

**For discussion
on 8 May 2009**

LC Paper No. CB(2)1464/08-09(01)

Legislative Council Panel on Home Affairs

Governance of Major Performing Arts Groups

Purpose

This paper sets out the funding support for the major performing arts groups, the existing mechanism to ensure their proper administration and governance as well as measures to safeguard their artistic autonomy.

Funding Policy for the Major Performing Arts Groups

2. The objective of our cultural policy is to create an environment conducive to the freedom of artistic expression and creation, and the wider participation in cultural activities.

3. To support this policy objective, the Government provides funding to the local performing arts groups through the Home Affairs Bureau (HAB), the Leisure and Cultural Services Department (LCSD) and the Hong Kong Arts Development Council (HKADC) to enable our local performing arts groups to develop and at the same time, to enable the public to have access to quality performing arts programmes of these groups at affordable prices for the purpose of enriching the cultural life of the community at large. At present, the HAB provides regular funding to the “Big nine” major performing arts groups (namely, Hong Kong Philharmonic Orchestra (HKPO), Hong Kong Chinese Orchestra (HKCO), Hong Kong Repertory Theatre (HKRT), Hong Kong Dance Company (HKDC), Hong Kong Sinfonietta (HKS), Hong Kong Ballet (HKB), City Contemporary Dance Company (CCDC), Chung Ying

Theatre Company (CYTC) and Zuni Icosahedron (Zuni)) while the LCSD and the HKADC provide presentation, sponsorship, ticketing, publicity and direct funding support to the small and medium-sized groups. These combined efforts will enable the local performing arts groups who are at different stages of development to grow in a stable environment to achieve excellence in their respective arts forms.

4. Following up on the recommendation of the 2006 Recommendation Report (I) of the Committee on Performing Arts (CPA)¹ issued in June 2006 to put the major professional performing arts groups on the same platform for consideration of funding support, the funding responsibility for the then ten major groups, namely the Big Nine and Theatre Ensemble (TE)², was transferred from the LCSD and the HKADC to the HAB as from 1 April 2007.

5. Since the HAB took over the funding responsibility for the major performing arts groups, all the groups have been receiving a consolidated grant³ from the Government. The determination of the

¹ The Committee on Performing Arts is a committee set up in November 2004 to follow up on the recommendations of the Culture and Heritage Commission, advising the Secretary for Home Affairs on performing arts services.

² Theatre Ensemble was one of the major performing arts groups on government subvention before it left the government subvention system voluntarily to take on new development direction under the name of PIP Cultural Industries Ltd on 1 April 2008.

³ Prior to 1 April 2007, the LCSD was responsible for providing support to the HKPS, HKCO, HKRT and HKDC in the form of consolidated grants comprising the groups' programming fees, administration costs, venue hiring costs etc. On the other hand, the HKADC was responsible for providing three-year grants to the other six groups, namely, HKS, HKB, CYTC, CCDC, Zuni and TE. The HKADC three-year grants were not consolidated grants as the HKADC only supported the groups' administration costs while programming fees would come from the LCSD. As from 1 April 2007, all the then majors started receiving consolidated grants from the HAB.

size of the consolidated grant is based on the groups' submissions on their staff costs (artistic and otherwise), administration costs, programme production as well as venue rental, ticketing, publicity and related costs, funding availability from the Government as well as the performance outturn of the groups in the preceding year.

6. The total funding support for the Big Nine⁴ has increased from \$219 million in 2007-08 to \$259 million in 2008-09 and to \$263 million in 2009-10 (for details, please refer to *Annex A*). The amounts of subvention for the groups as a proportion of their total incomes range from 55% to 87% in 2009-10. The total expenditures of the groups can be broadly classified under the four categories of production costs, personal emoluments, general overheads and other expenses. Details of the use of funds by the groups from 2007-08 to 2009-10 are set out at *Annex B*.

7. The Government's existing system of providing recurrent subvention for the selected "Big nine" major performing arts groups through the HAB is an arrangement that has been inherited from the past. A new set of common assessment criteria and new funding arrangements will be developed after the completion of a funding research study to be launched in 2009.

Governance of the Major Performing Arts Groups

8. To ensure proper administration of the groups and that public money is used properly and cost-effectively, and at the same time without micro-managing the groups on a day-to-day basis, the HAB has entered into a Funding and Services Agreement (FSA) with each of the Big Nine. The FSAs have been drawn up in line with the prevailing government subvention guidelines on support for subvented organisations which

⁴ For comparing like with like, the figure quoted for 2007-08 has the funding for TE in 2007-08 deducted although TE was still on government funding in that year.

require the setting of objectives, the review of budget requirements and the entry into tailor-made instruments with the subvented organisations.

