

Agreement between the Government and The Walt Disney Company

Termination and Compensation Provisions

Members have raised queries about the different types of termination and compensation provisions that are covered in the Master Project Agreement (MPA).

Termination Provisions

2. Certain events, or in some cases non-events, are “walk away” provisions. That is to say, if one party has failed to do something by a certain specified date, the other party is entitled not to proceed with the Agreement, without penalty. Examples are the Reclamation Order* not being made, or the Conditions of Grant not being entered into, or the draft Outline Zoning Plan for North-East Lantau not being approved in a form which permits Hong Kong Disneyland to go ahead as envisaged. These and other similar events are seen as fundamental to the project.

Project Coordination

3. As regards project works, from the outset it was realised that there were two basic approaches to implementing the project

(a) the Government to complete its works on site, then move

* Issue of this Order is tied to completion of the EIA and issue of the necessary environmental permits.

away to allow HKITP to commence its work unobstructed; or

- (b) the two parties' works to be dovetailed together as far as reasonably practical.

4. The main advantage of option (a) is that it provides for a more simple contractual relationship. The main disadvantage is that it would not permit the park to open before 2007 at the earliest.

5. The main advantage of option (b) is that it allows earlier opening of the park (2005). The main disadvantage is that it requires a more complicated contractual relationship to protect HKITP against the consequences of delay by the Government in completing its works.

6. The two parties felt that postponement to 2007 would be undesirable. Accordingly, we agreed to work together on the basis of mutual cooperation to try to achieve early opening while at the same time minimising contractual claims against each other but recognising that HKITP would in cases of serious delay incur some additional costs (including some contractual claims against HKITP by various WD affiliates which had been adversely affected by the delay).

7. To provide maximum flexibility and minimise the potential for claims, the MPA provides inter alia that

- (a) only the first two Milestone Dates are specified. They are 31 January 2000 (by which time tenders for the Government's reclamation works are to be invited) and 30 April 2000 (by

which time the contract for the Government's reclamation works is to be awarded);

- (b) all other Milestone Dates will be agreed later between the Government and HKITP when the position is clearer and can be forecast more accurately. The dates by which the Milestone Dates are to be specified are themselves specified. But once a Milestone Date has been specified, HKITP is entitled to rely on it;
- (c) extensions of time to Government contracts may be authorised for a variety of reasons by The Engineer appointed by the Government to supervise the works. In respect of most of those reasons, there is an equal and corresponding postponement of the relevant Milestone Date;
- (d) in order to cover other situations for which there is not an equal and corresponding postponement of the MPA Milestone Date, the MPA provides a three month cushion before liquidated damages become payable by the Government to HKITP; and
- (e) the Liquidated Damages have been set at daily rates in line with the estimated additional costs HKITP would incur if the Government works are late. The daily rate, together with the liquidated damages on the part of Government, will be fully claimed from the contractors under the contracts for the Government works.

Rail Link

8. No liquidated damages are payable if the rail link is not ready on time. If such an event occurs, HKITP is entitled either to delay opening the park or to discuss with the Government alternative means of providing transport (e.g. extra bus services). In the event the alternative mode involved additional costs, such costs would be borne by the Government.

Summary

9. The termination and liquidated damages provisions of the MPA have been designed in such a way that it is extremely unlikely, provided that the Government works diligently towards performing its contractual obligations on time, that they will ever apply. If they ever do apply, they will be more than covered by equivalent provisions in the Government's contracts.

Tourism Commission
Economic Services Bureau
November 1999