

Leisure and Cultural Services Department

Report of Investigation and Examination on the Use of Swimming Lanes in Public Swimming Pools under Priority Allocation by Hong Kong Amateur Swimming Association and its three Affiliated Clubs

I. Introduction

To promote water sports through a holistic approach, the Leisure and Cultural Services Department (LCSD) provides special assistance to the major national sports associations (NSAs) and sports clubs related to water sports in the hiring of swimming lanes in the main pools of LCSD's public swimming pools for long-term development of sport and training purposes. Upon consultation with the Community Sports Committee of the Sports Commission, LCSD has implemented the Central Lane Allocation Scheme ("CLAS")¹ since 2005 to coordinate the demand for booking of venues from six NSAs/sports clubs (i.e. Hong Kong Amateur Swimming Association (hereinafter referred to as "HKASA"), the Hong Kong Life Saving Society, Hong Kong Triathlon Association, Hong Kong Underwater Association, Hong Kong Paralympic Committee and Sports Association for the Physically Disabled and the New Territories Regional Sports Association). Under CLAS, LCSD will first coordinate with NSAs/sports clubs concerned on the number and sessions of swimming lanes in main pools of public swimming pools to be allocated. After that, NSAs/sports clubs will, through a fair and reasonable mechanism and established procedures, coordinate and recommend their affiliated clubs to apply for the use of the sessions allocated to the individual NSAs/sports clubs. The affiliated clubs will then submit their applications to the swimming pools for approval.

2. Organisations which enjoy priority hiring of swimming lanes under CLAS must be non-profit-making in nature. All proceeds from the activities must only be spent for the same activities. Any surplus generated from the activities can only be used by the same organisation for development of sport. Proceeds or surplus from the activities shall not be directly or indirectly channelled to any person, any member of the organisation or other organisations. No organisation shall transfer the swimming lanes to other organisations for use, failing which will be a breach of the conditions of hire.

¹ Apart from CLAS, organisations eligible for booking of venues may also submit applications for booking public swimming facilities in accordance with the Booking Procedure for Use of Public Swimming Pools of LCSD.

3. Since November 2017, there have been media reports alleging that three affiliated clubs under HKASA, which are charged “normal rates” in their capacity of non-profit-making organisations, have organised swimming courses using swimming lanes allocated to them with priority under the coordination and recommendation of HKASA and have instructed the trainees to deposit the course fees into private bank accounts for profit-making purposes. Deeply concerned about the alleged reports, LCSD took this matter very seriously and worked on various fronts to follow up.

4. To address public concerns, LCSD suspended processing the allocation of sessions of swimming lanes to the three affiliated clubs under HKASA under CLAS in 2018 pending the provision of detailed information and explanation by the clubs. As at early 2019, the processing of allocation of swimming lanes to two of the three affiliated clubs under CLAS is still being suspended.

II. Scope of investigation and Examination

5. In response to the above-mentioned news reports, LCSD had initiated investigation and examination on the matter on various fronts, including writing to and meeting with HKASA demanding HKASA to provide detailed information and investigation reports; asking the three swimming clubs concerned to provide detailed information; and reviewing the current mechanism and procedures. The scope of investigation and examination included:

- (a) investigation into the matter in the reports, especially whether the three HKASA’s affiliated clubs had transferred any swimming lanes allocated under CLAS to other users; whether the trainees were requested to deposit course fees into private bank accounts for profit-making; and whether swimming courses were organised at the swimming lanes allocated under CLAS for profit-making;
- (b) whether there is room for improvement in HKASA’s mechanism of allocation and monitoring of swimming lanes obtained under CLAS;
- (c) whether there is room for improvement in CLAS; and
- (d) suggesting enhancement measures to be implemented.