9. In the FSAs, the nature of service to be provided by the groups and the obligations expected to be carried out by the groups are defined. Among other things, the groups are required to provide artistic leadership in their respective art form in the local community, establish community support and develop public interest in their respective art form, establish regional and international reputation for their own group and implement their own committed level of activities. They are also required to submit to the Government at the end of the year of subvention their year-end self-evaluation and assessment report, their audited annual financial statement, annual financial report and their annual report.

10. In carrying out their committed level of activities and discharging all their duties and obligations under the FSAs, the groups are required to use all experience, skill, care and diligence and attention as may be expected from a person who is an expert in providing activities similar to their committed level of activities. To ensure that the groups will deliver their committed level of activities, they also have to comply with the requests and/or directives of the Government relating to their committed level of activities if given.

11. The FSAs have also set out a number of other corporate governance requirements. Under the FSAs, the groups commit -

- (a) not to alter the terms of its Memorandum and Articles of Association without first obtaining the written consent of the Government;
- (b) to procure that no member of its governing body shall serve for a term in excess of six consecutive years;
- (c) to hold meetings of its governing body not less than three

times a year during the subvention period;

- (d) to comply with all applicable employment and equal opportunities and data protection laws and regulations in the performance of the FSA;
- (e) to account to the Government its employment and remuneration of its senior executives, and observe the principle of fairness and transparency in recruiting staff in the performance of the FSA;
- (f) to notify the Government in writing if its establishment is significantly different from the level provided for in the agreed establishment, or if there are any proposed changes or renewal of employment in its highest level of artistic or management staff, to seek the Government's prior approval in writing where approval will not be unreasonably withheld;
- (g) if for the subvention period, the subvention amounts to \$10 million or more and the subvention accounts for 50% of the group's operating income, to review the number, ranking and remuneration of its staff and to submit regular reports to the Government on the review findings (for the purpose of assessment and effective monitoring on the appropriateness of the remuneration packages for the top three tier positions of the group that have comparable civil service ranks);
- (h) to procure its employees, agents and sub-contractors who are engaged to carry out the activities to adopt and observe the "Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organisations" (Code of Conduct at *Annex C*) (as may be amended or supplemented

by the Government from time to time) and adopt the pro-forma “Declaration of Conflict of Interest” (at *Annex D*);

- (i) to follow the Code of Conduct to set out its policy documents on restricting its staff to take part in outside work and to supply the Government with such policy documents whenever revised;
- (j) in case of any suspected breach of the Code of Conduct, to forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities;
- (k) to ensure that all procurement of goods and services pursuant to the provisions of the FSA shall be conducted on a fair, unbiased and competitive bidding basis. The group shall review its existing procurement procedures making reference to the sample procurement policy and guidelines provided by the Government (at *Annex E*), and amend its existing procedures to ensure compliance with the sample policy and guidelines if required by the Government;
- (l) to ensure that its governing body, officers and staff shall keep themselves informed of the financial and accounting procedures relating to procurement of goods and services regularly and whenever such procedures are amended; and
- (m) to explain and procure its employees and agents to explain to the Government, the Director of Audit and/or their respective authorised representatives any matters relating to the receipt, expenditure and/or custody in respect of the subvention upon request.

12. In addition, upon the Government's request, the groups shall also allow the Commissioner of the Independent Commission Against Corruption or its authorised representatives to examine its management and control procedures for corruption prevention advice, which the groups shall heed and take remedial actions as appropriate.

13. As part of the Government's monitoring efforts, the HAB, in consultation with the FCPA, has conducted internal assessment on the groups' compliance with the requirements stipulated in the past FSA when considering the groups' funding application for the next year.

14. The Government also has the power to appoint up to one-third of the members of the respective governing board of the Hong Kong Chinese Orchestra, Hong Kong Repertory Theatre and Hong Kong Dance Company, as provided under their respective Memorandum and Articles of Association (M&AA). In the case of the Hong Kong Philharmonic Society, the Government has the power to appoint up to six out of their board total of 20 members. For the other groups whose M&AAs do not provide for such a power of appointment for the Government, it is provided in the FSAs that the groups are to give due consideration to the inclusion in their governing bodies an appropriate number of professionals of various disciplines to give advice and business support to the groups.

15. As performance on corporate governance will be made one of the funding assessment criteria in the future funding determinations for the major performing arts groups as recommended in the CPA's Recommendation Report (I), the funding research study will also develop a set of indicators on good corporate governance to give clearer guidance on the requirements to the boards of the major performing arts groups.

