

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 29 February 2008
on which the Administration is requested to provide written response**

The Administration's response to the points raised by individual members at the meeting on 29 February 2008 is set out below —

(1) Will the Administration consider articulating mission statements for the West Kowloon Cultural District Authority (WKCDA) and incorporating such mission statements into the Bill so as to provide objective yardsticks for the public and the Legislative Council to continuously scrutinize the Authority's work?

Administration's Response:

Section 4 of the West Kowloon Cultural District Authority Bill ("the Bill") clearly sets out the functions of the West Kowloon Cultural District Authority (WKCDA), which include —

- (a) to prepare a development plan and, if necessary, amend any development plan, and submit such plan to the Town Planning Board for its consideration;
- (b) to develop the leased area in accordance with the land use and other requirements or conditions specified in the approved development plan;
- (c) either alone or jointly or by agreement with any other person, to provide (including plan, design and construct), operate, manage, maintain or otherwise deal with arts and cultural facilities, related facilities or ancillary facilities;
- (d) to advocate, promote, organize, sponsor, encourage and provide for the appreciation of and participation in arts and culture;
- (e) to promote, exhibit and display the arts publicly and otherwise;
- (f) to initiate and support the creation, composition, production, learning and practising of the arts; and
- (g) to perform such other functions as are conferred or imposed on the Authority by or under this or any other Ordinance.

In addition, section 4 of the Bill also provides that the Authority, when performing its functions, is to have regard to one or more of the following purposes—

- (a) to contribute to the long-term development of Hong Kong into an international arts and cultural centre;
- (b) to contribute to the enhancement of appreciation of a diverse and pluralistic range of the arts;
- (c) to contribute to the development of new and experimental works in arts and culture;
- (d) to contribute to the development of cultural and creative industries;
- (e) to contribute to the nurturing of local artists and arts groups;
- (f) to contribute to encouraging wider participation of the local community in arts and culture;
- (g) to contribute to the provision of arts education to the local community;
- (h) to contribute to cultural exchange and cooperation between the Mainland of China, Hong Kong and any other place;
- (i) to contribute to the cooperation between any non-government body or organization and providers of the arts, within and outside Hong Kong;
- (j) to contribute to encouraging commercial and corporate support and sponsorship of arts and culture;
- (k) to provide or facilitate the provision of free and accessible open space within the leased area to the general public; and
- (l) to strengthen the position of Hong Kong as a tourist destination.

The above-mentioned functions and purposes cover a wide range of aspects. They have also set out in clear and concrete terms the WKCDA's mission relating to the development of Hong Kong's arts and culture and its responsibilities in developing and operating the West Kowloon Cultural District (WKCD). They would serve as yardsticks for evaluating the performance of the WKCDA in future. Should Members have any suggestions to expand or elaborate any purposes in this regard, we would be happy to consider.

(2) While the Administration considers it not appropriate to specify the precise composition of Board members in the Bill, will the Administration consider specifying the criteria, such as the backgrounds and the qualities possessed, for the appointment of the non-public officer members of the WKCDA Board?

Administration's Response:

Section 6 of the Bill provides that in addition to the Chairman, the Chief Executive Officer and three public officer members, the Board will also consist of not more than 15 other members who are not public officer members, including at least 5 members who, in the opinion of the Chief Executive, have knowledge of, or experience in, or exposure to, arts and cultural activities; and at least one member who is a Member of the Legislative Council.

The Administration intends to appoint individuals with different backgrounds and expertise to serve on the WKCD Board in accordance with the needs at different stages of the development and operation of the WKCD project. We will take into account the merit of the individuals concerned, including their ability, expertise, experience, integrity and commitment to public service in appointing the most appropriate individuals to the Board. As different expertise will be required at different stages of the WKCD project, we consider it practically difficult to specify in the Bill the full range of backgrounds and qualities required of Board members. We are however prepared to consider any suggestions from members in this regard.

(3) Will the Administration consider appointing some of the non-public officer Board members in representative capacities instead of on an ad personam basis? In this regard, the Bill may provide that the Legislative Council Member(s) to be appointed to the Board are to be elected by and from among the Legislative Council Members. For those Board members from the professional sectors, the Bill may provide for an election mechanism linked to the relevant subsectors represented on the Chief Executive Election Committee. For those Board members from the arts and cultural sectors, the Bill may provide for an election mechanism linked to the Sports, Performing Arts, Culture and Publication functional constituency of the Legislative Council.

Administration's Response:

The Administration will adhere to the principle of "meritocracy" when considering appointments to the Board, having regard to the needs of the WKCD at different stages of development. In line with appointments to similar statutory bodies, the Administration will take into account the merit of the individuals concerned, including their ability, expertise, experience, integrity and commitment to public service, and the development needs of the WKCD in appointing the most appropriate individuals to the Board. As such, we do not consider it appropriate to

put in place a prescribed mandatory election system in the Bill for different categories of Board members. Neither do we consider it conducive to the effective management of the Board of the WKCDA, who has to work coherently as a body corporate in delivering many executive functions in pursuit of its statutory purposes, to consist of members serving as representatives of certain organizations, as opposed to serving as members in their personal capacity. However, relevant institutions could nominate or recommend candidates to the Chief Executive for consideration.

