

**WEST KOWLOON CULTURAL DISTRICT AUTHORITY
BILL**

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A BILL

To

Establish the West Kowloon Cultural District Authority to develop the land leased to the Authority into an integrated arts and cultural district and to provide, operate, manage, maintain or otherwise deal with, arts and cultural facilities and related facilities in, and ancillary facilities outside, the district; to provide for the powers and functions of the Authority; to provide for planning and financial matters; and to provide for connected matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the West Kowloon Cultural District Authority Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“ancillary facilities” (附屬設施) means any facilities provided outside the leased area that are ancillary to the preparation or provision of arts and cultural facilities;

“approved development plan” (核准發展圖則) means an approved development plan referred to in section 18(11);

- “arts and cultural facilities” (藝術文化設施) means any arts or cultural facilities provided within the leased area that are comprised in any land set apart for such facilities in the approved development plan;
- “Authority” (管理局) means the West Kowloon Cultural District Authority established under section 3(1);
- “Board” (董事局) means the Board of the Authority established under section 6(1);
- “Board member” (董事) means any member of the Board referred to in section 6(3), including the Chairman and the Chief Executive Officer;
- “Chairman” (主席) means the Chairman referred to in section 6(3)(a);
- “charge” (押記) includes any form of security, including a mortgage;
- “Chief Executive Officer” (行政總裁) means the Chief Executive Officer of the Authority appointed under section 7;
- “committee member” (委員) means a member of any committee established under section 8 or 9;
- “development plan” (發展圖則) means any development plan prepared under section 18(1);
- “financial year” (財政年度), in relation to the Authority, means—
- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; or
 - (b) the period of 12 months ending on 31 March in each subsequent year;
- “function” (職能) includes a power and a duty;
- “land grant” (批地文件) means any instrument in writing by which the Director of Lands agrees to lease land within the plan area (or interests or other rights in respect of the land) to the Authority, and includes a reference to the legal estate created by virtue of section 14 of the Conveyancing and Property Ordinance (Cap. 219) in the land;
- “leased area” (批租地區) means all the area of land within the plan area which is leased to the Authority under any land grant;
- “plan area” (規劃區) means the area that is set apart for “Arts, Cultural, Entertainment, Commercial and Other Uses” in the SWK approved plan;
- “related facilities” (相關設施) means any facilities other than arts and cultural facilities provided within the leased area that are comprised in any land set apart for such facilities in the approved development plan, including—
- (a) any retail, dining or entertainment facilities;
 - (b) a mechanical system (if any) which is constructed or adapted for the carriage of passengers and their personal effects within such area;
 - (c) roads, public piers and other transport facilities;
 - (d) public car parks;

- (e) public open space; and
 - (f) such other facilities as the Authority considers necessary or expedient;
- “subsidiary” (附屬公司) means a body corporate that is deemed to be a subsidiary of the Authority by virtue of section 2 of the Companies Ordinance (Cap. 32);
- “SWK approved plan” (西南九龍核准圖則) means any approved plan for the lay-out of South West Kowloon that is approved under section 9 of the Town Planning Ordinance (Cap. 131);
- “SWK draft plan” (西南九龍草圖) means any draft plan for the lay-out of South West Kowloon that is exhibited under section 5 or 7 of the Town Planning Ordinance (Cap. 131);
- “Town Planning Board” (城規會) means the Town Planning Board appointed under section 2 of the Town Planning Ordinance (Cap. 131);
- “Vice-Chairman” (副主席) means any Vice-Chairman appointed under section 6(4).

PART 2

WEST KOWLOON CULTURAL DISTRICT AUTHORITY

Division 1—The Authority

3. Establishment of Authority

(1) There is established by this section a body corporate with the corporate name of “West Kowloon Cultural District Authority” in English and “西九文化區管理局” in Chinese.

(2) The Authority—

- (a) has perpetual succession in its corporate name;
- (b) shall provide itself with a corporate seal; and
- (c) is capable of suing and being sued in its corporate name.

(3) The Authority is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

4. Functions of Authority

(1) The functions of the Authority are—

- (a) to prepare a development plan and, if necessary, amend any development plan under section 18(10), 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.

(2) The Authority, when performing its functions under subsection (1), 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.

