and some charitable organisations through the Home Affairs Department.
17 October 2003	Prince opened the festival with Ms Karen Mok as the opening act.
20 October 2003	At the 12 th meeting of ERWG, DGIP briefed the meeting on follow up actions taken after the LegCo FA Panel meeting on 11 October.
22 October 2003	<p>The Chief Secretary, in his capacity as acting Chief Executive, met Mr Thompson, the FS, SCIT and DGIP on the Harbour Fest.</p> <p>The Government issued a press statement in support of the Harbour Fest.</p>
22 October 2003	The Harbour Fest Organising Committee announced that one of the groups scheduled for the performance on 24 October 2003, the Atomic Kittens, was unable to come to HK as one of the band members fell sick. The show would go ahead as a free show. Tickets would be distributed the next morning.
25 October 2003	InvestHK issued a response letter to the LegCo FA Panel providing information on specific activities under the economic relaunch campaign and

Date	Event
	<p>explaining further queries on the Harbour Fest event.</p> <p>A copy of the sponsorship agreement signed between InvestHK and AmCham was provided to the LegCo FA Panel.</p>
28 October 2003	<p>InvestHK issued a press statement confirming that there was neither any plan nor commitment at that stage for the Government to sponsor any similar event beyond 2003. It also clarified the ownership and custodianship of the intellectual property rights clause in the sponsorship agreement with AmCham.</p> <p>InvestHK issued another press statement confirming that the final payment of \$25 million had been made.</p>
29 October 2003	InvestHK issued another press statement to explain the scope of the intellectual property rights under clause 8 of the sponsorship agreement.
29 October 2003	The Audit Commission informed InvestHK of its intention to conduct a value for money audit on the Government's sponsorship of the Harbour Fest.
30 October 2003	The Chinese press carried editorials discussing the perceived conflict of interest concerns arising from the revelation of the ownership of Red Canvas Limited by Mr and Mrs James Thompson.
31 October 2003	Mr Thompson attended the 13 th meeting of ERWG to explain problems that had arisen with the Harbour Fest.
1 November 2003	The AmCham representatives updated DGIP on the progress with the production of the television special, and clarified matters relating to talent fees, ticket sale to tourists, withdrawal of local talents, advertising efforts, distribution of free tickets etc.
5 November 2003	The FS replied to four LegCo oral questions on the Harbour Fest. The FS announced the setting up of an independent panel of inquiry to investigate into the Harbour Fest event.
7 November 2003	Audit Commission commenced the value-for-money

Date	Event
	study.
9 November 2003	The Harbour Fest closed after the second show of the Rolling Stones.
15 November 2003	Mr Thompson attended the LegCo FA Panel meeting with FS and other officials. The provisional financial out-turn of the event was presented to the meeting.
24 November 2003	InvestHK replied to the 16 questions posed by Hon Fred Li at the LegCo Panel meeting on 15 November 2003.
4 December 2003	Hon Fred Li asked further questions on taxation to which InvestHK gave an interim reply on 12 December 2003.
12 December 2003	The Chief Executive announced the appointment of the two-member independent inquiry panel to inquire into the Harbour Fest.
12 December 2003	Hon Fred Li raised another 11 follow up questions on the Harbour Fest relating to various issues such as benefits to HK and talent fees.
15 January 2004	InvestHK issued a response letter to Hon Fred Li's questions.
22 January 2004	The one-hour video on the Harbour Fest was broadcast on MTV 2 in the US.
25 January 2004	The video was re-run on MTV2 in the US.
8 February 2004	The video was re-run on MTV in the US.
10 February 2004	The independent panel obtained an extension until 30 April 2004 to submit its report.
27 February 2004	Red Canvas Limited submitted its audited accounts to the Government. According to the audited accounts, the total expenditure of the Harbour Fest was HK\$155.8 million and total revenue, HK\$55.2 million. There would be a deficit of HK\$0.6 million after the Government sponsorship of HK100 million.
21 April 2004	The Director of Audit tabled its value-for-money report on the Harbour Fest at the Legislative Council.
26 April 2004	The independent panel obtained a further extension until 15 May 2004 to submit its report.
1 May 2004	The one-hour video on the Harbour Fest was

Date	Event
	broadcast in Hong Kong.
3 May 2004	The Public Accounts Committee held their first public hearing on the Director of Audit's report on the Harbour Fest.
5 and 6 May 2004	The video was broadcast on the regional Star TV.
7 May 2004	The Public Accounts Committee held the second session of their public hearing on the Harbour Fest.

Acknowledgement list of contributors

I. Meetings

The Independent Panel of Inquiry on the Harbour Fest expresses its sincere thanks to the following 28 individuals who met with the Panel on the Harbour Fest during the inquiry –

***Economic Relaunch Strategy Group (ERSG) &
Economic Relaunch Working Group (ERWG)***

The Honourable Henry Tang Ying-yen, GBS, JP
Financial Secretary

The Honourable Stephen Ip Shu-kwan, GBS, JP
Secretary for Economic Development and Labour

Mr Anthony Leung Kam-chung, GBS, JP
Former-Financial Secretary

Mr M J T Rowse, JP
Director-General of Investment Promotion, Invest Hong Kong

Representatives of the American Chamber of Commerce

Mr James E Thompson, GBS
Former Chairman
AmCham

Ms Lucille Barale
Chairman
AmCham

Mr Frank Martin
President
AmCham

Representatives of the American Chamber of Commerce (AmCham)

Mr Mike Denzel
Chairman
Sports and Entertainment Committee, AmCham

Mr Jon Niermann
Vice Chairman
Sports and Entertainment Committee, AmCham

Contractors / Sub-contractors for the Harbour Fest

Mr Ray F. Garman III
Director
East Art International Limited

Mr Joseph Poon
Chief Executive Officer
Vertex Communications and Technology Group and
Director
East Art International Limited

Emperor Entertainment Group (2 representatives)

Mr Cliff Wallace, CFE
Chairman
Hong Kong Ticketing

Ms Alex Ng
Promotion Director / Logistics
International Fixer Asia Limited

Ms Dora Chang
Limelite Company

Contractors / Sub-contractors for the Harbour Fest

Ms Colleen Ironside
Director
LIVE tour promotion and event co-ordination

Note : One contractor representative declined to be acknowledged

Legislative Councillors

The Honourable James Tien Pei-chun, GBS, JP

The Honourable Fred Li Wah-ming, JP

InvestHK

Ms Ophelia Tsang Oi-lin
Associate Director-General of Investment Promotion 3

Mr David Y W Chiu
Head, Corporate Services

Industry Expert

Mr Roks Lam
President, Wolfman Jack Entertainment (Hong Kong) Ltd

Note : One industry expert declined to be acknowledged

Related Industry Experts

- Hong Kong Rugby Football Union
Mr Allan Payne
Executive Director

Related Industry Experts

Mrs Beth Coalter
Sevens Manager (Directorate Executive Secretary)

