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**Report of the Bills Committee on  
West Kowloon Cultural District Authority Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on West Kowloon Cultural District Authority Bill.

**Background**

2. Following its announcement on 21 February 2006 to discontinue the Invitation for Proposals (IFP) process to pursue the West Kowloon Cultural District (WKCD) project, the Administration established the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District (Consultative Committee), supported by three advisory groups, to re-examine, with a view to re-confirming if appropriate, the need for the Core Arts and Cultural Facilities (CACF) as defined in the IFP and other arts and cultural facilities to be provided in WKCD and the financial implications of developing and operating these facilities. The recommendation report of the Consultative Committee was submitted to the Chief Executive (CE) on 30 June 2007 and was released by the Administration on 12 September 2007 with the launch of a three-month public engagement exercise.

3. Having regard to the results of the public engagement exercise, the Administration proposes to adopt the Consultative Committee's recommendations with regard to the provision of arts and cultural facilities in WKCD, the financing approach for developing the WKCD and the enactment of legislation for the establishment of a West Kowloon Cultural District Authority (WKCDA). The Bill was introduced into the Legislative Council (LegCo) on 20 February 2008.

## **The Bill**

4. The Bill proposes to set up WKCDA as a dedicated statutory body whose major functions are to implement the WKCD project from its planning to the operation stages and to ensure the project's financial sustainability. WKCDA is required to have regard to one or more of the specified purposes relating to the promotion of arts and culture in performing its functions and is vested with the necessary powers to do so. The governing and executive body of WKCDA will be a Board of not more than 20 members, consisting of both public officers and non-public officer members. The Bill also provides for planning matters in respect of the WKCD site, financial matters pertinent to WKCDA, and measures to safeguard public interests.

## **The Bills Committee**

5. At its meeting on 22 February 2008, the House Committee agreed to form a Bills Committee to study the Bill. Hon Mrs Selina CHOW LIANG Shuk-ye and Hon CHEUNG Hok-ming were elected Chairman and Deputy Chairman of the Bills Committee respectively. There are a total of 27 members on the Bills Committee. The membership list of the Bills Committee is in **Appendix I**.

6. The Bills Committee has held a total of 15 meetings, including two meetings to receive views from interested parties. The Bills Committee has received views from 39 organizations and nine individuals. The list of the organizations/individuals is in **Appendix II**. The Bills Committee has taken into account the views expressed by various parties in examining the Bill.

## **Deliberations of the Bills Committee**

### Commencement of the West Kowloon Cultural District Authority Ordinance - clause 1

7. Clause 1(2) of the Bill provides that the West Kowloon Cultural District Authority Ordinance (the WKCDA Ordinance), if passed, will come into operation on a day to be appointed by the Secretary for Home Affairs (SHA). The Administration has subsequently affirmed its intention that WKCDA should be established as soon as possible to take forward the WKCD project, and thus the Administration will move a CSA to delete clause 1(2) so that the Ordinance will commence upon publication in the Gazette after passage of the Bill by LegCo.

### Establishment of WKCDA - clause 3

8. Clause 3 incorporates WKCDA as a body corporate with perpetual succession and a corporate seal. Some members have expressed concern that the public may wish to change the name of WKCD after passage of the Bill. According to the Administration, changing the name of WKCDA will need legislative amendments but changing the name of WKCD will not. While there is a view that it would not be satisfactory if the name of WKCD has to be changed after the passage of the Bill, members in general consider it acceptable to name the statutory body as WKCDA in the Bill.

### Functions of WKCDA - clause 4

9. Clause 4(1) sets out the functions of WKCDA. Clause 4(2) provides that the Authority, when performing its functions, is to have regard to one or more of the purposes listed in that clause. Some members consider that in view of the high expectations of the public on the WKCD project, the present provisions in clause 4 are not sufficient to reflect the public's expectations and the unique character of WKCD. There has been a suggestion that mission statements and objective performance indicators should be formulated and specified in the Bill to provide objective yardsticks for the public and LegCo to monitor regularly the Authority's work.

10. According to the Administration, the functions of WKCDA in clause 4(1) seek to set out in technical and functional terms what WKCDA is required to do to achieve its objectives. The purposes which WKCDA should have regard to in performing its functions as set out in clause 4(2) seek to express and elaborate in different dimensions the broad vision and objectives of the WKCD project — an important strategic investment in the long-term development of culture and the arts for the future of Hong Kong.

11. Each of the purposes can serve as broad yardsticks or indicators for evaluating the performance of WKCDA in future. The actual types, quantity and quality of programmes or activities which should be carried out to deliver the functions and purposes should be left to WKCDA to decide after it has been set up. The Administration does not consider it appropriate to specify in the enabling legislation any quantifiable performance indicators for evaluating WKCDA's work, as such evaluation should be done on an on-going basis and in a holistic manner with evolving indicators at different stages of the WKCD project. This approach is in line with the legislation of comparable local statutory bodies.

12. However, taking into account the views and comments from members and deputations, the Administration agrees to improve the presentation of clause 4 to bring out more clearly the role of WKCDA in meeting the different objectives when performing its functions. The Administration will move a

Committee Stage amendment (CSA) to clause 4(2) so that WKCDA is required to carry out its functions in ways which aim to achieve its objectives, instead of merely having regard to one or more of the purposes. The list of objectives under the revised clause 4(2) has been drawn up with regard to the various purposes included in the original clause 4(2), but they are expressed in a more forthcoming manner. Moreover, the following new objectives are added having regard to deputations' suggestions --

- (a) to uphold and encourage freedom of artistic expression and creativity; and
- (b) to enhance and promote excellence, innovation, creativity and diversity in arts and culture.

13. In response to members' view that WKCDA should assess its performance during the year by making reference to the objectives in the Bill, the Administration agrees to amend clause 31 to the effect that WKCDA will be required to make reference to the objectives set out in clause 4 in its annual report for submission to the Financial Secretary.

