

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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**Bills Committee on
Hong Kong Arts Development Council (Amendment) Bill 1999**

**Minutes of meeting
held on Tuesday, 26 October 1999 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Timothy FOK Tsun-ting, SBS, JP (Chairman)
Hon Cyd HO Sau-lan
Prof Hon NG Ching-fai
Hon MA Fung-kwok
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon CHOY SO-yuk
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP

Member Absent : Hon Christine LOH Kung-wai

Public Officers Attending : Mr David LAN, JP
Secretary for Home Affairs

Mr Peter CHEUNG
Deputy Secretary for Home Affairs

Mr William SHIU
Principal Assistant Secretary for Home Affairs (Task Force)

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Mr NGAI Wing-chit
Principal Assistant Secretary for Home Affairs (Culture)

Ms Phyllis POON
Government Counsel
Department of Justice

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Election of Chairman

Mr Timothy FOK Tsun-ting was elected Chairman of the Bills Committee.

Request for late membership

2. The Clerk informed members that a request had been made by Hon CHAN Yuen-han to the Bills Committee for late membership on the grounds of failing to receive LC Paper No. CB(2) 52/99-00 which invited Members to join the Bills Committee. Members agreed to the request.

II. Meeting with the Administration

3. At the Chairman's invitation, Secretary for Home Affairs (SHA) briefed members on the background and purposes of the Bill. He highlighted that the Bill sought to expand the membership of the Hong Kong Arts Development Council (ADC) from 22 to a maximum of 27 by adding the Director of Leisure and Cultural Services or his representative, one representative nominated by the organizations of Chinese opera (Xiqu) and five other members. He pointed out that the proposed expansion of the membership of ADC was aimed at bringing in more expert advice and community input and to address the problem of sectoral interests. The proposal was one of the recommendations in the report of the Consultancy Study on Culture, the Arts, Recreation and Sports Services published in March 1999.

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4. SHA pointed out that the current appointments on the Council would expire on 31 December 1999. He explained that the Administration intended to pursue passage of the Bill in parallel to the Provision of Municipal Services (Reorganization) Bill, which was currently under examination by a Bills Committee. He pointed out that early passage of this Bill would make it possible for new members to be appointed before 1 January 2000, when the new institutional framework for the provision of arts was to come into effect.

5. SHA further briefed members on the new measures introduced for the next ADC nomination exercise to be held in November 1999. He said that there were a total of 6 400 eligible voters and each of them would be allowed to elect not only the representative of his own arts interest group, but also those of the other specified interest groups. He explained that this system would broaden the electorate base and enhance the representativeness of those nominated to serve on the Council.

6. Mr Andrew CHENG Kar-foo referred to paragraph 2(a) of the Legislative Council (LegCo) Brief and asked whether the Bill would introduce any changes to the funds allocation mechanism of ADC. He also asked whether the Administration intended to pursue passage of this Bill, as well as the Hong Kong Sports Development Board (Amendment) Bill 1999, without regard to the fact that the scrutiny of the Provision of Municipal Services (Reorganization) Bill might not be completed before the end of 1999. In response, Deputy Secretary for Home Affairs (DSHA) said that as the funds allocation mechanism of ADC was not provided for in the Hong Kong Arts Development Council Ordinance (Cap. 472), the scope of the Bill did not include reviewing the said mechanism. He further said that under the proposed new structure, the funds allocation mechanism would remain unchanged to a large extent. The new changes would only be that the future Culture and Heritage Commission would advise on broad funding allocations to those well established culture and arts organizations, such as the Hong Kong Philharmonic Orchestra. Funding applications from smaller art groups and for project-based grants would continue to be examined and approved by ADC, which would consider the applications based on the relative artistic merits of the projects. He emphasized that the Bill had not made any proposal to undermine ADC's power over funding allocation for arts and cultural activities.