Artistic Autonomy

16. In line with our policy to support freedom of artistic expression and creation, the Government is committed to safeguarding the autonomy of our local arts groups. We will not interfere with either the executive decisions or the artistic directions of the groups, but will count on the governing boards of the groups to, on the artistic front, lead the groups to artistic excellence in the respective art forms, and on the management front, to ensure proper management of the groups through the setting of proper internal procedures and guidelines and due diligence in compliance with these procedures and guidelines.

17. Apart from ensuring that an appropriate system of cost control and overall monitoring is in place to oversee the performance of the groups, the Government has all along been entrusting the boards of the groups with the autonomy and the responsibility to propose their own budgets, the types, forms and levels of their own activities in pursuance of the defined objectives set out in the FSAs and to manage their own groups.

18. In the long run, we will continue our commitment to upholding the artistic autonomy of our local performing arts groups. The Government does not have a preconceived view on what the artistic directions of our arts groups should be, but encourages the groups to thrive and prosper under the framework of artistic autonomy and vie for funding by performing to their best against this assessment criterion.

19. Within this framework of autonomy, we expect the boards of the major performing arts groups to continue to adhere to principles of transparency and accountability in the management of the groups which is a legitimate expectation on organisations supported to a considerable extent with money from public coffers. We also expect the major performing arts groups to dedicate more efforts to arts education and audience building in the community and in the schools in

line with public expectation on arts groups of their stature.

Way Forward

20. The funding study to be commissioned shortly will further examine and refine our existing funding, governance and administration framework for the major performing arts groups in the light of international best practice. We will continue to work closely with the arts sector, members of this Council and interested members of the public in the process.

Home Affairs Bureau

April 2009

Subvention to the Major Performing Arts Groups for 2007-08, 2008-09 and 2009-10

	Subvention for 2007-08 (\$)	Subvention for 2008-09 (\$)	Subvention for 2009-10 (\$)
Hong Kong Philharmonic Society (HKPS)	56,538,000	61,575,480	62,075,830
Hong Kong Chinese Orchestra (HKCO)	48,178,000	53,079,809	53,143,963
Hong Kong Sinfonietta (HKS)	13,507,000	19,879,883	20,663,088
Hong Kong Repertory Theatre (HKRT)	26,640,000	29,714,190	29,947,000
Chung Ying Theatre Company (CYTC)	5,059,000	9,358,318	9,291,080
Zuni Icosahedron (Zuni)	4,844,000	8,996,506	10,450,558
Hong Kong Dance Company (HKDC)	27,270,000	30,664,012	31,415,452
Hong Kong Ballet (HKB)	24,918,000	31,490,175	32,192,050
City Contemporary Dance Company (CCDC)	12,110,000	14,194,000	14,194,000
Theatre Ensemble (TE)	4,600,000	Nil	Nil
Total	223,664,000	258,952,373	263,373,021

Income and Expenditure of the Ten Major Performing Arts Groups in 2007-08 (Actual)#

Annex B

Item	HK Philharmonic Society	HK Chinese Orchestra	HK Sinfonietta	HK Repertory Theatre	Chung Ying Theatre Company	Zuni Icosahedron	HK Dance Company	HK Ballet	City Contemporary Dance Company	Theatre Ensemble
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
(I) Income										
(A) Government Subvention	56,538,000	48,178,000	13,507,000	26,640,000	5,059,000	4,844,000	27,270,000	24,918,000	12,110,000	4,600,000
<i>% over total income</i>	<i>52.4%</i>	<i>84.4%</i>	<i>51.8%</i>	<i>70.2%</i>	<i>47.8%</i>	<i>50.2%</i>	<i>75.3%</i>	<i>56.4%</i>	<i>47.7%</i>	<i>11.1%</i>
(B) Income other than Government Subvention	51,315,281	8,914,781	12,544,869	11,328,000	5,535,218	4,804,003	8,928,295	19,300,424	13,256,768	36,724,920
Total (A) + (B)	107,853,281	57,092,781	26,051,869	37,968,000	10,594,218	9,648,003	36,198,295	44,218,424	25,366,768	41,324,920
(II) Expenditure										
(A) Production Cost	39,679,307	8,978,789	10,237,298	14,591,000	3,477,150	6,041,280	15,643,135	12,242,901	8,894,509	27,520,781
Sub-total of (A)	39,679,307	8,978,789	10,237,298	14,591,000	3,477,150	6,041,280	15,643,135	12,242,901	8,894,509	27,520,781
(B) Administration & Other Expenses										
Personal Emoluments	59,015,510	39,637,964	14,644,602	16,613,000	4,481,507	2,594,136	16,663,372	19,612,125	10,733,669	9,912,796
General Overheads	6,873,411	4,381,321	861,015	6,510,000	851,612	1,152,130	5,716,170	5,081,882	2,127,165	6,360,200
Other Expenses	2,299,178	4,864,871	189,982		1,300,084	127,227			570,219	
Sub-total of (B)	68,188,099	48,884,156	15,695,599	23,123,000	6,633,203	3,873,493	22,379,542	24,694,007	13,431,053	16,272,996
Total of (A) + (B)	107,867,406	57,862,945	25,932,897	37,714,000	10,110,353	9,914,773	38,022,677	36,936,908	22,325,562	43,793,777