6. In response to LCSD’s request, HKASA appointed three members that had no relation with the three affiliated clubs concerned to form an independent investigation committee to investigate and examine the existing mechanism of monitoring the use of allocated swimming lanes by affiliated clubs. An

investigation report was submitted to LCSD on 27 April 2018. The report gave a general account of the findings and put forward proposals for improvement. However, financial reports of income and expenditure in connection with the organisation of swimming courses by the three affiliated clubs concerned were not available to prove that courses had not been organised at the allocated swimming lanes under CLAS for profit-making. As a result, LCSD wrote to and met HKASA and the three swimming clubs separately and asked for detailed information, including financial documents in relation to the organisation of swimming courses by the three affiliated clubs and documents in relation to the appointment of agents by the three swimming clubs concerned. At the same time, LCSD examined CLAS, the Booking Procedure for Public Swimming Pools, the Terms and Conditions of Hire of LCSD's Public Swimming Pools, the implementation of the penalty system for booking/use of public swimming pools and the relevant management guidelines, etc., and consulted with the relevant NSAs/sports clubs so as to ensure the proper allocation and effective use of the booked sessions of swimming lanes in public swimming pools.

III. Observations and conclusions of the investigation and examination

7. Upon investigation and examination of the affiliated clubs' use of swimming lanes, allocation and monitoring mechanism of HKASA, CLAS and the booking arrangements, LCSD has the following major observations and conclusions.

Use of swimming lanes by the three affiliated clubs

8. In response to the news reports, both HKASA and LCSD carried out thorough investigation and examination on the use of swimming lanes by the three affiliated clubs. The major observations are as follows:

- (a) According to the Memorandum and Articles of Association submitted by the three affiliated clubs, they are non-profit-making organisations which meet the requirements of CLAS.
- (b) According to the findings of the random check by the investigation committee of HKASA, the swimming lanes allocated to the three affiliated clubs under CLAS were all used for training of swimming teams or preparatory class for swimming teams. It was not found that the three affiliated clubs had transferred the swimming lanes to other organisations or companies for use.

- (c) All the three affiliated clubs confirmed that they had appointed agents to handle the administrative work of the swimming training classes including the collection of course fees. One of affiliated clubs (Club A) appointed the agent in writing while the other two (Club B and Club C) have appointed their agents only by means of verbal agreement for years with no written proof.
- (d) The investigation committee of HKASA was not able to obtain financial reports on the swimming courses organised by the three affiliated clubs. Nevertheless, based on the investigation committee's random check on the schedules and arrangements of some swimming courses of the three affiliated clubs, HKASA considered that there was no evidence suggesting that the three affiliated clubs had reaped profits from organising the swimming courses. To clarify the fact, LCSD requested HKASA and the three affiliated clubs by correspondence and during meetings to provide detailed information including financial documents of the swimming courses organised by the three affiliated clubs.
- (e) With regard to the use of swimming lanes in LCSD swimming pools (including hired under CLAS or Guide to The Booking Procedure for Use of Public Swimming Pools of LCSD (hereinafter referred to as "ordinary procedures")) for organising swimming courses, affiliated club A submitted a financial report from its agent audited by a certified public accountant on 27 April 2018. After examining the information and documents submitted by the swimming club (including detailed financial documents from its agent and documents about appointment of the agent), no substantive evidence was found to show that the swimming club had used swimming lanes in main pools allocated under CLAS to make profit or transferred the use of swimming lanes to other organisations. In the meantime, the club pledged to HKASA in a written undertaking that the swimming lanes in main pools allocated under CLAS shall be used for non-profit-making activities, and that no swimming facilities hired by it shall be transferred to other organisations for use. The club is also willing to carry out various enhancement measures in response to LCSD's requirements.
- (f) On 26 June 2018, Swimming Clubs B and C submitted financial reports from their agents, audited by certified public accountants, on swimming courses using swimming lanes of LCSD's swimming pools (including hired under CLAS or ordinary procedures). The financial reports affirm that the swimming courses organised by the two swimming clubs yielded no profits but recorded losses in the income

and expense accounts in 2015, 2016, 2017. After examining the information and documents submitted by the two swimming clubs involved, including detailed financial documents from their agents in respect of the swimming courses held at swimming lanes hired from LCSD, the Department does not find any substantive evidence suggesting the use of swimming lanes in main pools allocated under CLAS by the two swimming clubs for profit making, or the transfer of the swimming lanes to other organisations. Meanwhile, the two clubs have pledged to HKASA in written undertakings that swimming lanes in main pools allocated under CLAS shall only be used for non-profit-making activities, and that swimming facilities hired from LCSD will not be transferred to other organisations for use. The two clubs are also willing to carry out enhancements in response to LCSD's requests.

