

Bills Committee on West Kowloon Cultural District Authority Bill

**Points raised by individual members at the meeting on 8 May 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 8 May 2008 is set out below –

(1) Whether, other than the Chief Executive Officer of the West Kowloon Cultural District Authority (WKCD), a distinction will be drawn between executive members and non-executive members within the WKCD Board; and if there is such a distinction, whether only non-executive members can sit on the Audit Committee.

Administration's Response:

Clause 6(3) of the WKCD Bill provides that the WKCD Board is to consist of the Chairman (who may or may not be a public officer); the Chief Executive Officer ("CEO") who is an ex officio member, not more than 15 other members who are not public officers (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); and 3 other members who are public officers. Section 8 of the Schedule to the Bill provides that the CEO shall be responsible for the general management and administration of the Authority's affairs and shall perform such functions as are for the time being assigned to him or delegated to him.

The CEO is the only member on the WKCD Board with executive duties and functions. For this reason, the CEO will not be eligible to sit on the Audit Committee by virtue of Clause 8(4). Other Board members can sit on the Audit Committee if appointed by the Board. It would be important to allow Board members (other than the CEO) to sit on the Audit Committee as it enables the Committee to include individuals who are familiar with the Authority's operation to facilitate the operation of the Committee. This arrangement is generally in line with the practices of comparable local statutory bodies such as the Airport Authority and the Urban Renewal Authority.

To further enhance the independence of the Audit Committee, while ensuring that the Committee would have access to an adequate number of Board members with the relevant experience and expertise, we are prepared to amend the Bill to propose that, in addition to the CEO and employees of the WKCD, chairmen of any other committees of the WKCD will not be eligible for appointment as members of the Audit Committee. Moreover, the Audit Committee would comprise a minimum of three members, of whom at least one with appropriate expertise and experience in accounting, or related financial management.

(2) Under what circumstances the WKCDA Board may exercise the powers under clause 8(6)(a) and (b); and in this regard, whether there will be assurance that the WKCDA Board will not exercise those powers before the Audit Committee completes the work referred or assigned to it by the WKCDA Board.

Administration's Response:

Clause 8(6)(a) has to be read in conjunction with Clause 8(2)(b). Clause 8(2)(b) provides that the Audit Committee can consider any other matter, whether financial or otherwise, referred or assigned to it by the Board for consideration. 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 seeks to enable the Board to withdraw a matter referred to or assigned to the Audit Committee when circumstances warrant such as when no further action is required of such matter or if the matter has been overtaken by events. It would however be practically difficult to set out all the various circumstances under which this provision would be invoked.

It should also be noted that Clause 8(2)(a) of the Bill provides that one of the functions of the Audit Committee is 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. This provision seeks to ensure that Audit Committee, on its own, has the power to consider a matter relating to the financial affairs of the Authority and conducts an audit as it considers necessary or desirable.

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 adjust the appointments of members to the Audit Committee when circumstances warrant, such as to stagger the terms of Committee members. It would however be practically difficult to set out all the various circumstances under which this provision would be invoked.

Taking into account Members' concerns, we are reviewing the above express provisions in Clause 8(6), having regard to the operational perspectives of the Audit Committee.

(3) Since the Administration refuses to provide 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, whether the Administration will provide an undertaking at the resumption of the Second Reading debate on the Bill that it will abide by the six-year six-board rule when making appointments to the WKCDA Board.

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 WKCDA in any one capacity continuously for more than 6 years. We would abide by this rule as far as practicable and would consider undertaking to do this as appropriate when Second Reading of the Bill resumes.

(4) Whether a specific "Remuneration Committee" will be unduly restrictive in its functions; and whether it would be more flexible to provide that there is a committee to oversee remuneration matters, taking into account the need to strike a balance between providing a proper check and balance mechanism and effective use of secretariat support to WKCDA committees.

Administration's Response:

As foreshadowed in our earlier reply to the Bills Committee, we are prepared to amend the Bill to provide for the setting up of a Remuneration Committee. We propose that the functions of the Remuneration Committee should be to advise the Authority on the following—

- (a) terms and conditions relating to the remuneration of the employees of the Authority; and
- (b) **any other matter, whether relating to remuneration or otherwise**, referred or assigned to it by the Board for consideration.

As such, the scope of the functions of the Remuneration Committee may include matters other than “remuneration” per se. This would provide the WKCDA Board with the flexibility to refer or assign to it matters other than remuneration for consideration.

(5) The Administration should clarify the policy intention and effect of clause 5(2)(n).

Administration's Response:

Taking into account Members' views and the functions and powers of the Authority under other provisions, we intend to propose CSAs to delete Clause 5(2)(n) and Clause 5(3).

**Home Affairs Bureau
May 2008**