

香港藝術發展局的信頭
Letterhead of HONG KONG ARTS DEVELOPMENT COUNCIL

December 6, 1999

Mr William Shiu
Secretary for Home Affairs
Home Affairs Bureau
41/F Revenue Tower
5 Gloucester Road
Wanchai
Hong Kong

By fax and post

Dear

With reference to your fax dated November 3, 1999, we are pleased to provide the following information:

- A Attached in Annex I is the membership list of the Board and Committees of ADC. The following Committees are responsible for vetting most of the funding applications made by artists and arts associations:

Drama Committee (DC)
Film and Media Arts Committee (FMAC)
Literary Arts Committee (LAC)
Music and Dance committee (MDC)
Visual Arts Committee (VAC)
Xiqu Committee (XC)

- B The Council has recently conducted a review on the number of times when members are required to declare interest in Committee Meetings. Result of the analysis, which was discussed at recent Council meeting open to the public, is attached at Annex II. Please note that the situations constituting the need for Members to declare interests is diverse. It may range from Members being the applicant himself to Members being one of the many contributors to a collection of writings. A copy of our Conflict of Interest rules (which was drawn up upon advice of ICAC) is attached as Appendix III. Interests which are not of a pecuniary nature are also included in the statistics. All cases involving declaration of interest by members are further vetted by a Ethics Committee before the grants are confirmed.

I would like to draw your attention to two recent developments in Council policy

relating to conflict of interest. After an interval review and a systems audit conducted by the ICAC (upon invitation of the Council) late last year, the Council introduced the examiners system in assessing grant applications. Pools of specialist examiners (established arts practitioners) were recruited in each art form to assist in assessing and giving marks to project grant applications. Each application was marked by at least four examiners who have no conflict of interest in the case. To ensure that the examiners selected by ballot have no conflict of interest in the cases they assess, they have to declare interest at two stages (when they were informed of the name of projects they assess and in the actual marking sheet, copies attached in Appendix IV). Applicants are also required to state in their application form the names of Council, co-opted members and examiners involved in the project (Appendix V). Council members in each committee then make decision on grants on the basis of the average marks awarded by examiners (conflict of interest rules are observed in the decision process).

The Council also decided a few months ago that personal applications from Council Members will not be accepted.

- C With effect from January 1999, all appeals against grant applications are handled by the Artform Board whose decisions are final. The Council's policy towards appeals against grant decisions is as follows:
- a written appeal must be submitted within one month of results notifications;
 - b the Council will consider the appeal only on grounds of:
 - i improper application processing procedures; and
 - ii the reasons given to the applicant for rejection of application was not proper. In this case, the applicant must substantiate the claim that the Council's original decisions as misled, and provide new information relevant to those in the original application. New information that is independent of that in the original application is not acceptable;
 - c appeals against artistic judgement are not accepted;
 - d appeals against insufficient funding are not accepted;
 - e appeals not substantiated by concrete reasons are not accepted.

If you have any further enquiries on the above, please let me know.

Yours sincerely

Tseng Sun-man
Secretary - General

ADC Boards/Committees Membership - 1999

Bds./Comms. Name	AB	RMB	SDB	AEC	DC	FMAC	LAC	MDC	VAC	XC	Total No. of Bd./Comm. in addition to Council
Ms Chan Kim-seng	✓	✓	✓	✓	✓	✓				C	7
Mr Gordon Chan	✓					C					2
Prof Chan Wing-wah	C		✓					✓			3
Mr Cheung Ping-kuen	✓		✓	✓	C					✓	5
Mr Benny Chia									✓		1
Ms Barbara Fei	✓		✓			✓		C			4
Dr Patrick Ho			C								1
Mr Andrew Lam	✓	✓	✓	C					✓		5
Mr Lee Kam-yin	✓	✓	✓				✓		C	✓	6
Mr Lee Kin-chun							✓		✓		2
Prof Leung Ping-chung	✓						C				2
Mr Lo King-man	✓	C	✓					✓			4
Dr Vicki Ooi	✓	✓	✓	✓	✓				✓		6
Mr Willy Tsao	✓					✓		✓		✓	4
Mr Anthony Tsui		✓			✓						2
Mr Woo Chih-wai	✓	✓	✓				✓	✓	✓		6
Mr Vincent Chow	✓	✓	✓				✓				4
Mr Darwin Chen	✓	✓	✓								3
D of Ed Rep			✓	2EO							2
UC Rep				EO							1
RC Rep				EO	✓	✓					3
ADUS (Observer)	Ob										1
ADRS (Observer)											0
DS(CS), HAB			✓								1
PAS(C), HAB	✓	✓									2
HKIED				EO							-
HKSSSC				EO							-
Total (Council Member):	15	10	14	4	5	5	5	5	6	4	
No. of Co-opted Member	-	-	-	5	5	5	5	6	7	5	

