

立法會
Legislative Council

LC Paper No. CB(1)2223/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/07/2

Bills Committee on West Kowloon Cultural District Authority Bill

**Minutes of eleventh meeting held on
Thursday, 29 May 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP (Chairman)
Hon Margaret NG
Hon CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon CHEUNG Hok-ming, SBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon LUI Ming-wah, SBS, JP
Hon James TO Kun-sun
Hon SIN Chung-kai, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon WONG Kwok-hing, MH
Hon Daniel LAM Wai-keung, SBS, JP

Public officers attending : Agenda item II

Ms Esther LEUNG, JP
Deputy Secretary for Home Affairs
(West Kowloon Cultural District)

Mr Frederick YU
Assistant Secretary for Home Affairs
(West Kowloon Cultural District) 4

Mr Louis KAU
Senior Town Planner
(West Kowloon Cultural District)

Ms NG Wah-chi, Lonnie
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr WONG Siu-yee
Senior Council Secretary (1)7

I Confirmation of minutes
(LC Paper No. CB(1)1686/07-08 -- Minutes of meeting on
29 April 2008)

The minutes of the meeting held on 29 April 2008 were confirmed.

II Meeting with the Administration

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)361/07-08 -- The Bill)

Matters arising from previous meetings

- (LC Paper No. CB(1)1689/07-08(01) -- Issues raised by individual members on which the Administration was requested to provide written response (as at 28 May 2008)
- LC Paper No. CB(1)1514/07-08(02) -- Administration's response to points raised by individual members at the meeting on 29 April 2008
- LC Paper No. CB(1)1622/07-08(02) -- Administration's response to points raised by individual members at the meeting on 8 May 2008)

Draft Committee Stage Amendments

- (LC Paper No. CB(1)1622/07-08(03) -- "Proposed Committee Stage Amendments -- The First Batch" provided by the Administration)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to provide written response on the following points raised by individual members of the Bills Committee --
 - (a) the Administration should clarify the dual role of the Chief Executive Officer (CEO) as an ex-officio member of the Board of the West Kowloon Cultural District Authority (WKCD) and as an employee of WKCD, and provide information on the relevant provisions of comparable public statutory bodies;
 - (b) the Administration should clarify the relationship between sections 9 and 15 of the Schedule and provide information on the relevant provisions of comparable public statutory bodies;
 - (c) the Administration should review the need for the wording "unless two-thirds of the other Board members present at the meeting decide otherwise" in section 9 of the Schedule;
 - (d) the Administration should clarify what constituted direct and indirect interests for the purpose of the proceedings of the Board in respect of "Conflict of interest", and provide information on relevant provisions of comparable public statutory bodies;

- (e) on section 15(2) of the Schedule, the Administration should review whether the presence of the WKCDA Board member concerned should be disregarded for the purpose of forming a quorum for the meeting;
- (f) the Administration should consider re-positioning the wording "(if he is present at the Board meeting)" in section 15(1)(a) of the Schedule;
- (g) on section 16 of the Schedule, the Administration should provide information on the relevant provisions of comparable public statutory bodies and make clear the public officers' role with regard to public interest vis-à-vis their role in common with other members of the WKCDA Board;
- (h) the Administration should make an undertaking at the resumption of the Second Reading debate on the Bill that WKCDA would be required to set up an appeal mechanism;
- (i) the Administration should consider specifying in the Bill the term of office of the members of WKCDA committees and provide information on the relevant provisions of comparable public statutory bodies; and
- (j) the Administration should consider further refining the wording of the beginning of clause 4(2) to the effect of strengthening the commitment of WKCDA in achieving its objectives.

III Any other business

4. There being no other business, the meeting ended at 7:30 pm.

**Proceedings of the eleventh meeting of the
Bills Committee on West Kowloon Cultural District Authority Bill
on Thursday, 29 May 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000011	Chairman	Confirmation of minutes of the meeting held on 29 April 2008 (LC Paper No. CB(1)1686/07-08)	
000012 - 000114	Chairman	Opening remarks Clause-by-clause examination of the Schedule to the Bill	
000115 - 000628	Administration Senior Assistant Legal Adviser 2 (SALA2) Chairman	Sections 1 to 5 On section 5, Chairman's seeking clarification on whether, if the chairman of the WKCDA Board was a public officer, acting chairmanship would be taken up by a vice-chairman or by another public officer acting in the capacity of the public officer who served as the chairman SALA2's enquiry on whether acting chairmanship was automatic if the chairman was a public officer Administration's response that as the appointment of a public officer as chairman of the WKCDA Board was not on an ad personam basis, a public officer acting in the capacity of the public officer who served as chairman would automatically become chairman of the WKCDA Board	
000629 - 001807	Administration Mr Alan LEONG Chairman	Sections 6 to 8 SALA2's enquiry on whether it was necessary to specify serving as a WKCDA Board member as a function of the CEO	

