

**Bills Committee on
West Kowloon Cultural District Authority Bill**

Proposed Committee Stage Amendments – The Second Batch

Purpose

This paper sets out the second batch of the Administration's proposed Committee Stage Amendments ("CSAs") to the West Kowloon Cultural District Authority Bill ("the Bill").

Proposed CSAs

2. Further to the Administration's first batch of the proposed CSAs which covers Clauses 4, 5, 8, 30A, 31 and 34 issued on 21 May 2008 for discussion at the Bills Committee, we intend to propose further CSAs to amend Clauses 1, 6, 8A, 8B, 10, 20, 25 and 30A, and Section 4 of the Schedule. In addition, we also propose a number of technical amendments to Clauses 2, 4, 11 and 18 to fine-tune the Bill. The key information on the proposed CSAs is set out in the following paragraphs.

Clause 1

3. Clause 1(2) of the Bill provides that the West Kowloon Cultural District Authority Ordinance, if passed, will come into operation on a day to be appointed by the Secretary for Home Affairs. It is one of the common arrangements for bringing statutes into operation. Taking into account Members' views and the Administration's intention to establish the West Kowloon Cultural District Authority (WKCD) as soon as possible to take forward the West Kowloon Cultural District project, we will propose to delete Clause 1(2) so that the Ordinance will commence upon publication in the Gazette after passage by the Legislative Council (LegCo).

Clause 6

4. We will propose to delete Clause 6(8) of the Bill which specifies that the number of Board members who are public officers is not to exceed the number of those who are not public officers. Clause 6(3)(d) specifies that there are three other Board members who are public officers while Clause 6(3)(c)(i) alone already provides that there are at least 5 Board members who, in the opinion of the Chief Executive, have knowledge of, or experience in, or exposure to, arts and cultural activities. Taken together, the number of Board members who are not public officers would effectively exceed that of those members who are public officers. There is therefore no need for Clause 6(8).

5. Members have also expressed the view that the criteria for appointing non-public officers to the Board should be specified more clearly in the Bill. We have agreed to consider revising Clause 6(3)(c)(i) (which currently reads “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) as well as to add one sub-clause to specify the range of expertise, experience, etc., required for the appointment of the Board members other than these 5 members, the member who is a LegCo member, the Chairman, the Chief Executive Officer and the three public officer members. We will submit proposed CSAs in this regard to the Bills Committee for discussion in a further batch of CSAs.

Clauses 8A and 20(1)

6. In response to Members’ concern that there should be a dedicated committee under the WKCDA Board to oversee the management of the investment of the upfront endowment which, subject to LegCo’s approval, will be given to the WKCDA upon its establishment, we intend to propose CSAs to require the WKCDA to set up an Investment Committee to advise the WKCDA on its investment and to oversee and monitor the management of such investment. To give a certain degree of flexibility to the scope of responsibilities of the Investment Committee, the Investment Committee may also consider any other matter referred or assigned to it (whether relating to investment or otherwise) by the Board for consideration.

7. Correspondingly, we also propose to amend Clause 20(1) specifying that the Authority shall have regard to the advice of the Investment Committee when investing the funds available for investment.

Clauses 8B and 10(2)

8. In response to Members’ views about determination of remuneration packages for senior executives of the WKCDA, we intend to propose CSAs to require the WKCDA to set up a Remuneration Committee to advise the WKCDA on the terms and conditions of the employment of its employees. To give a certain degree of flexibility to the scope of responsibilities of the Remuneration Committee, the proposed CSAs also provide that the Committee may consider any other matter referred to it or assigned to it by the WKCDA Board.

9. Correspondingly, we also propose to amend Clause 10(2) such that the WKCDA is required to have regard to the advice of the Remuneration Committee when determining the terms and conditions of the employment of its employees.

Clause 25

10. Clause 25(5) of the Bill specifies that the WKCDA shall ensure that the statement of accounts prepared under Clause 25(2) has to comply with the manner in which the statement is to be prepared and any accounting standards, as may be notified to the Authority in writing by the Financial Secretary. We propose to amend Clause 25(5) by adding a new sub-clause such that on top of the existing requirements, the Authority has to comply with any other requirement as notified to it by the Financial Secretary. This will enable the Financial Secretary to impose any other requirements on the preparation of the statement of accounts with a view to further strengthening the Government's financial monitoring of the WKCDA.

