

A. Introduction

The Audit Commission ("Audit") conducted a review of the Hong Kong Arts Development Council ("HKADC"). The review focused on the following areas:

- corporate governance;
- grants and proactive projects; and
- administrative issues.

2. **Mr TSANG Tak-sing, Secretary for Home Affairs**, made an opening statement at the Committee's public hearing on 12 May 2009. The full text of his statement is in *Appendix 14*.

B. Role and functions of the Hong Kong Arts Development Council

3. The Committee notes that the HKADC is a statutory body established for the purpose of the development of the arts in Hong Kong. It is tasked with eight functions as specified in section 4 of the HKADC Ordinance (Cap. 472), and receives an annual funding of about \$100 million. The Committee was concerned about whether the HKADC had been given due respect and recognition by the Government to enable it to fully discharge its eight functions.

4. According to paragraphs 3.38 and 3.40(e) of the Director of Audit's Report ("Audit Report"), the HKADC had been providing funding to the Hong Kong International Film Festival Society ("HKIFFS") since 2004. However, the HKADC's funding and monitoring responsibility over the HKIFFS was transferred to the Television and Entertainment Licensing Authority under the Commerce and Economic Development Bureau ("CEDB") starting from 1 April 2009. To ascertain the HKADC's involvement in the decision-making process, the Committee asked:

- whether the HKADC had been consulted before the decision of transfer was made;
- about the HKADC members' views towards the transfer of responsibility; and
- whether the time and efforts previously spent by the HKADC to enhance the evaluation mechanism of the HKIFFS were wasted (paragraph 3.38(a) of the Audit Report referred).

5. **Mr MA Fung-kwok, Chairman, HKADC**, said that:

- the HKADC was not consulted but only notified by the Home Affairs Bureau ("HAB") in February 2009 of the transfer. After receipt of the HAB's notification, the Council discussed the matter and members decided to convey their views to the Government;
- generally speaking, since there was a designated agency in the Government responsible for the promotion and development of the filming industry, it was reasonable for the Government to make such a move in order to centralise and utilise the resources more effectively. In future, the HKADC would continue to promote the development of the filming industry through other channels;
- it was natural that after years of support by the HKADC, some arts groups would become mature and develop in their own way. For example, the funding responsibility of six major arts groups was transferred from the HKADC to the HAB in 2007-2008. The transfer of the HKIFFS was just another similar case; and
- members considered that as the funding body of the HKIFFS, the HKADC was duty-bound to monitor the performance of the HKIFFS. Hence, extensive discussion was held with the HKIFFS since 2008 with a view to developing an evaluation mechanism that would be acceptable to both parties. As the evaluation mechanism was close to finalisation, members were concerned as to whether the mechanism could be implemented after the transfer. In this connection, a meeting had been arranged with the CEDB through the HAB to discuss the matter, and the CEDB had undertaken to consider adopting the proposed monitoring framework.

6. **The Secretary for Home Affairs and Mrs Carrie YAU TSANG Ka-lai, Permanent Secretary for Home Affairs**, said that:

- despite the change of funding channel, the Government's overall financial commitment to the HKIFFS remained unchanged. In fact, before the funding responsibility of the HKIFFS was transferred to the HKADC, the Hong Kong International Film Festival had been organised by various government departments. The recent transfer to the CEDB was a positive move to ensure optimal utilisation of resources from a value-for-money perspective, and was conducive to the overall development of culture and the arts in Hong Kong; and

- although there might be inadequacies in the process of communicating the transfer decision to the HKADC, the Government had ensured a smooth transfer of work to the CEDB. The CEDB was also aware of the audit recommendations regarding the need to finalise an evaluation mechanism with the HKIFFS and would continue to take the matter forward.

7. At the request of the Committee, the HKADC provided relevant papers and minutes of its Council meetings relating to the discussion on the transfer of the HKIFFS to the CEDB. The Committee noted that the Chairman, HKADC, had, upon request of its members, wrote to the Secretary for Home Affairs to convey the Council's dissatisfaction about the absence of prior consultation. The HKADC members considered that the Government should have respected the role of the HKADC as the funding body of the HKIFFS, and engaged the HKADC and other relevant stakeholders in the process so that they could contribute their views.

8. The Committee pointed out that as a major statutory body responsible for the planning, promotion and support of the development of the arts in Hong Kong, the HKADC should play a key role in developing the cultural and arts software for the West Kowloon Cultural District ("WKCD") project. However, the Committee noted that the HKADC did not have institutionalised participation in the Board of the WKCD Authority. For instance, the Chairman, HKADC, was appointed to the Board only in a personal but not official capacity as the Chairman of the HKADC. The Committee asked:

- given that the HKADC's request to nominate several members to the Board of the WKCD Authority was rejected by the Government, whether the HKADC considered that the Government had not respected its views; and
- why the Government had not allowed the institutionalised participation of the HKADC in the Board of the WKCD Authority, if it had paid due regard to the HKADC's role and functions.