9. On the whole, after investigating and examining the information and reports submitted by HKASA and the three affiliated clubs involved, while LCSD finds no substantive evidence suggesting the three swimming clubs had transferred the swimming lanes or used the swimming lanes allocated by priority for profit-making purposes, the Department is of the view that the following conditions are undesirable and there is room for improvement:

- (a) The declaration system has to be strengthened, stipulating that NSAs/sports clubs and their affiliated clubs which enjoy priority in the allocation of swimming lanes must be non-profit making organisations, and these organisations shall undertake to use the allocated swimming lanes for non-profit-making activities and shall not transfer the swimming lanes to other organisations for use.
- (b) It is understandable that swimming clubs may need to appoint an agent to handle administrative and operational work. However, the appointment must go through a fair and impartial system and agents shall be appointed in writing. In addition, the incident showed that the three swimming clubs concerned neither requested their agents to give a clear account of the income and expenditure, nor reflected their income and expenditure of the swimming courses organised in the hired LCSD swimming lanes in the year-end financial reports of the swimming clubs. Obviously, both parties, as principal and agent, did not perform their obligations, including requesting the agent to give a clear account of the income and expenditure to the client. LCSD considers it necessary for the swimming clubs concerned to improve the arrangement (including arrangement regarding contracts and income and expenditure) of appointing an agent for the execution of work.

Allocation and monitoring mechanism of HKASA

10. To promote the sport of swimming in Hong Kong and to ensure the steady provision of swimming lanes in main pools for long-term training of Hong Kong athletes, HKASA has adopted an internal scoring system and criteria for allocating swimming lanes under CLAS. The scores are determined by non-performance rating (including club history, number of registered swimmers, competitions participation, proactiveness to provide volunteer services to HKASA, and participation in local open water swimming competitions) and performance rating (including swimmer trained in HKASA squads, record breaker or holder, swimmer representing Hong Kong, ranking in age group championships, ranking in Hong Kong International Open Swimming Championships and ranking in local open water swimming competitions). Details of the scoring system, the annual cumulative scores and the Booking Chart on swimming lanes allocated under CLAS are accessible on the website of HKASA by the affiliated clubs using their respective passwords. HKASA has assigned a committee to monitor the allocation of swimming lanes by a fair and impartial mechanism. HKASA undertook to review and enhance the existing scoring system and criteria and to submit a report on enhancement measures to LCSD upon completion of the review.

11. LCSD takes the view that HKASA has established an elaborate and reasonable set of mechanism and procedures in respect of CLAS, which incorporates performance-based criteria that help motivate the affiliated clubs and athletes to strive for good performance. The existing mechanism has been made public to the affiliated clubs. HKASA can further enhance transparency by making known to the public the assessment criteria and mechanism, which will be conducive to enhancing the public credibility of the mechanism. In addition, LCSD encourages HKASA to keep on enhancing the mechanism and related arrangements, so as to better balance the training and development needs of affiliated clubs of different scales.

12. While HKASA and other NSAs/sports clubs are given priority in the allocation of swimming lanes in public swimming pools, they must bear the responsibility of allocating the lanes to their affiliated clubs through a fair and reasonable mechanism, and put in place an effective monitoring mechanism. In response to the news reports and LCSD's requests, HKASA issued letters to its affiliated clubs to remind them that they must comply with the Terms and Conditions of Hire of LCSD's Public Swimming Pools in the use of public swimming pools of LCSD. Representatives of the affiliated clubs were requested to sign the reply slips to ensure the affiliated clubs' having gone over and thoroughly understanding the current condition related to the hiring/using of the facilities. Both HKASA and its affiliated clubs have signed a declaration and returned the reply slips to LCSD. On the whole, the incident reveals that

there is a need for HKASA to reinforce its monitoring role and mechanism, and that there is still room for improvement in the areas of interest declaration, avoidance of conflicts of interest and transparency.

