

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 15 May 2008
on which the Administration is requested to provide written response**

The Administration's response to the points raised by individual members at the meeting on 20 May 2008 is set out below –

(1) Whether the terms of appointment and remuneration package of the Chief Executive Officer will be submitted to the Chief Executive and whether extended integrity check on the candidate will be performed before the appointment.

Administration's Response:

Clause 7 of the Bill provides that the West Kowloon Cultural District Authority (WKCD) may, with the prior approval of the Chief Executive ("CE"), appoint a person to be the Chief Executive Officer ("CEO") of the Authority who is to be an employee of the Authority. The purpose of this clause is to safeguard public interest by including an additional layer of approval from the Chief Executive before the appointment of the CEO, taking into account the importance of the CEO to the effective functioning of the WKCD. Similar provisions can be found in other comparable statutory bodies, for example the Airport Authority (requiring CE's approval) and the Hong Kong Science and Technology Parks Corporation (requiring Financial Secretary's approval).

Clause 10(2) of the Bill provides that the Authority may determine the terms and conditions of the employment of its employees, including the terms and conditions relating to allowances, benefits and remuneration. The Bill does not require the WKCD to submit the terms of appointment and remuneration package of the CEO to the CE.

(2) The Administration should consider specifying in the Bill the criteria the Chief Executive shall consider in deciding whether the appointment of the Chief Executive Officer should be approved.

Administration's Response:

We expect the WKCD will recruit the CEO through an open recruitment exercise, which is a common practice of comparable local statutory bodies. Section 7 of the Schedule of the Bill provides that the CEO shall be responsible for the general management and administration of the Authority's affairs and shall perform such functions assigned or delegated to him. The WKCD has to carry out a wide range of functions including preparing the development plan for the whole WKCD, constructing, operating and managing the facilities through various private sector involvement arrangements. We therefore consider that WKCD would be in the best position to assess and decide, according to various needs at different stages of the WKCD project, the

qualities required of the CEO. Accordingly, we consider that it would not be appropriate to set out rigidly the criteria for recruiting the CEO in the Bill. We are also not aware of any legislation of comparable statutory bodies that contain such provisions.

(3) How secretariat support will be provided to the Audit Committee.

Administration's Response:

Secretariat support to the Board and committees of the WKCD, including that for the Audit Committee, is part of WKCD's internal operation. Clause 8(9) provides that the Committee may regulate its own administration, proceedings and business in such manner as it considers appropriate. We consider that how secretariat support should be provided for the Audit Committee should be decided by the WKCD upon its establishment according to the operational needs of the Audit Committee and the WKCD.

(4) Regarding the membership composition of the Audit Committee, the Administration should (a) specify the ratio between Board members and non-Board members; and (b) draw reference from the Listing Rules and incorporate the relevant requirements into the Bill as appropriate.

Administration's Response:

Clause 8(3) of the Bill specifies that the Audit Committee is to consist of such number of members, not being less than 3, as the Board may determine. Taking into account Members' views, we will propose Committee Stage Amendments (CSAs) to the effect that both Board members and non-Board members may be appointed to the Audit Committee. As to whether there should be a ratio between Board members and non-Board members, we consider that it should be up to the WKCD Board to decide the composition of the Audit Committee taking into account operational needs. Making reference to the Listing Rules, we would also propose CSAs to require that at least one member of the Audit Committee should possess appropriate professional qualifications, accounting or related financial management expertise.

(5) The Administration should consider providing for the establishment of a "Financial Management Committee" and an "Investment Committee" in the Bill.

Administration's Response:

Taking into account Members' suggestions and to further enhance the financial control mechanism of the WKCD, we will propose CSAs for the setting up of an Investment Committee to advise the Authority on its investment and to oversee and monitor the management and investment of funds available to the Authority. The detailed arrangements are set out in paragraph 6 of LC Paper No. CB(1)1751/07-08(01), paragraph 8 of LC Paper No.

CB(1)1785/07-08(01) and paragraph 5 of LC Paper No. CB(1)1851/07-08(01).

(6) The wording "in the manner as the Board considers fit" should be deleted from clauses 8(7) and 9(7).

Administration's Response:

Clauses 8(7) and 9(7) require the WKCD to make public any appointments to the Audit Committee and other committees in a manner that the Board considers fit. Taking into account the possible advances in technology on the one hand and the fact that some members of the public may not have convenient access to the Internet, it would not be appropriate to pre-determine a particular means of announcing appointments in the Bill. We consider it appropriate to provide the Board with flexibility on the way in which the appointments are to be made public.