5. Powers of Authority

(1) The Authority may do all such things as are necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

(2) Without limiting the generality of subsection (1), the Authority may—

- (a) acquire, hold, lease or hire any kind of property, whether movable or immovable;
- (b) subject to the terms and conditions contained in the land grant, sell, surrender or otherwise dispose of any kind of immovable property;
- (c) sell, surrender or otherwise dispose of any kind of movable property;
- (d) enter into, assign or accept the assignment of, and vary or rescind, any contract or obligation, whether or not for the purpose of providing, operating, managing, maintaining or otherwise dealing with arts and cultural facilities, related facilities or ancillary facilities;
- (e) apply for and receive any grant for the performance of its functions on such terms and conditions as it considers appropriate;
- (f) receive and solicit gifts, donations or sponsorship, whether on trust or otherwise, and act as trustee of moneys or other properties vested in it on trust, for any purposes consistent with the purposes under section 4(2);
- (g) sponsor or provide financial support to facilitate the organization of activities relating to arts and culture;
- (h) establish any body corporate (including a subsidiary) or any trust or non-profit making organization, as may be appropriate in the opinion of the Authority, to facilitate the attainment of the purposes under section 4(2);
- (i) acquire or dispose of shares of any body corporate (including a subsidiary);
- (j) liaise and cooperate with any person, whether within or outside Hong Kong, for any purposes consistent with the purposes under section 4(2);
- (k) determine, approve or collect, or vary, waive or refund, fees or charges for the use of arts and cultural facilities, related facilities or ancillary facilities;
- (l) specify terms and conditions for the use of any of the facilities referred to in paragraph (k);

- (m) commission, mount or present any work of visual art, exhibition or theatrical, music, dance or other arts production;
 - (n) engage in such activities as the Chief Executive in Council may, after consultation with the Authority, permit or assign to it by order published in the Gazette; and
 - (o) either alone or jointly or by agreement with any other person, exercise any of the powers of the Authority.
- (3) An order under subsection (2)(n) is subsidiary legislation.

6. Establishment of Board

- (1) There is established by this section a Board of the Authority.
- (2) The Board is the governing and executive body of the Authority with authority to perform, in the name of the Authority, the functions conferred or imposed on the Authority by or under this Ordinance.
- (3) The Board is to consist of—
- (a) the Chairman who may or may not be a public officer;
 - (b) the Chief Executive Officer;
 - (c) not more than 15 other members who are not public officers, including—
 - (i) 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
 - (ii) at least one member who is a member of the Legislative Council; and
 - (d) 3 other members who are public officers.
- (4) The Chief Executive may appoint one or more than one Board member (other than the Chairman and the Chief Executive Officer) as Vice-Chairman of the Board as long as the person is a Board member.
- (5) All Board members (other than the Chief Executive Officer) are to be appointed by the Chief Executive.
- (6) The Chief Executive Officer is to be an ex-officio member of the Board.
- (7) An appointment made under this section is to be notified in the Gazette.
- (8) The number of Board members who are public officers is not to exceed the number of those who are not public officers.
- (9) Where the requirements of subsection (3) or (8) are not complied with as a result of any change in membership of the Board or any change of the status of any Board member, the Chief Executive shall as soon as reasonably practicable make the necessary appointment to ensure that the requirements are complied with.

(10) Notwithstanding subsections (3), (8) and (9), the Board may perform any of its functions, and its proceedings are valid, despite—

- (a) a vacancy in the membership of the Board;
 - (b) a defect in the appointment or qualification of a person purporting to be a Board member; or
 - (c) a minor irregularity in the convening of any Board meeting.
- (11) A notification under subsection (7) is not subsidiary legislation.

7. Chief Executive Officer

The Authority may, with the prior approval of the Chief Executive, appoint a person to be the Chief Executive Officer of the Authority who is to be an employee of the Authority.

8. Audit Committee

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

(2) The functions of the Audit Committee 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.

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

(4) 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.

(5) The Board is to appoint a Board member (other than the Chairman) to be the chairman of the Audit 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 as the Board considers fit.

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

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

9. Establishment of committees

(1) The Board may, for the purpose of performing any of the functions of the Authority, establish such committee as the Board considers necessary or expedient to deal with any matter (including, in particular, matters relating to planning, finance and operation of arts and cultural facilities).

(2) The Board may refer or assign a matter to any committee established under this section for consideration.

(3) A committee is to consist of such number of committee members as the Board may determine.

(4) Each of the committee members, 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 (other than the Chairman) to be the chairman of a committee.

(6) The Board may—

(a) withdraw any matter referred or assigned under subsection (2);
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 as the Board considers fit.

(8) A committee established under this section may, subject to the requirements of this Ordinance, regulate its own administration, proceedings and business in such manner as it considers appropriate.

10. Appointment of employees of Authority, etc.

(1) Subject to section 7, the Authority may appoint any person to be its employee.