7. DSHA further said that the Bill could be considered independently, since no provision therein was contingent upon the dissolution of the two Provisional Municipal Councils. As regards the inclusion of the post of the Director of Leisure and Cultural Services in the proposed new structure, he explained that when the Bill was introduced into LegCo in July 1999, the Administration did not anticipate that the scrutiny of the Provision of Municipal Services (Reorganization) Bill would take such a long time. He admitted that from this angle there was a technical link between this Bill and the Provision of Municipal Services (Reorganization) Bill. However, he pointed out that the problem could be easily solved as the Administration could introduce an amendment to replace the Director of Leisure and Cultural Services by a

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public officer appointed by the Chief Executive.

8. Mr Andrew CHENG Kar-foo opined that the views of the sector should be sought regarding the proposed changes to the funds allocation mechanism. He was of the view that as there was no urgency to pass the Bill and effect the proposed changes, the Bill could be deferred until a decision had been made on the Provision of Municipal Services (Reorganization) Bill confirming the future administrative framework for culture and arts services. In response, SHA agreed that there was no great urgency to pass this Bill. However, he did not see any technical problems preventing the Bills Committee from proceeding with the scrutiny of this Bill. He reiterated that if necessary, the Administration could introduce an amendment to the Bill to replace the Director of Leisure and Cultural Services by a public officer appointed by the Chief Executive.

9. Dr TANG Siu-tong also queried the timing of this Bill and asked the Administration why it did not wait until passage of the Provision of Municipal Services (Reorganization) Bill before introducing this Bill. DSHA explained that the Administration had introduced the Bill into the Council in July 1999 mainly because the current appointments on the Council would expire on 31 December 1999 and the new term of ADC would start on 1 January 2000.

10. Miss CHOY So-yuk queried why it was proposed to increase the number of other members of ADC "from 16 to a maximum of 22" but not "from 16 to 22". She was worried that the proposed wording would allow the Administration to appoint far fewer than 22 other members. In addition, she considered that the Administration should have specified in the Bill the background of the people who would be appointed to ADC.

11. DSHA replied that the proposed wording as mentioned by Miss CHOY was common in law drafting and it had the merit of allowing the Administration some flexibility in the appointments. Moreover, the Administration would not need to appoint members immediately to fill vacancies when they arose. DSHA further said that it was rare for the Administration to specify in law the membership source of an independent statutory body like ADC. However, he pointed out that in this context the Administration's intention was clear as it had already stated in the LegCo Brief that it wanted to bring in more experts from the relevant fields and community input to ADC.

12. Miss CHOY So-yuk counter-proposed that the number of members of ADC should be "increased from the existing 16 to not fewer than 20 but not more than 22". She also considered that the Administration should specify in the Bill the number of ADC members appointed from the Legislative Council and District Councils to ensure continued community representation in the formulation of cultural policies. In response to Miss CHOY's first proposal, DSHA reaffirmed that it was the Administration's clear intention to increase the number of other members to 22. As to Miss CHOY's second proposal, DSHA reiterated that the Administration generally

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did not specify the membership source in law in the appointments in order to allow flexibility.

13. Miss CHOY So-yuk enquired about the future arrangements for the allocation of funds for arts services as there would be some scope for re-distribution of resources in the wake of the proposed dissolution of the provisional municipal councils. DSHA replied that the Administration had discussed the matter with ADC, which had indicated that it would like to concentrate on handling discretionary grants. He said the Administration's thinking was that ADC in the future should be the main source of funding for those performing groups which were not so well established.

14. Miss CHOY So-yuk pointed out that all along ADC had been criticized that its decisions on funding allocations were often influenced by sectoral interests. She considered that the Administration should demonstrate that the proposed new structure would be an improvement over the present one in that it would enhance public accountability and allow public participation in policy formulation. In response, Principal Assistant Secretary for Home Affairs (Task Force) (PASHA(TF)) explained that the Administration had already taken the following steps to address the problem of sectoral interests within ADC -

- (a) To enhance representativeness of nominees, the electorate base had been broadened by including teachers of arts subjects of secondary schools;
- (b) The eligibility criteria of voters had been reviewed with more stringent requirements imposed; and
- (c) An eligible voter in the next election could elect not only the representative of his own arts interest group, but also those of the other specified interest groups.

