

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 24 April 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 24 April 2008 is set out below –

(1) The Administration should consider drawing up "best practices" for the West Kowloon Cultural District Authority (WKCDA) to follow in conducting public consultation, and in this regard should provide information on the practices adopted by comparable overseas statutory bodies in conducting public consultation.

Administration's Response:

Clause 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. Clause 18 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 involve a wide range of matters covering not only the building and operation of arts and cultural facilities, but also the preparation of the Development Plan for the entire WKCD area, as well as planning and management of commercial facilities, public open space and other communal facilities. The stakeholders concerned will vary according to the matters requiring public consultation. It would be inappropriate and indeed difficult to prescribe in the legislation a pre-determined public consultation mechanism that would fit all purposes and all stakeholders' requirements which the WKCDA should follow in conducting any public consultation. The WKCDA should be given the flexibility to conduct public consultation in a manner most suitable to the circumstances at any time. We are yet to see any other enabling legislation of comparable overseas area-based management organizations which sets out a prescribed mechanism for public consultation.

Experiences could be drawn from other comparable overseas statutory bodies in conducting public consultations which comprise a variety of measures. We are in the process of obtaining the relevant information from such bodies. The Administration could ask the WKCDA to make reference to such practices in drawing up its own measures for conducting public consultations as appropriate.

(2) The Administration should clarify whether members of the WKCDA Board could be appointed to the Audit Committee, and in this regard should provide information on the relevant practices of listed companies.

Administration's Response:

Clause 8(3) of the Bill provides that the Audit Committee is to consist of such number of members, not being less than 3, as the Board may determine. Clause 8(4) further provides that the Board is to appoint each of the members of the Audit Committee but neither the Chief Executive Officer nor any other employee of the Authority is to be so appointed. We have agreed to amend this Clause to provide that the Audit Committee should not consist of members who sit on any other committees under the Board.

Under the Bill, a member of the WKCDA Board may be appointed as a member of the Audit Committee while the Chief Executive Officer and any other employees of the WKCDA may not be appointed to the Committee. We should like to adhere to this provision as it enables the Audit Committee to include Board members who are familiar with the operation of the WKCDA to facilitate the operation of the Committee. This arrangement is generally in line with the practices of comparable local statutory organization such as the Airport Authority and the Urban Renewal Authority.

As for the relevant practices of listed companies, the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited ("listing rules") do not prevent a Board director from being appointed as a member of the Audit Committee. Section 3.21 of the listing rules (extract at **Annex**) provides that an audit committee should comprise non-executive directors only. It also sets out that, among others, an audit committee must comprise a minimum of three members, the majority of the audit committee members must be independent non-executive directors of the listed issuer and the audit committee must be chaired by an independent non-executive director.

(3) The Administration should explain the need for clause 8(6) in relation to withdrawal of matters referred or assigned to the Audit Committee and revoking of appointments to the Audit Committee by the WKCDA Board.

Administration's Response:

Clause 8(2)(a) of the Bill provides that the functions of the Audit Committee include the consideration of such matter relating to the financial affairs of the Authority and to conduct an audit (whether generally or in respect of particular matters) as the Committee considers necessary or desirable. Clause 8(2)(b) further provides that the Audit Committee can consider any other matter, whether financial or otherwise, referred or assigned to it by the Board for consideration.

Clause 8(6)(a) has to be read in conjunction with Clause 8(2)(b). The objective of Clause 8(6)(a) is to allow the Board to withdraw a matter referred or assigned to the Audit Committee under Clause 8(2)(b). This provision is necessary so that the Board may withdraw a matter referred to or assigned to the Audit Committee when no further action is required of such matter.

Clause 8(6)(b) has to be read in conjunction with Clauses 8(4) and 8(5). Clause 8(4) provides that the Board is to appoint each of the members of the Audit Committee. Clause 8(5) provides that the Board is to appoint a Board member (other than the Chairman) to be the chairman of the Audit Committee. Clause 8(6)(b) enables the Board to revoke any appointment made under Clause 8(4) or (5). This would facilitate the Board to arrange the staggering of the terms of Committee members and appoint the most appropriate members to the Audit Committee.

(4) The Administration should consider whether the Audit Committee should be required to prepare annual reports and/or should be subject to other requirements to enhance its credibility.

Administration's Response:

The functions of the Audit Committee, as provided in Clause 8(2) of the Bill, are –

- (a) to consider such matters relating to the financial affairs of the Authority and to conduct an audit (whether generally or in respect of particular matters) as the Committee considers necessary or desirable; and
- (b) to consider any other matter, whether financial or otherwise, referred or assigned to it by the Board for consideration.

To enhance the credibility of the Audit Committee, we have agreed to amend the Bill to the effect that the Audit Committee shall not consist of any other committee members under the WKCDA Board.

Clause 26(1) already provides that the WKCDA shall appoint an external qualified auditor (defined in the Bill to be a certified public accountant (practising) or a corporate practice as defined in the Professional Accountants Ordinance) to audit the statement of accounts for the financial year, which contains a profit and loss account for that financial year, a cash flow statement for that financial year and a balance sheet as on the last day of that financial year. Clause 26(3) provides that the auditor appointed under Clause 26(1) shall submit a report on the statement of accounts to the WKCDA. According to Clause 31, that report shall then be submitted to the Financial Secretary within 6 months after the end of each financial year and the Financial Secretary shall cause it to be laid on the table of the Legislative Council.