Clause 30A

11. We have proposed in the first batch of CSAs that the annual report of the WKCDA should specify how the activities of the WKCDA relate to its functions and the objectives specified in Clause 4. Taking into account Members' views, we intend to propose further amendments to the Clause 30A requiring that the annual report of the WKCDA must include information on how the WKCDA conducted or implemented the activities and projects as set out in the corporate plan and the business plan submitted in the previous financial year.

Section 4 of the Schedule

12. Section 4 of the Schedule provides that the Chief Executive may remove a Board member (other than the Chief Executive Officer and public officer member) from office if he is satisfied that a member is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause. The proposed amendment will make it clear that any change of the status of the member base on which he has been appointed for the original purpose would be considered as a sufficient cause for removal from office.

Technical Amendments

Clauses 2 and 11

13. We will propose deleting "section 8 or 9" and substituting with "this Ordinance" in the definition of "committee member" in Clause 2 and in Clauses 11(1)(b) and 11(6), as consequential amendments to our proposal to add new Clauses 8A and 8B to set up an Investment Committee and a Remuneration Committee respectively.

Clauses 4(1)(a) and 18(13)

14. We will propose amending Clause 18(13) to spell out explicitly that if the Chief Executive in Council refuses to approve a development plan submitted to it for approval, it is WKCDA's obligation to prepare a further development plan. Consequentially, we will also propose amending Clause 4(1) such that the WKCDA's responsibilities in preparing a development plan in accordance with all the provisions of Clause 18 are clearly specified.

————— 15. The proposed CSAs are at **Annex**.

Home Affairs Bureau
June 2008

WEST KOWLOON CULTURAL DISTRICT AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Home Affairs

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 1 | By deleting the heading and substituting " Short title ". |
| 1 | By deleting subclause (2). |
| 2 | In the definition of "committee member", by deleting "section 8 or 9" and substituting "this Ordinance". |
| 4(1) | By deleting paragraph (a) and substituting - "(a) to prepare a development plan under section 18(1) and to perform the other functions imposed on it under section 18;". |
| 5(2) | (a) In paragraph (m), by adding "and" at the end. (b) By deleting paragraph (n). |
| 5 | By deleting subclause (3). |
| 6 | By deleting subclause (8). |

6(9) By deleting "or (8)".

6(10) By deleting ", (8)".

8 By adding -

"(3A) At least one member of the Audit Committee is to be a member who, in the opinion of the Board, possesses such appropriate professional qualification or expertise in accounting or financial management as would render the member suitable for appointment.".

8 By deleting subclause (4) and substituting -

"(4) Each of the members of the Audit Committee, whether or not the member is a Board member, is to be appointed by the Board.".

8 By adding -

"(4A) A person is not eligible for appointment as a member of the Audit Committee if -

- (a) he is the Chief Executive Officer or any other employee of the Authority; or
- (b) he is the chairman of any other committee established under this Ordinance.".

8(7) In the English text, by deleting "as" and substituting "that".

New By adding -

"8A. Investment Committee

(1) There is established by this section a committee to be known as the Investment Committee.

(2) The functions of the Investment Committee are -

- (a) to advise the Authority in relation to its functions under section 20;
- (b) for the purposes of paragraph (a), to monitor any investment made under section 20 and oversee the management of such investment; and
- (c) to consider any other matter, whether relating to investment or otherwise, referred or assigned to it by the Board for consideration.

(3) The Investment Committee is to consist of -

- (a) the Director of Accounting Services, or his

representative; and

- (b) such number of other members, not being less than 2, as the Board may determine who, in the opinion of the Board, possess such expertise or experience as would render them suitable for appointment.

(4) Each of the members of the Investment Committee, whether or not the member is a Board member, is to be appointed by the Board.

(5) The Board is to appoint a Board member to be the chairman of the Investment Committee.

(6) The Board may -

- (a) withdraw any matter referred or assigned under subsection (2)(c); or
- (b) revoke any appointment made under subsection (4) or (5).

(7) An appointment made under this section is to be made public in the manner that the Board considers fit.

(8) Meetings of the Investment Committee are to be held as often as may be necessary for the performance of its functions.

(9) The Investment Committee may, subject to the requirements of this Ordinance,

regulate its own administration, proceedings and business in such manner as it considers appropriate.".