(7) The Bill should specify that the report of the WKCD submitted under clause 31(1)(a) will include information on the work and activities of all committees.

Administration's Response:

Taking into account Members' suggestions and to further enhance the transparency of the work of WKCD, we will propose CSAs requiring the WKCD to include the works and activities of its committees in its annual report. The detailed arrangement is set out in p.8 of the Annex to LC Paper No. CB(1)1751/07-08(01).

(8) The Bill should specify the term of office of members of committees.

Administration's Response:

As elucidated in our earlier replies to the Bills Committee, the WKCD project is a long-term development project that will span over a long period of time and individuals with different backgrounds and expertise are required to serve on the Board and committees at different stages of the development and operation of the WKCD. At the same time, we also have to take into account the need to ensure continuity and consistency in the operations of the Board and the committees. In line with appointments to all other statutory boards and committees, the Government will consider appointments of non-public officer members to the Board and committees of the WKCD primarily on the merit of the individuals concerned, having regard to their ability, expertise, experience, integrity and commitment to public service.

In line with our existing administrative guidelines on appointment of non-official members to advisory and statutory bodies, a non-public officer Board member should not serve on the Board or committees of the WKCD in any one capacity continuously for more than 6 years. We would abide by this

rule as far as practicable, having regard also to the need to ensure consistency and continuity of the WKCDA Board at different stages of its development. However, we do not consider it appropriate to specify the term of office of members of committees in the Bill.

(9) The Administration should consider specifying in the Bill the division of responsibility between the chairman of the WKCDA Board and the Chief Executive Officer and their respective functions.

Administration's Response:

Section 8(1)(a) and (b) of the Schedule to the Bill provides that the CEO shall be responsible for the general management and administration of the Authority's affairs and shall perform such functions as are for the time being assigned to him or delegated to him.

Section 11(1) of the Schedule to the Bill provides that Board meetings may be convened by the Chairman, any Vice-Chairman or any other 4 Board members. Section 12(a) of the Schedule provides that at a Board meeting the Chairman is to be the chairman of the meeting. Section 14(1) of the Schedule specifies that in relation to any matter on which a decision is taken by vote in a Board meeting, and in the event that voting is equally divided, the chairman of the meeting has a casting vote. Section 15(1)(a)(ii)(A) empowers the chairman of a meeting to permit a Board member to take part in the discussion or consideration of a contract or a matter in which a Board member has an interest, and vote on any question concerning the contract or matter.

We consider that the above provisions have clearly set out the respective roles and responsibilities of the Chairman and the CEO under the Bill.

(10) The Administration should elaborate on the need for clause 13 and provide examples of possible scenarios under which the Chief Executive in Council will give directions to WKCDA, and to specify in the Bill that such directions shall be made public.

Administration's Response:

The purpose of Clause 13 is to safeguard public interest by enabling the Chief Executive in Council ("CE in C") to give instructions in writing to the Authority (which the Authority shall comply), if the public interest so requires. However, such instructions may not require the Authority to do, or not to do, anything if the requirement is wholly or partly inconsistent with the Bill. Empowering the CE in C (or CE) to give direction is a standard clause that appears in the enabling legislation of a number of statutory bodies. A table showing similar provisions is at **Annex**.

It would be difficult to set out the specific scenarios in which the clause

would be invoked, although we envisage that this power will be rarely exercised.

(11) The Administration should confirm that the amount to be paid by the Government to WKCDA under clause 13(5) will not be subject to further funding approval by the Finance Committee of the Legislative Council.

Administration's Response:

Section 4 of the Public Finance Ordinance (Cap. 2) ("PFO") provides that "[n]o expenditure shall be charged on the general revenue except as provided by or under this Ordinance or any other enactment".

As Clause 13(6) of the Bill explicitly provides that a sum payable under Clause 13(5) is to be charged and paid out of the general revenue, further funding approval by the Finance Committee of the Legislative Council would not be required unless the amount involved requires a change to the approved estimates which is outside the authority delegated by FC in accordance with section 8(3) of PFO.

(12) The Bill should provide for the circumstances under which clauses 14 and 15 may be invoked, and the scope of the information to be furnished by WKCDA.