- Octagon Greater China Limited
Ms Marlene Lee
Managing Director, Hong Kong and China

Others

Mr Alan Smith

II. Submissions / Expert Opinions Received

The Independent Panel on the Harbour Fest express its sincere thanks to the following individuals and organisations who submitted their views or provided information to the Panel during the inquiry –

ERSG & ERWG

The Honourable Henry Tang Ying-yen, GBS, JP
Financial Secretary

Mr Chan Wing-kee
Member, Economic Relaunch Strategy Group

Mr Norman Lyle
Member, Economic Relaunch Strategy Group

Mr Anthony Nightingale
Member, Economic Relaunch Strategy Group

Dr Rosanna Wong, JP

Member, Economic Relaunch Strategy Group

ERSG & ERWG

Mr George Yuen
Member, Economic Relaunch Strategy Group

The Honourable Stephen Ip Shu-kwan, GBS, JP
Secretary for Economic Development and Labour

The Honourable Frederick Ma Si-hang
Secretary for Financial Services and the Treasury

Dr the Honourable Patrick Ho Chi-ping, JP
Secretary for Home Affairs

Mr W K Lam, GBS, JP
Director of the Chief Executive's Office

Mr M J T Rowse, JP
Director-General of Investment Promotion, Invest Hong Kong

Representatives of AmCham

Mr James E Thompson, GBS
Former Chairman
AmCham

Ms Lucille Berale
Chairman
AmCham

Mr Frank Martin
President
AmCham

Legislative Councillors

Ir Dr the Honourable Raymond Ho Chung-tai, JP

Dr the Honourable David Li Kwok-po, GBS, JP

The Honourable Fred Li Wah-ming, JP

Government Bureaux / Departments

Miss Denise Yue, GBS, JP

Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry)

Commerce, Industry and Technology Bureau

Miss Anissa Wong, JP

Director of Leisure & Cultural Services

Leisure and Cultural Services Department

Ms Eva Cheng, JP

Commissioner for Tourism

Tourism Commission

Mr Lawrence C H Wong

Senior Assistant Law Officer (Civil Law)

Department of Justice

Mr Bassanio So

Director

Hong Kong Economic & Trade Office, Toronto

Mr Stephen Kwok

Assistant Director-General (Air Services)

Civil Aviation Department

Mr Donald Choy

Chief Leisure Manager (Hong Kong East)

Leisure and Cultural Services Department
Government Bureaux / Departments

Ms Ophelia Lau
Senior Manager (Marketing)
Stadia Office
Leisure and Cultural Services Department

Contractors / Subcontractors for the Harbour Fest

Ms Mary Covatta
Managing Director
Covatta Communications Limited

Mr Christopher Dalston
Creative Artists Agency

Mr Ray F. Garman III
Director
East Art International Limited

Mr Joseph Poon
Chief Executive Officer
Vertex Communications and Technology Group and
Director
East Art International Limited

Emperor Entertainment Group

Mr Topy Lee
General Manager
Gold Label Management Ltd

Ms Conita Kwok
Operations Manager
HK Ticketing

Contractors / Subcontractors for the Harbour Fest

Ms Alex Ng
Promotion Director / Logistics
International Fixer Asia Limited

Mr Breck McCormack
President, Asia & Pacific
International Management Group

Mr Victor Chu
Senior Marketing Manager, Asia
International Management Group

Ms Ruby Lee
Group Branch Director
Leo Burnett Limited

Ms Colleen Ironside
Director
LIVE tour promotion and event co-ordination

Mr Nigel Peters
Director
Midas Promotions (Hong Kong) Ltd

Ms Catherine Cheung
Director
Pro Marketing Services Company

Mr Barry Slattery
Slattery Jermyn Insurance Brokers

Mr Tod Smith
Wolfman Jack Productions (US)

Note : One contractor declined to be acknowledged

Others

Mr. Dennis Chau

Ms Stephanie Cheung

Mr Patrick L Crowley

Managing Director, Accident & Health, Sport & Leisure
HSBC Insurance Brokers Limited (London)

Mr Hans Ebert

Executive Director
EMI Music Southeast Asia

Mr Ricky Fung

International Federation of the Phonographic Industry Limited

Mr Douglas Gaultier

Executive Director
Hong Kong Arts Festival Society Limited

Hon Jerry S. Grafstein, Q.C

Senator
Toronto, Canada

Ms Teresa Hong

Hong Kong Tourism Board

Ms Beryl Lai

Accountant
Crown Worldwide Group Hong Kong

Mr Roks Lam

President
Wolfman Jack Entertainment (Hong Kong) Limited

Mr Lawrence Lee

Managing Director

AON HK Ltd

Others

Mr Pato Leung

Wiser Club Limited

Mr Ken Madrid

Chief Executive Officer, Asia Pacific

Crown Worldwide Group Hong Kong

Ms Kitty Ng

Chief Operating Officer

BMG HK Ltd

Mr Donovan North

Mr Raymond Sit

Managing Director

HSBC Insurance Brokers (Asia Pacific) Ltd

Mr Alan Smith

Mr Scot Weeres

Director, Tourism Re vitalisation Office

Ontario Provincial Government

Mr Ridgely Wei

Acting Head of Public Performance Licensing

Composers and Authors Society of Hong Kong Ltd

Mr Paul Zimmerman

The Experience Group Limited

Note : One industry expert declined to be acknowledged

Economic Relaunch Programme
Proposal of Spending Items to be Funded by the
Economic Relaunch Working Group

Subject Bureau/ Department : Invest Hong Kong

Programme : Hong Kong International Autumn Festival
(with brief description of the activities) Organised by the American Chamber of Commerce, the Festival will feature world-class entertainment and variety shows in Hong Kong by international renowned entertainers and celebrities. It will be held at the Tamar Site in Oct/Nov 2003, where a gigantic stage in the form of a Hollywood Bowl with temporary seating facilities will be constructed to accommodate an audience up to 10,000 to 12,000 per occasion. A variety of programmes including concerts by international singers, family festival, NBA Basketball and X Games, comedy shows etc. will be held during the four weekends to attract local residents, short-haul visitors from neighbouring countries, as well as tourists from other parts of the world. A tentative programme is at Appendix 1.
As a part of the programme, ABC will produce and air TV special "Live from Hong Kong" in USA during the peak viewing period and the TV specials will be distributed to other networks e.g. BBC for worldwide broadcast.