15. Mr MA Fung-kwok asked whether the Administration planned to appoint members of District Boards (to be renamed District Councils) to fill the seats vacated by the chairmen of the two provisional municipal councils, assuming that the Provision of Municipal Services (Reorganization) Bill would be passed. DSHA replied that the Administration did not intend to specify in law which organizations would be represented on ADC as this was not the normal practice. However, he assured members that as a general rule the Administration would, in making appointments, ensure a balanced and fair representation of various parties. However, Miss CHOY So-yuk disagreed and considered that since the Ordinance (Cap. 472) stipulated that the chairmen of the provisional municipal councils were ex officio members of ADC, the Bill could also specify the appointment of two representatives from the Legislative Council and District Councils to ADC. DSHA explained that there was historical background giving rise to the appointment of the chairmen of the two municipal councils as ex officio members of ADC. However, Miss CHOY So-yuk took the view that if the two provisional municipal councils ceased to exist, there

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would be a need to appoint representatives from the Legislative Council and District Councils to ADC so that they could help channel public opinions to ADC and monitor its operation.

16. Miss Cyd HO Sau-lan asked what other financial assistance would be provided to arts groups with limited means, especially some avant-garde creative groups, in case their applications for funding were turned down by ADC. DSHA replied that the Administration was conscious of the need to preserve the pluralistic character of Hong Kong's cultural scene and had therefore introduced new measures such as the Examiner System for assessing project grants. Under the system, the merits of each application were considered based on laid down assessment criteria and the problems of prejudice and biases were thus minimized. DSHA added that ADC had been active in consulting the public regarding its policies and in taking steps to resolve problems found with its mechanisms. He further made the point that the full autonomy of ADC as an independent statutory body should be respected.

17. Miss Cyd HO Sau-lan commented that the funds allocation processes of ADC should be made more transparent and requested the Administration to provide the following information -

- (a) whether the meetings conducted by the committees of ADC for discussion of funding applications were open to the public. If not, when they would be made so;
- (b) how many times the committee members responsible for vetting the funding applications were involved with the applicant organizations or they themselves were the applicants; and
- (d) the membership lists of the relevant committees responsible for vetting funding applications.

DSHA undertook to seek the requested information from ADC.

(Post-meeting note : supplementary information was subsequently provided by ADC and issued to members on 10 December 1999 under LC Paper No. CB(2) 586/99-00 (01).)

18. Addressing Miss HO's concerns, PASHA(TF) invited members to note that ADC was subject to the Prevention of Bribery Ordinance (Cap.201) and reviews by the Audit Department. On the advice of the Independent Commission Against Corruption (ICAC) last year, ADC had drawn up guidelines on the avoidance of conflicts of interest and provided them to its members. He also noted that ADC was reviewing its operations from time to time to seek improvements.

19. PASHA(TF) referred to a press statement issued by ADC in March 1999 in

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response to criticisms of its sectoral interests. He pointed out that although closed-door meetings were held by ADC for discussing funding applications, the outcome of the discussion and reasons for rejection of any applications were made public. Moreover, applicants could appeal against decisions on their grant applications. Also, the newly established Examiner System was recognized by ICAC as an improvement to the grant system in enhancing its transparency. Miss Cyd HO Sau-lan requested the Administration to provide information on the past appeal cases and the outcome. She pointed out that since members of ADC and its boards or committees were generally involved in a wide range of arts activities, there was need to enhance public scrutiny of the vetting processes and for the conduct of open meetings to discuss funding applications. She suggested that this point should be further discussed by the Bills Committee when more information was provided by ADC.