Note

Figures provided in this table are extracted from the arts groups' (except for Theatre Ensemble) funding application forms when they submitted their 2009-10 funding applications to HAB in January 2009. Figures related to Theatre Ensemble, which left the Government subvention system in April 2008, are extracted from the "Statement of Income and Expenditure for the year ended 31 March 2008" in the group's 2007-08 Annual Report. While the categorization of expenditure appears to be the same, the ambit of each category may differ from groups to groups.

Income and Expenditure of the Nine Major Performing Arts Groups in 2008-09 (Outturn Forecast)#

Item	HK Philharmonic Society	HK Chinese Orchestra	HK Sinfonietta	HK Repertory Theatre	Chung Ying Theatre Company	Zuni Icosahedron	HK Dance Company	HK Ballet	City Contemporary Dance Company
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
(I) Income									
(A) Government Subvention	61,575,480	53,079,809	19,879,883	29,714,190	9,358,318	8,996,506	30,664,012	31,490,175	14,194,000
<i>% over total income</i>	<i>56.2%</i>	<i>84.4%</i>	<i>60.2%</i>	<i>77.6%</i>	<i>57.5%</i>	<i>63.5%</i>	<i>83.7%</i>	<i>73.2%</i>	<i>55.6%</i>
(B) Income other than Government Subvention	47,947,688	9,800,974	13,165,889	8,587,000	6,920,754	5,170,000	5,957,135	11,548,008	11,345,797
Total (A) + (B)	109,523,168	62,880,783	33,045,772	38,301,190	16,279,072	14,166,506	36,621,147	43,038,183	25,539,797
(II) Expenditure									
(A) Production Cost	38,278,446	9,434,289	11,060,000	15,768,000	7,405,627	7,100,000	13,896,265	22,679,791	11,278,854
Sub-total of (A)	38,278,446	9,434,289	11,060,000	15,768,000	7,405,627	7,100,000	13,896,265	22,679,791	11,278,854
(B) Administration & Other Expenses									
Personal Emoluments	61,464,428	41,823,470	16,772,748	17,189,000	5,586,555	5,900,000	17,320,000	21,445,118	11,173,030
General Overheads	6,962,535	4,809,898	1,170,000	5,607,000	1,395,000	1,207,000	5,608,615	5,649,355	2,833,913
Other Expenses	2,626,798	5,822,026	910,000		1,298,090	160,000			254,000
Sub-total of (B)	71,053,761	52,455,394	18,852,748	22,796,000	8,279,645	7,267,000	22,928,615	27,094,473	14,260,943
Total of (A) + (B)	109,332,207	61,889,683	29,912,748	38,564,000	15,685,272	14,367,000	36,824,880	49,774,264	25,539,797

Note

Figures provided in this table are extracted from the arts groups' funding application forms when they submitted their 2009-10 funding applications to HAB in January 2009. While the categorization of expenditure appears to be the same, the ambit of each category may differ from groups to groups.

Income and Expenditure of the Nine Major Performing Arts Groups in 2009-10 (Estimates)#