14. Hon Margaret NG has suggested that the provision of input/recommendations to the Administration with regard to the introduction of legislation to regulate museum services should be a function or purpose of WKCDA. In this regard, the Administration has explained that although WKCDA will be responsible for building and managing a cultural institution with museum functions (temporarily entitled M+), it is not intended to be a regulatory or advisory body on museum matters in Hong Kong. The Administration does not consider it appropriate to include the provision of input/recommendations to the Administration with regard to the introduction of legislation to regulate museum services as a function or purpose of WKCDA. The Administration will consider whether museum services should be regulated by legislation in the context of its cultural policy on provision and development of museum services. WKCDA will be a future provider of museum services. In considering this matter, the Administration would, if necessary, consult stakeholders including WKCDA.

*Amendments proposed by members*

15. Taking note of the amendments to clause 4 proposed by the Administration, Hon Emily LAU Wai-hing has requested the Administration to add the objective of "to recognize and enhance the right of everyone to take part in cultural life" to reflect the relevant principle under the International Covenant on Economic, Social and Cultural Rights. The Administration considers that this principle has already been fully embedded and reflected in its proposed revised clause 4(2).

16. Members of the Democratic Party have requested the Administration to further amend clause 4 --

- (a) to add a provision under clause 4(1) to require WKCD to conduct open design competitions for the arts and cultural facilities and the exhibition centre in WKCD with a view to obtaining the most suitable designs;
- (b) to add "culture" to "arts" in a number of the objectives listed under the revised clause 4(2) proposed by the Administration; and
- (c) to include the wording "different sectors of the community including" to the revised clause 4(2)(1) proposed by the Administration so that it would read "to encourage different sectors of the community including commercial and corporate support and sponsorship of arts and culture".

17. Prof Hon Patrick LAU Sau-shing has requested the Administration to further amend clause 4(1) to require WKCD to conduct open design competitions for the planning of WKCD and for the architectural designs of the arts and cultural facilities, so as to ensure high quality designs and to meet the principle of fair and orderly competition. The requirement, according to Prof LAU, is concordant with the management code for building projects of the Mainland Government.

18. The Administration has subsequently indicated that it intends to include the element of "community (社會)" in clause 4(2)(1) such that one of the objectives of WKCD is to encourage community, commercial and corporate support and sponsorship of arts and culture. This further amendment may have the same effect as the amendment proposed by members of the Democratic Party in paragraph 16(c) above. The Administration has also advised that according to the recommendations of the Consultative Committee, design competitions should be organized for a few major arts and cultural venues in WKCD only. The Administration therefore does not agree with the relevant amendments proposed by members of the Democratic Party and Prof LAU.

#### Powers of Authority - clause 5

19. Clause 5(2)(n) empowers WKCD to "engage in such activities as CE in Council may, after consultation with the Authority, permit or assign to it by order published in the Gazette". Clause 5(3) specifies that an order under clause 5(2)(n) is subsidiary legislation. The Bills Committee has questioned the need for clause 5(2)(n) and sought clarification from the Administration on

the relevant policy intent. The Administration has subsequently advised that it will propose CSAs to delete clause 5(2)(n) and clause 5(3).

Establishment of Board - clause 6

20. Clause 6 provides that the Board, which is the governing and executive body of WKCDA, shall consist of not more than 20 members, comprising --

- (a) the Chairman who may or may not be a public officer;
- (b) the CEO;
- (c) not more than 15 members, who are not public officers, including at least five members who, in the opinion of CE, have knowledge of, or experience in, or exposure to, arts and cultural activities, and at least one member who is a member of LegCo; and
- (d) three other members who are public officers.

All Board members (other than the CEO) are to be appointed by CE.

*Appointment mechanism*

21. Some members of the Bills Committee have expressed grave concern about the appointment mechanism provided in the Bill, pointing out that the entire appointment exercise would be conducted behind closed doors and at the sole discretion of CE. They consider that the appointment mechanism should be transparent and accountable to the public. At the earlier stage of the scrutiny of the Bill, some members suggested that some of the non-public officer Board members should be appointed in representative capacities instead of on a personal basis through nomination or election by the respective sectors. Moreover, the LegCo Member(s) to be appointed to the Board should be elected by and from among LegCo Members.

22. According to the Administration, the WKCDA Board should be composed of a right and balanced mix of individuals with different expertise and knowledge in various fields at different stages of the project. As such, the precise composition of the Board may vary from time to time to tie in with the needs of the different stages of the development and operation of the WKCD facilities. The Administration therefore considers it not appropriate to specify the precise composition of the Board members in the Bill.

23. On the suggestion that some of the non-public officer members of the Board should be appointed in representative capacity, the Administration's stance is that WKCDA Board should work together as a strong, dedicated and

cohesive team capable of performing the range of executive functions conferred on WKCD in accordance with its statutory objectives. Any nomination or election mechanism would risk undermining the effective operation of the Board, as the interests of the sectors or organizations which some members are representing may not be compatible with the corporate objectives of the Board in responding to the development needs of the WKCD project from time to time. Any election or nomination system based on majority vote does not necessarily provide a balanced mix of individuals on the Board. It may also have the unintended effect of denying individuals who could make valuable contributions to the Board the opportunity to serve on it, if they are not among any of the specified sectors or organizations.

24. The Administration has also advised that it is particularly difficult and impracticable to prescribe a proper and fair election or nomination system for the arts and cultural sector, given its diversity and the lack of an established professional accreditation mechanism for screening and electing qualified representative members of the arts and cultural sector. It follows that the Administration does not agree to prescribe any nomination or election mechanism which seeks to return a precise composition of the Board, setting out the sectors or organizations, as well as the number of members in each sector or organization.

25. Given the above considerations, the Administration considers it more appropriate for CE to appoint members of the Board having regard to the different needs of the WKCD project at different stages of development, based on the merit of the individuals concerned, including their ability, expertise, experience, integrity and commitment to public service. The Administration also indicates that it is open to any organizations or individuals to nominate persons for consideration of appointment to the Board by CE.

*Criteria for appointing non-public officer members of the Board*

26. Some members consider that putting aside the issue of prescribing a nomination or election mechanism, the Administration should specify in the Bill objective criteria for the appointment of the non-public officer members of the Board. This would to some extent provide assurance to the public that the appointments would not be based solely on the personal liking of CE. There is also a suggestion that the appointment criteria of the five or more Board members with arts and cultural background should be suitably tightened, to the effect that those Board members should have standing and good reputation within the arts and cultural sector.