New

By adding -

"8B. Remuneration Committee

(1) There is established by this section a committee to be known as the Remuneration Committee.

(2) The functions of the Remuneration Committee are to advise the Authority -

- (a) on terms and conditions for the purposes of section 10(2); and
- (b) on any other matter, whether relating to remuneration or otherwise, referred or assigned to it by the Board for consideration.

(3) The Remuneration Committee is to consist of such number of members, not being less than 3, as the Board may determine.

(4) Each of the members of the Remuneration Committee, whether or not the member is a Board member, is to be appointed by the Board.

(5) The Board is to appoint a Board member to be the chairman of the Remuneration Committee.

(6) The Board may -

(a) withdraw any matter referred or assigned under subsection (2)(b); or

(b) revoke any appointment made under subsection (4) or (5).

(7) An appointment made under this section is to be made public in the manner that the Board considers fit.

(8) Meetings of the Remuneration Committee are to be held as often as may be necessary for the performance of its functions.

(9) The Remuneration Committee may, subject to the requirements of this Ordinance, regulate its own administration, proceedings and business in such manner as it considers appropriate.

(10) In this section, "remuneration" (薪酬) includes allowance, financial accommodation or benefit, or any consideration, whether paid, provided or supplied directly or indirectly."

9(7) In the English text, by deleting "as" and substituting "that".

10 By deleting subclause (2) and substituting -
"(2) The Authority may determine the terms and conditions of the employment of its

employees, having regard to the advice of the Remuneration Committee established under section 8B."

11(1)(b) By deleting "section 8 or 9" and substituting "this Ordinance".

11(6) By deleting "section 8 or 9" and substituting "this Ordinance".

18 By adding -

"(13) Where the Chief Executive in Council refuses to approve a development plan which is deemed to be a draft plan by virtue of subsection (8), the Authority shall, as soon as reasonably practicable after such refusal, prepare a further development plan for the purposes specified in subsection (1)(a), (b) and (c), and this section applies to any such further plan."

20(1) By adding ", having regard to the advice of the Investment Committee established under section 8A," before "invest".

25 By deleting subclause (5) and substituting -

"(5) The Authority shall ensure that the statement of accounts prepared under subsection (2) complies with -

- (a) the manner in which the statement is to be prepared;
 - (b) any accounting standards; and
 - (c) any other requirement,
- as may be notified to the Authority in writing by the Financial Secretary."

New

By adding -

"30A. Annual report

(1) The Authority shall, in respect of each financial year, prepare an annual report of the Authority for that financial year.

(2) Without limiting the matters that the Authority may include in it, the annual report must -

- (a) specify the work and activities of the Authority for that financial year and how they relate to the Authority's functions and the objectives specified in section 4(2);
- (b) specify the work and activities of the committees established under this Ordinance for that financial year;

- (c) include the statement of accounts prepared under section 25(2) for that financial year;
- (d) include the report submitted under section 26(3)(b) for that financial year; and
- (e) include information on how the Authority, during the financial year, conducted or implemented the activities and projects set out -
 - (i) in the corporate plan sent in the previous financial year to the Secretary for Home Affairs under section 29(1); and
 - (ii) in the business plan sent in the previous financial year to the Secretary for Home Affairs under section 30(1).

(3) In this section, "previous financial year" () means the year immediately preceding the financial year to which the annual report relates."

In the heading, by deleting "**Reports, etc.**" and substituting "**Annual report**".

31 By deleting subclause (1) and substituting -

"(1) The Authority shall, within 6 months after the end of each financial year, submit to the Financial Secretary the annual report prepared under section 30A(1) for that financial year."

31(2) By deleting "documents" and substituting "report".

34 By deleting subclause (1) and substituting -

"(1) A Board member or a committee member shall disclose to the Authority any interest that he has which is of a class or description determined by the Authority under subsection (2) -

- (a) on his first appointment;
- (b) at the beginning of each calendar year after the appointment;
- (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (d) after the occurrence of any change to an interest previously disclosed under this subsection."

34(5) By adding ", by such means as it considers appropriate," before "make available".

Schedule,
section 4 By adding "(including any change of the status of the member by reference to which he has been appointed for the purpose of complying with section 6(3) of this Ordinance)" after "cause".