Proposed Total Budget¹ : HK\$ 116,189,200 (see Appendix 2)
(Please provide itemised breakdown in separate attachment)

Net Amount of Fund to be Sought² : HK\$ 100,000,000
(If different from the stated budget)

Strategic Objectives to be Achieved³ :

<u>Reassurance Phase</u>	
<input checked="" type="checkbox"/>	Boost morale in HK
<input type="checkbox"/>	Build long term confidence both locally & overseas in our capability to combat SARS
<input type="checkbox"/>	Maximise international awareness of lifting of WHO & CDC travel advisory
<input checked="" type="checkbox"/>	Encourage return to normal economic activities

¹ Please indicate only the top-up budget if existing funding has already been secured, either partly or wholly, for the planned activities.

² The net amount of fund to be sought should be clearly indicated if it is different from the total top-up budget

Proposal of Spending Items to be Funded by the ERWG

Recovery Phase

- Get local economy growing again by boosting local consumption and tourism
- Convince international and Mainland communities that they should come to HK for business & leisure
- Continue to boost morale and enhance the confidence of the local community
- Others (please specify) : _____

Date, Time & Duration of Programme : 17 October (Friday) to 9 November (Sunday), 2003

Target & Size of Audience : Estimated total number of visitors: 88,000
(12,000 each Friday and 10,000 in total each Saturday/Sunday)

Justifications : The International Autumn Festival creates an international entertainment showcase to support the revitalization of Hong Kong and reinforce Hong Kong's image as Asia's World City, where the world comes to perform. The variety of the programmes will encourage local community to resume participation in cultural and entertainment activities and attract overseas tourists. The endorsement by popular international celebrities and the broadcast of TV specials will generate huge media value worldwide.

(Please specify why funding needs to be sought from the Economic Relaunch Working Group)

Performance Measurements : The estimated total number of visitors/spectators is 88,000 over 12 days. For global exposure, besides the 100 million US TV homes to be reached via ABC, the TV specials will be available for broadcast via other worldwide networks. The visit of the international celebrities will also attract extensive media coverage.

(Please specify how the effectiveness of the activities can be measured)

Remarks : The funding applied represents the maximum financial commitment from the Government. This will be partly offset by the revenue generated from tickets sales and other commercial sponsorship.

(e.g. any other relaunch agents involved, etc.)

Contact Person⁴ : Ophelia Tsang Rank : AOSGC
Tel No. : 3107 1004 **Fax No.** : 3107 9006
E-mail Address : opheliatsang@investhk.gov.hk **Date** : 7 July 2003

- End -

Tentative Calendar of Events

CAPACITY = 12,000 – 15,000 Approx. 23,000 m ² for guests	Day	Night
WEEKEND #1 – FAMILY		
Friday, October 17		Bruce Springsteen and the E Street Band
Saturday, October 18	Family Festival – Wiggles, Etc.	“Viva Las Vegas” with Tom Jones, Annie Lennox and Elvis’ s Band
Sunday, October 19	Family Festival Day 2	
WEEKEND #2 – TEENS		
Friday, October 24		Linkin Park or JLo
Saturday, October 25	Sports Festival – NBA Basketball and X Games	Coco Lee, Jay Chou, Asian Pop Star
Sunday, October 26	Sports Festival Day 2; Asian Bands	
WEEKEND #3		
Friday, October 31		Sting or Elton John
Saturday, November 1	Comedy Festival	Aaron Kwok, Korean, Japanese Acts
Sunday, November 2	Food Festival – Taste of Hong Kong	
WEEKEND #4		
Friday, November 7		Kylie or Britney or Faith Hill
Saturday, November 8	Jazz Festival / Taste of Hong Kong	Santana or Enrique
Sunday, November 9	Blues Festival w/James Brown	

Hong Kong

International Autumn Festival

<i>Budget SUMMARY</i>	TOTAL IN HK\$	TOTAL IN US\$
<i>EXPENSES :</i>		
VENUE CONSTRUCTION/FACILITIES	15,341,100	1,966,800
VENUE OPERATIONS	15,828,100	2,029,300
TALENT	73,320,000	9,400,000
TELEVISION PRODUCTION	7,800,000	1,000,000
MARKETING AND PROMOTIONS	3,900,000	500,000
<i>TOTAL EXPENSES</i>	<i>116,189,200</i>	<i>14,896,100</i>
<i>REVENUES :</i>		
TICKETS (based on 12,000 each Friday @\$150+10,000 Sat/Sun @\$100)	11,200,000	1,435,900
MDSE (10% royalty on \$15/head)	132,000	16,925
SPONSORSHIPS/VIP SECTIONS	1,560,000	200,000
TELEVISION RIGHTS (secondary mkts)	3,120,000	400,000
CONCESSIONS ROYALTY (5% sales)	100,000	12,820
<i>TOTAL REVENUES</i>	<i>16,112,000</i>	<i>2,065,645</i>
<i>TOTAL EXPENDITURE</i>	<i>100,077,200</i>	<i>12,830,455</i>

US\$ = HK\$7.8

**Revised Budget from AmCham dated 6 July 2003
on Hong Kong International Autumn Festival**

Annex 6

<i>Budget SUMMARY</i>	TOTAL IN HK\$	TOTAL IN US\$
EXPENSES :		
VENUE CONSTRUCTION/FACILITIES	15,341,100	1,966,800
VENUE OPERATIONS	15,828,100	2,029,300
TALENT	73,320,000	9,400,000
TELEVISION PRODUCTION	7,800,000	1,000,000
MARKETING AND PROMOTIONS	3,900,000	500,000
TOTAL EXPENSES	116,189,200	14,896,100
REVENUES :		
TICKETS (based on 12,000 each Friday @ \$150 + 10,000 Sat/Sun @\$100)	11,200,000	1,435,900
MDSE (10% royalty on \$15/head)	132,000	16,925
SPONSORSHIPS/VIP SECTIONS	1,560,000	200,000
TELEVISION RIGHTS (secondary markets)	3,120,000	400,000
CONCESSIONS ROYALTY (5% sales)	100,000	12,820
TOTAL REVENUES	16,112,000	2,065,645
TOTAL EXPENDITURE	100,077,200	12,830,455

