



**SUBMISSION TO THE LEGCO BILLS COMMITTEE ON THE
WEST KOWLOON CULTURAL DISTRICT AUTHORITY BILL
10 APRIL 2008**

AUTHORITY OR TRUST

Careful consideration should be given to the name of the new organization charged with development and management of WKCD. ‘Authority’ does not connote an organization entrusted with the creation, management, programming and future development of a significant part of the cultural sector. The idea of authoritarian control is anathema to creativity and the arts.

Considering the sweeping powers and extensive resources placed at the disposal of the WKCD Board, ‘Trust’ is a more apposite title than ‘Authority’ for a number of reasons. It will constantly remind WKCD Board members that they have been entrusted with significant public resources and that they are managing those resources on behalf of, and for the benefit of, the people of Hong Kong.

‘Trust’ implies an outward-looking body focused on the needs of its key stakeholders and sensitive to public opinion. ‘Authority’ on the other hand, invites an authoritarian or dictatorial mind-set among Board members, ranging from introspective to cavalier in attitudes to public opinion and the needs of the arts community.

It may seem of little importance to change just one word that in no way alters any of the Bill’s legislative intent, but it is a very powerful word that will not only exert subtle influence over the demeanour of successive WKCD Boards for generations to come, but that will also have a positive effect on public perceptions about WKCD and the way it conducts its business.

The Administration’s initial response to this name change proposal is that the term ‘trust’ has a specific meaning in the Recognition of Trusts Ordinance (Cap. 76) and therefore it can’t be used. However, this response misses the point entirely, i.e. that the spirit of the WKCD Ordinance should be precisely to create a Trust whose role is to manage assets on behalf of the beneficiary, the people of Hong Kong, with the Government in the role of Settlor.

There are numerous precedents in Hong Kong law where statutory bodies with the word ‘Trust’ in their names have been created by Ordinance, for example the Lord Wilson Heritage Trust. In other common law jurisdictions, there are close parallels where statutory bodies established by legislation to oversee cultural centres are called Trusts, and these happily co-exist with charitable trusts, family trusts and so on, where a similar meaning of the word ‘trust’ is defined in legislation.

AUTONOMY

The WKCD Trust's independence and autonomy should be preserved as far as possible by the enabling legislation to protect freedom of artistic expression and programming choices that may at times challenge the status quo. If art is not allowed to be controversial it loses one of its key values – that of holding a mirror up to society, challenging the way we think about ourselves. Such controversy is not likely to win votes from public officers on the Board whose first instinct is to avoid it at all costs.

While it would be reasonable to have two or three public officers on the Board, for example the Secretary for Home Affairs and Secretary for Education, to have up to half of the Board comprised of public officers (as allowed by Section 6(8)) is not an ideal state of affairs and certainly runs contrary to the spirit of a quasi-autonomous non-government organisation. **Section 6(8) contradicts subsections 3(c) and 3(d) of Section 6 and should be deleted from the Bill.**

A quorum of the Board also requires at least two public officers to be present (Schedule on Board Proceedings Part 1 Section 13). To frustrate a Board meeting where a controversial matter was likely to be approved, the public officers could simply abstain from attending. This Section of the Schedule should be deleted.

It is also not clear why it is necessary to constrain the independence of the Board to the extent that the HKSAR Chief Executive's approval is required to appoint or remove the WKCD's Chief Executive Officer (section 7, and Schedule on Board Proceedings Part 1 Section 10). While it may be intended as a safeguard, this provision creates the perception of a puppet string.

On the other hand, the Trust's powers are drafted broadly enough in the Bill so as not to constrain its autonomy, while its functions and purposes give it sufficient latitude to act effectively.

BOARD MEMBERSHIP

One of the main challenges will be ensuring that the right people are appointed as Trustees, and are given sufficient autonomy to carry out their responsibilities without undue interference from external forces. Unfortunately one can't legislate for creativity or vision.

Elections for certain Board members, as have been proposed in some quarters, have been discredited by the unfortunate experiences of the HK Arts Development Council, and that experience should not be repeated at WKCD. Elections are won from a factional power base – to select Board members on this basis (or even, as some have suggested, to appoint on the basis of members representing particular groups) will exacerbate inter-factional disputes over allocation of resources. This is not conducive to good governance, nor to encouraging cooperation among various groups in the common interest of arts development.

The preferred approach would be to appoint an independent selection panel to recommend board members for appointment by CE according to clearly defined criteria. This panel would operate on arms-length terms similar to the recommendations of judicial appointments by the Judicial Officers Recommendations Commission.

The composition of the Board of Trustees should remain flexible so that members' skills and experience can be matched to the needs at each stage of WKCD's evolution and development. In the initial development phases, expertise in urban planning, architecture, legal and financial matters will be required, as well as marketing expertise. However, starting from day one, and at every subsequent phase of the project's life, the creation and operation of WKCD should be guided by artistic expertise.

Suggestions that the Board should hold its meetings in public are not realistic. Much of the Board's business would be restricted by its very nature – tender pricing and other commercially sensitive information, tenancy-related issues, reports on negotiations with overseas arts organizations re decisions that must remain confidential before contracts are signed, and so on. It would be more meaningful to compel the Board to face the public at its own public forums from time to time.

It would be desirable for the bill (Schedule Part 2) to establish clearer delineation between the roles of Governance in the hands of the Board of Trustees, and that of management and administration, in the hands of the CEO. In the interests of freedom of artistic expression, the Bill should clarify that artistic programming comes under the heading of day to day administration and is therefore a CEO matter, not a board matter.

SUMMARY

Apart from the concerns set out above, the remaining provisions of the WKCD Bill are well-drafted and will provide a solid foundation for the establishment and operation of WKCD.

To summarise the shortcomings of the draft Bill:

Name: 'Authority' is not appropriate. 'Trust' would be more suitable.

Autonomy: It is not acceptable that up to half the members of the board can be public officers.

The approval of the HKSAR Chief Executive should not be required for the appointment or removal of the CEO.

Board: The board should not require the attendance of public officers to be quorate.

Elections for board membership are not desirable. An independent selection panel should recommend board appointments.

Calls for board meetings to be open to the public are not realistic.

The distinction between Governance and Management should be more clearly defined. Artistic programming decisions should be a Management, not a Board matter.