EO = Ex-officio C = Chairman Ob = Observer

Hong Kong Arts Development Council
Members' Declaration of Interests (1998/99)
(Presented in the Council Meeting dated September 6, 1999)

	<u>No of Times</u>
Drama	9
Xiqu	14
Visual Arts	28
Literary Arts	17
Music and Dance	14
Film and Media Arts	10
Arts Education	1
	<hr/>
	93

No. of Project Grants applications considered by the ADC in 98/99: 1,234

Extract of HKADC's 'Conflict of Interest' Rules

ETHICAL CONDUCT AND GUIDELINES AND PRINCIPLES ON AVOIDANCE OF CONFLICT OF INTEREST SITUATION

10 The Council has powers over policy and financial matters related to the arts. The reputation of the Council and the trust and confidence of those with whom it deals is one of its most valued resources. The protection of this is of fundamental importance. To maintain public confidence in the integrity of the Members, as well as in the impartiality of their advice tendered to the Council, Boards or Committees, all Members should:

- a Maintain the highest ethical standards at all times and in all matters concerning the Council. Ethical conduct includes:

Integrity - Members must be straightforward, honest and sincere in their approach to their work.

Objectivity - Members must be fair and must not allow prejudice, arbitrariness or bias to compromise their impartiality.

Independence - Members should be and be seen to be free of any interest which might be regarded by an objective and reasonable member of the public as being incompatible with integrity and objectivity.

Confidentiality - Members must respect the confidentiality of information acquired in the course of their work and should not disclose any such information to a third party without specific authority or unless there is a legal duty to disclose it.

- b Disclose their general pecuniary or other interests on appointment to the Council.
 - c Report conflicts of interests as and when they arise.
- 11 Such declaration shall be made available for public inspection through a Register and the open file system currently in use by the Secretariat so that Members could be protected from criticism or embarrassment arising from the existence of any undeclared general financial interest which may have potential conflict with the work of the Council.
 - 12 The basic principle to be observed is that Members' advice and decisions should be disinterested and impartial and it is the responsibility of each Member to judge and decide if the situation warrants a declaration.
 - 13 For every situation, Members should ask themselves "Would any objective and reasonable member of the public think that I might have any interest that might affect my judgment?" If so, the Member should declare an interest and absent themselves from the meeting for the discussion, deliberation and decision of that item. In making decisions Members should be and be seen to be free of any interest that might affect their judgment.
 - 14 The Chairman of Council, in conjunction with the Secretary-General, may be asked to give a ruling in the first instance on a case by case basis where there is doubt. Should there be disagreement, or very complex issues, the Chairman shall appoint an independent ad-hoc review panel consisting of disinterested Members to consider the matter and whose decision shall be final.

SITUATIONS WITH POTENTIAL CONFLICTS OF INTEREST

- 15 The nature of an interest may vary widely from case to case. It may be direct or indirect; personal or through another connection; commercial or professional; pecuniary or otherwise. Whilst it is difficult to define or describe all the situations which would call for a declaration of interests on the part of Members, the Council has considered a number of situations which warrant declaration for members reference.

- a Pecuniary interests in a matter under consideration by the Council or its Boards or Committees, held either by the Member or by any close relative of his. Members are themselves the best judge of who, in the particular circumstances, is a “close relative”.

Council has agreed that the following cases do involve a conflict of interest.