US\$ = HK\$7.8

Source : InvestHK

**Revised Budget from AmCham dated 6 July 2003
on Hong Kong International Autumn Festival**

Building & Ops Budget

		MOUNTING TOTAL IN HKD	OPERATIONAL TOTAL IN HKD	TOTAL IN HKD	MOUNTING TOTAL IN USD	OPERATIONAL TOTAL IN USD	TOTAL IN USD
STAGING & TECHNICAL INFRASTRUCTURE	HKD	\$ 587,619.00	\$ 4,180,586.00	\$ 4,768,205.00	\$ 75,335.77	\$ 535,972.56	\$ 611,308.33
STAGING & TECHNICAL INFRASTRUCTURE - CONVERTED AUD	HKD	\$ 153,075.98	\$ 1,457,077.73	\$ 1,610,153.71	\$ 19,625.13	\$ 186,804.84	\$ 206,429.96
BACKSTAGE & DRESSING ROOMS	HKD	\$ 1,317,221.40	\$ 317,255.40	\$ 1,634,476.80	\$ 168,874.54	\$ 40,673.77	\$ 209,548.31
ENTRANCE GATEWAY	HKD	\$ 318,225.50	\$ 629,191.60	\$ 947,417.10	\$ 40,798.14	\$ 80,665.59	\$ 121,463.73
MERCHANDISE AREA	HKD	\$ 191,600.20	\$ 326,782.00	\$ 518,382.20	\$ 24,564.13	\$ 41,895.13	\$ 66,459.26
FESTIVAL AREA	HKD	\$ 590,976.20	\$ 326,782.00	\$ 917,758.20	\$ 75,766.18	\$ 41,895.13	\$ 117,661.31
BACKSTAGE F&B	HKD	\$ 76,496.20	\$ 261,382.00	\$ 337,878.20	\$ 9,807.21	\$ 33,510.51	\$ 43,317.72
VIP / CORPORATE / SPONSOR VILLAGE	HKD	\$ 1,505,508.00	\$ 321,266.60	\$ 1,826,774.60	\$ 193,013.85	\$ 41,188.03	\$ 234,201.87
MEDIA / PRESS & PR AREA	HKD	\$ 404,477.20	\$ 291,357.00	\$ 695,834.20	\$ 51,856.05	\$ 37,353.46	\$ 89,209.51
AUDIENCE SEATING & FACILITIES	HKD	\$ 5,378,932.00	\$ 2,489,865.20	\$ 7,868,797.20	\$ 689,606.67	\$ 319,213.49	\$ 1,008,820.15
MANAGEMENT OFFICES & FIT OUT, SITE FACILITIES, OPERATIONS AND LOGISTICS	HKD	\$ 798,305.10	\$ 76,823.20	\$ 875,128.30	\$ 102,346.81	\$ 9,849.13	\$ 112,195.94
UTILITIES & SERVICES	HKD	\$ 1,904,339.00	\$ 2,861,686.00	\$ 4,766,025.00	\$ 244,146.03	\$ 366,882.82	\$ 611,028.85
STAFFING & MANAGEMENT	HKD	\$ 490,500.00	\$ 991,900.00	\$ 1,482,400.00	\$ 62,884.62	\$ 127,166.67	\$ 190,051.28
STAFFING & MANAGEMENT - COVERTED AUD	HKD	\$ 1,623,747.77	\$ 1,296,119.48	\$ 2,919,867.25	\$ 208,172.79	\$ 166,169.16	\$ 374,341.95
TOTALS		\$ 15,341,023.56	\$ 15,828,074.21	\$ <u>31,169,097.76</u>	\$ 1,966,797.89	\$ 2,029,240.28	\$ <u>3,996,038.17</u>

NB : EXCHANGE RATES ARE AS OF 2ND JULY 2003

HK - USD = 7.8 AUD - USD = 1.4885

AUD COVERTED TO US, THEN HKD

**Revised Budget from AmCham dated 6 July 2003
on Hong Kong International Autumn Festival**

<i>Talent Budget</i>	COMPONENT TOTAL IN USD
Talent costs all delivered: (fees plus all expenses)	
Bruce Springsteen and Band	1,800,000
Family Festival	450,000
Viva Las Vegas	850,000
Linkin Park or J Lo	750,000
NBA Experience	500,000
X Games	200,000
Asian Pop Stars/Coco Lee	1,000,000
Sting	1,000,000
Jazz and Comedy Fest	500,000
Blues Fest with James Brown	400,000
Kylie or Britney or Faith	1,000,000
Santana or Enrique	800,000
Taste of Hong Kong	150,000
TOTALS	\$ 9,400,000

Benchmarking of Fees for Western Artists

<u>Name</u>	<u>Country_ of Origin</u>	<u>Artist Fees¹</u>	<u>Comparison with going rate for performance in the US per a US industry website²</u>	<u>Whether On tour</u>
Prince	US	US\$1,300,000 (inclusive of airfare)	US\$800,000 above the maximum fee quoted	Yes , having some shows lined up in Australia before signing the Harbour Fest (from the US to HK and to Australia after Harbour Fest)
Craig David	UK	US\$275,000 (inclusive of airfare)	No benchmarking possible since going rate range for artist not available	Yes , having some shows lined up in Asia after signing the Harbour Fest (tour ended on 29.11.03 in Copenhagen)
Jose Carreras	Spain	US\$230,000 (exclusive of profit tax and airfare)	US\$80,000 above the going fee quoted for recitals	Yes (to Japan after Harbour Fest)
Charlotte Church	UK	US\$110,000 (exclusive of profit tax and airfare)	US\$35,000 above the maximum fee quoted	Not on tour

Source: Red Canvas Limited and industry

¹ According to trade practice, an artist will pay his agent a certain percentage as commission out of the artist fees he received. In the cases of Neil Young, Prince, Rolling Stones, Santana and tATu who were brought in by East Art International Limited, East Art advised that it did not get any commission from the artists. In the cases of Jose Carreras and Charlotte Church, contrary to trade practice, the commission to the agent amounting to about 6% of the artist fee was paid by the Harbour Fest instead of the artists themselves. The artist fees paid by the Harbour Fest include TV rights for 2 songs to be included in a TV special on the highlights of the festival to be broadcast in the US, Europe and Asia for a limited duration.

² Reference is made to the maximum of fee range for each artist, where available, from a popular industry website in the US which shows fee ranges of artists for performance in the US, before travel, freight etc. The fee range listed on the website is not shown because of proprietary and contractual reasons.