Item	HK Philharmonic Society	HK Chinese Orchestra	HK Sinfonietta	HK Repertory Theatre	Chung Ying Theatre Company	Zuni Icosahedron	HK Dance Company	HK Ballet	City Contemporary Dance Company
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
(I) Income									
(A) Government Subvention <i>% over total income</i>	62,075,830 58.4%	53,143,963 80.8%	20,663,088 57.0%	29,947,000 74.0%	9,291,080 55.3%	10,450,558 63.3%	31,415,452 87.0%	32,192,050 66.0%	14,194,000 56.5%
(B) Income other than Government Subvention	44,266,848	12,589,189	15,600,000	10,512,000	7,511,464	6,060,000	4,710,000	16,620,690	10,931,826
Total (A) + (B)	106,342,678	65,733,152	36,263,088	40,459,000	16,802,544	16,510,558	36,125,452	48,812,740	25,125,826
(II) Expenditure									
(A) Production Cost	34,621,925	10,603,844	13,342,488	16,626,000	8,422,193	8,610,000	13,389,452	20,949,728	9,914,705
Sub-total of (A)	34,621,925	10,603,844	13,342,488	16,626,000	8,422,193	8,610,000	13,389,452	20,949,728	9,914,705
(B) Administration & Other Expenses									
Personal Emoluments	61,621,765	45,193,566	21,510,600	18,777,000	6,367,224	6,429,000	17,600,000	23,205,852	12,364,682
General Overheads	7,882,867	4,858,800	1,760,000	5,600,000	1,410,000	1,348,000	5,136,000	5,439,883	2,643,383
Other Expenses	2,079,930	5,126,585	850,000		1,537,899	250,000			203,056
Sub-total of (B)	71,584,562	55,178,951	24,120,600	24,377,000	9,315,123	8,027,000	22,736,000	28,645,735	15,211,121
Total of (A) + (B)	106,206,487	65,782,795	37,463,088	41,003,000	17,737,316	16,637,000	36,125,452	49,595,463	25,125,826

Note

Figures provided in this table are extracted from the arts groups' funding application forms when they submitted their 2009-10 funding applications to HAB in January 2009. While the categorization of expenditure appears to be the same, the ambit of each category may differ from groups to groups.

Code of Conduct for Members of the Governing Board and Staff of (Name of the Performing Arts Organizations)

Introduction

Name of the Performing Arts Organization (“the Company”) is fully committed to the principle of honesty, integrity and fair play in all its businesses and activities. All officials¹ and staff should ensure that the businesses of the Company, such as procurement of production and office equipment, hiring of staff and services, and allocation of resources are dealt with in an open, fair and impartial manner. They should bear in mind that the Company is accountable to its sponsors, including the government and any private sponsors, and all its members, in the conduct of its business and activities.

2. This Code of Conduct sets out the basic standard of conduct expected of all officials and staff and the Company’s policy on such matters as acceptance of advantages and declaration of conflict of interest. This Code also applies to temporary or part-time staff employed by the Company.

Prevention of Bribery Ordinance

3. Under Section 9 of the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong), an employee who solicits or accepts an advantage in relation to his employer’s business or affairs without the latter’s permission may commit an offence. The term “advantage” is defined in the Ordinance and includes almost anything of value, except entertainment, such as money, gift, commission, loan, fee, reward, office, employment, contract, service or favour (*Appendix 1*).

Acceptance of Advantages

4. It is the policy of this Company to prohibit all staff from soliciting any advantage from any persons having business dealings with the Company (e.g. suppliers, contractors, members, performers, audience). Officials and staff who wish to accept any advantage from such persons should seek special permission from the Governing Board/ Company Management prior to the acceptance.

¹ Officials include Office-bearers, Board/ Council Members, Executive Members, and any Members of the Company acting on behalf of the Company.

5. Any gifts offered voluntarily to the officials or staff in their official capacity are regarded as gifts to the Company and they should **not** be accepted without permission. Officials and staff should decline the offer if the acceptance could affect their objectivity in conducting the Company's business, or induce them to act against the interest of the Company, or lead to perception or complaints of bias or impropriety.

6. For gifts which are presented to officials or staff in their official capacity and of nominal value (*below \$XXX*), the refusal of which could be seen as unsociable or impolite (e.g. a plaque presented to an official or a staff member during a seminar in which he is invited to be the guest speaker), the Governing Board/Company Management has given a ***blanket permission*** for the officials and staff to accept these gifts. In other circumstances, the officials and staff should apply in writing to the Governing Board/Company Management for permission to accept the gifts. Each application should be carefully considered by the Governing Board/Company Management. Proper records of these applications should be kept showing the name of the applicant, the occasion of the offer, the nature and estimated value of the gift, and whether permission has been granted for the applicant to retain the gift or other directions have been given to dispose of the gift. Possible ways of disposal of such gifts are listed at ***Appendix 2***.

7. There is however no restriction on the acceptance of advantages, in the official's or staff's private capacity, from any person who does not have any official dealings with the Company. In case of doubt, the officials and staff should refer the matter to the Governing Board/Company Management for advice and instruction before accepting such offer of advantages.

Conflict of Interest

8. A conflict of interest situation arises when the "private interests" of the official and staff compete or conflict with the interests of the Company. "Private interests" means both the financial and personal interests of the official and staff or those of their connections including:

- family and other relations;
- personal friends;
- other companies or business interests which they hold or own (both in part or in whole);
- other associations and societies to which they belong; and

- any person to whom they owe a favour or are obligated in any way.