9. The **Chairman, HKADC**, responded that:

- after the HKADC's request to nominate several members to the Board of the WKCD Authority was rejected by the Government, members had not formally discussed the matter at a meeting. Personally, he believed that the Government had made this decision after thorough considerations. Although he was appointed to the Board in a personal capacity, he still would convey the arts sectors' feedback and the Council's views to the Board;

- he had no intention to comment on whether the Government had given due respect to the HKADC. The HKADC, as a publicly-funded statutory body, would diligently discharge its functions with its existing resources. It also had the responsibility to support the Government's cultural and arts policy;
- when the WKCD Authority was established, he had conveyed his views to the HAB regarding the need to clarify the role and functions of the WKCD Authority and the HKADC. However, sufficient time should be given to the Government to rationalise the relationship between the two bodies. Recently, the Chairman of the Development Committee of the WKCD Authority had given a briefing to the HKADC, and invited the HKADC to be a partner during the consultation process. The HKADC had also held internal discussion to examine its positioning in the WKCD project. Members expressed that they would like to be the major consultation partner playing a key role during the process. The HKADC would further review its deployment of resources and put up recommendations for the Government's consideration; and
- in a recent Board meeting of the WKCD Authority, the Secretary for Home Affairs, as a public officer member of the Board, remarked that the Chairman of the HKADC would play a leading role in the development of the cultural and arts software for the WKCD project. The HKADC members welcomed this encouraging message from the Government and would make greater efforts to actively participate in the cultural and arts software development of the WKCD project.

10. Regarding the appointment of members to the Board of the WKCD Authority, the **Secretary for Home Affairs** said that the WKCD Authority Ordinance (Cap. 601) was approved by the Legislative Council. The Ordinance had already specified that certain members of the Board should be of good standing in the field of arts and culture. The current composition of the Board met the statutory requirements.

C. Corporate governance

11. The Committed noted that the HKADC had already undergone six nomination exercises for returning representatives of arts sectors as Council members since its establishment in 1995, and the HAB was responsible for appointing a nomination agent to assist in conducting the nomination exercise. However, as revealed in paragraphs 2.9 and 2.13 of the Audit Report, there was still feedback from some arts organisations/practitioners that the process of nominating Council members was not well understood by the arts sectors, with some arts organisations/practitioners not yet registered as members of the 10 nominating bodies. The Committee asked:

- whether the same nomination agent was appointed in the last three nomination exercises; and
- about the measures that would be adopted by the HAB to facilitate the registration of members of the nominating bodies.

12. **The Secretary for Home Affairs and Ms Winnie SO Chui-ying, Principal Assistant Secretary (Culture) for Home Affairs**, said that:

- in the last three nomination exercises in 2001, 2004 and 2007, the HAB had, through tendering, appointed the same consulting firm to act as the nomination agent. The HAB had set out the scope of work and deliverables in a project brief which was issued to various consulting firms. In the 2007 exercise, only one firm responded to the tendering invitation and hence the same company was appointed; and
- the HAB had accepted the audit recommendations that it should lengthen the period for the registration of members of the nominating bodies, step up voter registration efforts and consider earmarking a larger publicity budget to widen the publicity channels so that more people from the arts community could take part in the next nomination exercise.

13. **Mr Louis YU, Chief Executive, HKADC**, supplemented that during each nomination exercise, the HKADC received different feedback from the arts sectors. For example, some persons were not sure about the nominating body to which they belonged, and some nominating bodies did not help their members register as voters. Since the arts sectors had been changing rapidly in the past few years, with more new arts groups emerging, it was important to continuously improve the nomination procedures.

14. According to paragraph 2.18 of the Audit Report, there was a downward trend in the attendance rates of members at meetings of the HKADC Council and four of its Committees during the previous Council term (2005 to 2007). The Committee asked whether the HKADC had ascertained the underlying reasons for the low attendance rates, and whether it was because members felt that despite their expertise and experience in the field, their views were not respected and recognised by the Government.

15. The **Chairman, HKADC**, responded that:

- at the first or second meeting of a new term, the Council would, after consulting members' availability, decide the meeting dates for the whole year. Meetings were usually held after normal office hours to facilitate members' attendance. However, it was noted that some members, being arts practitioners, had to work irregular hours or outside Hong Kong for a prolonged period (e.g. filming activities), and there were practical difficulties in getting all members to attend the meetings as scheduled;
- improving members' attendance rates had always been his concern. Staff of the Administration Office would remind members to attend meetings. Members were also advised to inform the Administration Office in advance if they were unable to attend any meetings. Some members, although not being able to attend meetings, would convey their views in writing or through other members to the Council or Committee; and
- apart from attending Council and Committee meetings, members also contributed to the Council's work by offering advice from time to time and participating in other working groups.