- i Member lodges a personal application and/or has a substantial direct pecuniary interest in an application. [In view of the sensitivity of these cases the Council has agreed that in addition to the normal conflict of interest procedures, the decision of the Board or Committee will be conditional upon the application being further reviewed by an independent ad-hoc review panel who will consider the ethical implications of the decision.]
 - ii Member is named in the application and will receive a fee.
 - iii Member is not named in the application but is aware that he may be invited to participate in the project if the application is successful.
 - iv Member does not have any direct interest in an application but reasonably expects at some time in the future to be able to use or benefit from the provision of services or facilities that are the subject of the application.
- b A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with or the subject of. a matter under consideration by the Council or its Boards or Committees. Significant connection is any involvement that might lead an objective and reasonable member of the public to think that the Member might have any interest that might affect his judgment.

Council has agreed that the following cases do constitute a conflict of interest:

- i Member is a senior employee of the applicant organisation and has some responsibility for the direction and control of the organisation (and /or that part of it which is responsible for the application).
- ii Member is a current Board Member of an applicant organisation.
- iii Member has in the previous 12 months been a Board Member

or had some Executive role with an applicant organisation and is still an ordinary member of the organisation.

- iv Member is an ordinary member of an applicant organisation and does not have any direct involvement with the Board of the organisation but the organisation is so small as to suggest close involvement of all members in the work of the organisation.
- v Member is a Board member of a School which is an applicant.

Council has agreed that the following cases should be noted during the meeting but do not constitute a conflict of interest and do not require the member to leave the meeting:

- i Member is an ordinary member of an applicant organisation but has never been a Board member or held an executive position with the organisation.
 - ii Member is an employee of an applicant organisation but is not associated with the application and will not participate in the project.
 - iii Member is Council's nominee to the Board of an applicant organisation. As Council's nominee the Member represents the Council's interests to the Board of the applicant organisation and has Council's interests at heart when reporting back to Council on the activities of the applicant organisation. [Council will endeavor not to nominate Members to the Board of applicant organisations but instead to appoint observers only.]
- c A friendship and/or relationship with an applicant which is so close as to lead an objective and reasonable member of the public to believe that it could influence the Member's advice to the Council or its Boards or Committees.

Council has agreed that the following cases do constitute a conflict of interest:

- i Member is currently involved or has recently been involved in a personal relationship with the applicant.
- ii Member is a close confidant or regular professional collaborator with the applicant.
- iii Member knows an applicant well enough (personally or professionally) to nominate them for a particular position or event. The applicant then lodges an application to enable them

to participate in that position or event.

Council has agreed that the following cases should be noted during the meeting but do not constitute a conflict of interest and do not require the member to leave the meeting:

- i Member is a colleague or acquaintance of the applicant and the Member's interest is indirect and remote and unlikely to give him any personal benefit and a reasonable person would not consider his interest likely to affect his views and judgment.
- d A Member who, as an artistic consultant, barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Council, or its Boards or Committees.

Council has agreed that the following cases do constitute a conflict of interest:

- i Member is personally the current teacher/lecturer/tutor of the applicant.
- ii Member is the Principal / Director of an institution currently attended by an applicant who has lodged a personal application.
- iii Member is advisor (official or unofficial, paid or unpaid) to an applicant which results in an application.
- e Any interest likely to lead an objective and reasonable member of the public to believe that the Member's advice might have been motivated by personal interest rather than a duty to give impartial advice.

Council has agreed that the following cases do constitute a conflict of interest:

- i Member is named in the application but will not receive a fee. However participation in the project may help enhance the Member's professional standing or reputation.
- ii Member has no interest whatsoever in the particular application under consideration. However the Member does have a significant interest in another application which is similar to and/or may be seen as competing with the application under consideration.
- f Significant links with a company, or association or firm that may influence or be perceived by others to influence the Member's

judgment in matters relating to other parties which have common or competing interests with the organisation.

Council has agreed that the following cases do constitute conflict of interest:

- i Member is strongly associated with a particular organisation as founder and/or a Board member or Chairman in the previous 12 months. That organisation then lodges an application for a project that is in direct competition with another application by another organisation for the same project.