9. Officials and staff should avoid using their official position or any information made available to them in the course of their duties for the Company to benefit themselves, their relations or any other persons with whom they have personal or social ties, or business connections. They should avoid putting themselves in a position that may lead to an actual or perceived conflict of interest with the Company. Failure to avoid or declare any conflict of interest may give rise to criticism of favouritism, abuse of authority or even allegations of corruption, which are to the corporate disgrace of the Company. In particular, officials and staff involved in the procurement process should declare conflict of interest if they are closely related to, or have or will likely be perceived to have, beneficial interest in any company which is considering submission of quotation/tender to the Company or is being considered for selection as the Company's supplier of goods or services. *Appendix 3* provides some examples of conflict of interest situations which may be encountered and should be avoided by officials and staff.

10. When called upon to deal with matters of the Company for which there is an actual or perceived conflict of interest, the officials and staff should make a declaration by completing a form of "Declaration of Conflict of Interest" to his supervisor or the Governing Board/Company Management. He should then abstain from dealing with the matter in question, and follow the instruction of his supervisor or the Governing Board/Company Management who may (or may not) reassign the task to other officials or staff.

Entertainment

11. As defined in Section 2 of the Prevention of Bribery Ordinance, "entertainment" refers to food or drink provided for immediate consumption on the occasion, and any other entertainment provided at the same time. Although entertainment is an acceptable form of business and social behaviour and is not an "advantage", officials and staff must not accept lavish or frequent entertainment from persons with whom the Company has official dealings (e.g. suppliers or contractors, persons to which the Company may allocate resources or job assignments), so that they will not be placed in a position of obligation to the offerer.

Misuse of Official Position

12. Officials and staff who misuse their official position for personal gains or to favour their relatives or friends or to benefit their business connections are liable

to disciplinary action by the Company or even prosecution by the appropriate authorities. Examples of misuse include an official or a staff member responsible for the selection of suppliers giving undue favour or leaking tender information to his own or his relative's company with a view to awarding the contract to the latter, or placing it in an advantageous position ahead of other competitive bidders. Other examples include reserving tickets for popular events for relatives and friends without prior permission and without going through the proper ticket allocation procedures by the Company, admitting an artist with whom the official or staff member has personal relationship to the Company without going through proper audition procedures and unfair allocation of resources to other parties for personal gain.

Handling of Classified or Proprietary Information

13. Officials and staff are not allowed to disclose any classified or proprietary information to anybody without prior authorisation by the Company. Officials and staff who have access to or are in control of such information should at all times provide adequate safeguards to prevent its abuse or misuse. Examples of misuse include disclosure of information in return for monetary rewards, or use of information for personal interest or business benefit. It should also be noted that unauthorised disclosure of any personal data may result in a breach of the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).

Property and Other Resources of the Company

14. Officials and staff given access to any property or other resources of or acquired by the Company should ensure that it is properly used solely for the purpose of conducting the Company's business. Misappropriation or unauthorised use of such property or resources, such as for personal use or personal gain (e.g. resale or unauthorised leasing of the Company's property) is strictly prohibited.

Sponsorship

15. The Company is accountable to its sponsors for the use of their sponsorship. Officials and staff should ensure that any sponsorship or sponsored item is used solely for the purpose for which it is provided. Consent from the sponsor should be obtained if it is to be used for a purpose that deviates from the stated purpose for which it is obtained. Officials and staff should also ensure adequate transparency on the use of sponsorship to the sponsors, and ensure that the Company can account for the use of their sponsorship.

Gambling

16. Officials and staff must not engage in frequent or excessive gambling with persons who have business dealings with the Company as well as among colleagues, particularly with subordinates. If on social occasions where refusal of gambling (provided that the activity is legal) is considered unsociable, the amount of money involved should not be significant. Gambling in the Company's premises, government venues, and locations where activities of the Company take place is strictly forbidden.

Outside Employment

17. Staff who wish to take up paid outside work, including those on a part-time basis, must seek the written approval of the Company before accepting the job. Applications for outside work should be made to the Governing Board/Company Management for consideration. Approval will not be given if the outside work is in conflict with the interest of the Company.

Compliance with the Code

18. It is the personal responsibility of every official and staff to understand and comply with the Code of Conduct, in particular by conscientiously avoiding any conflict of interest, and making declaration and seeking prior permission from the Company in accordance with this Code in any case of exception.

19. The Company Management will ensure that officials and staff understand and comply with the standards and requirements stated in the Code. Any problems encountered as well as any suggestions should be channeled to the Governing Board for consideration and advice.