(4) Will the Administration consider specifying in the Bill that the meetings of the Board and committees of WKCDA shall be open to the public except under certain specified circumstances? The relevant provisions in the Town Planning Ordinance (Cap. 131) may serve as the reference.

Administration's Response:

The nature, powers and responsibilities of the WKCDA and the Town Planning Board are quite different. Given that WKCDA has the statutory duty to develop and operate the WKCD, most of the WKCDA Board meetings would involve lots of discussions related to facility management contracts and even evaluation of performance of arts groups, which are not appropriate to be opened to the public. We therefore consider it inappropriate to make it mandatory in the legislation for the Board to open its meetings to the public. Rather, the Board should regulate its own meeting proceedings, decide whether its meetings should be open to the public and prescribe relevant detailed arrangements after taking into account the practical situations. In the light of administrative measures adopted by other existing statutory organizations in enhancing the transparency of their operations such as disclosing information on work progress in their dedicated websites, the Administration would consider requiring the WKCDA to adopt similar transparency measures in future.

(5) Will the Administration consider providing in the Bill the establishment of statutory consultation panels comprising representatives from various stakeholder groups and members of the public? In this regard, it has been suggested that while the WKCDA should be obliged to engage the panels openly, the opinions of the panels and their members will not bind the Authority.

Administration's Response:

Section 17 of the Bill provides that the WKCDA shall, in relation to matters

concerning the development or operation of arts and cultural facilities, related facilities, ancillary facilities and any other matters as the WKCDA considers fit, consult the public. Furthermore, section 18(3) of the Bill requires that in preparing a development plan for the WKCD, the WKCDA shall consult the public and shall have regard to the views received in the public consultation. The development and operation of the WKCD will involve the arts and culture as well as many other related aspects at different stages. We consider it inappropriate to introduce mandatory requirements in the Bill for setting up a specific consultation structure, which would unduly restrict the WKCDA's flexibility in considering the most appropriate ways and means to seek public views on its operations at different points in time. We believe the WKCDA will consult the relevant bodies and the public in an appropriate manner according to practical situation when conducting public consultation.

(6) To ensure that the Audit Committee can play an effective financial monitoring role, would it be appropriate to specify in the Bill that the members of the Audit Committee shall not include those persons who make or execute decisions on the expenditure of the WKCDA?

Administration's Response:

Section 8(4) of the Bill provides that neither the Chief Executive Officer nor any other employee of the WKCDA shall be appointed as members of the Audit Committee to ensure the Audit Committee can play an effective financial monitoring role. Taking into account Member's views, we will consider specifying in the Bill that the Audit Committee should exclude members of other committees under the WKCDA.

(7) Will the Administration consider including relevant provisions in the Bill to the effect that the six-year six-board rule will be applicable to WKCDA Board members?

Administration's Response:

As with appointments to all other statutory boards and committees, the Government will consider appointments of non-public officer members to the WKCDA Board primarily on the merit of the individuals concerned, having regard to their ability, expertise, experience, integrity and commitment to public service. As the WKCD project is a long-term cultural project that will span over a long period of

time, individuals with different backgrounds and expertise are required to serve on the Board at different stages of the development and operation of the WKCD. At the same time, we also need to take into account the need to ensure continuity and consistency in the Board's operations. In line with our existing administrative guidelines on appointment of non-official members to advisory and statutory bodies, a non-public officer Board member should not serve on the Board of the WKCD in any one capacity continuously for more than 6 years. We would abide by this rule as far as practicable. We therefore consider it not necessary to specify in the legislation that a non-public officer Board member may not serve continuously for more than 6 years.

(8) It has been suggested that a system with the most stringent requirements for disclosure of interest should apply to the members of the Board and committees of WKCD. Will the Administration consider this suggestion and how such a system should be reflected in the legislation?

Administration's Response:

The level of stringency of the disclosure of interest mechanism in the Bill is similar to that in other statutory bodies. For example, section 34 of the Bill provides that a Board member or a committee member shall upon his first appointment and on such occasion as the circumstances may require after the appointment disclose to the WKCD his interest. WKCD may determine the class or description and the details of the interest required to be disclosed and the manner in which such interest is to be disclosed. Furthermore, the WKCD shall establish and maintain a register relating to any disclosure required to be made at its principal office for inspection by the public.

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

Having considered Members' views, we will consider including provisions in the Bill to suitably tighten the relevant requirement prescribing that members of the Board and committees shall disclose his interest to the WKCD annually.

(9) It has been suggested that for the purpose of good governance, there should be a mechanism for determining the remuneration package for senior executives of WKCD and for disclosure of their remuneration packages. Will the Administration consider this suggestion and how the relevant arrangements should be reflected in the legislation?

Administration's Response:

The Administration agrees that statutory body should have good governance, which includes the handling of the remuneration package for senior executives. To achieve the objective of good governance, we are prepared to consider introducing provisions into the Bill, requiring the WKCD to set up a Remuneration Committee to determine the remuneration and other related matters for senior executives of the WKCD. In view of the fact that remuneration packages involve sensitive information, we consider it inappropriate to specify any disclosure mechanism in the Bill. We understand that a number of statutory bodies disclose remuneration information of their senior executives in their annual reports despite that there is no statutory requirement for them to do so. The WKCD may make reference to other statutory bodies in disclosing remuneration information in its annual report.

**Home Affairs Bureau
March 2008**