(2) The Authority may determine the terms and conditions of the employment of its employees, including the terms and conditions relating to allowances, benefits and remuneration.

(3) The Authority may make arrangements for the provision and maintenance of any schemes for the payment of pensions, gratuities and retirement benefits to the employees or former employees of the Authority or their dependants.

(4) The Authority may engage such consultants or advisors as it may consider necessary or expedient and may determine the terms and conditions of their engagement.

11. Delegation and sub-delegation of Authority's functions

(1) Subject to subsection (2), the Authority may delegate any of its functions to—

- (a) any Board member;
 - (b) any committee established under section 8 or 9;
 - (c) any body corporate (including a subsidiary) acquired or established by, or any trust or non-profit making organization, established by, the Authority; or
 - (d) any employee of the Authority.
- (2) No delegation is to be made under subsection (1) in respect of—
- (a) the power of the Authority to delegate under this section;
 - (b) the power to make bylaws;
 - (c) the power to acquire or establish a body corporate (including a subsidiary), or establish a trust or non-profit making organization;
 - (d) the power to acquire or dispose of shares of a body corporate (including a subsidiary).

(3) Where the Authority delegates any function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation under this section does not prevent the Authority from concurrently performing the function delegated unless it is otherwise stated in the delegation.

(5) A sub-delegation under this section does not prevent a delegate of the Authority from concurrently performing the function sub-delegated unless it is otherwise stated in the sub-delegation.

(6) Where a person or any committee established under section 8 or 9 purports to act pursuant to a delegation or sub-delegation under this section, he or it is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

12. Board matters

The Schedule has effect with respect to the Board members and the Chief Executive Officer, and the proceedings of and other matters concerning the Board.

**Division 2—Directions and further requirements applicable to
the Authority**

13. Chief Executive in Council may give directions

(1) Subject to subsection (2), the Chief Executive in Council may, if he considers the public interest so requires, give such directions in writing to the Authority as he considers appropriate.

(2) A direction given under subsection (1) may not require the Authority to do, or not to do, anything if the requirement is wholly or partly inconsistent with this Ordinance.

(3) The Authority shall comply with any direction given under subsection (1).

(4) A direction given under subsection (1) is to remain in force for such period as is specified in it or, if no period is specified, until it is withdrawn by the Chief Executive in Council.

(5) If compliance with a direction given under subsection (1) results, or is expected to result, in the Authority's being unable to pay (whether wholly or partly) a debt or to discharge (whether wholly or partly) any of its other legal obligations, then subject to subsection (7), the Government shall, upon an application made by the Authority, pay to it an amount equal to any loss as may be reasonably incurred by the Authority by reason of such compliance.

(6) Any sum which is payable under subsection (5) is to be charged and paid out of the general revenue.

(7) Where an application is made under subsection (5), the Authority shall give to the Financial Secretary such relevant information or other relevant particulars as he may require.

14. Chief Executive may obtain information

(1) The Chief Executive may require the Authority to furnish to him such information relating to its affairs or activities as may be specified by him.

(2) The Authority shall comply with any requirement made under subsection (1) and afford to the Chief Executive facilities for the verification of information furnished.

15. Financial Secretary may obtain information

(1) The Financial Secretary may, for the purposes of Part 4, require the Authority to furnish to him such information relating to its financial affairs as may be specified by him.

(2) The Authority shall comply with any requirement made under subsection (1) and afford to the Financial Secretary facilities for the verification of information furnished.

16. Attendance at Legislative Council

(1) The Legislative Council or any committee of the Legislative Council may request the Chairman and the Chief Executive Officer to attend its meetings.

(2) The Chairman and the Chief Executive Officer shall—

- (a) comply with the request; and
- (b) answer questions raised by the Members of the Legislative Council at the meetings.

17. Public consultation

Without prejudice to section 18(3)(a), the Authority 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 Authority considers fit, consult the public at such time and in such manner as it considers appropriate.

PART 3

PLANNING MATTERS

18. Preparation of development plans, etc.

(1) Subject to subsections (3) and (5), the Authority shall, as soon as reasonably practicable after the commencement of this Ordinance, prepare a development plan to—

- (a) lay out the plan area;
- (b) set apart any land within the plan area for one or more than one land use; and
- (c) show or make provision for any area that is comprised in the land set apart under paragraph (b).

(2) Without affecting the generality of subsection (1), a development plan—

- (a) may contain any thing that a draft plan may contain under section 3 or 4 of the Town Planning Ordinance (Cap. 131); and
- (b) may provide for the grant of permission under section 16 of that Ordinance for all purposes or for any purpose.