DISCLOSING GENERAL PECUNIARY OR OTHER INTERESTS ON APPOINTMENT TO THE COUNCIL, OR ITS BOARDS AND COMMITTEES

- 16 The Chairman and Members shall register in writing their personal interest, direct or indirect, pecuniary or otherwise, when they first join the Council, and annually thereafter, to the Secretary-General. The registration shall be made on the standard form.
- 17 The types of interests required for registration shall include :-
 - a proprietorships, partnerships or directorships of companies;
 - b remunerated employments, offices, trades, professions or vocations;
 - c shareholdings in a publicly listed or private company (1% or more of the company's issued share capital);
 - d advisory or client relationship, or other significant connection with a company, firm, club, association, union or other organisation which may have a direct/indirect official dealings with the Council or its Boards or Committees.
- 18 A register of Members' interests shall be kept by the Secretariat which shall be made available for inspection on request by any member of the public.

REPORTING CONFLICTS OF INTERESTS AS AND WHEN THEY ARISE

- 19 Since Members of the Council and its Boards or Committees are generally involved in a wide range of arts activities, it is administratively not viable for the Secretariat to screen their interests in advance of each meeting to identify if any conflicts of interests exist in each and every one of the matters to be discussed. It is the Member's responsibility to consider and decide if a situation warrants a declaration. The following outlines the procedures for declaration.

- 20 If a Member has any interest in any matter under consideration by the Council or its Boards or Committees that may be or may be seen to be constituting a conflict of interest, he must, as soon as practicable after he has become aware of it, disclose it to the Chairman prior to the discussion of the item either verbally during a Council/Board/Committee Meeting or in writing to the Chairman or Secretary-General before the Meeting. In all cases where a conflict is declared, the Member shall withdraw from the meeting immediately and take no part in any discussion or deliberation or in the decision. If the withdrawal of the Member leaves the meeting inquorate, the decision on that item must be deferred to the next meeting or made by circulation. If the matter is considered by circulation, the papers will not be sent to the Member who has declared an interest.
- 21 Members do not have to declare why they think they have a conflict of interest (unless they wish to do so).
- 22 Some associations (such as mere membership of a particular organisation) should be noted during the meeting but do not constitute a conflict of interest and do not require the member to leave the meeting.
- 23 If the Chairman declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by the vice-Chairman or another Member nominated by the Majority at the meeting to be temporary vice-Chairman if a vice-Chairman is not available at the meeting.
- 24 When a known direct pecuniary interest exists, the Secretary-General shall withhold circulation of relevant papers to the Member concerned. Where a Member is in receipt of a paper for discussion which he knows presents a conflict of interest, he should immediately inform the Secretary-General and return the paper.
- 25 All cases of declaration of interests and withdrawal from meetings will be recorded in the Minutes of the meeting.
- 26 In cases where a Member lodges a personal application and/or has a substantial direct pecuniary interest in an application, the Council has agreed that in addition to the normal conflict of interest procedures, the decision of the Board or Committee will be conditional upon the application being further reviewed by an independent ad-hoc review panel appointed by the Chairman of Council and consisting of disinterested Members who will consider the ethical implications of the decision.

UNDERSTANDING OF AND COMPLIANCE WITH THE CODE OF CONDUCT

- 27 Problems encountered in enforcement as well as comments or suggestions for

improvement of the Code of Conduct should be channeled to the Secretary-General for consideration and action.

VIOLATION OF THE CODE OF CONDUCT

28 The Council shall not tolerate any illegal or unethical acts. Anyone violating the Code of Conduct will be subject to disciplinary action such as censure, termination of appointment (in the case of Co-opted Committee Members), or a recommendation to the Chief Executive HKSAR to terminate his appointment. In cases of suspected corruption or other forms of criminality, a report will be made to the ICAC or appropriate authorities.

COMPLAINTS

29 Complaints can be sent directly to the Council Chairman via the Secretary-General. Unlawful or unethical conduct will be investigated promptly.

Council
19 September 1997