16. The **Secretary for Home Affairs** also said that:

- it was noted that the attendance rates of some individual members were low. Members were not able to attend meetings due to various reasons. Their absence from meetings was not because they had any doubt on the effective functioning of the Council. In fact, members were very committed to the work of the HKADC and had a keen interest in furthering the development of the arts in Hong Kong. The HKADC's overall performance indicated that it had effectively discharged its statutory functions; and
- in recommending re-appointment of the HKADC's members to the Chief Executive of the Hong Kong Special Administrative Region, the HAB had reported the relevant members' attendance records to the Chief Executive for reference.

17. According to the supplementary information provided by Audit in **Appendix 15**, the Committee noted that in 2008, for the Council, Arts Promotion Committee and Arts Support Committee meetings, the attendance rates of nominated members were 79%, 83% and 74% respectively, whereas those of the directly appointed members were only 69%, 63% and 53% respectively. Noting that the attendance rates of nominated members were higher than those directly appointed, the Committee enquired about the reasons for such a difference.

18. The **Chairman, HKADC**, said that according to his observation, in the first year of a term, the attendance rates of nominated members were higher as matters relating to resource allocation and project funding of the arts sector represented by them were discussed. After the first year, when the focus of the discussions shifted to the implementation details of specific projects, their attendance rates tended to decline. For directly appointed members, their attendance rates during the whole term tended to remain stable. Nevertheless, the above observation was only based on his experience as Chairman in the past four years from 2005 to 2008, and exchange of views with his predecessor. Given a longer period, there might be different observation and views.

19. It was revealed in paragraph 2.29 of the Audit Report that for two (13%) of the 16 Council meetings held in 2007 and 2008, resolutions were passed during the time when there was not a quorum. The Committee asked whether the HKADC had reviewed the resolutions passed, and the measures that would be taken to prevent recurrence of similar situation.

20. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, said that:

- during the two said Council meetings, five resolutions were passed when there was not a quorum after some members had left the meeting. The HKADC had already sought the Council's approval for the resolutions subsequently;
- according to the procedures of meetings, if there was no quorum during a meeting, the Chairman might decide to continue the discussion but no decision would be made. The proposed resolution would then be circulated to all members after the meeting for approval. From 2004 to 2008, among the 39 Council meetings held, 10 resolutions were passed through circulation of papers due to the lack of a quorum during the meetings. Hence, there was already a mechanism in place for dealing with the passage of resolutions when there was not a quorum;
- for the two meetings in question, although the secretary had recorded the time when the members left the meetings, the secretary had miscounted the number of members and hence had not reminded the Chairman of the lack of a quorum. In preparing the minutes of meetings subsequently, the secretary had not counted the number of members present again. As a result, the problem had not been identified until the Audit examination; and

- staff of the HKADC had been reminded to pay attention to the counting of the number of members during meetings, and take measures to prevent recurrence of similar problem. The secretary would also record the number of attending members in the minutes of meetings so that in case a lack of quorum was identified after a meeting, remedial actions could be taken at the next Council meeting.

21. According to paragraph 2.33 of the Audit Report, Audit examination of the declarations of interests submitted by Council members of the previous term (2005 to 2007) and by current Council members (with tenure from 2008 to 2010) showed that some members had not submitted any declarations of interests or had not submitted them for some years. Of the 24 current members, 12 had not submitted their declarations of interests for 2008. The Committee enquired about the latest position of these cases, and whether any cases of conflict of interests had been identified before.

22. The **Chief Executive, HKADC**, replied that:

- the declarations of interests of all current members had been received by February 2009. The HKADC had not followed up the declarations of interests of those former members who were not re-appointed. The HKADC adopted a two-tier reporting system for declaration of interests. Apart from submitting declaration of interests forms, members were also required to report at meetings any conflict of interest; and
- in the early years, there were indeed cases of members having received grants without declaring interests, resulting in investigations by the Independent Commission Against Corruption ("ICAC"). Since then, the declaration of interests system had been improved. A Review Committee had been set up under the Council to monitor and review conflict of interest cases. If members were involved in or related to a project application, that application would be passed to the Review Committee for further examination.

23. As reported in paragraph 2.38 of the Audit Report, Audit examination of the HKADC's three-year strategic plans revealed that there was a break in the planning period as the year 2004-2005 was not covered by any strategic plan. Further, the HKADC had not posted the second and third strategic plans on its website for reference by stakeholders and the arts community. The Committee asked:

- about the reasons for the break in the planning period;
- about the process of formulating strategic plans; and

- whether the HKADC would publicise its strategic plans in future.

24. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, said that:

- the break in 2004-2005 was due to the transition period between two Council terms, during which a Chairman was appointed to serve a short remaining period of a term. The former Chairman might consider it not necessary to carry out a three-year strategic plan during his short tenure. After he took up the Chairmanship in 2005, a three-year strategic plan was made;
- the HKADC usually held a brainstorming session six months after the commencement of a new Council term, and another session in the middle of the term. The first session aimed to obtain members' consensus regarding the specific objectives to be achieved and the task list for the coming three years. In the second session, members would review the progress, priority and effectiveness of the HKADC's work, and make necessary adjustments. Members and staff at managers and above level would attend these brainstorming sessions, and sometimes government officials or expertise in the field would be invited to exchange views with them; and
- the HKADC would arrange a retreat in June 2009 to prepare for the next three-year strategic plan. After the three-year strategic plan was made, the HKADC would consider publicising it on the website and the annual report.

25. In view of the problems in corporate governance and administration of grants/projects identified by Audit, the Committee asked whether:

- the HKADC would consider setting up an audit and compliance committee to oversee and strengthen internal control and compliance matters, in addition to the six Committees established under the Council; and
- there was any accounting professional in the HKADC's existing membership.

26. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, replied that:

- before Audit commenced its review of the HKADC, the idea of setting up an internal audit mechanism had been raised by members at a brainstorming session held in 2008. Members' reaction was positive, and the HKADC was reviewing the matter;

- after the audit review, the Management Committee had been tasked to follow up the audit recommendations. The progress made in implementing such recommendations had become a standing item since the last two meetings of the Management Committee. The HKADC had drawn lessons from this audit exercise, and would consider carrying out internal audit in its operations where appropriate; and
- there was no accounting professional in the HKADC's existing membership.

27. The Committee asked whether the Council had regularly reviewed its performance indicators/measurements with a view to fulfilling its mission, and whether the number of new arts groups and artists supported was one of the indicators. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, said that the performance of the HKADC and that of specific projects were discussed at Council meetings from time to time. In evaluating its performance, the HKADC was concerned about the feedback from the arts sectors, in addition to quantitative results such as the number of projects completed. Currently, there was no measurement on the number of new arts groups and artists supported, but the HKADC would consider adopting similar indicators.

D. Grants and proactive projects

Appointment of examiners

28. The Committee noted that the HKADC appointed examiners to assist it in application adjudication and project assessment. However, according to paragraphs 3.9 and 3.12 of the Audit Report, as at 31 December 2008 (five months after their appointment), 27 (10%) of the 274 selected examiners had not returned their appointment acceptance forms, and 24 (9%) of the 274 examiners had not submitted their curriculum vitae ("CV") forms. Of these 24 examiners, 19 were assigned application adjudication/project assessment duties. The Committee enquired:

- how the examiners were recruited, selected and appointed; and
- why the HKADC had not followed up with the examiners regarding their appointment acceptance forms and CV forms.

29. The **Chief Executive, HKADC**, and **Ms Josephine WAI, Director, Arts Support, HKADC**, replied that:

- there were two channels to recruit examiners. The HKADC would conduct open recruitment of examiners by placing advertisements in newspapers. Besides, the respective art-form groups could also nominate qualified and experienced persons to serve as examiners. All applicants had to go through a selection process. The criteria for selecting examiners included the applicants' qualifications, experience, professional standing and whether they had the time and commitment to carry out the adjudication and assessment work;
- the arrangement for appointing examiners to assist in project adjudication was approved by the HKADC Council in 1999 after detailed discussion. The HKADC had invited the ICAC to comment on its appointment procedures. As application adjudication/project assessment formed the core of the HKADC's work, the HKADC would continue to improve the system;
- examiners with relevant professional background would first be selected from the pool of over 400 examiners, and they should have no conflict of interest with the project applicants. The assignment of examiners would then be determined by drawing lots. After the examiners had completed adjudication, the recommended subvention amount would be submitted to the Arts Support Committee for endorsement; and
- for some long-serving examiners, when they were re-appointed, they told the Administration Office that they had submitted their CV forms before. After verbal confirmation was obtained from them, they were not required to submit the CV forms again.

Audit examination of grant and proactive projects

30. Regarding the assessment of grant/proactive projects, the Committee asked:

- about the criteria adopted for making assessment, and how such criteria could facilitate the HKADC in furthering the development of the arts;
- about the number and percentage of grant/proactive projects approved in 2007-2008 for which examiners were assigned to attend and observe the project activities for making assessment;
- whether there were any measures to handle the situation where the assigned examiners turned out to be unavailable for making assessment, as referred to in paragraph 3.23 of the Audit Report; and

- whether examiners with unsatisfactory performance would be removed from the pool.

31. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, said at the public hearing and in his letter of 26 May 2009 in *Appendix 16* that:

- the criteria adopted for the assessment of grant/proactive projects varied depending on the nature of the projects. In general, the criteria included the artistic merit of the project, technical standard, creativity and originality, and value of the project to the arts development in Hong Kong. These criteria would enable the HKADC to have an independent artistic review to assess the outcome and merits of these projects. When the same applicants submitted new project applications in future, the assessment reports would also be made available to the examiners for reference. This would facilitate the HKADC to further arts development through supporting applicants and projects with good track record and merits;
- the number of grant/proactive projects due to complete in 2007-2008 was 236, of which assessment had been arranged for 231 projects, equivalent to 97.9% of the total projects;
- sometimes planned assessment could not be carried out because the examiners became unavailable (e.g. due to sickness) and did not inform the Administration Office in advance to facilitate the making of alternative arrangements. In future, the HKADC might consider adopting a standby examiners arrangement, say, by requesting a staff member to act as examiner when the assigned examiner suddenly became unavailable; and
- when considering re-appointment of examiners, the Administration Office would prepare a performance report of the examiners setting out information such as whether they had provided the assessment reports on time, the number of occasions on which they failed to carry out the assignments as scheduled, etc, for reference by the selection panel. If the performance of examiners was found to be unsatisfactory, the examiners would not be re-appointed.

32. According to paragraph 3.29 of the Audit Report, 32 (47%) of the 68 grantees/project organisers could not complete their projects and/or submit their reports on time, and had to apply for extension of time for project completion and/or report submission. The approved extension of time for them ranged from 10 to 365 days, with an average of 89 days. The Committee enquired:

- about the reasons why a substantial proportion of grantees/project organisers could not submit their projects/reports on time;

- whether the HKADC would consider adopting more stringent measures in respect of those grantees/project organisers who had repeatedly failed to submit their projects/reports on time; and
- whether such delay in submission would affect the grantees/project organisers' future applications.

33. The **Chief Executive, HKADC**, and the **Director, Arts Support, HKADC**, said that:

- among those 47% of grantees/project organisers who could not complete their projects and/or submit their reports on time, about 80% of them had applied for an extension of three months in accordance with the HKADC's procedures. The HKADC had allowed the grantees/project organisers to extend the project completion date, as long as they could provide valid justifications, such as artistic creation reasons, difficulties in venue booking, or the lack of other financial support. Such flexibility was given to meet the needs of the arts sector, especially since many of the grantees were small arts groups or individual artists with limited resources. The HKADC inclined to provide support to these grantees instead of regulating or penalising them; and
- three types of reports were used to assess the performance of the grantees/project organisers. The first one was the artistic performance report, which would be included for reference by examiners when the grantees/project organisers submitted new applications. In addition, the grantees/project organisers had to submit a self-assessment report, including information such as the number of performance sessions, the number of tickets sold, and the number of audience and comments by the media. An assessment of financial performance by auditors was also required. The administrative and financial performance of the grantees/project organisers would be presented in a paper for reference by the examiners.

34. In respect of the following instances of non-compliance identified by Audit, the Committee queried why the HKADC had not followed the laid-down requirements in the Procedures Handbook:

- reminders were not issued on 24 occasions (22%), and there was a delay of two to 24 days in issuing 11 reminders (10%) (paragraph 3.28 of the Audit Report referred);

- among the 12 grantees/project organisers on the HKADC's "frozen" list, "frozen" letters were not issued for four cases, and for six cases, "frozen" letters were not issued within seven days after the expiry of project/report due dates (paragraph 3.32 of the Audit Report referred); and
- the grantees/project organisers of four "frozen" cases had not completed project reports which had been overdue for a long time, and no action had been taken in recovering the grants (paragraph 3.35 of the Audit Report referred).

35. The **Director, Arts Support, HKADC**, explained that:

- although there were some instances where the "frozen" letters were not issued or issued with a delay, these cases would not be missed out as the computer system would automatically "freeze" such overdue projects. Once the project status was frozen, the grantees/project organisers concerned could not proceed with any other new applications unless with the approval of the Accounts Department;
- the Administration Office had not issued reminders for some cases because during its communication with the grantees/project organisers, it was aware of the progress of the projects and noted that the projects could eventually be completed. For example, sometimes the promotional materials and the acknowledgement lists of the performance had already been submitted to the HKADC for checking, and the HKADC had assigned examiners to assess the performance;
- for some cases, "frozen" letters had not been issued timely as flexibility had been allowed in view of the special circumstances of individual cases. In one case, the delay involved was 131 days. The grantee, a Nepalese, had difficulties in filling in the relevant forms and preparing project proposal in writing. The Administration Office had to provide close guidance to him at each step of his application and throughout the project implementation period, and issue reminders to him from time to time. A non-standard "frozen" letter was also issued to him using languages that he could easily understand. The grantee was grateful for the assistance rendered by the staff of the HKADC; and
- regarding the four long overdue cases, for one case, the HKADC had never released the funding as it was not sure whether the new Chairperson of the arts group would accept the grant. The other three projects had eventually been completed, and the HKADC's auditors were auditing their accounts. Hence, the HKADC had decided not to take legal action against them to recover the grants.