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20. Mr Ambrose CHEUNG Wing-sum considered that the scrutiny of this Bill provided an opportunity for members to discuss and review Hong Kong's cultural policy. He felt that the scope of the Bill was very limited and failed to address the concerns raised by members of the former Subcommittee on Long-term Cultural Policy of the Panel on Home Affairs. He considered that the Bill should not be passed hastily without addressing the following issues -

- (a) the roles and delineation of responsibilities of the Hong Kong Academy for Performing Arts, ADC, Hong Kong Arts Centre, the proposed Culture and Heritage Commission and the new Department of Culture and Leisure Services in the development of policies on culture and the arts and the future funds allocation arrangements;
- (b) the optimal allocation of cultural facilities amongst these five institutions; and
- (c) the future system to assess the popularity and cost-effectiveness of all public entertainment programmes.

21. He considered that the views of the sector should be sought on the above issues, as well as on the suggestion that ADC should be mainly responsible for discretionary grants. He was worried that this change would enable the Administration to take control of the resources for the development of culture and the arts. He further pointed out that as LegCo would assume a greater monitoring role in the provision of the arts and cultural services after the proposed reorganization, LegCo should now examine the proposed institutional framework very carefully to ensure that it would really enhance public accountability. In response, DSHA reaffirmed that the Administration had no intention to control the operation of ADC which would continue to enjoy full autonomy in its work. He said that in fact the allocation of public resources for the development of culture and the arts would continue to be subject to the monitoring by LegCo and the Panel on Home Affairs. Moreover, he

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invited members to note that ADC had put in place well established mechanisms in many respects.

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22. Miss Cyd HO Sau-lan was of the view that the new institutional framework should allow input from the recipient groups who only attended performances funded by ADC. Therefore, it should establish links with organizations like Friends of Hong Kong Cultural Centre, Friends of the City Hall and so on. DSHA replied that the expanded membership of ADC would enable it to accommodate people from various strata of the society and that the new structure would put emphasis on community participation.

23. Miss CHOY So-yuk also considered that the review of district reorganization had provided a good opportunity for members to consider the issues referred to by Mr Ambrose CHEUNG Wing-sum. She requested the Administration to explain in detail how ADC would handle the additional resources for culture and the arts in the wake of dissolution of the provisional municipal councils and how the proposed new structure would enhance public accountability of ADC. Dr TANG Siu-tong commented that community participation in the provision of arts and cultural services was best ensured by retention of the two provisional municipal councils and he appealed to members not to support the Provision of Municipal Services (Reorganization) Bill.

24. Miss CHAN Yuen-han suggested to invite representatives from the sector to express their views on the cultural policy. For example, they should be consulted as to whether or not additional art groups should be represented on ADC. The Chairman sought members' views regarding Miss CHAN's suggestion.

25. Mr MA Fung-kwok considered that the Bills Committee should focus on the discussion of the structure of ADC and not the cultural policy which involved wide-ranging issues. Moreover, he recalled that such issues had already been largely covered by the Subcommittee on Long-term Cultural Policy. Mr MA said that he did not object to inviting deputations but he believed that they had already presented their views at the meetings held by the Subcommittee. DSHA agreed with Mr MA and pointed out that the shortcomings in the operation of ADC could be further improved under the new structure as proposed by the Bill. In fact, ADC had been active in making improvements and it had commissioned a consultancy study earlier to review its operation and to collect the views of the public on its operation. As regards the suggestion of inviting deputations to make representation at a future meeting of the Bills Committee, DSHA said he had no objection.

26. Mr Ambrose CHEUNG Wing-sum pointed out that the Administration apparently had not taken into consideration the suggestions made by members previously regarding ADC and the long-term cultural policy. He considered if the Bill was passed without discussing the issues he had raised, members were not fulfilling their role as LegCo Members in monitoring public policies. DSHA emphasized that the Administration had been active in consulting the sector regarding the development of the cultural policy for Hong Kong as seen from the public consultation exercise conducted earlier. Moreover, the sector was also invited to

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make representation at the meetings held by the Panel on Home Affairs.

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27. Miss CHOY So-yuk supported to invite representatives from the sector to comment on the following aspects -

- (a) whether it was acceptable for the Bill not to specify the membership source for the category of "other members" to be appointed;
- (b) whether there was/were any art group(s) left out from representation on ADC; and
- (c) whether the proposed new structure would enable ADC to replace the two provisional municipal councils in the promotion of art and cultural programmes.