20. Any official and staff who violates any provision of the Code will be subject to disciplinary action, or termination of appointment/employment where warranted. In cases of suspected corruption or other criminal offences, a report will be made to the ICAC or the appropriate authorities.

“Advantage” means –

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty;
and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e).

**Ways to dispose of gifts presented to
an Official or a Staff Member in his official capacity**

- If the gift is of perishable nature (e.g. food or drink), it may be shared among the office or during an activity organised by the Company.
- If the gift is of historical or other interest, it may be sent to a library or museum.
- If the gift is suitable for display (e.g. a painting, vase, etc), it may be retained for display in the recipient's office or elsewhere noticeable in the Company's premises.
- If the gift is of low value (*below \$XXX*), it may be donated to the Company's social function as a lucky draw prize.
- If the gift is a personal item of low value (*below \$XXX*), it may be retained by the recipient after approval by the Company.

Examples of Conflict of Interest Situations

- An official or a staff member takes part in the selection of suppliers or contractors, and one of the bidders under consideration is his relative or close personal friend.
- An official or a staff member has a financial interest in a company which is being considered for selection as the Company's supplier of goods or services, or is an existing supplier.
- An official or a staff member acquires dealership of goods or services on insider knowledge that such goods or services are being considered for procurement by the Company.
- An official or a staff member has beneficial interests in a supplier whose goods or services are being selected through an intermediary (e.g. a publicity agent) appointed by the Company.
- An official or a staff member accepts frequent or lavish entertainment or expensive gifts from the Company's suppliers or contractors.
- An official or a staff member hires a relative as performer or staff member, or is considering the promotion of such a person.
- An official or a staff member nominates a relative as office-bearer.
- An official vetting applications for programme sponsorship submitted by a corporate of which he is also a corporate member.
- An official or a staff member responsible for selling tickets of a popular performing arts programme reserves tickets for his relatives or personal friends without permission.

(Name of Company)
Declaration of Conflict of Interest

Part A – Declaration *(To be completed by Declaring Staff)*

To : (Approving Authority)

I report the following existing/potential* conflict of interest situation arising during the discharge of my official duties :-

Persons/companies with whom/which I have official dealings and/or personal interests
Brief description of my duties which involved the persons/companies mentioned above

(Name of Declaring Staff)

(Office/Post)

(Date)

 -

Part B – Acknowledgement *(To be completed by Approving Authority)*

To : (Declaring Staff)

Acknowledgement of Declaration

The information contained in your declaration form of (Date) is noted. It has been decided that :-

- You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- You may continue to handle the work as described in Part A, provided that there is no change in the information declared above.
- Others (please specify) : _____

(Name of Approving Authority)

(Office/Post)

(Date)

* *Delete where inapplicable*

**Procurement Policies and Guidelines for
(Name of Performing Arts Organizations)**

Procurement Policies and Principles

1. The following principles should be adhered to in the procurement of materials and services :

(a) Fair Competition

Name of performing arts organization (“The Company”) should treat all bidders with fairness and ensure that they are given the same level of information when preparing quotations or tenders.

(b) Conflict of Interest

Situations of conflict of interest with the business of the Company should be declared to the Company in accordance with the code of conduct of the Company.

(c) Cost-effectiveness

Quotations and tenders should be evaluated not only on competitiveness in pricing but also factors such as the quality of the products/services and track records of the bidders.

(d) Transparency

To ensure transparency, tender documents should provide all the necessary information to facilitate submission of appropriate and competitive tenders.

(e) Public Accountability

The Company shall be held accountable to the Government and the public for any procurement involving the use of public fund.

Types of Procurement

2. The following types of procedures should be adopted according to the amounts and nature of the procurement of goods or services:

(a) Open Tendering (applicable to procurements of value exceeding \$_____)

Notice of tender invitations should be advertised in the press for free response by all interested suppliers or contractors.

(b) Restricted or Single Tendering (applicable to all types of procurement)

This type of tendering is applicable to procurements of goods or services that can only be provided by a limited number of suppliers or suppliers who are sole agents or patented distributors. Therefore, only one or several suppliers or contractors will be invited to submit written tenders. Sufficient justification should be made for prior approval by the authorized person before proceeding the tendering exercise. The above information should be clearly recorded in the tender evaluation report for examination by the approving officer (please refer to Paragraph 16 below).