36. The **Chairman, HKADC**, added that:

- before he took up the Chairmanship, there was a general impression from the arts sectors that the HKADC was bureaucratic and rigid in following rules and procedures. He tried to change such impression by emphasising the role of the HKADC as a responsible service provider, i.e. accountable to itself, to the arts sectors and to the public. Whilst it was necessary to maintain the relevant rules and procedures, it was also important to streamline the procedures and adopt a user-friendly attitude in providing service and support to the arts sectors. During this change process, there might be situations in which the Administration Office had to exercise flexibility or discretion when the arts groups or arts practitioners could not meet the laid-down requirements;
- since there were discrepancies between actual implementation and the stipulated requirements, the HKADC would also consider revising the guidelines or Handbook to build in flexibility for discretion or exceptional arrangements, and specify the approval authority; and
- the increase in workload in the past two years had also resulted in oversight or inadequacies in the handling of projects. In 2006-2007, there were a total of 487 applications and the HKADC approved about 190 projects. In 2007-2008, the number of applications increased to over 800, and the approved projects amounted to 354, representing an 80% increase compared to the previous year. In 2008-2009, there were over 700 applications and more than 400 projects were approved. Despite such increase, staff of the HKADC had made their best efforts to ensure compliance with the relevant requirements.

37. Referring to some of the irregularities identified by Audit, the **Secretary for Home Affairs** also mentioned in his opening statement that:

- with the transfer of the responsibility for administering funding to the major performing arts groups to the HAB on 1 April 2007, the HKADC had since focused on the cultivation and development of small-to-medium sized arts groups and local emerging artists. Some of the issues raised in the Audit Report reflected the challenges facing the HKADC as it embarked on this new course, as well as the development process of the small-to-medium sized arts groups; and

- to improve the management of these arts groups, the HKADC had begun to offer short courses on the management and governance of arts groups in February 2009. These courses, covering topics from accounting, contract management, intellectual property to corporate governance, were designed to help the small and medium sized arts groups upgrade their management and governance skills. As the small and medium sized arts groups picked up their management and governance standards, it was necessary for the HKADC to maintain a degree of flexibility in exercising its regulatory role over them to allow them room for growth and development.

38. In the above connection, the Committee asked whether the HKADC Council was regularly informed of the irregularities identified in the administration of grants and proactive projects, so that members could have a better understanding of the situation and might take actions to address the problems as necessary.

39. The **Chairman, HKADC**, said that a comprehensive list of projects was submitted for members' information at almost every Council meeting. The list included information on project commencement date, and project due date and expected completion date. Although there was no detailed information on when reminders or refund letters were issued, the Administration Office would bring up the long overdue cases to the attention of the Council and seek its direction on the action to be taken. The HKADC would consider including more useful information on the list to facilitate project monitoring.

E. Administrative issues

40. Regarding the relocation to the Quarry Bay office referred to in paragraphs 4.10 to 4.16 of the Audit Report, the Committee enquired about the justifications for moving to a larger office, and whether sufficient information had been provided to the Management Committee to facilitate its decision-making. The **Chairman, HKADC**, and the **Chief Executive, HKADC**, explained that:

- due to the booming property market in 2007, the HKADC was informed that the rent for the Sheung Wan office would increase on renewal of the lease. Since then, the Management Committee had thoroughly considered various options of relocation, including the possibility of moving to the Jockey Club Creative Arts Centre in Shek Kip Mei. The Administration Office had also carried out detailed analyses for different options;

- the decision to move to the Quarry Bay office had taken into account the fact that the office had a longer lease term of five years, and the HKADC could save the cost and disruption of having to move to another office upon expiry of a three-year tenancy agreement. The moving cost, amounting to around \$6 million, would far exceed the rental cost incurred over a five-year period for the additional office space in the Quarry Bay office. Hence, the HKADC considered the moving plan feasible; and
- it was anticipated that the HKADC had to play a more important role to assist in the development of the cultural and arts software of the WKCD project. Hence, sufficient office space was required to cope with future expansion. The surplus space would also provide a venue for arts groups to hold meetings, workshops or exhibitions and to forge closer ties. Although no supporting data for future expansion was provided in the office accommodation proposal, the HKADC considered its decision reasonable having regard to the above considerations.