- (3) In preparing a development plan, the Authority shall—
- (a) consult the public at such time and in such manner as it considers appropriate; and
 - (b) consult the Secretary for Home Affairs.
- (4) When consulted by the Authority, the Secretary for Home Affairs may impose such requirements or conditions as he thinks necessary or expedient for the development of the plan area.
- (5) In preparing a development plan, the Authority shall have regard to the views received in the consultation conducted under subsection (3)(a) and ensure that—
- (a) the requirements or conditions imposed by the Secretary for Home Affairs (if any) under subsection (4) are satisfied; and
 - (b) the development parameters and other requirements or conditions as may be specified in the SWK approved plan are, in so far as they relate to the plan area, complied with.
- (6) The Authority shall submit a development plan to the Town Planning Board for consideration under subsection (7).
- (7) Upon the submission to it of a development plan under subsection (6) or (10), the Town Planning Board shall consider the plan and may—
- (a) deem the plan as being suitable for publication;
 - (b) deem the plan as being suitable for publication subject to such amendments as the Town Planning Board shall specify; or
 - (c) refuse to deem the plan as being suitable for publication.
- (8) A development plan which is deemed suitable for publication under subsection (7)(a) or (b) is deemed to be a draft plan prepared by the Town Planning Board for the purposes of the Town Planning Ordinance (Cap. 131) and the provisions of that Ordinance concerning any draft plan are to apply accordingly.
- (9) Where under section 5 of the Town Planning Ordinance (Cap. 131) a development plan which is deemed to be a draft plan by virtue of subsection (8) is exhibited, such plan is, from the date that the exhibition of the plan is first notified in the Gazette, to replace any SWK draft plan or any SWK approved plan in so far as such SWK draft plan or SWK approved plan relates to the plan area.
- (10) Where the Town Planning Board refuses to deem a development plan submitted under subsection (6) as being suitable for publication, the Authority shall amend the development plan and submit it to the Town Planning Board for consideration under subsection (7).
- (11) Where a development plan which is deemed to be a draft plan by virtue of subsection (8) is approved under section 9 of the Town Planning Ordinance (Cap. 131)—

- (a) the development plan becomes an approved development plan when the approval is notified in the Gazette; and
- (b) the approved development plan is to be regarded as an approved plan for the purposes of that Ordinance.

(12) Where under section 9 of the Town Planning Ordinance (Cap. 131), the Chief Executive in Council refuses to approve a development plan which is deemed to be a draft plan by virtue of subsection (8), such refusal is—

- (a) to be notified in the Gazette; and
- (b) to revive any SWK draft plan or any SWK approved plan which, under subsection (9), was replaced by it.

PART 4

FINANCIAL MATTERS

Division 1—Resources

19. Resources of Authority

- (1) The resources of the Authority consist of—
 - (a) all moneys paid by the Government to the Authority, whether by way of appropriation by the Legislative Council, loan or any other means;
 - (b) all moneys provided by any person other than the Government to the Authority, whether by way of loan or any other means;
 - (c) income received by the Authority by operating, managing or otherwise dealing with arts and cultural facilities, related facilities or ancillary facilities; and
 - (d) all other moneys and property, including gifts, sponsorships, donations, interest, profits, dividends and investment income, received by the Authority.
- (2) The Authority shall—
 - (a) manage its finances (including resources) with due care and diligence; and
 - (b) ensure the financial sustainability of the operation and management of arts and cultural facilities, related facilities and ancillary facilities.

Division 2—Financial arrangements

20. Investment

(1) The Authority shall invest, in a financially prudent manner, the funds available for investment in such classes or descriptions of investment as the Financial Secretary may specify in writing.

(2) For the purposes of subsection (1), the Authority may engage financial consultants or advisors under section 10(4) to manage or otherwise deal with its resources referred to in section 19(1).

21. Borrowing powers, etc.

(1) The Authority may borrow from the Government, or otherwise raise, moneys as may be required for the performance of its functions on such terms and conditions as may be approved by the Financial Secretary.

(2) Subject to subsection (3), the Authority may borrow moneys from any person other than the Government for performing its functions.

(3) The Chief Executive may issue a direction in writing for the purposes of this section to the Authority that it is not to borrow or raise any sum (or its equivalent in a currency other than Hong Kong dollar) which exceeds an amount specified in the direction without the prior written approval of the Financial Secretary.

(4) The Authority shall comply with a direction issued under subsection (3).