27. Having regard to members' views, the Administration has agreed to move CSAs to amend clause 6(3) to the effect that (revised aspects shown in bold type) --

- (a) **there shall be not less than eight** and not more than 15 non-public officer members (other than the CEO and the LegCo Member(s)) to be appointed to the Board;
- (b) those five or more Board members with arts and cultural background should, in the opinion of CE, have **extensive** knowledge of, or experience in, or exposure to, arts and cultural activities, **or have good standing in the field of arts and culture**; and
- (c) the other non-public officer members (other than those members with arts and cultural background and the LegCo Member(s)) shall possess experience in **management, engineering, planning, architecture, surveying, landscape architecture, accounting, finance, education, law or community service, or such professional or other experience** as would, in the opinion of CE, render them suitable for appointment.

*Amendments proposed by Hon Alan LEONG Kah-kit*

28. Hon Alan LEONG Kah-kit has indicated his intention to move CSAs to the effect that --

- (a) of the not more than 15 non-public officer members (other than the CEO and the LegCo Member(s)) of the Board, there shall be not fewer than eight persons selected by CE according to the principles and procedures laid down in a new Part 5 of the Schedule; and
- (b) the LegCo Member(s) sitting on the Board shall be elected by the Members among themselves.

*Amendments proposed by members of the Democratic Party*

29. Members from the Democratic Party have indicated their intention to move CSAs to the effect that --

- (a) two LegCo Members should be appointed to the WKCDA Board by way of election among LegCo Members;
- (b) to add "good standing within the arts and cultural sector" to the factors that CE needs to consider in appointing those Board members with arts and cultural background;



- (c) to add "information technology" to the list of professions/range of experience from which the other non-public officer Board members should come from; and
- (d) to add a provision that after three years of establishment of WKCDA, there should be at least two board members to be appointed through election among the stakeholders of WKCD. The election method should be specified in subsidiary legislation to be published by notice in the Gazette.

*Amendments proposed by Hon CHAN Yuen-han*

30. Hon CHAN Yuen-han has requested the Administration to further amend clause 6 to the effect that at least seven (instead of five under the Administration's current proposal) non-public officer members of the Board shall have arts and cultural background, and those members should, in the opinion of CE --

- (a) have good standing in the field of arts and culture in Hong Kong, the Mainland and internationally; or
- (b) have extensive knowledge of, or wide experience in or exposure to, arts and cultural activities, with regard to a specified range of knowledge and experience relating to arts and culture.

Miss CHAN's suggested range of knowledge and experience includes (a) arts/culture administration, education and planning; (b) arts/culture creation, interpretation, commentary; and (c) arts/culture sponsorship.

Term of office of the WKCDA Board - Section 1 of the Schedule

31. Section 1 of the Schedule to the Bill provides that any non-public officer members of the Board (other than the CEO) is to be appointed by CE for a term not exceeding three years. Some members consider that to avoid perpetual appointment of certain persons to the Board, the Administration should introduce a provision to the effect that these Board members may not serve as such a member continuously for more than six years. In this regard, the Bills Committee notes that such a prohibition is adopted for the Construction Industry Council as provided for in section 10 of the Construction Industry Council Ordinance (Cap. 587).

32. The Administration has explained that while individuals with different backgrounds and expertise are required to serve on the Board at different stages of the development and operation of the WKCD project, the Administration also needs to take into account the need to ensure continuity and consistency in the Board's operations. The Administration agrees that in line with the

Administration's existing administrative guidelines on appointment of non-official members to advisory and statutory bodies, a non-public officer member of the WKCDA Board should not serve on the Board in any one capacity continuously for more than 6 years. The Administration would abide by this rule as far as practicable, but does not consider it necessary to specify this arrangement in the legislation.

Appointment and removal of the CEO - clause 7 and Section 10 of the Schedule

33. Clause 7 provides that WKCDA may, with the prior approval of CE, appoint a person to be the CEO of the Authority who is to be an employee of the Authority. Section 10 of the Schedule provides that the Authority may, with the prior approval of CE, remove the CEO.

34. Some members are of the view that the appointment process should be fair and open, and have requested the Administration to revise clause 7 to this effect. The Administration has responded that it expects that WKCDA will recruit the CEO through an open recruitment exercise, which is a common practice of comparable local statutory bodies. As the recruitment of the CEO is a responsibility of WKCDA and will involve sensitive issues such as individual candidates' ability and experiences, the Administration considers it more appropriate to leave it to WKCDA to decide the actual arrangements and procedures for recruiting the CEO having regard to operational and practical considerations.

35. On the issue of whether the appointment and removal of the CEO should require the prior approval of CE, the Bills Committee notes that similar arrangements are provided for in the relevant legislative provisions for some comparable public statutory bodies. The Administration considers that the arrangement would safeguard the public interest and would not affect the independence of WKCDA. The Administration has also confirmed that the terms of appointment and the remuneration would be decided by WKCDA, and CE would not interfere with the appointment process. Some members consider that WKCDA should have the powers to decide the appointment and removal of employees of WKCDA including the CEO. Hon Abraham SHEK Lai-him has expressed the view that prior approval of CE for appointment and removal of the CEO is appropriate because this would offer a safeguard against irregularities in the operation of WKCDA.

*Amendment proposed by Hon Alan LEONG Kah-kit*

36. Hon Alan LEONG Kah-kit has indicated his intention to move a CSA to clause 7 to the effect that the appointment of the CEO shall be made according to a set of principles and procedures laid down in a new part (Part 5)

of the Schedule to the Bill. The prior approval of CE for the appointment is not required under his proposed amendments.

### Audit Committee - clause 8

#### *Composition of Audit Committee*

37. Clause 8 provides for the establishment of the Audit Committee and related matters. Clause 8(3) provides that the Audit Committee is to consist of such number of members, not being less than three, as the Board may determine. Clause 8(4) further provides that the Board is to appoint each of the members of the Audit Committee but neither the CEO nor any other employee of the Authority is to be so appointed. Clause 8(5) provides that the WKCD Board is to appoint a Board member (other than the Chairman) to be the chairman of the Audit Committee.