F. Conclusions and recommendations

41. The Committee:

Role and functions of the Hong Kong Arts Development Council ("HKADC")

- expresses concern that the HKADC, as a statutory body established for the purpose of the development of the arts in Hong Kong with an annual funding of about \$100 million, might not have been given due respect and recognition by the Government to enable it to fully discharge its eight functions as specified in section 4 of the HKADC Ordinance (Cap. 472), as reflected by the following:

Hong Kong International Film Festival Society ("HKIFFS")

- (a) the HKADC's funding and monitoring responsibility over the HKIFFS was transferred to the Television and Entertainment Licensing Authority under the Commerce and Economic Development Bureau ("CEDB") starting from 1 April 2009. Although the HKADC had been providing funding to the HKIFFS since 2004, it was not consulted but only notified by the Home Affairs Bureau ("HAB") in February 2009 of the transfer. As a result, the Chairman, HKADC, wrote to the Secretary for Home Affairs to convey the Council's dissatisfaction about the absence of prior consultation as it considered that the HKADC, as the funding body of the HKIFFS, should be engaged in the process so that it could contribute its views;

- (b) the HKADC held extensive discussion with the HKIFFS in 2008 regarding a proposed evaluation mechanism for assessing the performance of the HKIFFS. However, the time and efforts spent by the HKADC to enhance the evaluation mechanism might be wasted due to the transfer of the funding and monitoring responsibility of the HKIFFS to the CEDB; and

West Kowloon Cultural District ("WKCD") project

- (c) the HKADC, as a major statutory body responsible for the planning, promotion and support of the development of the arts in Hong Kong, should play a key role in developing the cultural and arts software for the WKCD project. However, the HKADC does not have institutionalised participation in the Board of the WKCD Authority. For instance, the Chairman, HKADC, was appointed to the Board only in a personal but not official capacity as the Chairman of the HKADC. The HKADC's request that it should have the right to nominate several members to the Board was also rejected by the Government;
- urges the Government to:
 - (a) accord to the HKADC the recognition it deserves as the statutory body tasked with the role to develop the arts in Hong Kong as stipulated in section 4 of the HKADC Ordinance, such as by allowing institutionalised participation of the HKADC in the HKIFFS and the WKCD project; and
 - (b) rationalise the relationship between the WKCD Authority and the HKADC, so as to ensure the optimal utilisation of the HKADC's annual funding in the planning, promotion and support of the development of the arts in Hong Kong;

Corporate governance

- expresses concern that:
 - (a) despite the fact that the HKADC has already undergone six nomination exercises since its establishment in 1995 and that the same nomination agent was appointed by the HAB to assist in conducting the last three nomination exercises, in the 2007 nomination exercise, there was still feedback from some arts organisations/practitioners that the process of nominating the HKADC members was not well understood by the arts sectors, with some arts organisations/practitioners not yet registered as members of the 10 nominating bodies;

- (b) there was a downward trend in the attendance rates of members at meetings of the HKADC Council and four of its Committees during the previous Council term (2005 to 2007);
 - (c) according to the observation of the Chairman, HKADC, in the first year of a term, the overall attendance rates of nominated members at Council and Committee meetings were higher as matters relating to resource allocation and project funding of the arts sector represented by them were discussed. After the first year, the attendance rates tended to decline when the focus of the discussions shifted to the implementation details of specific projects;
 - (d) for two of the Council meetings held in 2007 and 2008, resolutions were passed in the absence of a quorum; and
 - (e) for the Council term 2005 to 2007, three of the 24 members had not submitted any declarations of interests throughout their tenure and 10 had not submitted their declarations for one or two years. For the term 2008 to 2010, 12 of the 24 members had not submitted their declarations for 2008;
- considers that as the members' expertise and commitment are essential to the effective functioning of the Council and its Committees, they should make greater efforts to attend the meetings, although it understands that some members, being arts practitioners who have to work irregular hours or who are outside Hong Kong frequently, may face practical difficulties in attending all Council and Committee meetings;
 - acknowledges that:
 - (a) the Secretary for Home Affairs has agreed to implement the audit recommendations in paragraphs 2.14 and 2.25 of the Director of Audit's Report ("Audit Report"); and
 - (b) the Chief Executive, HKADC, has agreed to implement the audit recommendations in paragraphs 2.24, 2.30, 2.34, 2.39 and 2.45 of the Audit Report;
 - urges:
 - (a) the Secretary for Home Affairs to:
 - (i) lengthen the registration period to facilitate the registration of members of the nominating bodies; and