<u>Name</u>	<u>Country_ of Origin</u>	<u>Artist Fees¹</u>	<u>Comparison with going rate for performance in the US per a US industry website²</u>	<u>Whether On tour</u>
t.A.T.u	Russia	UK\$125,000 (exclusive of tax and airfare)	No benchmarking possible since going rate range for artist not available	On promotion visits: from Europe to HK and to Japan after Harbour Fest.
Westlife	Ireland	US\$500,000 (exclusive of airfare)	US\$300,000 above the maximum fee quoted	On promotion visits: to Harbour Fest after the promotion visits in Japan, and to the UK after Harbour Fest
Air Supply	Australia	US\$125,000 (exclusive of airfare)	US\$85,000 above the maximum fee quoted	Not on tour in the region (to the US after Harbour Fest)
Gipsy Kings	France	US\$275,000 (exclusive of airfare)	US\$150,000 above the maximum fee quoted	Not on tour in the region
Santana	Mexico	US\$850,000 (exclusive of airfare)	US\$100,000 above the maximum fee quoted	Yes (to Thailand and Japan after Harbour Fest)

<u>Name</u>	<u>Country_ of Origin</u>	<u>Artist Fees¹</u>	<u>Comparison with going rate for performance in the US per a US industry website²</u>	<u>Whether On tour</u>
Neil Young	Canada	US\$800,000 (exclusive of airfare)	US\$700,000 above the maximum fee quoted for performances on routed dates, and US\$50,000 above the maximum fee quoted for performance at private or corporate functions NB: According to the website, the artist does not like to perform at private or corporate functions.	Yes (from the US to HK, and to Japan after Harbour Fest)
Michelle Branch	US	US\$130,000 (exclusive of profit tax and airfare)	Within range, US\$45,000 below the maximum fee quoted	Yes (in between her Japan tour; charter flight required to transport artist to Fukuoka, Japan, after Harbour Fest)
Rolling Stones	UK	Under confidentiality claim ³ (the fees paid by the Harbour Fest are for two shows and exclusive of airfare)	Within range, US\$500,000 below the maximum fee quoted on a per show basis	Not on tour in the region (the Licks Tour ended on 2.10.03 at Zurich)

³ The contracts of the Rolling Stones contain confidentiality clauses.

Press release dated 3 September 2003

**Hong Kong Harbour Fest :
A spectacular Festival-of-Festivals showcasing world-class**

The American Chamber of Commerce (AmCham) together with the Hong Kong Special Administrative Region Government (HKSARG) proudly announce today the launch of the spectacular Hong Kong Harbour Fest, the festival-of-festivals in entertainment.

The extravaganza will be held at Admiralty's Tamar site over four weekends from 17 October to 9 November 2003, where a huge outdoor concert stage will be erected. Over 200,000 tickets will be available for the entire event, with reserved seatings for up to 13,000 people per show.

Hong Kong Harbour Fest will be the first festival of its kind to take place in Asia, and features a dazzling series of superb live shows catering to all tastes and ages, encompassing rock n' roll, family entertainment, blues and jazz, classical, theatrical performances and a Vegas Night. An unprecedented mix of international and Asian artists will headline the program, including legendary rockers The Rolling Stones, godfathers of renowned Latin-rock fusion Santana, sensational pop act Westlife, R&B innovator Craig David, and superstars F4, Jay Chou from Taiwan and Andy Hui from Hong Kong.

A key component of international exposure for the *Hong Kong Harbour Fest* will be a television special to be broadcast in the United States, Europe, Asia and other locations globally. The programme is expected to draw 100 million television viewers in the United States alone, where audiences will see celebrated artists enjoying the fabulous sights and sounds that Hong Kong has on offer. Also included will be the stars' performances staged at Tamar, against the dramatic backdrop of the Hong Kong skyline.

“We want the world to know that the business community and the people of Hong Kong are working hand in hand to rebuild the exciting spirit of our city. Nothing does this better than an international music festival such as the *Hong Kong Harbour Fest*. I'm very proud of the large number of AmCham companies that have agreed to contribute their creative talents to this endeavour. We feel the benefits to Hong Kong will be tremendous.” said James Thompson, Chairman, AmCham.

The Director-General of Investment Promotions at Invest Hong Kong, Mr Mike Rowse, said the spectacular event will serve not only as a great attraction to both the local community and tourists, but also help boost Hong Kong's image as Asia's world city around the world.

“Through the broadcast of this world-class entertainment nationwide in the US and other countries, we want to show to the world that Hong Kong would continue to be a world-class city for both investors and tourists,” Mr Rowse said.

Michael Denzel, Chairman, Sports and Entertainment Committee, AmCham, said of the festival, “The event is designed to showcase the most spectacular aspect of Hong Kong to the world, its harbour and skyline. Thus, the scenic location of Tamar along the harbour in the city centre was an absolute must.”

Jon Niermann, Vice-Chairman of the Committee adds, “We want to highlight that Hong Kong is situated at a cultural nexus where the best of everything in the world can be found here. We anticipate Hong Kong Harbour Fest to become an annual extravaganza on Hong Kong's cultural calendar.”

A full list of the artists, schedule and ticket information will be released in the coming week. For regular updates on *Hong Kong Harbour Fest*, please visit www.hkharbourfest.com.

About AmCham

The American Chamber of Commerce in Hong Kong (AmCham) is a non-partisan, non-profit business organization, established in 1969. AmCham's mission is to foster commerce among the United States of America, Hong Kong and Mainland China; and to enhance Hong Kong's stature as an international business center. The Chamber espouses the core values; private enterprise, free trade, rule of law, ethical and responsible business practices, transparency and the free flow of information.

Sports & Entertainment Committee aims to raise the profile of the sports and entertainment industries and other related business in Hong Kong. It provides networking opportunities, social activities, a forum for discussions on relevant business issues, and a platform for companies to provide input into the government's policies affecting these industries.

Source : Harbour Fest website (www.hkharbourfest.com)