38. The Bills Committee has examined whether and how the composition of the Audit Committee should be subject to additional conditions to enhance its independence and effectiveness in performing the internal financial monitoring role. As regards some members' concern about the inclusion of WKCD Board members in the Audit Committee, the Administration has explained that this provision enables the Audit Committee to include Board members who are familiar with the operation of WKCD to facilitate the operation of the Committee. This arrangement is generally in line with the practices of comparable local statutory bodies such as the Airport Authority and the Urban Renewal Authority.

39. In response to the suggestion of some members that the members of the Audit Committee should not include those persons who make or execute decisions on the expenditure of WKCD, the Administration initially proposed to specify that the Audit Committee should exclude members of other committees set up under WKCD. Noting that such an arrangement is not adopted by other public statutory bodies, some members consider that as non-executive WKCD Board members do not have any private interest, concurrent membership among the committees should not give rise to problems of role conflict. Prohibiting concurrent membership may also give rise to the problem of not having sufficient Board members who are familiar with the operation of WKCD for appointment to the various committees. After deliberation, the Bills Committee considers that the Audit Committee of WKCD would play a role similar to the Audit Committee of listed companies and thus reference could be made to the relevant rules for listed companies.

40. In this regard, the Administration has advised that the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited ("listing rules") do not prevent a Board director from being appointed as a member of the Audit Committee. The relevant section in the listing rules

provides that an audit committee should comprise non-executive directors only. It also sets out that, among others, an audit committee must comprise a minimum of three members, the majority of the audit committee members must be independent non-executive directors of the listed issuer, and the audit committee must be chaired by an independent non-executive director.

41. Taking into account members' concerns and views, the Administration will move CSAs to specify that the chairman of any other committee established under the WKCD Ordinance is not eligible for appointment as a member of the Audit Committee. This is to strike a reasonable balance between the need to ensure the independence of the Audit Committee and to have enough Board members familiar with the operation of WKCD available to sit on the various committees of WKCD. The Administration also proposes that, in line with the practice of listed companies, the Audit Committee should include at least one member with appropriate professional qualifications or accounting or related financial management expertise, and will move CSAs to this effect. The proposed CSAs will also specify explicitly that members of the Audit Committee may comprise individuals who are Board members or those who are not Board members.

#### *Functions of Audit Committee*

42. Clause 8(2)(a) of the Bill provides that the functions of the Audit Committee include the consideration of such matters relating to the financial affairs of the Authority and to conduct an audit (whether generally or in respect of particular matters) as the Committee considers necessary or desirable. Clause 8(2)(b) further provides that the Audit Committee can consider any other matter, whether financial or otherwise, referred or assigned to it by the Board for consideration. Clause 8(6) provides that the Board may withdraw any matter referred or assigned to the Audit Committee and may revoke any appointment to the Audit Committee.

43. The Bills Committee has sought explanation on the need for clause 8(6) and under what circumstances the WKCD Board may exercise the powers under this clause. The Administration has explained that clause 8(6)(a) seeks to enable the Board to withdraw a matter referred to or assigned to the Audit Committee when circumstances warrant such as when no further action is required of such matter, or if the matter has been overtaken by events. It would however be practically difficult to set out all the various circumstances under which this provision would be invoked. The Administration also points out that clause 8(2)(a) will ensure that the Audit Committee, on its own, has the power to consider a matter relating to the financial affairs of the Authority and conduct an audit as it considers necessary or desirable.

44. As regards the power of WKCDA Board to revoke any appointment to the Audit Committee under clause 8(6)(b), the Administration has explained that this provision seeks to facilitate the Board to adjust the appointments of members to the Audit Committee when circumstances warrant, such as to stagger the terms of committee members. It would however be practically difficult to set out all the various circumstances under which this provision would be invoked.

*Amendments proposed by members of the Democratic Party*

45. Members of the Democratic Party have indicated their intention to move CSAs to clause 8 to require the Audit Committee to conduct a comprehensive audit on the financial matters of WKCDA in 2015 and submit a report on the review to WKCDA, and that WKCDA shall cause the report to be laid on the table of LegCo. The members have explained that as WKCDA would be provided with substantial public resources including the upfront endowment, it would be opportune for the Audit Committee to conduct a comprehensive audit in 2015 when the first phase of the development of WKCD is scheduled to complete.

Investment Committee - clauses 8A and 20(1)

46. The Bills Committee has raised concern on whether there will be a dedicated committee under the WKCDA Board to oversee the management of the investment of the upfront endowment which, subject to the Finance Committee's approval, will be given to WKCDA upon its establishment. In view of members' concern, the Administration will move CSAs to require WKCDA to set up an Investment Committee to advise WKCDA on its investment and to oversee and monitor the management of such investment.

47. Initially, the Administration proposed that apart from advising the Authority in relation to its functions under clause 20 (i.e. investment of funds available to the Authority), the Investment Committee might also consider any other matter referred or assigned to it (whether relating to investment or otherwise) by the Board for consideration. In response to members' concern that the scope is too broad, the Administration has agreed to narrow it down so that the other functions of the Investment Committee are confined to any other matter relating to investment or finance (instead of "any other matter, whether relating to investment or otherwise") that is referred or assigned to it by the Board for consideration.

48. Correspondingly, the Administration will move a CSA to amend clause 20(1) to specify that WKCDA shall have regard to the advice of the Investment Committee when investing the funds available for investment.

Remuneration Committee - clauses 8B and 10

49. Clause 10 provides for the appointment of employees of WKCD, and that the Authority may determine the terms and conditions of the employment of its employees, and make arrangements for the provision and maintenance of any schemes for the payment of pensions, gratuities etc. to its employees or former employees and their dependents. Some members have expressed the view that for the purpose of good governance, there should be mechanisms specified in the legislation for determining the remuneration packages for senior executives of WKCD and for disclosure of their remuneration packages.

50. Taking into account members' views, the Administration will move CSAs to add a new clause 8B to require WKCD to set up a Remuneration Committee to advise the Authority on the terms and conditions of employment and pension schemes, etc. and on any other matters relating to allowances, benefits and remuneration of the Authority's employees, former employees or their dependants that is referred or assigned to it by the Board for consideration. It will be specified in clause 8B that the CEO shall not be appointed as the chairman of the Remuneration Committee.