- (ii) expeditiously implement the audit recommendations in paragraphs 2.14 and 2.25 of the Audit Report; and
- (b) the Chief Executive, HKADC, to:
 - (i) ascertain the reasons for the declining attendance rates at the Council and some Committee meetings during the previous Council term and take measures to encourage members' active participation in meetings throughout the term of their membership;
 - (ii) consider setting up an audit and compliance committee, with a professional accountant as a member, to oversee and strengthen internal control and compliance matters;
 - (iii) promote an understanding of important corporate governance principles among Council members, especially new members (e.g. through briefings at induction programmes); and
 - (iv) expeditiously implement the above audit recommendations;

Grants and proactive projects

- expresses serious concern that there are inadequacies in the appointment of examiners for application adjudication/project assessment:
 - (a) in 2008, for the four art-forms selected for review by the Audit Commission, the HKADC assigned application adjudication/project assessment duties to 11 examiners who had not returned their appointment acceptance forms, and to 19 examiners who had not submitted their curriculum vitae ("CV") forms to declare their interests; and
 - (b) during July 2005 to June 2008, the HKADC had not required its examiners to submit their updated CV forms on an annual basis to keep the register of examiners' interests up-to-date;
- expresses concern that on the administration and assessment of grants/projects:
 - (a) the HKADC has not ensured that cultural exchange projects were processed in time. As a result, the HKADC entered into agreements with two grantees after completion of the respective cultural exchange project, rendering some grant conditions (such as project monitoring) not applicable;

- (b) planned assessments for six projects were not carried out as the assigned examiners turned out to be unavailable; and
 - (c) 47% of the sampled grantees/project organisers could not complete their projects and/or submit their reports on time and had to apply for extension;
- acknowledges that the Chief Executive, HKADC, has agreed to implement the audit recommendations in paragraphs 3.15 and 3.39 of the Audit Report;
 - urges the Chief Executive, HKADC, to:
 - (a) implement measures to ensure that all examiners return their appointment acceptance forms and CV forms before they take up the appointment;
 - (b) make appropriate arrangements to ensure that project assessments can still be carried out as planned when examiners cannot undertake assigned duties (e.g. to introduce arrangements for standby examiners);
 - (c) regularly report to the Council on any irregularities identified in the administration of grants and proactive projects, so that appropriate measures can be taken to address such problems; and
 - (d) consider adopting more stringent measures in respect of grantees/project organisers who have repeatedly failed to complete projects/reports on time (e.g. to debar them from making further grant/proactive project applications for a longer period), and publicising such measures to discourage delay in submission;

Administrative issues

- accepts the HKADC's explanation that before deciding on the relocation to the Quarry Bay office, the Management Committee had thoroughly considered various options. The decision had taken into account the fact that the Quarry Bay office had a longer lease term of five years, and the HKADC could save the cost and disruption of having to move to another office upon expiry of a three-year tenancy agreement. The surplus space would also allow for future expansion and provide a venue for arts groups to hold meetings, workshops or exhibitions and to forge closer ties. Nevertheless, the Committee is concerned that:
 - (a) in the Management Committee paper of September 2007 concerning the relocation of the HKADC office, there was no supporting data to justify the request for additional space in the accommodation proposal; and

- (b) in the Management Committee's discussion of using some of the surplus space in the Quarry Bay office to provide new support services to arts groups, financial data was not provided for the Management Committee's consideration;
- expresses concern that there was room for improvement in placing surplus fund as time deposits to earn interest income;
- acknowledges that the Chief Executive, HKADC, has agreed to implement the audit recommendations in paragraphs 4.17, 4.25, 4.31 and 4.37 of the Audit Report; and

Follow-up actions

- wishes to be kept informed of:
 - (a) any progress made in allowing the institutionalised participation of the HKADC in the HKIFFS and the WKCD project;
 - (b) any progress made in rationalising the relationship between the WKCD Authority and the HKADC;
 - (c) the decision made in lengthening the registration period to facilitate the registration of members of the nominating bodies;
 - (d) the reasons for the declining attendance rates during the previous Council term and the measures taken to encourage members' active participation in meetings throughout the term of their membership;
 - (e) the decision made regarding the setting up of an audit and compliance committee;
 - (f) the measures taken to promote an understanding of important corporate governance principles among Council members, especially new members;
 - (g) the measures taken to ensure that all examiners return their appointment acceptance forms and CV forms before they take up the appointment;
 - (h) the arrangements made to ensure that project assessments can still be carried out as planned when examiners are unavailable to undertake assigned duties;

- (i) the decision made regarding the adoption of more stringent measures in respect of grantees/project organisers who have repeatedly failed to complete projects/reports on time; and
- (j) the progress made in implementing other audit recommendations.