

**Legislative Council Subcommittee on
West Kowloon Cultural District Development**

**Key Aspects of the Proposed Legislation for
Establishing a Statutory Body**

Purpose

This paper sets out certain key aspects of the proposed legislation for establishing a statutory body to take forward the West Kowloon Cultural District (WKCD) project, namely, planning matters, land matters, financial matters, proceedings of the Board and committees and measures to safeguard public interests.

Background

2. We submitted a discussion paper to the Subcommittee on West Kowloon Cultural District Development (the Subcommittee) for the meeting on 15 December 2007 outlining the details of certain key aspects of the proposed legislation for establishing a statutory body - West Kowloon Cultural District Authority (WKCDA) - to take forward the WKCD project, which include the functions, purposes and powers of the WKCDA and the composition of the Board of the WKCDA. In response to the request of the Subcommittee, we outline in this paper other key aspects of the proposed legislation.

Planning Matters

3. One of the functions of the WKCDA is to prepare a development plan for the WKCD. We propose to require the WKCDA to prepare a development plan to layout the different land uses for the various facilities in the WKCD. In preparing the development plan, the WKCDA would be required to consult the public, to have regard to the public views received in the consultation and ensure that all the relevant development parameters set out in the South West Kowloon Outline Zoning Plan are complied with. We also propose that the Authority should consult the Government in the process of preparing the development plan, and ensure that any requirements and conditions that may be imposed by the Government are satisfied.

4. We propose that the proposed ordinance should provide that the Town Planning Board (TPB) may deem the development plan as being suitable for publication and as a draft plan prepared by the TPB under the Town Planning Ordinance (Cap.131). Thereafter the development plan will be subject to the relevant provisions of Cap. 131.

5. The key elements of the planning process are as follows -

- (a) the WKCDA will submit the development plan prepared by it to the TPB for consideration;
- (b) the TPB may deem the development plan suitable for publication. If the development plan is deemed by the TPB to be suitable for publication, then the development plan will be deemed to be a draft plan prepared by the TPB under Cap. 131. If so, the provisions of Cap. 131 concerning draft plans will apply to the development plan;
- (c) the TPB will then publish the development plan in the Gazette in accordance with the relevant provisions of the TPB for public consultation.
- (d) the TPB will submit the development plan to Chief Executive in Council (CE in C) for approval, after the requisite statutory planning process under Cap.131.
- (e) if the development plan is approved by CE in C, it will be notified in the Gazette, and will become an approved development plan and the provisions of Cap. 131 concerning an approved plan will apply accordingly, including future amendments to the approved plan.

Land Matters

6. In view of the responsibility of the WKCDA to develop and operate the facilities in an integrated arts and cultural district, we propose to grant the necessary land to the WKCDA through one or more land grants. After the development plan for the WKCD

prepared by the WKCDA has been approved by CE in C, the Government will be in a position to decide on the land area that will need to be granted to the WKCDA. The land related matters will therefore be largely be dealt with in the land grant. We envisage to include in the land grant document the details of the facilities that the WKCDA has to provide, including the number, types and specifications of the arts and cultural facilities, as well as provisions to restrict the assignment, parting with possession, subletting, mortgaging, charging, and disposal of the leased land and the facilities thereon by the WKCDA.

Financial Matters

7. The resources of the WKCDA will include, among others, all moneys paid by the Government to the Authority, investment income, income received by it by operating and managing the arts and cultural facilities and the related facilities, including the retail/dining/entertainment facilities and all other moneys and property, including loans, sponsorships, donations received by it. The WKCDA will be required to manage its finances (including resources) with due care and diligence. Relying on these financial resources, the WKCDA is expected to develop and operate the arts and cultural facilities, related facilities and ancillary facilities in a financially sustainable manner. In this connection, the WKCDA shall invest in a financially prudent manner the funds available for investment in such classes or descriptions of investment as the Financial Secretary may specify. The WKCDA may borrow and raise money. The CE may direct that the WKCDA may not borrow or raise any sum which exceeds a specified amount without the approval of the Financial Secretary. The WKCDA may also enter into other financial transactions in connection with its financial affairs. With the Financial Secretary's prior approval, the WKCDA may establish general and special reserve funds.

8. The WKCDA serves the whole community of Hong Kong. To reflect its mission and functions, and to alleviate its tax burden, we propose that the WKCDA should be exempted from taxation under the Inland Revenue Ordinance (Cap.112), and from stamp duty under the Stamp Duty Ordinance (Cap. 117) in respect of

instruments relating to the conveyance of immovable property and the transfer of stock by way of gift and donation to the WKCDA.

Proceedings of the Board and Committees

9. We propose that the Board meetings of the WKCDA should be held as often as may be necessary for performing its functions. The quorum for a Board meeting cannot be less than half of the Board members. As regards voting rights, each attending Board members will have one vote subject to the conflict of interest requirements. In the event that voting is required for decision of a question at a Board meeting and that voting is equally divided, the Chairman of the meeting shall have a casting vote.

10. As for the proceedings and business relating to the committees, we propose that they should be determined by the respective committees themselves.

Measures to Safeguard Public Interests

11. To ensure that the large amount of resources vested in the WKCDA will be deployed in a prudent and transparent manner, we propose to put in place a number of measures to safeguard public interests, which are detailed in the ensuing paragraphs.

Submission of Plans and Reports

12. To ensure a reasonably high degree of transparency for its activities, the WKCDA will be required to send annually to the Government for record a corporate plan covering its programme of activities in the coming three years, and a business plan which sets out the details of its activities and projects that will be conducted in the coming year.

Establishment of Committees

13. We propose that the Board may establish any committee as it considers necessary or expedient to deal with any matter (such as planning, finance, operations of arts and cultural facilities etc.). Members of the committees may be drawn from the community to ensure that views of different sectors would be

reflected. For greater transparency and accountability, we also propose that the Board should make public all appointments to these committees.

Financial Monitoring

14. In respect of financial monitoring, we propose to require the WKCD to set up an Audit Committee and to appoint a qualified auditor to audit the statement of accounts. In addition, the Director of Audit will be empowered to conduct an examination on the economy, efficiency and effectiveness with which the WKCD expends its resources in performing its functions. The WKCD will also be required to keep proper accounts and records of its transactions, prepare a statement of accounts within 3 months after the expiry of a financial year, submit an annual report and a statement of accounts to the Government who will cause these documents to be tabled in the LegCo.

Declaration of Interests

15. To avoid any potential conflict of interests, all members of the Board and committees have to disclose to the WKCD their interests upon their first appointment and as and when circumstances require. All interests declared will be recorded in a register available for public inspection. Furthermore, if a member of the Board or committee has an interest in any matter which would be discussed or considered, he has to disclose the nature of his interest and withdraw from the meeting as appropriate.

Consultation with the Public

16. We propose to require the WKCD to consult the public in respect of matters relating to the development and operation of the WKCD, such as the preparation of the development plan. In addition, the Chairman and the CEO of the WKCD have to attend LegCo meetings upon the request of the LegCo.

Other measures

17. On top of the above measures, we also propose to include the WKCD, its committees and any entity established

under it (bodies corporate including subsidiaries, trust or non-profit making organisations) into Schedule 1 of the Prevention of Bribery Ordinance (Cap. 201) so that their employees and members will be subject to the relevant provisions of Cap. 201. We also propose to include WKCDA into Schedule 1 to the Ombudsman Ordinance (Cap. 397) so that the WKCDA will be subject to the powers of the Ombudsman.

Home Affairs Bureau
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