51. On the suggestion that the method for determining the remuneration packages of senior executives should be specified in the legislation, the Administration has explained that the details of the remuneration packages depend on a number of factors, including the experience of the relevant candidates, the need to offer a competitive package to attract talents, the special skills required of a particular position, etc. It would be practically difficult to set out all the relevant criteria for various senior executive posts in the legislation, as the job requirements could vary amongst positions on offer at any one time. It would also unduly restrict the flexibility of WKCD in offering market competitive packages for specific posts if the method for determining the remuneration packages is specified in the Bill.

52. As regards the disclosure of the remuneration packages of senior executives, the Administration has explained that it is an established practice for comparable statutory bodies to disclose the remuneration packages of their senior executives in the annual reports, although there is no specific provision in the relevant enabling legislation requiring such disclosure. The Administration believes WKCD will follow the practices adopted by similar statutory bodies and considers it not appropriate to specify in the legislation the manner in which and the extent to which the remuneration packages are to be disclosed.

Delegation and sub-delegation of WKCDA's functions - clause 11

53. In considering the proposed new clauses to establish the Investment Committee and the Remuneration Committee, the Bills Committee considers that the functions of the committees should include those functions delegated by WKCDA under clause 11, and in delegating any function, WKCDA should have regard to the respective functions of the committees. Having regard to members' view, the Administration will revise clauses 8A(2) and 8B(2) so that the Investment Committee and the Remuneration Committee may deal with any such matter as may be delegated to them by WKCDA. In this connection, the Administration will also propose an amendment to clause 8(2) regarding the functions of the Audit Committee to the same effect. To regulate the scope of the functions that may be delegated to the committees, the Administration will propose an amendment to clause 11 such that when delegating any of its functions to any of the three committees, WKCDA shall have regard to the committee's functions as specified in the legislation.

Public consultation - clause 17 and new clause 17A

54. Clause 17 of the Bill provides that WKCDA shall, in relation to matters concerning the development or operation of arts and cultural facilities, related facilities, ancillary facilities and any other matters as WKCDA considers fit, consult the public at such time and in such manner as it considers appropriate.

55. Some members consider that the provisions on public consultation in the Bill are too loosely constructed. In effect, WKCDA is almost entirely free to decide when and how to consult. They opine that as the primary objective of setting up WKCDA is to enable the implementation of the WKCD project through bottom-up and community-driven approaches, the Bill should provide for an institutionalized mechanism for public engagement so that the stakeholders and the general public would be engaged in an ongoing and systematic manner throughout the development and operation of the project. Hon Alan LEONG Kah-kit has proposed the establishment of a statutory consultation panel for the purposes. Recognizing that the main purpose of such a consultation panel is to facilitate ongoing and systematic public engagement, Mr LEONG has further suggested that while WKCDA should be obliged to engage the panels openly, the recommendations of the panel will not bind the Authority. Some other members have suggested that the Administration should consider drawing up "best practices" for WKCDA to follow in conducting public consultation.

56. The Administration initially responded that the development and operation of WKCD involve a wide range of matters. The stakeholders concerned would vary according to the matters requiring public consultation. It would be inappropriate and indeed difficult to prescribe in the legislation a

pre-determined public consultation mechanism that would fit all purposes and all stakeholders' requirements which WKCDA should follow in conducting any public consultation. WKCDA should be given the flexibility to conduct public consultation in a manner most suitable to the circumstances at any time. The Administration also advised that it was not aware of any other enabling legislation of comparable overseas area-based management organizations which set out a prescribed mechanism for public consultation.

57. At the later stage of the Bills Committee's deliberation, the Administration, upon further consideration, has advised that WKCDA may discharge this statutory duty through a regular public consultation mechanism. Making reference to the work of the Consultative Committee as well as its three Advisory Groups, the Administration considers that a similar consultative mechanism established under the Authority could provide a useful platform for soliciting views and building consensus among experts, stakeholders and the general public on major matters relating to the work of the Authority. The Administration, therefore, will move a CSA to introduce a new clause 17A, under which WKCDA is required to set up a consultation panel to gather public views on matters relevant to the functions of the Authority. As the panel is intended to be a consultative mechanism, the results of its deliberations will not be binding on the decisions of the Authority.

58. Under clause 17A, the members of the consultation panel will be appointed by WKCDA and the Authority shall have regard to the purpose for which the panel is established when appointing the members. The Authority shall, from time to time, issue guidelines on the functions, administration, proceedings and business and any other matters in relation to the panel, as the Authority considers appropriate. The guidelines shall be made public. The consultation panel is required to hold at least one meeting each year and its meetings are to be open to the public.

59. According to the Administration, clause 17A seeks to strike a reasonable balance between the need for a standing consultative mechanism and the need to ensure adequate flexibility for the Authority in deciding how best to consult the public.

*Amendments proposed by members of the Democratic Party*

60. Members of the Democratic Party have indicated their intention to move a CSA to clause 17 to add the wording "regularly and extensively" such that WKCDA shall be required to consult the public on the matters specified under this provision in a regular and extensive manner.



*Amendments proposed by Hon Alan LEONG Kah-kit*

61. Prior to the introduction of clause 17A by the Administration, Hon Alan LEONG Kah-kit had proposed amendments to clause 17 for the establishment of a standing consultation panel, which WKCDA would be obliged to consult regularly and openly but WKCDA would not be bound by the decisions of the panel.

62. As the Administration subsequently indicates that it will introduce clause 17A to provide for a regular public consultation mechanism as mentioned above, Mr LEONG has suggested amendments to clause 17A for the Administration's consideration, instead of pursuing his initial proposed amendments. The suggested amendments mainly seek to specify that --

- (a) the function of the consultation panel is to provide a platform for soliciting views and building consensus among experts, stakeholders and the general public on major matters relating to the work of WKCDA;
- (b) in appointing the members of the consultation panel, WKCDA shall have regard to the function of the panel, and that the appointments should be consistent with the principles of transparency and equal opportunity;
- (c) WKCDA shall consult the consultation panel on the guidelines in relation to the functions and other matters of the panel; and
- (d) WKCDA shall give reasons for not adopting any recommendations supported by a majority of the members of the consultation panel.

