

*Vincent W. S. Lo*

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Date : 10<sup>th</sup> April 2008

The Secretary  
The Bills Committee on WKCD,  
25/F., Wanchai Tower,  
No.12 Harbour Road,  
Wanchai,  
Hong Kong.

BY FAX (31025997) & BY POST

Dear Sirs,

Re : WKCD bill

I refer to the above draft Bill and related documents sent to former members of the Museums Advisory Group and have the following comments :-

- (1) I am pleased to see that the draft Bill has incorporated the recommendations of the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District and drawn up a fairly comprehensive framework of checks and balances after taking into account the views of the public.
- (2) I note that a request was made at the hearing on 29<sup>th</sup> February 2008 that some Board members of the Authority should be appointed on representative instead of ad personam basis. I have reservations on such a proposal.

One has to distinguish the role of an elected representative in a functional or electoral constituency in the Legislative Council and that of a board member in a statutory body. The former is to represent the interests of relevant group as well as those of the public and to monitor the performance of the government and/or statutory bodies to ensure that the letters and spirit of the law are carried out. In the case of a statutory body one important function of its board members is to supervise and carry out the objectives as set out in the statute. The board members have an executive role to play. They are

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expected to deliver work required of them under the statute together with the Chief Executive Officer and his team. They need to have the relevant expertise and experience in order to perform. Thus, one is looking for candidates with different qualities in a statutory board. I am sure that there are members of the Legislative Council who have the relevant expertise and experience but it may not be a case applicable to all elected representatives.

Further, the WKCD project envisages that different expertise is required over the development, construction and operation phases of the project. To cast a rigid selection system tied to various functional or electoral constituencies is to reduce the flexibility of a good and practical arrangement.

- (3) To have members appointed on ad personam basis does not diminish the role of the Legislative Council. Under the draft Bill, members of the Legislative Council are given plenty of opportunities to question and scrutinize the works of the WKCD such as :
- (i) The bylaws of WKCD have to be approved by the Legislative Council. (Section 31 (2)(e))
  - (ii) Within 6 months of each financial year, a report on the activities of that financial year has to be presented to the Legislative Council by the Financial Secretary (Section 31 (2))
  - (iii) The Chairman and Chief Executive Office of WKCD have to attend the Legislative Council or any committee of the Legislative Council to answer questions (Section 16)
  - (iv) A member of the Legislative Council will be appointed to the Board of WKCD.

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So, there are sufficient safeguards in the draft Bill for the Legislative Council to monitor the performance of the Authority.

- (4) Another issue raised is the request that the meetings of the Board and committees of WKCDA be open to the public except under certain specified circumstances. The Home Affairs Bureau has already explained with good reasons why it is not appropriate for the Board to open its meetings to the public. Apart from the sensitive nature of matters discussed in meetings in particular the awarding of contracts, appraisal of performance, etc., one has to ask how effective can the public participate in these meetings?

Meetings of the Board and its committees often deal with matters which require massive background information before decisions can be made. Some of them are of sensitive commercial nature, for example the financial position of a company tendering for a contract and its bid price. No tendering companies want these sensitive pieces of information to be made public. But without the benefits of these information, the public cannot take part in a meaningful discussion and understand how a decision is reached. Its participation is futile.

To ensure that decisions of the meetings are made fairly and in a transparent manner, one should instead look for a checking mechanism in the Bill. It is already in place. There is requirement for board members to declare interests (Section 34) and there are detailed provisions governing various situations of conflict of interest (Section 15 of Part 3).

There are also internal and external controls for example, works of the Authority are subject to review by an Audit Committee. One could, of course improve on the independence of the Audit Committee by having non board members appointed to this Committee. The Authority is further made subject to the ambit of the Prevention of Bribery Ordinance and the Ombudsman Ordinance.

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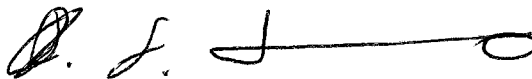
To complete the checking mechanism, the Authority should in time devise internal manuals setting out various procedures or best practice for the Board and/or committees to conduct their meetings.

With these various mechanism in place, the Authority, its Board and committees are required to work under a regulated framework with public scrutiny.

- (5) Finally, there is one point in the draft that I want to seek clarification. On the provisions for Removal of Chief Executive Office, “the Authority may, with the prior approval of the Chief Executive, remove the Chief Executive Office” (Section 10). Does this act still require the 2/3 majority of the Board same as for situations under Section 9? If it does not, Section 9 should be made subject to Section 10.

I hope these comments are of use.

Yours sincerely,



Vincent Lo  
former member of the  
Museums Advisory Group  
Consultative Committee

VL/dky