Harbour Fest 2003 Attendance – Detailed Breakdown

Annex 9

	Prince and Karen Mok	Family Fest (2)	Craig David	Jose Carreras and Charlotte Church	t.A.T.u and Twins	Westlife, Energy and eVonne Hsu	Air Supply, Eason Chan and Ronald Cheng	Gipsy Kings, Danny Diaz and Hyo-Ri Lee	Asian-All-Star Night	Santana and Andy Hui	Gary Valenciano (2)	Neil Young and Michelle Branch	Rolling Stones (2)	Grand Total
Capacity Attendees	11,751 10,471	26,302 16,009	13,151 6,940	13,151 5,778	13,151 12,494	13,151 6,431	13,151 8,297	13,151 4,622	13,151 4,736	13,151 12,152	26,302 6,294	13,151 7,836	24,682 23,812	207,396 125,872
% of Capacity	89%	61%	53%	44%	95%	49%	63%	35%	36%	92%	24%	60%	96%	61%
Sold HKT	4,720	12,235	3,785	4,348	-	5,881	6,563	2,709	608	11,019	2,128	4,266	20,985	79,247
Sold Corporate	404	397	433	463	-	77	951	1,410	1,386	438	1,964	370	1,015	9,308
<i>subtotal</i>	<i>5,124</i>	<i>12,632</i>	<i>4,218</i>	<i>4,811</i>	<i>-</i>	<i>5,958</i>	<i>7,514</i>	<i>4,119</i>	<i>1,994</i>	<i>11,457</i>	<i>4,092</i>	<i>4,636</i>	<i>22,000</i>	88,555
% of Capacity	44%	48%	32%	37%		45%	57%	31%	15%	87%	16%	35%	89%	43%
Free Show	-	-	-	-	12,494	-	-	-	-	-	-	-	-	12,494
														6%
Sponsors	160	260	160	160	-	160	160	160	160	160	320	160	320	2,340
Media	18	16	18	18	-	98	128	98	98	58	228	98	68	944
Home Affairs Department and Community Chest ⁽¹⁾	-	2,763	-	-	-	-	-	-	-	-	-	-	-	2,763
Hospital Authority	1,500	-	-	-	-	-	-	-	-	-	-	-	-	1,500
Band/Promoter	390	290	591	62	-	100	35	134	450	68	577	161	100	2,958
Promotion	22	48	22	18	-	28	28	28	28	28	44	26	34	354
Hotels	-	-	4	45	-	24	62	30	102	22	12	76	8	385
Schools	352	-	-	-	-	-	-	-	-	-	-	-	-	352
Production	-	-	-	-	-	10	12	12	54	19	-	13	431	551
Complimentary/ Other ⁽³⁾	2,905	-	1,927	664	-	53	358	41	1,850	340	1,021	2,666	851	12,676
<i>subtotal</i>	<i>5,347</i>	<i>3,377</i>	<i>2,722</i>	<i>967</i>	<i>-</i>	<i>473</i>	<i>783</i>	<i>503</i>	<i>2,742</i>	<i>695</i>	<i>2,202</i>	<i>3,200</i>	<i>1,812</i>	24,823
% of Capacity	46%	13%	21%	7%		4%	6%	4%	21%	5%	8%	25%	7%	12%
Total	10,471	16,009	6,940	5,778	12,494	6,431	8,297	4,622	4,736	12,152	6,294	7,836	23,812	125,872

Source : Red Canvas Limited

Notes

1. A total of 6,600 tickets were delivered to the Home Affairs Department and the Community Chest for distribution to orphanages and under privileged children. As there were fewer attendees at these two shows than tickets issued, the organisers believed that these organizations were not able to adequately distribute these tickets due to time constraints. The total number of free tickets issued is therefore adjusted by a deduction of 3,837.
2. There were two shows each for: Family Fest, Gary Valenciano and the Rolling Stones. All figures are for two shows.
3. Red Canvas has provided no breakdown by recipient for this category. According to Red Canvas, this would have included supporters of the Harbour Fest such as restaurants and shops that distributed Harbour Fest flyers or hung up posters.

Attendance Rate For Each Concert

	Capacity (a)	Attendees (b)	Attendance Rate (c) = (b) / (a)	Paid Attendees		Free Attendees	
				Number (d)	As a Percentage of Attendees (d) / (b)	Number (e)	As a Percentage of Attendees (e) / (b)
Prince and Karen Mok	11,751	10,471	89%	5,124	49%	5,347	51%
Family Fest ⁽²⁾	26,302	16,009	61%	12,632	79%	3,377 ⁽¹⁾	21%
Craig David	13,151	6,940	53%	4,218	61%	2,722	39%
Jose Carreras and Charlotte Church	13,151	5,778	44%	4,811	83%	967	17%
t.A.T.u. and Twins	13,151	12,494	95%	0	0%	12,494	100%
Westlife, Energy and eVonne Hsu	13,151	6,431	49%	5,958	93%	473	7%
Air Supply, Eason Chan and Ronald Cheng	13,151	8,297	63%	7,514	91%	783	9%
Gipsy Kings, Danny Diaz and Hyo-Ri Lee	13,151	4,622	35%	4,119	89%	503	11%
Asian-All-Star Night	13,151	4,736	36%	1,994	42%	2,742	58%
Santana and Andy Hui	13,151	12,152	92%	11,457	94%	695	6%
Gary Valenciano ⁽²⁾	26,302	6,294	24%	4,092	65%	2,202	35%
Neil Young and Michelle Branch	13,151	7,836	60%	4,636	59%	3,200	41%
Rolling Stones ⁽²⁾	24,682	23,812	96%	22,000	92%	1,812	8%
Total	207,396	125,872	61%	88,555	70%	37,317	30%
Total ⁽⁴⁾	194,245	113,378	58%	88,555	78%	24,823	22%

Source : Red Canvas Limited

Notes

1. A total of 6,600 tickets were delivered to the Home Affairs Department and Community Chest for distribution to orphanages and under privileged children. As there were fewer attendees at these two shows than tickets issued, the organizers believed that these organizations were not able to adequately distribute these tickets due to time constraint. The total number of free tickets issued is therefore adjusted by a deduction of 3,837.
2. There were two shows each for: Family Fest, Gary Valenciano and the Rolling Stones. All figures are for two shows.
3. This was a free show.
4. Attendance excluding the free show.

Lead time available for ticket sales and the number and value of tickets sold

Concert	Date of concert (in 2003) (a)	Date when ticket sales started (in 2003) (b)	Number of days available for ticket sales (b) less (a)	Tickets Sold	
				Number ⁽¹⁾	Value (\$)
tATu and Twins ⁽²⁾	24 October	8 October	17	Not applicable	Not applicable
Asian all-star Night	31 October	10 October	22	1,994 (15.2%)	536,854
Rolling Stones	7 November	15 October	24	} 22,000 (89.1%)	22,685,438
Rolling Stones	9 November	15 October	26		
Prince and Karen Mok	17 October	19 September	29	5,124 (43.6%)	3,211,808
Family Fest	18 October (day)	19 September	30	} 12,632 (48.0%)	1,257,735
Family Fest	19 October (day)	19 September	31		
Air Supply, Eason Chan and Ronald Cheng	26 October	26 September	31	7,514 (57.1%)	2,367,684
Jose Carreras/ Charlotte Church	20 October	19 September	32	4,811 (36.6%)	3,005,708
Gipsy Kings, Danny Diaz and Hyo-Ri Lee	30 October	26 September	35	4,119 (31.3%)	1,485,294
Craig David	18 October (night)	12 September	37	4,218 (32.1%)	1,484,152
Gary Valenciano	2 November	26 September	38	} 4,092 (15.6%)	643,352
Gary Valenciano	2 November	26 September	38		
Neil Young and Michelle Branch	6 November	26 September	42	4,636 (35.3%)	2,766,494
Westlife, Energy and eVonne Hsu	25 October	12 September	44	5,958 (45.3%)	2,201,112
Santana and Andy Hui	1 November	12 September	51	11,457 (87.1%)	7,565,684

Source: Harbour Fest website and Red Canvas

Notes:

1. The figure in brackets is the percentage of sold tickets against seating capacity.
2. It was announced on 22 October 2003, two days before the concert was to be held, that Atomic Kittens could not show up. In the event, a free concert was held.