28. Mr Andrew CHENG Kar-foo remained of the view that consideration of Bill should be deferred until a decision had been made on the Provision of Municipal Services (Reorganization) Bill. Moreover, as compared with the other Bills on the waiting list pending activation of bills committees, he considered that this Bill had no urgency as ADC could still function in its present form. He therefore suggested to hold this Bill in abeyance to release a time-slot for other bills. He also agreed with Mr Ambrose CHEUNG Wing-sum that it was necessary to discuss the policy issues involved before passage of the Bill.

29. DSHA pointed out that the Administration had sought the views of the sector on the proposals of the Bill and no objection was raised. He said that the Administration did not want to hold the Bill in abeyance as the proposed changes would facilitate the operation of ADC and should be implemented early. He added that they were in fact a follow-up to the recommendations of the Report of the Consultancy Study on Culture, the Arts, Recreation and Sports Services.

30. Mr Gary CHENG Kai-nam said he had no strong view as to whether or not consideration of the Bill should be held in abeyance. He opined that as the ambit of Bill was limited to the expansion of membership of ADC, it would be outside the purview of this Bills Committee to discuss and formulate a long-term policy on culture and the arts. As regards Miss CHAN Yuen-han's suggestion of inviting deputations, Mr CHENG pointed out that representatives from the sector had already made representations at previous meetings of the Panel on Home Affairs and their views on the cultural policy had also been thoroughly discussed by the Panel. If the Bills Committee decided to invite deputations, he suggested that they should be requested only to comment on whether or not the changes proposed by the Bill were adequate to ensure fair representation of the parties concerned on ADC.

31. Miss CHOY So-yuk said that she also had no strong view on Mr Andrew CHENG Kai-foo's proposal. She considered that the limited scope of the Bill reflected that the Administration had failed to take into consideration the views expressed earlier by LegCo Members and the sector.

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32. Miss Cyd HO Sau-lan expressed support for Mr Andrew CHENG Kar-foo's proposal. She pointed out that the previous discussions on the cultural policy were not focused on particular aspects such as the membership source/composition of ADC, its funds allocation mechanism and whether or not other art groups should be represented on ADC. Therefore, she disagreed that the deputations, if invited, would only be asked to comment on the proposed institutional framework. Mr MA Fung-kwok also supported Mr CHENG as he considered that it would be a waste of time to proceed with the discussion of this Bill while there were many uncertain factors pertaining to the future administrative structure for the provision of cultural and art services.

33. PASHA(TF) pointed out that the new nomination system was introduced with the support of the sector. As for the art groups represented on ADC and the proposed addition of a representative from Xiqu to ADC, PASHA(TF) said that these art groups were selected after consultation was held with the sector. However, Miss Cyd HO Sau-lan pointed out that the consultation did not involve LegCo and it was only held by the Administration.

34. DSHA said that he did not object to inviting deputations to exchange views with the Bills Committee. However, he considered that it was unnecessary to hold consideration of the Bill in abeyance as the Provision of Municipal Services (Reorganization) Bill was at its final stage of examination. However, Mr Ambrose CHEUNG Wing-sum, who was a member of the Bills Committee on the Provision of Municipal Services (Reorganization) Bill, disagreed and pointed out there were still many outstanding issues of the Bill to be discussed. Mr CHEUNG further considered that members should identify an appropriate forum, such as the Panel on Home Affairs, to follow up on the policy issues raised by members if they could not be discussed by this Bills Committee.

35. Mr Andrew CHENG Kar-foo's proposal of holding consideration of the Bill in abeyance until a decision was made on the Provision of Municipal Services (Reorganization) Bill was seconded by Miss Cyd HO Sau-lan. The Chairman put it to vote. A majority of members voted for Mr CHENG's proposal. The Chairman requested the Clerk to inform the House Committee of the decision. Members further agreed that there was no need to decide whether or not the Bills Committee should invite deputations to make representation until the Bills Committee was re-activated and meetings resumed.

36. The meeting ended at 10:40 am.