The CLAS

13. The CLAS has been implemented for years and is gradually delivering pleasing results. Swimming, triathlon and disabled athletes have attained remarkable achievements in recent years and some trainees who had completed the training courses organised by the above-mentioned NSAs have even become elite athletes, demonstrating the success of CLAS in promoting sports development and that it is worth maintaining. However, after reviewing the existing CLAS, LCSD considers that there is room for improvement. LCSD will step up its efforts on monitoring and regulating individual NSAs/sports clubs and their affiliated clubs, stipulate the requirements for joining CLAS in more explicit and clear terms, and strictly enforce the relevant declaration system.

IV. Proposed enhancement measures

14. Taking into consideration LCSD's own investigation, information and reports submitted by HKASA and its three affiliated clubs, and after revisiting CLAS, LCSD considers that there is further room for improvement in various aspects. Based on the findings of the investigation and examination, LCSD will implement improvement and enhancement measures in a number of areas, including strengthening the requirements and enhancing the declaration system to ensure the swimming lanes allocated under CLAS shall be used for organising non-profit-making activities by non-profit-making organisations; improving the appointment of agent by various NSAs/sports clubs and their affiliated clubs and their financial arrangement; demanding NSAs/sports clubs to establish a fair, impartial and open internal system for the allocation of swimming lanes, including enhancing the mechanism of interest declaration and avoidance of conflicts of interest, increasing transparency, and establishing an appeal mechanism; reinforcing the monitoring role of NSAs/sports clubs, establishing/enhancing the monitoring mechanism and non-compliance penalty system. LCSD will also review and enhance CLAS regularly, and revise the booking arrangement of public swimming pools and the relevant guidelines to set out more clearly the requirements. Besides, LCSD has also reviewed the booking mechanism through ordinary procedures in light of the findings of this review and extended relevant improvement and enhancement measures to booking of swimming lanes through ordinary procedures as appropriate. The improvement and enhancement measures are listed below:

Beefing up the requirements and enhancing the declaration measures

- (a) LCSD will stipulate more clearly that NSAs/sports clubs and their affiliated clubs to be eligible for priority allocation of swimming lanes must be non-profit-making organisations and the swimming lanes allocated under CLAS shall be bound by the following requirements:
 - (i) The swimming lanes shall be used for non-profit-making activities and training purposes only;
 - (ii) Transfer of the swimming lanes for use by other organisations is strictly prohibited;
 - (iii) Proceeds from the non-profit-making activities organised using the swimming lanes shall only be spent on such activities. Any surplus generated shall only be reserved for use by NSAs/sports clubs or their affiliated clubs for promoting sports development. Proceeds or surplus from these activities shall not be channelled directly or indirectly to other person, any member of the club or other organisations;
 - (iv) Proceeds from courses and activities held shall be received by the clubs direct and not through agents;
 - (v) The income and expenditure of all courses and activities held at the swimming lanes shall be reflected annually in the accounts and financial reports of the clubs; and
 - (vi) The hirer shall, upon request of LCSD, submit to LCSD its audited accounts or statement of accounts audited by a certified public accountant and any other information requested by LCSD.
- (b) NSAs/sports clubs and their affiliated clubs joining CLAS shall declare and undertake in writing to comply with all the requirements in paragraph (a) above.
- (c) NSAs/sports clubs joining CLAS shall play a monitoring role and regularly require their affiliated clubs to declare compliance with the requirements in paragraphs (a)(i)-(v). They shall also be responsible for making relevant verification.
- (d) In addition to devising an “Application Form” customised for CLAS, LCSD will also revise the Terms and Conditions of Hire of LCSD’s Public Swimming Pools to set out more clearly all the requirements

applicable to CLAS and the new clauses above, and demand organisation applicants to sign an additional declaration to commit compliance of the requirements and clauses.