Hong Kong Harbour Festival 2003
Income and Expenditure

INCOME	
Revenue-Ticket Sales	\$49,603,134.55
Revenue-Sponsorship	4,858,147.06
Revenue-Merchandising/Concessions	746,924.94
Revenue-TV Rights	0.00
Revenue-Government Funds	100,000,000.00
Revenue-Handling Charges	800.00
Revenue-Interest Income	12,344.71

TOTAL INCOME	155,221,351.26
	=====
EXPENDITURE	
Artist Fee -Talent	(76,436,724.72)
Artist Fee -Third Party	(2,034,173.76)
Artist Fee -Riders	(2,115,536.51)
Artist Fee-Tax	(8,472,627.50)
Operations-Utilities	(451,762.20)
Operations-Ticketing	(2,093,073.06)
Operations-Site Preparation/Manager	(25,662,795.37)
Operations-Production Costs	(3,412,975.99)
Operations-Noise Control	(154,600.00)
Operations-Equipment Rental	(11,237.30)
Operations-Licence	(880.00)
Operations-Security	(396,116.00)
Operations-Chalet	(54,000.00)
Marketing-Advertising-Production	(1,977,756.04)
Marketing-Advertising-Radio	(130,450.08)
Marketing-Advertising-Prints	(2,870,818.92)
Marketing-Hotline	(5,000.00)
Marketing-Promotional Materials	(5,500.00)
Marketing-Web	(28,750.00)
Marketing-Programs	(278,550.00)
Marketing-Public Relations	(621,514.50)
TV Production	(7,684,064.11)
Insurance-Cancellation/Non-Appeara	(5,792,233.80)
Insurance-Public Liability	(854,150.00)
Rental-Site Rental	(2,140,454.70)
Rental-Other Rental	(13,800.00)
Air Fare	(7,353,308.76)
Hotel	(2,492,777.40)
Local Transportation	(441,110.00)
Porter Services	(5,175.00)
Commission-IMG	(922,832.06)
Professional-Tax Preparation	(66,450.00)
Professional-Legal	(439,627.60)
Professional-Immigration	(310,366.00)
Professional-Audit Fee	(56,000.00)
Bank Charges	(60,342.50)
Forex	931.25

TOTAL EXPENDITURE	(155,846,602.63)
	=====

**THE FIRST SCHEDULE
INDICATIVE PROPOSAL**

(1) AmCham has presented to the Government and has agreed to manage the organisation, operation and implementation of the 2003 Festival with the intent of developing the following Indicative Proposal in accordance with the terms of this Agreement:

(a) Objectives –

- ※ Attract visitors from around the region, and around the world, to Hong Kong while providing residents the best in “feel good” international entertainment (*“The World’s Stage”*).
- ※ Create an annual entertainment festival to promote tourism, and brand Hong Kong as a destination for quality, world-class entertainment and entertainers (*“Where the World Comes to Perform”*).
- ※ Establish a Harbour-side entertainment landmark venue, with the culture and skyline of Hong Kong as a scenic backdrop, and its people the international hosts (*“World-Class Performing Arts and World-Class Hospitality, Surrounded by World-Famous Architecture”*).

(b) Event Mission –

- ※ The Festival celebrates the diversity of the “Asia’s World City” with world-class entertainment from around the globe, while highlighting the amazing cultural crossroads that is Hong Kong.
- ※ The Ultimate objective is to create an entertainment showcase in support of the Government’s effort to revitalise Hong Kong, providing the biggest bang for the investment via a high-profile attention-grabbing collection of world famous performing talents.

(c) Rationale –

- ※ Autumn is “wide open” and ideal for a regular entertainment event in Asia. Hong Kong can be its home.
- ※ Hong Kong can build upon the traditional Asian “Mid-Autumn Festival” by adding an international entertainment component, and become the World’s Stage.
- ※ For the world to understand Hong Kong is open for business and visitors, Hong Kong needs to show them the best that the city has to offer and truly create a visible scene of life.
- ※ To rebuild Hong Kong’s image, there are strategic needs to incorporate a signature international showcase.

(d) Tentative Programme of Events

Serial No.	Date / Time	Artists	Ticket Prices (HK\$)			
			A	B	C	D
Week 1						
1	Friday 17 Oct	Prince	988	758	488	258
2	Saturday 18 Oct am	Family Fest	All seats \$100			
3	Saturday 18 Oct pm	Craig David	588	388	288	158
4	Sunday 19 Oct am	Family Fest	All seats \$100			
5	Monday 20 Oct	Jose Carreras; Charlotte Church; and HK Philharmonic	988	758	488	258
Week 2						
6	Friday 24 Oct	Twins; L.A.T.u.; Atomic Kitten	588	388	288	158
7	Saturday 25 Oct	Westlife; Energy; evonne Hsu	588	388	288	158
8	Sunday 26 Oct	Air Supply; Ronald Cheng; Eason Chan	388	288	158	-
9	Tuesday 28 Oct	Umoja Charity Premiere	495	395	295	195

Serial No.	Date / Time	Artists	Ticket Prices (HK\$)			
			A	B	C	D
Week 3						
10	Thursday 30 Oct	Gypsy Kings; Danny Diaz	588	388	288	158
11	Friday 31 Oct	Asian All-Star Night Fly to the Sky; Shine; Boyz; Candy Lo; Gigi Leung; Yumiko; "S"	388	288	158	-
12	Saturday 1 Nov	Santana	988	758	488	258
13	Sunday 2 Nov am	Gary Valenciano (1)	All seats \$158			
14		Gary Valenciano (2)	All seats \$158			
Week 4						
15	Thursday 6 Nov	Neil Young, Michelle Branch	988	758	488	258

Source : InvestHK

**THE SECOND SCHEDULE
THE INDICATIVE BUDGET**

- (1) AmCham has presented to the Government the following Indicative Budget for the 2003 Festival and has agreed to finalise a Budget on the basis of the programme of events in the First Schedule with any subsequent changes to the Budget to be as determined from time to time in accordance with this Agreement but having regard to the objectives of this Agreement as well as commercial profit making principles, including but not limited to sales of admission tickets and the procurement of commercial sponsorship, with the intent of generating and increasing revenues for the 2003 Festival –

<u>Expenditure#</u>	<u>\$m</u>
Artist Fees	85.8
Operations	30.4
Marketing	6.2
TV Production	6.6
Insurance	4.7
Contingency	<u>2.5</u>
	136.2
<u>Revenue#</u>	<u>\$m</u>
Ticket Sales (assuming 50%)	52.5
Sponsorship	3.1
Merchandise	0.3
Concessions	1.6
TV Rights	<u>1.6</u>
	59.1
Estimated Shortfall (as at 22.9.03)	\$77.1 million

Note#: Neither expenditure nor revenue forecasts include provision of \$8 million for air tickets and hotel rooms, which it is assumed will be sponsored and therefore balanced out.