(c) General Procurement (applicable to procurements of value below \$_____)

(i) Written Quotation

After obtaining approval from the authorized person (please refer to Paragraph 16 below), written quotations should be sought from five (5) suppliers, including the successful tenderer in the last procurement exercise (whose goods or services meeting the requirements). If a list of suppliers is used, quotations should be sought from the suppliers on the list by rotation. The lowest quotation meeting the requirements should be accepted.

(ii) Verbal Quotation

To enhance administrative efficiency, verbal quotations from not less than two (2) suppliers or contractors may be used for procurement of miscellaneous item or service that costing \$_____ or below. The responsible officer must make a record of the verbal quotations for review and verification.

(iii) Exemption

All procurements must follow and comply with the above procedures. Only in acceptable circumstances should exemption from the above procedures be granted with special approval from the authorized person holding a higher office (please refer to Paragraph 16 below).

Tendering Procedures

3. The following summarizes the stringent tendering procedures to be followed :

Tender documents / quotations

4. Procurement officers should prepare the tender documents/quotation pro-forma and provide all the required information in the documents to facilitate bidding from tenderers. The information should include tender specifications and requirements, conditions of contract, required quantity of items and service and timing of provision, assessment criteria, tender closing date and time, the place for depositing the tender, the contact person, and the officer to whom enquiries may be made. To avoid allegations of favouritism, the Company should build in the principle of specifying the functional requirements only. Where it is considered necessary to specify a particular feature such as brand or technology and such practice may result in limited bids or even single bid, justifications should be documented and proper approval should be sought from appropriate authority.

5. As far as possible, the officer responsible for seeking quotations from the suppliers/contractors should not be the approving officer for the acceptance of the quotations in the same procurement exercise.

Submission of Tenders / Quotations and Opening of Tenders

6. Unless in exceptional circumstance of urgency and approved by appropriate authority, tenderers should be allowed sufficient time to submit their tenders. Tenderers must submit their tenders before the tender closing date and time specified in the tender documents. Any tenders received after the tender closing time shall not be considered.

7. Tenders/quotations should be deposited in the tender box by tenderers in person. For confidentiality, the tender box should be properly locked with two individual padlocks, and the respective keys should be separately kept by two authorized persons. To ensure fairness of the procedures, the tenders/quotations should be taken out of the tender box immediately after the tender closing time. All tenders/quotations received after the tender closing time will not be processed. At least two (2) officers shall open the tenders/quotations simultaneously and shall each initial beside the each quotation figures as confirmation.

Tender/ Quotation Evaluation

8. In general, tender evaluation should be carried out by an assessment panel consisting of at least two (2) members. Evaluation of quotations of small amounts may be carried out by one staff member.

9. A 'two-envelope system' should be used for procurement involving the technical

aspects and service quality. Tenderers should be required to submit price information and technical information in separate envelopes. Appropriate weights should also be given to the two areas. It is normal practice for the assessment panel firstly to evaluate and award an assessment score on technical aspects of the proposals before opening the price envelope to evaluate the price information.

10. The assessment panel should conduct a preliminary evaluation of the tenders based on the required information and documents stipulated in the tender documents. This will ascertain full compliance with the stipulated conditions and requirements.

11. The assessment panel should select the most competitive and cost-effective tender among the eligible tenders by evaluation according to the pre-set assessment criteria. For contracts involving higher construction costs or requiring higher standards in technology and service areas, a scoring system should be adopted for giving scores in terms of tender price, tenderer's reputation, track records and management quality, as well as the professional and technical standard of staff for implementation of the project/service.

12. The assessment panel shall prepare a tender evaluation report to state clearly its recommendations and the justifications. Where a scoring system has not been adopted and the successful tenderer is not the lowest bidder, full and sufficient justifications must be stated in the evaluation report.

Acceptance of Tender

13. The assessment panel should submit the evaluation report to officers of different ranks for approval (Please refer to Paragraph 16 below) in accordance with the guideline. After endorsement and approval of the selection result, the successful tenderer should be officially notified by post and be invited to enter into a contract with the Company. For protection of commercial secrets, it should be ensured that disclosure of the details shall not lead to revelation of any tender information provided in confidence by other tenderers.

14. Should none of the tenders received can fulfill the required specifications and conditions, the tendering exercise should be canceled. The original specifications and conditions should be amended as necessary for purpose of re-tendering.

Procedure of Handling Complaints

15. The Company should be committed to maintaining a fair and open procurement system. Tenderers who consider themselves being treated unfairly can lodge a complaint

with the Company.

Approval and Authorization

16. Approval or authorization should be sought from the following person(s) before inviting suppliers to submit quotations and/or selecting suppliers for seeking quotations :

Value of the Materials or Services to be Procured	Procurement authorized by	Tender approved by