

**Tee Keat: PKA must not pay bondholders**  
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Former transport minister Ong Tee Keat has given Port Klang Authority (PKA) and the government a piece of advice - don't pay the Port Klang Free Zone (PKFZ) bondholders.

In a posting on his blog, Ong - who initiated the probe on PKFZ's cost overruns last year after becoming transport minister - listed out several reasons why PKA and the government must not do so.

NoneFirstly, he argued that it was PKFZ's turnkey contractor Kuala Dimensi Sdn Bhd (KDSB) that issued the bonds in the form of four sets of private debt securities (PDS) and not PKA nor the government.

"These private bonds were secured against repayments from the various principal agreements between KDSB and PKA. The bondholders are prima facie not privy to these agreements.

"So, this is not a case where we can simply draw an analogy with taking a housing loan from the bank before buying a house from the developer," wrote Ong, referring to the argument made by Deputy Transport Minister Abdul Rahim Bakri on Tuesday.

In the case of PKFZ, Ong said that since the contractor raised the bond, it follows that the responsibility to pay the bondholders lay with KDSB and not the government.

"And if default on payment occurs, the proper remedy should be obtained against KDSB," he said.

Gov't not bound

Secondly, Ong argued that the letters of support issued by the Transport Ministry in the early 2000s were not government guarantees.

"Since this is a private KDSB bond, the issue of sovereign rating does not arise and PKA is under no direct legal obligation to pay the bondholders. The four letters of support are not guarantees per se.

"We must bear in mind that the Hansard reported a deputy minister of finance stating in Parliament that they are not guarantees. Further, there is a question of whether section 14 of the Financial Procedures Act 1957 has been complied with," said Ong

"The obligation under the said support letters are simply to ensure that PKA will have funds to meet its obligations, but does not constitute an undertaking by the government to pay PKA's debts to a third party."

chan kong choy come back 130907 walkingThe letters of support are subject of widespread debate because it was argued that two of the letters, signed by former transport minister Chan Kong Choy (centre in photo), violated treasury laws.

According to the parliamentary Public Accounts Committee (PAC) report last year, the committee had recommended Chan be investigated for criminal breach of trust (CBT).

The report said three letters of support issued by Chan were not authorised by the Finance Ministry, and were also an implicit guarantee from the government that there would be allocations for PKA to enable it to meet its financial obligations under the development agreement for PKFZ.

PKFZ culprits roam free

Ong's final argument to withhold payment was because PKA and KDSB were currently embroiled in several law suits and making payments now could jeopardise PKA's cases.

Among others, PKA is suing KDSB for over-claiming and fraud.

He said that it "makes sense" to withhold payments until KDSB's lawful dues are determined by the courts, and bondholders should accept this as an investment risk.

azlan"From PKA's standpoint, stopping payment to the contractor for monies that they are not legally entitled to due to fraud and irregularities is definitely preferable to recovering monies already paid.

"We should avoid the risk of monies paid but unable to be physically recovered subsequently, when the courts rule in your favour," he said.

Ong reiterated his previous claims that the PKFZ scandal was one of the main reasons for the BN's poor performance during the 2008 general election. The rakyat issued a clear signal that the government must exercise prudence in handling public funds.

As a parting shot, Ong reminded the government that those responsible for the PKFZ scandal have yet to be brought to justice.

"I shudder to think of the people and whistleblowers constantly drawing the short straw, whilst the other parties to the debacle are paid by taxpayers in full, with interest, and continue to roam freely."

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