Administration's Response:

Clause 14 of the Bill provides that the Chief Executive may require the WKCDA to furnish information relating to its affairs or activities as may be specified by him. Clause 15 provides that the Financial Secretary may for the purposes of part 4 of the Bill request the WKCDA to furnish to him such information relating to its financial affairs as may be specified by him.

Similar requirements for the Chief Executive to obtain information are found in the legislation of other statutory bodies, such as the Airport Authority Ordinance (Cap. 483) and the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565).

At the same time, the Financial Secretary is empowered under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) and the Western Harbour Crossing Ordinance (Cap. 436) respectively to inspect books of accounts etc. of the companies concerned.

Given the importance of the WKCD project to the long-term development of arts and culture for the future of Hong Kong, as well as the large amount of resources that will be vested in the WKCDA, we consider it appropriate to empower the Chief Executive to obtain information about its affairs and activities on the one hand, and to empower the Financial Secretary to

obtain information relating to the financial affairs of the WKCDA, on the other, as safeguards of public interest. These powers would be exercised having regard to the actual need for the relevant information in different scenarios. It would, however, be practically difficult to specify all the circumstances under which the two clauses will be invoked and the scope of the required information in the Bill.

(13) The Bill should provide that the Legislative Council shall have the power to obtain information from WKCDA.

Administration's Response:

Clause 16 of the Bill already provides that the Legislative Council or any committee of the Council may request the Chairman and the CEO to attend its meetings. It also provides that the Chairman and the CEO shall comply with the request and answer questions raised by the Members of the Council at the meetings. As such, the Legislative Council would be able to require the WKCDA to provide information through raising questions when the Chairman or the CEO attends such meetings. We consider that it is not necessary to further provide in the Bill that the Legislative Council shall have the power to obtain information from WKCDA.

**Home Affairs Bureau
July 2008**

Comparison between the proposed West Kowloon Cultural District Authority and other comparable statutory bodies in Hong Kong in respect of the power of the Chief Executive in Council (or the Chief Executive) to give directions

	West Kowloon Cultural District Authority	Airport Authority (Cap. 483)	Hong Kong Science and Technology Parks Corporation (Cap. 565)	Hospital Authority (Cap. 113)	Urban Renewal Authority (Cap. 563)	Hong Kong Arts Development Council (Cap. 472)
The power of the Chief Executive in Council (or the Chief Executive) to give directions	<ul style="list-style-type: none"> • The Chief Executive in Council may, if he considers the public interest so requires, give such directions in writing to the Authority as he considers appropriate. • A direction given ... may not require the Authority to do, or not to do, anything if the requirement is wholly or partly inconsistent with this Ordinance. • The Authority shall comply with any direction given. • (c.f. Clause 13 of the WKCDA Bill) 	<ul style="list-style-type: none"> • [T]he Chief Executive in Council may, if he considers the public interest so requires, give to the [Airport] Authority such directions (in writing) as regards the performance of any of its functions as he considers appropriate; provided that such a direction shall not require the [Airport] Authority to do, or omit to do, anything which would be wholly or partly inconsistent with any provision of th[e] Ordinance. • The [Airport] Authority shall, as soon as practicable, comply with any direction under this section. • (c.f. Section 20 of Cap. 483) 	<ul style="list-style-type: none"> • The Chief Executive may, if he considers it to be in the public interest so to do, give the [HKSTP] Corporation such general directions in writing as regards the performance of its functions as he considers appropriate. • The [HKSTP] Corporation shall give effect to a direction given. • (Section 12 of Cap. 565) 	<ul style="list-style-type: none"> • The Chief Executive may, if he considers the public interest so requires, give directions in writing of a general or specific character to the Authority in relation to the performance of its functions or the exercise of its powers and the [Housing] Authority shall comply with those directions. • (c.f. Section 15 of Cap. 113) 	<ul style="list-style-type: none"> • The Chief Executive may, if he considers the public interest so requires, give directions in writing to the [Urban Renewal] Authority in relation to the exercise of its powers or the performance of its duties and the Authority shall comply with those directions. • (c.f. Section 33 of Cap. 563) 	<ul style="list-style-type: none"> • The Chief Executive may, if he considers the public interest so requires, give to the [Hong Kong Arts Development] Council directions in writing, not inconsistent with its functions and powers under th[e] Ordinance, with respect to the carrying out of its functions, powers or duties, either generally or in any particular case, and the [Hong Kong Arts Development] Council shall comply with those directions. • (c.f. Section 16 of Cap. 472)