63. After the conclusion of the deliberation of the Bills Committee, the Administration has responded to the above suggested amendments of Mr LEONG that clause 17A has already specified the objective of the consultation panel -- that is to gather public views on matters relevant to the functions of the Authority. The Administration has agreed, however, to further provide that in appointing any member of the consultation panel, the Authority shall have regard to the purpose for which the panel is established. In order to retain adequate flexibility for the Authority in deciding on the proceedings and business of the panel, the Administration considers it not appropriate to specify the detailed arrangements regarding the operation of the panel in the Bill.

Preparation of development plan – clause 18

64. Clause 18 requires WKCDA to consult SHA and the public in preparing a development plan for consideration by the Town Planning Board (TPB). This clause also deems a development plan which TPB deems suitable for publication to be a draft plan prepared under the Town Planning Ordinance (Cap. 131) and relevant provisions of that Ordinance are to apply to the plan.

65. Members have expressed concerns on the scope of matters with respect to which SHA may impose requirements and conditions under clause 18(4), and whether the current drafting of sub-clauses 18(4) and 18(5)(a) may have the effect that SHA could impose requirements or conditions inconsistent with the future WKCDA Ordinance, and that the role and powers of SHA under these sub-clauses may be incompatible with those of other authorities such as TPB and government bodies responsible for public works.

66. The Administration has advised that the policy intention of the provisions under clause 18 regarding the consultation with SHA is for SHA to impose conditions and requirements mainly relating to public infrastructure, communal facilities and other matters on ground of protecting public interest if necessary. The Administration has also advised that it was not Government's intention to attach different weight to the consultation with the public and the consultation with SHA in the preparation of the development plan.

*Amendments proposed by Hon CHAN Yuen-han*

67. Hon CHAN Yuen-han has requested the Administration to consider amendments to clause 18(3)(a) to the effect that in relation to WKCDA's consultation with the public in preparing the development plan, the Authority is required to announce a specific consultation timetable. The consultation should be conducted in three stages: (a) to consult the public on conceptual planning, (b) to conduct public hearings, and (c) to further consult the public on various detailed planning proposals before finalizing the proposals. The subjects to be consulted should have a wide coverage, including community representatives, persons in the field of arts and culture, the academia and the professional sectors. The Administration has responded that while it appreciates Miss CHAN's concern about the need to conduct the public consultation in an extensive and systematic manner, it is difficult to prescribe in the legislation the exact manner (including the stages of consultation and the persons/sectors to be consulted) that the consultation should be conducted. The Administration however would be prepared to undertake in the speech of SHA during the resumption of the Second Reading debate on the Bill that it would request WKCDA to conduct the public consultation in an extensive and systematic manner.

Corporate plan and business plan of WKCDA - clauses 29 and 30

68. Clauses 29 and 30 require WKCDA to send to SHA, for the purpose of record, a corporate plan and a business plan of the Authority before the end of each financial year.

69. On the issue of whether such corporate plans and business plans should be made public, the Administration has responded that it would not be appropriate to mandate WKCDA to do so because those work plans would contain sensitive information and comparable public statutory bodies are not subject to such requirements. Some members consider that in line with the principle of transparency, WKCDA should make public the information contained in the two work plans as far as possible. Some other members have expressed the view that as the corporate plan is a roll-forward three-year plan and the programmes contained therein may be in a state of flux, making it public may subject the Authority to undue restrictions.

70. The Administration however agrees with the Bills Committee's view that the annual report of WKCDA should include information on how the Authority conducted or implemented the activities and projects as set out in the corporate plan and the business plan submitted in the previous financial year, and the Administration will include relevant provisions in proposed new clause 30A.

*Amendments proposed by members of the Democratic Party*

71. By making reference to section 13 of the Securities and Futures Ordinance (Cap. 571), members of the Democratic Party have indicated their intention to move a CSA to clause 30 requiring that upon receipt of the business plan from WKCDA, SHA shall cause the estimated revenue and expenditure in the annual business plan to be laid on the table of LegCo.

Reports, etc. to be laid before LegCo - clause 31 and new clause 30A

72. Clause 31 requires WKCDA to submit to the Financial Secretary annually (a) a report on the activities of the Authority, (b) a copy of the statement of accounts and (c) a copy of the Auditor's report. The Administration has proposed to add new clause 30A to provide that all these three documents shall be included in one single document - the annual report.

73. Taking into members' views, the Administration has agreed to specify in clause 30A that the annual report must --

- (a) specify the work and activities of the committees established by WKCDA for that financial year;

- (b) specify how the activities of the Authority for that financial year relate to the Authority's functions and objectives under clause 4; and
- (c) include information on how the Authority conducted or implemented the activities and projects as set out in the corporate plan and the business plan submitted in the previous financial year.

#### Meetings of the Board and committees of WKCDA

74. Section 17 of the Schedule to the Bill and clause 9(8) of the Bill provide that the WKCDA Board and any committee established under clause 9 may regulate their own proceedings and business relating to any Board or committee meeting.

75. Members of the Bills Committee in general have expressed a strong wish that WKCDA will operate with a high degree of transparency. Members have noted that section 2C of the Town Planning Ordinance (Cap. 131) provides that all meetings of the Board or any committee established under that Ordinance shall be open to the public, except for the circumstances specified under the same section. A similar provision is also available in the Construction Industry Council Ordinance (Cap. 587). On the other hand, members have noted that quite a number of deputations have expressed the view that mandating the Board and committees of WKCDA to hold meetings in public would not be conducive to the effective performance of their functions. In order to examine the issue in detail, the Bills Committee has requested the Administration to explicate its position on the issue, and to provide information on the relevant provisions of comparable local and overseas statutory bodies, including the two former Municipal Councils which had been responsible for the management of arts and cultural venues and organization of cultural programmes before dissolution.