According to Clause 31, the WKCDA shall, within six months after the end of each financial year, submit to the Financial Secretary a report on the activities of the Authority for that financial year. This report should cover the work of not only the Board, but also all its Committees, including the Audit Committee. We therefore consider that it would be more appropriate to leave it to the Audit Committee to decide whether it should submit an annual report to the Board of the WKCDA, as its work should have been included in the annual report to be submitted to the Financial Secretary and the Financial Secretary shall cause it to be laid on the table of the Legislative Council.

We also note that there is no legal requirement for the Audit Committee of other comparable local statutory bodies to prepare a separate annual report.

(5) It should be specified in the Bill that a non-public officer member of the WKCDA Board may not serve as such a member continuously for more than 6 years. Reference could be made to section 10 of the Construction Industry Council Ordinance (Cap. 587) in this regard.

Administration's Response:

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.

In appointing non-public officer members to the WKCDA Board, the Government will consider, as with appointments to all other statutory boards and committees, the merit of the individuals concerned, having regard to their ability, expertise, experience, integrity and commitment to public service. 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 WKCDA in any one capacity continuously for more than 6 years. We would abide by this rule as far as practicable and 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.

(6) Apart from disclosing upon their first appointment and on an annual basis, WKCDA Board members should also be required to disclose interest whenever there are changes in the circumstances of their interest. Disclosure of interest by WKCDA Board members should be made available on the Internet for inspection by the public.

Administration's Response:

Having considered Members' views, we will consider amending Clause 34 such that, in addition to the requirements of Clause 34(1)(a) and (b) (i.e. requiring a Board member or a committee member to disclose to the WKCDA his interest which is of a class or description determined by the Authority upon his first appointment and on such occasion as the circumstances may require after the appointment), a Board member or a committee member would be required to declare his interest every year within the first month of each calendar year. In addition, such member will also be required to disclose his interest whenever there is any change to the interest disclosed previously. The WKCDA will also be required to make public the register of all disclosures through appropriate means, and make them available for inspection by the public at any reasonable time.

(7) Apart from the setting up of a Remuneration Committee, the method for determining the remuneration package for senior executives of WKCDA and the manner in which the remuneration packages are to be disclosed should also be specified in the Bill.

Administration's Response:

Clause 10(2) provides that the WKCDA may determine the terms and conditions of the employment of its employees, including the terms and conditions relating to allowances, benefits and remuneration. To address Members' concern about the remuneration packages for senior executives of the WKCDA, we are prepared to include new provisions in the Bill requiring a Remuneration Committee to be set up to advise WKCDA on matters relating to allowances, benefits and remuneration, and other relevant matters for all employees of the Authority.

The details of the remuneration package for senior executives of WKCDA depend on a number of factors, including the experience of the relevant candidate, the need to offer a competitive package to attract talents, the special skills required of a particular position, etc. It would be practically difficult to set out all the relevant criteria for various senior executive posts in the legislation, as the job requirements could vary amongst positions on offer at any one time. It would also unduly restrict the flexibility of the WKCDA in offering market competitive package for specific posts if the method for determining the remuneration package is specified in the Bill. We therefore consider it appropriate and reasonable to leave it to the Remuneration Committee and the Board of WKCDA to determine the remuneration package for senior executives of WKCDA.

It is an established practice for comparable statutory bodies to disclose the remuneration packages of their senior executives in the annual reports despite there is no specific provision in the relevant enabling legislation requiring such disclosure. We believe the WKCD A will follow the practices adopted by similar statutory bodies and consider it not appropriate to specify in the Bill the manner in, and extent to which the remuneration packages are to be disclosed.

Home Affairs Bureau
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Audit Committee

- 3.21 Every listed issuer must establish an audit committee comprising non-executive directors only. The audit committee must comprise a minimum of three members, at least one of whom is an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise as required under rule 3.10(2). The majority of the audit committee members must be independent non-executive directors of the listed issuer. The audit committee must be chaired by an independent non-executive director.

Notes: 1. The transitional provisions set out in rule 3.19 shall apply.

2. For further guidance on establishing an audit committee, listed issuers may refer to "A Guide for Effective Audit Committees" published by the Hong Kong Institute of Certified Public Accountants (formerly known as the Hong Kong Society of Accountants) in February 2002. Listed issuers may adopt the terms of reference set out in that guide, or they may adopt any other comparable terms of reference for the establishment of an audit committee.

3. Please see also the note to rule 3.10(2).

- 3.22 The board of directors of the listed issuer must approve and provide written terms of reference for the audit committee which clearly establish the committee's authority and duties.
- 3.23 A listed issuer shall immediately inform the Exchange and publish an announcement in accordance with rule 2.07C containing the relevant details and reasons if the listed issuer fails to set up an audit committee or at any time has failed to meet any of the other requirements set out in rule 3.21 regarding the audit committee. Listed issuers shall set up an audit committee and/or appoint appropriate members to the audit committee to meet the requirement(s) within three months after failing to meet such requirement(s).

Qualified Accountant

- 3.24 Every listed issuer must ensure that, at all times, it employs an individual on a full time-basis. The responsibility of such individual must include oversight of the issuer and its subsidiaries in connection with its financial reporting procedures and internal controls and compliance with the requirements under the Exchange Listing Rules with regard to financial reporting and other accounting-related issues. The individual must be a member of the senior management of the listed issuer (preferably an executive director) and must be a qualified accountant and a certified public accountant registered with the Hong Kong Institute of Certified Public Accountants or a similar body of accountants recognised by that Institute for the purpose of granting exemptions from the examination requirement for membership of that Institute. This rule does not apply to a listed issuer of debt securities, the equity securities of which are not listed on the Exchange.