

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 22 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 22 May 2008 is set out below –

(1) The Bill should provide that the West Kowloon Cultural District Authority (WKCDA) shall engage the public in preparing its corporate plans and business plans.

Administration's Response:

Clause 17 of the Bill provides that the WKCDA shall, in relation to matters concerning the development or operation of arts and cultural facilities, related facilities, ancillary facilities consult the public at such time and in such manner as it considers appropriate. Clause 17 also stipulates that the WKCDA may consult the public on any other matters as the Authority considers fit. This scope of this provision should be wide enough to allow WKCDA to consult the public for the sake of preparing its corporate and business plans.

As we have agreed to introduce a CSA to require the WKCDA to establish a consultation panel to gather public views on matters relevant to the functions of the WKCDA, we would envisage that the WKCDA would make use of the consultation panel to seek public views for the purpose of drawing up its corporate plans and business plans. We therefore do not see the need to make this specific consultation a mandatory requirement in the Bill.

(2) The annual report of WKCDA should specify how its activities for that financial year relate to the relevant corporate plan and business plan of the Authority.

Administration's Response:

Taking into account Members' views and to enable the public to assess the performance of WKCDA, we will propose CSAs requiring WKCDA to specify in its annual report the progress of the activities and projects included in the corporate plan and the business plan. The detailed arrangements have been set out in paragraph 11 of LC Paper No. CB(1)1751/07-08(01).

(3) The Administration should consider specifying in the Bill that information on disclosure of interest will be made available on the Internet for inspection by the public.

Administration's Response:

In the first batch of Committee Stage Amendments (CSAs) which was issued on 21 May (p.5 of Annex to LC Paper No. CB(1)1622/07-08(03)), we proposed to amend Clause 34(5) such that the Authority shall, **by such means as it considers appropriate**, make available the register containing the disclosed interest by Board or committee members for inspection by the public. By virtue of this amendment, the WKCDA may make information on disclosure of interest available on the Internet for inspection by the public. However, 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 specify a particular way for the WKCDA to make available the register in the Bill. We, therefore, consider it appropriate to leave the WKCDA Board with flexibility in deciding the proper ways and means to make available the register to the public.

(4) The Administration should consider specifying in the Bill the consequences or sanctions of failing to disclose interest with reference to the relevant rules of the Executive Council, the Legislative Council and other comparable public statutory bodies.

Administration's Response:

Under Rule 85 of the Legislative Council Rules of Procedure, a Member who, for example, fails to comply with Rules 83 (Registration of Interests) and 83A (Personal Pecuniary Interest to be disclosed), may be admonished, reprimanded or suspended by the Council on a motion to that effect.

Where an individual is in public office (including an Executive Council Member or other public statutory body), the common law offence of misconduct in public office may apply, for example, where there was a deliberate breach with a view to personal gain. There could be a spectrum of consequences, at one end for an innocent mistake there may be a reminder of the rules, progressing through a written warning to removal and criminal prosecution as the breach becomes more serious. A public officer could be subject to disciplinary action, lose his job and/or pension depends on the circumstances of an individual case.

We are of the view that it is unnecessary to specify in the Bill consequences/sanctions regarding disclosure of interest. First, legislation for comparable local statutory bodies (e.g. the Airport Authority, the Urban Renewal Authority and the Hong Kong Science and Technology Parks Corporation) do not contain specific provisions on the consequences or sanctions of failing to disclose interest. As such, the arrangement in the WKCDA Bill is in line with existing practices. Second, a WKCDA Board member might be punishable by the common law offence of misconduct in public office if there is a deliberate breach of rules for disclosure of interest with a view to personal gain. Furthermore, a non-public officer Board member failing to disclose an interest under Clause 34 of the Bill, or to disclose a conflict of interest under section 15 of the Schedule to the Bill, will also be subject to removal under section 4 of the

Schedule.

(5) The Administration should clarify how the laws of Hong Kong and the bylaws of WKCDA in relation to traffic, public order etc. will be enforced under different circumstances in the public places within the areas leased to WKCDA, and reference should be made to the relevant arrangements of the Airport Authority and Housing Authority.

Administration's Response:

Clause 35 of the Bill provides that for the purposes of any law, all common parts within the leased area to which the public has access is a public place. Where the areas in question are "public places" as defined by the Public Order Ordinance, Cap. 245, the provisions of that Ordinance will apply. The Hong Kong Police Force will have duties in relation to such areas under the Police Force Ordinance, Cap. 232. Whereas the areas in question are "road" as defined under the Road Traffic Ordinance (Cap. 374), the relevant provisions will apply.

(6) The Administration should review whether the current drafting of clause 37 can sufficiently safeguard against abuse by WKCDA's business partners through manoeuvres in contractual arrangements.

Administration's Response:

Clause 37 of the Bill provides, among others, that "[t]he Authority is exempt from taxation under the Inland Revenue Ordinance (Cap. 112)". The present Clause 37 only gives tax exemption to WKCDA and not its subsidiaries or business partners or joint ventures in which WKCDA is a participant or shareholder. As such, it is unlikely that WKCDA's business partners will be able to take advantage of WKCDA's tax exemption, as only the profits of WKCDA will be exempted from tax.

**Home Affairs Bureau
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