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's response in the negative</p> <p>Mr LEONG's view that the Administration should clarify the dual role of the CEO as an ex-officio member of the Board of WKCD and as an employee of WKCD, and provide information on the relevant provisions of comparable public statutory bodies</p>	<p>Administration to provide written response</p>
001808 - 003631	<p>Administration Chairman SALA 2 Mr Alan LEONG Mr LEUNG Kwok-hung</p>	<p>Section 9</p> <p>SALA2's query on whether section 9 or section 15 should prevail</p> <p>Mr Alan LEONG's query on the relationship between sections 9 and 15</p> <p>Administration's response that section 9(1) was a specific clause on the terms of appointment and removal of the CEO and for other matters related to the CEO, section 15 would be applicable</p> <p>Chairman's query on the need for an exception provision in section 9(1)</p> <p>Administration's response that it could provide flexibility</p> <p>Mr LEUNG Kwok-hung's view that the exception provision might have the undesirable effect of allowing the CEO to exert influence on the decisions of other WKCD Board members</p> <p>Chairman's advice that the Administration should --</p> <p>(a) clarify the relationship between sections 9 and 15 of the Schedule and provide information on the relevant provisions of comparable public statutory bodies; and</p> <p>(b) review the need for the wording "unless two-thirds of the other Board</p>	<p>Administration to provide written response</p>

Time marker	Speaker	Subject(s)	Action required
		members present at the meeting decide otherwise" in section 9 of the Schedule	
003632 - 003744	Administration	Sections 10 to 12	
003745 - 004209	Administration Chairman SALA 2	<p>Section 13</p> <p>Chairman's enquiry on whether the quorum requirement was the usual practice</p> <p>Administration's response that it was to ensure representativeness of the meeting</p> <p>SALA2's enquiry on whether there would be detailed practice and procedures in relation to quorum requirements</p> <p>Administration's response that section 17 empowered the WKCD Board to determine such procedures</p>	
004210 - 004215	Administration	Section 14	
004216 - 012916	Administration Chairman SALA 2 Prof Patrick LAU Mr Alan LEONG Mr Abraham SHEK Miss CHAN Yuen-han Mr CHAN Kam-lam Miss CHOY So-yuk Mr Howard YOUNG	<p>Section 15</p> <p>Chairman's enquiry on what constituted direct and indirect interests</p> <p>Administration's response that the principal ordinance only provided a general framework and would not include the detailed classification</p> <p>SALA2's view that the WKCD Board had to determine what constituted direct and indirect interests</p> <p>Prof LAU's making reference to the practices of the Town Planning Board and the Housing Authority</p> <p>Mr LEONG's views that --</p> <p>(a) the Administration should provide information on the relevant</p>	Administration to provide written

Time marker	Speaker	Subject(s)	Action required
		<p>provisions of comparable public statutory bodies; and</p> <p>(b) the wording of section 15 of the Schedule should be considered in conjunction with clause 34 of the Bill</p> <p>Mr SHEK's view that an honour system would suffice as it was impracticable to specify every detail in the Bill</p> <p>Chairman's view that "conflict of interest" was a very sensitive issue and thus the Administration should clarify what constituted direct and indirect interests for the purpose of the proceedings of the Board in respect of "Conflict of interest", and provide information on relevant provisions of comparable public statutory bodies</p> <p>Administration's response that it would consider the suggestion</p> <p>Miss CHAN Yuen-han's query on why a WKCD Board member could be allowed to stay at the meeting if he had interest</p> <p>Chairman's view that if the interest involved was remote, the WKCD Board member could stay but should not vote on the matter</p> <p>Mr CHAN Kam-lam's making reference to the practices of the Urban Renewal Authority and the District Councils; and his view that if withdrawal was required even for very remote interests, the meeting might easily become inquorate</p> <p>Prof LAU's view that disregarding the presence of the WKCD Board member concerned might make the meeting inquorate</p>	<p>response</p> <p>Administration to provide written response</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Miss CHOY's view that if a member had interest, he should withdraw even if he could not vote; however, if he was allowed to stay, his presence should not be disregarded for forming a quorum</p> <p>Mr YOUNG's view that the member concerned should not be disregarded for forming a quorum</p> <p>Mr LEONG's view that adequate presence was a merit</p> <p>Chairman's advice that on section 15(2) of the Schedule, the Administration should review whether the presence of the WKCDA Board member concerned should be disregarded for the purpose of forming a quorum for the meeting</p> <p>Mr SHEK's enquiry on whether the Administration had drawn reference from the legislation of other public statutory bodies</p> <p>Administration's response that the provision was drafted by drawing reference from and refining the provisions of the legislation of comparable statutory bodies</p> <p>SALA2's enquiry on why the wording "(if he is present at the Board meeting)" appeared in section 15(1)(a) but not 15(1)(b)</p> <p>Administration's response that section 15(1)(b) was a continuation of section 15(1)(a)</p> <p>Mr LEONG's view that the wording concerned should be moved before section 15(1)(a)</p> <p>Chairman's advice that the Administration should consider re-positioning the wording "(if he is</p>	<p>Administration to provide written response</p> <p>Administration to provide written response</p>