- (e) For booking of swimming lanes through ordinary procedures, LCSD will revise the application forms concerned to require the organisation applicants to declare the nature of their organisation (e.g. non-profit-making/profit-making) and whether the activities to be organised are profit-making. It will also be clearly stated on the forms that only applicants meeting the criteria below are eligible for hiring LCSD swimming lanes at normal rates:
 - (i) The organisation must be non-profit-making in nature;
 - (ii) The swimming lanes are to be used for non-profit-making activities;
 - (iii) The organisation shall undertake in writing to comply with the requirements stated in paragraphs (a)(ii)-(iii) and (e)(i)-(ii) above.

Improving the arrangement of agent appointment

- (f) NSAs/sports clubs and their affiliated clubs joining CLAS shall enhance the arrangement of agent appointment and comply with the following requirements:
 - (i) If there is the need for any organisation to appoint an agent in relation to any hired facility, the appointing arrangement shall be made through formal procedures with details put in writing, including details such as the period of appointment, scope of work for the appointment, person in charge, reporting and taking out of insurance, etc.;
 - (ii) NSAs/sports clubs (including HKASA) shall monitor their affiliated clubs' compliance with the requirements;
 - (iii) If the hirer appoints any agent to act on its behalf in relation to any hired facility, the hirer shall procure and ensure the agent to return all income generated from the activities organised at the hired facility to the hirer; and
 - (iv) All income generated from and all expenditure incurred for such activities shall be reflected in the hirer's audited accounts or

statement of accounts audited by a certified public accountant.

Establishing an impartial, open and fair internal system for the allocation of swimming lanes

- (g) To ensure that their internal systems for the allocation of swimming lanes are impartial, fair and transparent, NSAs/sports clubs joining CLAS shall:
- (i) introduce a mechanism for declaration of interest, so that members will withdraw from the discussion of issues with potential conflict of interest when necessary, to prevent actual or perceived conflict of interest;
 - (ii) expand the scope of representation of members involved in establishing the allocation system, so as to better balance the training and development needs of affiliated clubs of different scales;
 - (iii) enhance transparency by announcing on the Internet the allocation mechanism including the scoring system and criteria of allocation of swimming lanes and the list of affiliated clubs which benefits from CLAS to the public, in addition to announcing specific details of the internal system to the affiliated clubs;
 - (iv) establish a mechanism to process complaints and appeals related to allocation of swimming lanes under the Scheme and announce the number of complaints every year; and
 - (v) conduct regular reviews of the internal system for the allocation of swimming lanes, including the scoring system, criteria and operation of the system.

Strengthening the monitoring mechanism and enhancing the penalty system

- (h) NSAs/sports clubs joining CLAS should step up monitoring its affiliated clubs by establishing a mechanism of random check and inspection regarding the use of LCSD's swimming lanes by its affiliated clubs, so as to ensure the compliance of LCSD's hiring terms and conditions by its affiliated clubs. If breaches are found, NSAs/sports clubs shall strictly enforce the penalty of suspending the allocation of swimming lanes to ensure effective management of the non-compliant affiliated clubs. LCSD will demand related

NSAs/sports clubs to complete their review on the monitoring mechanism and penalty system in 2019, and submit a report in this regard to the Department.

- (i) LCSD will establish a clearer penalty system regarding breaches against CLAS and other relevant terms and conditions, including suspending or terminating the eligibility of NSAs/sports clubs or its affiliated clubs under CLAS.

15. Apart from the enhancement initiatives mentioned above, LCSD will continue to review with related NSAs/sports clubs on the arrangement and use of CLAS every year to facilitate the planning of on-going training on water sports and the promotion of long-term sports development. LCSD will also continue to monitor the implementation of the enhancement initiatives for CLAS; and continue to examine and further improve the Booking Procedure for Public Swimming Pools, the Terms and Conditions of Hire of LCSD's Public Swimming Pools, and management guidelines to ensure a proper and effective use of swimming lanes in public swimming pools.

Leisure and Cultural Services Department
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