Source : InvestHK

THE FIFTH SCHEDULE
AMCHAM'S COMMITMENTS
(Clause 6)

- (1) AmCham hereby represents, warrants and undertakes to the Government that –
- (a) AmCham shall use its best endeavours to conduct the Business on sound and proper commercial profit making principles in accordance with this Agreement, including but not exclusive of the determination of appropriate pricing strategy for the admission tickets, the procurement of commercial sponsorship, with the intent of generating and increasing revenues for the 2003 Festival having regard to the overall objectives set out in this Agreement;
 - (b) AmCham shall use its best endeavours to ensure proper administration of the sale of admission tickets and to identify opportunities for securing appropriate commercial sponsorship for the 2003 Festival;
 - (c) AmCham agrees to procure the production of a Hong Kong marketing video, being one special TV programme, capturing the highlights of the 2003 Festival, for airing and distribution to networks for broadcast in overseas markets with a view to expanding the broadcast coverage of the programmes;
 - (d) AmCham shall take all reasonably prudent steps to secure its or the SPV's Intellectual Property Rights in relation to the Hong Kong Harbour Fest and related matters;
 - (e) AmCham shall use reasonable endeavours such that the secured performing talents shall take part in side programmes as arranged by AmCham, and/or other promotional activities as the Government may reasonably request from time to time during their stay in Hong Kong, for the purpose of promoting Hong Kong;
 - (f) AmCham shall cause proper books of account in relation to the 2003 Festival to be kept with respect to :

- (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases of goods; and
 - (iii) all assets and liabilities;
- (g) AmCham shall procure that there shall be prepared and submitted to the Government the following information as soon as reasonably practicable after their preparation by the appointed accountants:
- (i) the Business Plan;
 - (ii) the Budget;
 - (iii) a review of the Budget; and
 - (iv) audited accounts in relation to the 2003 Festival not later than 28 February 2004 (to include an analysis of revenue and a statement of the source and applications of funds);
- (h) AmCham shall use its best endeavours to procure compliance by the SPV with all legislation and regulations regarding health and safety and crowd security matters relating to the 2003 Festival Site;
- (i) AmCham shall procure that the SPV shall, as part of the Organising Expenses, at all relevant times in relation to the 2003 Festival take out and maintain appropriate insurance cover.
- (j) Save as otherwise provided in the Fourth Schedule, the SPV shall, at its own cost provide, manage and implement all security measures and services relating to the 2003 Festival as part of the Organising Expenses;
- (k) AmCham shall ensure that all press releases to the media by it mentioning the Government are approved in advance by the Government who shall likewise allow AmCham an approval right in

relation to any releases which mention AmCham, the SPV or the 2003 Festival, such approval not to be unreasonably withheld or delayed by either party;

- (l) AmCham shall consider all reasonable requests from the Government or its agents to run joint promotional activities;
- (m) AmCham shall use its best endeavours to uphold the good name, image and reputation of the Government in relation to the 2003 Festival and shall not make any statements or engage in conduct which is likely to damage or bring into disrepute the name and/or image and/or reputation of the Government. AmCham shall ensure that the obligation to uphold the Government's image as referred to in this paragraph is notified to all of its employees, contractors and agents.

Source : InvestHK

Chronology of events leading to the signing of the Rolling Stones (RS)

2 nd half August 2003	AmCham agent and RS management reached broad agreement on performance by RS (including fee, approximate performance dates, etc.) through e-mails/telephone conversations.
3 September 2003	AmCham announced they were finalizing negotiations with RS management for the band to appear on 7 and 9 November.
September 2003	AmCham agent and RS management finalized detailed contract documents.
1 October 2003	Completed contract documents were ready for signature by both sides.
2 October 2003	AmCham signed contract documents and forwarded them to RS management. Around the same time, AmCham agent forwarded to RS management a 50% deposit in accordance with standard industry practice. Letters of Credit for the balance were also forwarded subsequently, also standard industry practice in such cases.
3-8 October 2003	RS management failed to sign contract documents, declined to give approval for AmCham to announce firm performance dates of RS in Hong Kong and to put tickets on sale.
8 October 2003	AmCham met DGIP. Meeting concluded Hong Kong should now take a tough stand, and if necessary be prepared to take contract off the table. DGIP, upon invitation, joined AmCham agent in late night conference call with RS management. Hong Kong side explained timing constraints at its end. RS management confirmed Hong Kong deal was settled, but problems remained with their proposed RS concerts elsewhere and these must be resolved before Hong Kong performance could be confirmed. Hong Kong side pressed RS management for firm answer no later than midnight next day and gave notice that

	failure to meet this timetable would mean the whole deal was off.
9 October 2003	Another late night conference call between AmCham agent, DGIP and RS management. RS management said they were working very hard to finalise signatures of contract documents at their end. AmCham agent and DGIP told RS management that with effect from midnight (by then only a short time away), the contract should be considered "off the table" and the Hong Kong side would confirm this in writing the next day.
10 October 2003	AmCham group met, DGIP also present, and confirmed decision to pull contract. AmCham agent formally informed RS management by email of Hong Kong's position.
13 October 2003	Reuters story quoted RS tour director Michael Cohl as saying RS performance in Hong Kong would go ahead.
14 October 2003	<p>AmCham group and DGIP met and agreed to entertain RS position provided written confirmation from RS management was received that day, that tickets could go on sale on 15 October, and that RS would lend special assistance to marketing effort to help make up for lost time.</p> <p>RS management confirmed in writing that RS performance dates in Hong Kong could be announced, that tickets could be put on sale and that contract documents would be signed by them during their working day (Toronto time) and sent immediately.</p>
15 October 2003	Contract documents, signed by RS management, arrived. Tickets went on sale in Hong Kong.

Source : InvestHK