Time marker	Speaker	Subject(s)	Action required
		present at the Board meeting)" in section 15(1)(a) of the Schedule	
012917 - 014814	Administration Ms Emily LAU Chairman SALA 2 Miss CHOY So-yuk Mr Abraham SHEK	<p>Section 16</p> <p>Ms LAU's enquiry on the consequences if the public officers concerned did not state public interest</p> <p>Administration's response that they had a statutory responsibility to do so, failing which they could be questioned</p> <p>Chairman's view that the presence of public officers in the boards of public statutory bodies could bring in alternative perspectives on top of the interest of the public statutory bodies concerned</p> <p>SALA2's advice that for serious misconducts, the public officers concerned might be subject to criminal prosecution under common law</p> <p>Miss CHOY's enquiry on the wording "perceived"</p> <p>Administration's response that the wording was used because there was no legal definition on public interest</p> <p>Mr SHEK's reference to the Public Accounts Committee's discussion on the role of public officers in public statutory bodies; and his concern that section 16 would create criminal liability</p> <p>SALA2's view that the focus of section 16 was not on the legal liability of the public officers concerned, but on their additional role in safeguarding public interest; failure to state public interest as required under section 16 per se would not have the effect of implicating the public officers concerned</p> <p>Chairman's advice that on section 16 of</p>	Administration to

Time marker	Speaker	Subject(s)	Action required
		the Schedule, the Administration should provide information on the relevant provisions of comparable public statutory bodies and make clear the public officers' role with regard to public interest vis-à-vis their role in common with other members of the WKCDA Board	provide written response
014815 - 014848	Administration	Sections 17 to 18	
014849 - 015045	Chairman Administration	Completion of the clause-by-clause examination of the Schedule to the Bill Briefing by the Administration on LC Paper No. CB(1)1514/07-08(02) Item 1	
015046 - 020147	Administration Miss CHAN Yuen-han	Item 2 Miss CHAN's view that the Administration should consider the nomination system adopted for the Hong Kong Arts Development Council Administration's response that the system still needed improvement	
020148 - 020226	Administration	Item 3	
020227 - 021834	Administration Chairman Miss CHOY So-yuk SALA 2 Mr CHAN Kam-lam	Item 4 Chairman's view that the Administration should encourage WKCDA to establish channels for appeal Administration's response that it would consider requiring WKCDA to do so but it was unnecessary to specify the requirement in the Bill Miss CHOY's view that the Bill should provide for an appeal mechanism SALA2's view that WKCDA might make bylaws to provide for an appeal mechanism and clause 33 of the Bill	

Time marker	Speaker	Subject(s)	Action required
		<p>empowered WKCDA to make such bylaws</p> <p>Chairman's view that the WKCDA Board could also establish a committee to handle appeals and the actual method to be adopted should be decided by the WKCDA Board</p> <p>Mr CHAN's view that establishing a committee to handle appeals was a possible solution and the WKCDA Board should be provided flexibility in this regard</p> <p>Administration's response that it would consider making an undertaking at the resumption of the Second Reading debate on the Bill that WKCDA would be required to set up an appeal mechanism</p>	<p>Administration to provide written response</p>
021835 - 022035	Administration	<p>Briefing by the Administration on LC Paper No. CB(1)1622/07-08(02)</p> <p>Items 1 to 2</p>	
022036 - 022606	Administration Miss CHOY So-yuk Chairman	<p>Item 3</p> <p>Miss CHOY's view that Administration should consider specifying in the Bill the term of office of the members of WKCDA committees and provide information on the relevant provisions of comparable public statutory bodies</p> <p>Administration's response that it would consider the suggestion</p>	<p>Administration to provide written response</p>
022607 - 022858	Administration	Items 4 to 5	
022859 - 025106	Administration Chairman SALA 2 Mr Alan LEONG	<p>Briefing by the Administration on LC Paper No. CB(1)1622/07-08(03)</p> <p>SALA2's request for the Administration to highlight the proposed amendments to clause 4(2) and the Administration's elaboration</p>	

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		<p>Mr LEONG's suggestion that "can achieve" or "may achieve" should be used instead of "are conducive to achieving"</p> <p>Administration's response that there would be difficulty in using "can achieve" because some objectives, such as "world standard", were set at a very high standard</p> <p>Chairman's suggestion that the Administration could consider using "aim at achieving"</p> <p>Mr LEONG's view that the Administration should consider further refining the wording of the beginning of clause 4(2) to the effect of strengthening the commitment of WKCDA in achieving its objectives</p>	<p>Administration to provide written response</p>
025107 - 025130	Chairman	Date of next meeting	