

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 29 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 29 May 2008 is set out below –

(1) The Administration should clarify the dual role of the Chief Executive Officer as an ex-officio member of the Board of the West Kowloon Cultural District Authority (WKCDA) and as an employee of WKCDA, and provide information on the relevant provisions of comparable public statutory bodies.

Administration's Response:

Clause 6(3) of the Bill provides that the Board is to consist of, among others, the Chief Executive Officer ("CEO"). Clause 6(6) provides that the CEO is to be an ex-officio member of the Board. Clause 7 of the Bill provides that the Chief Executive Officer is an employee of the WKCDA. Section 8 of the Schedule 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 purpose of including the CEO as an ex-officio member of the WKCDA Board is to facilitate the operation of the Board by enabling it to have access to the advice of the WKCDA's administrative head. This arrangement is similar to the practices of the Airport Authority ("AA") and the Urban Renewal Authority ("URA").

Section 3 of the Airport Authority Ordinance (Cap. 483) provides that the Authority shall consist of, among others, the Chief Executive Officer who shall be a member ex officio whereas section 4 of Cap. 483 provides that the Board shall consist of the persons who for the time being comprise the Authority as members of the Board.

Section 4 of the Urban Renewal Authority Ordinance (Cap. 563) provides that the Board of the URA comprised of, among others, the Managing Director of the Authority and who by virtue of holding that office, is the Deputy Chairman of the Board of URA.

(2) 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.

Administration's Response:

We will propose Committee Stage Amendments (CSAs) to delete the leading clause in section 9 of the Schedule which reads “[w]ithout affecting the generality of section 15,” such that section 15 will apply generally unless the scenario described in section 9 arises.

(3) 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.

Administration’s Response:

As explained in paragraph 10 of LC Paper No. CB(1)1785/07-08(01), we will propose CSAs to remove the wording concerned.

(4) The Administration should clarify what constitutes 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.

Administration’s Response:

As explained in paragraph 11 of LC Paper No. CB(1)1785/07-08(01), we will propose CSAs to amend the Clause such that the WKCDA Board may issue a guideline to set out the circumstances where a Board member is directly or indirectly interested in any contract or matter, for deciding whether he shall be required to disclose his interest.

(5) 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.

Administration’s Response:

Section 15(2) of the Schedule provides that where a disclosure is made under section 15 (1)(a)(i) and the Board member concerned is neither required to withdraw from the relevant meeting nor permitted to vote, then for so long as the contract or matter to which the disclosure relates is being discussed or considered at such meeting, his presence is disregarded for the purpose of forming a quorum for the meeting.

Under the circumstances, as the Board member will not be allowed to participate in making a decision on the matter by casting his vote, it would only be fair to disregard him for the purpose of forming a quorum for that part of the meeting.

(6) The Administration should consider re-positioning the wording "(if he is present at the Board meeting)" in clause 15(1)(a) of the Schedule.

Administration's Response:

As explained in paragraph 11 of LC Paper No. CB(1)1785/07-08(01), we will propose Committee Stage Amendments (CSAs) to amend the clause.

(7) 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.

Administration's Response:

Section 16 of the Schedule provides that where at a Board meeting a Board member who is public officer and is present considers that any matter which is to be or is being discussed or considered by the Board is or could be contrary to, or otherwise raises or puts in issue, or could so raise or put in issue, the public interest as perceived by him, he shall state to the meeting his opinion regarding the relation between the public interest, as so perceived, and the matter, and where appropriate, state how in his opinion, an actual or potential conflict with that interest, as so perceived, arises or could arise.

The purpose of this clause is to, on top of their general duties as a Board member, impose a duty on the public officer members of the Board to state public interest as perceived by him during deliberations of the Board to ensure that issues relating to public interest will be adequately considered and debated before a decision is made.

Section 14 of the Airport Authority Ordinance (Cap. 483) and section 8 of the Urban Renewal Authority Ordinance (Cap. 563) also have similar provisions requiring public officers to state public interest.

(8) The Administration should make an undertaking at the resumption of the Second Reading debate on the Bill that WKCDA will be required to set up an appeal mechanism.

Administration's Response:

As explained in our response to the points raised by members on 29 April (c.f. item 4 of LC Paper No. CB(1)1514/07-08(02)), the WKCDA is not a regulatory body and it would not be practicable to identify and specify in the Bill the specific types of decisions of the WKCDA which should be subject to appeal. We also note that the legislation of comparable statutory bodies such as the Airport Authority and Hong Kong Arts Development Council do not contain any appeal mechanism. As such, we consider it more appropriate for the WKCDA to set up its own complaints handling mechanism or procedures in the light of

operational experiences, rather than stipulating an appeal mechanism in the Bill. We would consider undertaking to require WKCDA to do this according to operational experiences when Second Reading of the Bill resumes.

(9) 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.

Administration's Response:

Clause 9(3) of the Bill provides that a committee is to consist of such number of committee members as the Board may determine. Clause 9(4) provides that each of the committee members, whether or not the member is a Board member, is to be appointed by the Board. As the WKCDA Board will be the appointing authority for the committee members, we consider it appropriate to defer to it to decide the term of office of the committee members.

We have made reference to a number of enabling legislation for comparable public statutory bodies regarding their arrangements on appointments of committee members, including the Airport Authority Ordinance (Cap. 483) and the Urban Renewal Authority Ordinance (Cap. 563). We are not aware of any provision in the two Ordinances that specifies the term of office of committee members.

(10) 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.

Administration's Response:

As explained in paragraph 4 of LC Paper No. CB(1)1785/07-08(01), we will propose CSAs to refine the leading clause of Clause 4(2) such that the WKCDA shall perform its functions in ways which "aim to achieve" (instead of "are conducive to achieving") its objectives.

**Home Affairs Bureau
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