76. The Administration has explained that unlike regulatory or consultative bodies, the Board and committees of WKCDA have the statutory duty to deliberate and make decisions on many matters concerning the development and operation of WKCD which include not only the management of arts and cultural facilities, the organization of arts, cultural and entertainment programmes, but also the management of commercial facilities such as retail, dining and entertainment facilities. It is expected that a vast majority of the meetings of the Board and committees will involve discussions of the following sensitive matters --

- (a) facility management contracts, works tenders and other contractual agreements;

- (b) selection of programme organizers, arts organizations, artists or other project agents;
- (c) ideas and concepts of major programmes, such as arts and cultural festivals;
- (d) assessment and evaluation of the performance of individual artists or arts groups and the programme of museum exhibitions;
- (e) collection strategy and budget for museums and exhibition centre;
- (f) programming strategy for different venues, outdoor performance areas, and public open space;
- (g) pricing and budget for commissioning different programmes, procurement of services, venue management etc.

77. All the above matters are commercially and market sensitive matters, the disclosure of which will make it very difficult for WKCDA to operate effectively and efficiently. As the Board and committees have to deal with these matters as part of their on-going business, most of their meetings cannot be held openly. The Administration therefore considers it inappropriate to impose a statutory requirement on WKCDA to hold its meetings in public, while allowing it to hold closed meetings under certain specified exceptional circumstances.

78. The Administration has also stressed that holding meetings in public is just one of the many means of enhancing the transparency of the work of WKCDA. The Authority may adopt various transparency measures such as uploading information on its work regularly to its dedicated website, distributing regular newsletters, organizing meet-the-media sessions to report on discussions and decisions of the Board after Board meetings, etc. The Administration has also advised that it is a common feature in the relevant legislation for local statutory bodies, except for TPB, that the respective boards are allowed to decide whether to hold open meetings. In practice, a number of these bodies do open part of their meetings to the public through administrative means. The Administration is also not aware of any comparable overseas organizations being required by statutes to hold their board meetings in public.

79. As regards the practices and procedures adopted by the two former Municipal Councils, the Bills Committee notes that for the former Urban Council/Provisional Urban Council, while it was not specified in the legislation, the meetings of the full Council and the select committees were open to the public except for matters of confidential nature and sensitive items which must be discussed in private. As for the former Regional Council/Provisional

Regional Council, it was specified in the relevant legislation that the meetings of the Council and any committee were to be held in public unless the Chairman or a chairman of such committee otherwise ordered in accordance with a decision of the Council or that committee. The Administration has advised that while most of the Council meetings of the two former Municipal Councils were open to the public, almost all discussions of important matters on the management of arts and cultural venues as well as organization of cultural programmes were conducted at meetings of different relevant committees under the Councils which were not open to the public.

*Amendments proposed by members of the Democratic Party*

80. By making reference to section 9 of Schedule 3 to the Construction Industry Council Ordinance (Cap. 587), members of the Democratic Party have indicated their intention to move CSAs to section 11 of the Schedule to the Bill requiring the Board and committees of WKCDA to hold their meetings in public except under certain specified circumstances. The exceptional circumstances include premature release of information concerning any financial matter or investment; disclosure of information in breach of any law, duty of confidentiality or other legal obligation or duty; and discussions concerning personnel matters, assessment or approval of tenders or other sensitive information.

Disclosure of interest - clause 34

81. In view of the wide ranging functions and powers of WKCDA, the Bills Committee has examined whether the requirements for disclosure of interest on the members of the Board and committees of WKCDA are adequate to safeguard public interest and to ensure public accountability of WKCDA.

82. Clause 34 provides that a Board member or a committee member shall upon his first appointment, and on such occasion as the circumstances may require after the appointment, disclose his interest to WKCDA. WKCDA may determine the class or description and the details of the interest required to be disclosed and the manner in which such interest is to be disclosed.

83. Taking into account members' views and suggestions, the Administration has agreed to amend clause 34 to require (in addition to the existing requirement of disclosing interest upon first appointment) a Board or Committee member to disclose his interest (a) at the beginning of each calendar year after the appointment; (b) on becoming aware of the existence of an interest not previously disclosed; and (c) after the occurrence of any change to an interest previously disclosed.

84. Clause 34 only requires WKCDA to make available the register of the disclosures of interest for inspection by the public at any reasonable time. In response to members' view that the register should be easily accessible by the public, the Administration has indicated that it will move a CSA to amend clause 34(5) to require WKCDA to make public the register through appropriate means. In this regard, Hon Emily LAU Wai-hing has expressed the view that the register should be available for public access on the website of WKCDA.

#### Conflict of interest - Section 15 of the Schedule

85. Section 15 of the Schedule provides that where a Board member who is in any way directly or indirectly interested in any contract or matter which is to be discussed or considered at a Board meeting, he shall disclose at the meeting the nature of his interest and withdraw from the meeting while the matter is being discussed or considered (unless he is exempted). Also, he shall not vote on any question concerning the contract or matter (unless he is exempted) or influence a decision of the Board concerning the contract or matter.

86. The Bills Committee notes that this section was drafted by drawing reference from and refining the provisions of the legislation of comparable statutory bodies. Members consider that "conflict of interest" is a very sensitive issue and has asked the Administration to consider specifying in the Bill what would constitute direct and indirect interests for the purpose of the proceedings of the Board. The Administration has advised that as in the case of the enabling legislation for other statutory bodies, the Bill should only provide a general framework and should not include the detailed classification of interests. Taking note of the advice, the Bills Committee suggests that there should be an enabling provision to empower the WKCDA Board to determine what would constitute direct and indirect interests.

87. Taking into account members' suggestion, the Administration will move a CSA to introduce a new sub-section 1A under section 15 of the Schedule to provide that the WKCDA Board may issue a guideline to set out the circumstances where a Board member is to be regarded as directly or indirectly interested in any contract or matter, for deciding whether he shall be required to disclose his interest.

#### Appeal mechanism

88. Some members have requested the Administration to consider establishing a statutory appeal mechanism in respect of WKCDA's decisions. The Administration has explained that WKCDA is not a regulatory body, but is an executive organization with a wide scope of duties. It would not be practicable to identify and specify in the legislation the specific types of

decisions of WKCDA which should be subject to appeal. The Administration has also advised that the legislation for comparable statutory bodies such as the Airport Authority and Hong Kong Arts Development Council does not contain any appeal mechanism. The Administration considers it more appropriate for WKCDA to set up a complaints handling mechanism or procedures in the light of operational experience, rather than stipulating an appeal mechanism in the legislation.

89. The Bills Committee notes that WKCDA may make bylaws under clause 33 to provide for an appeal mechanism, and that the WKCDA Board may set up a committee to handle appeals. In view of members' concern that there should be channels for appeal against the decisions of WKCDA, the Administration has indicated that SHA would make an appropriate undertaking in his speech at the resumption of the Second Reading debate on the Bill that the Administration would urge WKCDA to set up an appeal mechanism.

#### CEO not to take part in certain board meetings - Section 9 of the Schedule

90. Section 9(1) of the Schedule provides that where a matter relating to the terms and conditions of appointment or removal of the CEO is brought up for discussion or consideration in a board meeting, the CEO shall not take part in the deliberation of the Board and vote on any question concerning it, unless two-thirds of the other Board members present at the meeting decide otherwise.

91. The Bills Committee has queried the need for the exception. There is also a view that the exception may have the undesirable effect of allowing the CEO to exert influence on the decisions of other WKCDA Board members on matters relating to the terms and conditions of his appointment or removal. Having considered members' views, the Administration will move a CSA to remove the exception in the last part of section 9(1). As a consequential amendment, the Administration will also move a CSA to delete section 9(2) of the Schedule.

#### Authority may make bylaws - clause 33

92. On the coverage of the bylaws that may be made by WKCDA under clause 33, the Administration has advised that the current thinking is for WKCDA to enact bylaws to regulate the operation of certain major cultural and communal facilities in WKCDA, such as museum services and matters concerning public safety; there is no intention to regulate the operation of retail/dining/entertainment facilities or the fees and operating hours of cultural facilities through bylaws.



*Amendments proposed by members of the Democratic Party*

93. Members of the Democratic Party have indicated their intention to move a CSA to clause 33 to require WKCD to make bylaws regarding the handling and management etc. of collections and the use of public open space. The members have explained that proper regulation of the handling and management etc. of collections for museum facilities in WKCD is very important and crucial for inspiring confidence of the international and local communities in this regard. The bylaws in respect of the use of public open space should have regard to the right of all persons to use the space in a reasonable manner.

**Committee Stage amendments to be moved by the Administration**

94. Apart from the CSAs discussed in the above paragraphs, the Administration will move other amendments to the Bill for the purposes of clarity, refinement or consistency.

**Resumption of Second Reading debate on the Bill**

95. The Bills Committee supports the resumption of the Second Reading debate on the Bill.

**Consultation with the House Committee**

96. The House Committee was consulted on 13 June 2008 and supported the recommendation of the Bills Committee in paragraph 95 above.

**Bills Committee on West Kowloon Cultural District Authority Bill**

**Membership list**

<b>Chairman</b>	Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
<b>Deputy Chairman</b>	Hon CHEUNG Hok-ming, SBS, JP
<b>Members</b>	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Dr Hon LUI Ming-wah, SBS, JP Hon Margaret NG Hon James TO Kun-sun Hon CHAN Yuen-han, SBS, JP Hon Bernard CHAN, GBS, JP Hon CHAN Kam-lam, SBS, JP Hon SIN Chung-kai, SBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon Jasper TSANG Yok-sing, GBS, JP Hon Howard YOUNG, SBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon Daniel LAM Wai-keung, SBS, JP Hon Jeffrey LAM Kin-fung, SBS, JP Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Prof Hon Patrick LAU Sau-shing, SBS, JP

(Total: 27 members)

<b>Clerk</b>	Ms Anita SIT
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	29 February 2008

## Appendix II

### **Bills Committee on West Kowloon Cultural District Authority Bill**

#### **List of individuals/organizations that have made oral presentation/ written submissions to the Bills Committee**

##### *Oral presentation*

1. Asia Art Archive
2. Association of Engineering Professionals in Society Ltd. \*
3. C & G Artpartment
4. Chung Ying Theatre Company
5. Civic Act-up \*
6. Community Cultural Concern \*
7. Designing Hong Kong Ltd.
8. Dr Darwin CHEN
9. Hong Kong Arts Development Council \*
10. Hong Kong Arts Festival Society Ltd.
11. Hong Kong Ballet
12. Hong Kong Curators Association \*
13. Hong Kong Dance Company \*
14. Hong Kong Philharmonic Orchestra \*
15. Hong Kong Repertory Theatre
16. Hong Kong Society for Education in Art
17. Lan Kwai Fong Holdings Ltd.
18. Local Action \*

19. Miss FONG Kwok-shan, Christine, Sai Kung District Council Member \*
20. Mr HUNG Chiu-wah, Yau Tsim Mong District Council Member \*
21. Mr Oscar HO, Department of Cultural and Religious Studies, The Chinese University of Hong Kong
22. Mr Frank LEE
23. Museum of Site Ltd. \*
24. People's Democracy Foundation \*
25. Professional Property Services Ltd. \*
26. Prof Stephen CHAN Ching-kiu
27. Prof Stephen CHEUNG
28. Spring-Time Stage \*
29. The Chinese Artists Association of Hong Kong
30. The Civic Party
31. The Composers & Authors Society of Hong Kong Ltd.
32. The Democratic Party \*
33. The Hong Kong Academy for Performing Arts
34. The Hong Kong Institute of Architects \*
35. The Hong Kong Institute of Surveyors
36. The Ink Society Ltd. \*
37. The Lion Rock Institute
38. The People's Panel on West Kowloon \*
39. The Professional Commons \*
40. Zuni Icosahedron \*

*Written submissions*

41. Hong Kong Arts Administrators' Association
42. Mr LEUNG Siu-tong, Islands District Council Member
43. Mr Vincent W S LO
44. The Fringe Club
45. The Hong Kong Construction Association Ltd.
46. The Hong Kong Institution of Engineers
47. The Law Society of Hong Kong
48. Western Harbour Tunnel Co., Ltd.

\* Organizations/individuals that have also given written submissions