(5) The Authority may, with the prior written approval of the Financial Secretary, charge all or any part of its property as security for the repayment of moneys borrowed or raised.

(6) A charge referred to in subsection (5) in so far as it relates to any property of the Authority is not to be enforced, whether by order of any court or otherwise, except with the prior written approval of the Chief Executive in Council and in accordance with the terms and conditions of such approval.

22. Power to enter into other financial transactions

The Authority may, on such terms and conditions as it considers fit, enter into any agreement or arrangement in connection with its financial affairs, including any agreement or arrangement for reducing, compensating for or hedging against any financial risk.

23. Guarantees by Government

(1) The Legislative Council or its Finance Committee may from time to time by resolution authorize the Financial Secretary to grant on behalf of the Government guarantees in respect of the repayment of loans made to, or the discharge of other indebtedness of, the Authority and the payment of interest, premium or other charge on the loans or indebtedness up to an amount not exceeding in total the amount that is specified in the resolution and subject to any terms and conditions specified in it.

(2) If, pursuant to a guarantee granted under subsection (1), the Government makes a payment to a creditor of the Authority in respect of a debt secured by a charge—

- (a) the sum is to be charged and paid out of the general revenue;
- (b) the sum is repayable to the Government by the Authority, together with interest on such sum at such rate as the Financial Secretary may determine, and the Government shall as from the time of payment have the benefit of all the remedies vested in the creditor by virtue of such charge, and may exercise the rights and powers arising under the charge in its own name and without any assignment by the creditor; and
- (c) any sum received by the Government by way of repayment of a sum so paid out, or for the interest on such sum, is to be paid into the general revenue.

24. Reserve funds

(1) The Authority may—

- (a) with the prior written approval of the Financial Secretary, establish and maintain general and special reserve funds;
- (b) credit into those funds such sums as it considers fit; and
- (c) make such disbursements from those funds as are consistent with this Ordinance.

(2) For the purposes of subsection (1)(b), the Authority shall, in accordance with the direction given by the Financial Secretary at the time when the approval is given, carry the profits (whether wholly or partly) of the Authority in any financial year to the credit of such general or special reserve funds as may be specified in the direction.

Division 3—Accounting arrangements

25. Authority to keep proper accounting records and to prepare statement of accounts

(1) The Authority shall keep proper accounts and records of its transactions.

(2) Subject to subsection (5), the Authority shall ensure that a statement of accounts is prepared within 3 months after the end of each financial year, or such longer period as the Financial Secretary may allow, containing—

- (a) a profit and loss account for that financial year;
- (b) a cash flow statement for that financial year; and
- (c) a balance sheet as on the last day of that financial year.

(3) A statement of accounts referred to in subsection (2) is to give a true and fair view of—

- (a) the state of affairs of the Authority as at the end of the financial year to which the statement relates;
- (b) its profit or loss for that financial year; and
- (c) its cash flow for that financial year.

(4) Where the Authority has any subsidiary at any time in a financial year, the statement of accounts prepared under subsection (2) for that financial year is to include the group accounts relating to the Authority and the subsidiaries, and subsection (3) is to apply accordingly.

(5) The Authority shall ensure that the statement of accounts prepared under subsection (2) comply with—

- (a) the manner in which the statement is to be prepared; and
- (b) any accounting standards,

as may be notified to the Authority in writing by the Financial Secretary.

26. Authority to appoint auditor

(1) The Authority shall, subject to subsection (2), appoint an auditor to audit the statement of accounts prepared under section 25(2).

(2) The person appointed under subsection (1) is not to be—

- (a) a Board member;
- (b) a committee member;
- (c) an employee of the Authority;
- (d) a partnership of which any partner is a Board member or a committee member; or
- (e) a body corporate of which any director is a Board member or a committee member.

- (3) The auditor appointed under subsection (1) shall—
 - (a) audit the statement of accounts prepared under section 25(2); and
 - (b) submit a report on it to the Authority.
- (4) For the purposes of subsection (3), the auditor is entitled to—
 - (a) have access at all reasonable times to all books of account, vouchers and other financial records that are in the custody or under the control of the Authority; and
 - (b) require such information and explanations relating to those books, vouchers and records as he thinks fit.
- (5) In this section, “auditor” (核數師) means a certified public accountant (practising) or a corporate practice as defined in the Professional Accountants Ordinance (Cap. 50).

27. Director of Audit’s examination

(1) The Director of Audit may, in respect of any financial year of the Authority, conduct an examination into the economy, efficiency and effectiveness with which the Authority has expended its resources in performing its functions.

(2) For the purposes of subsection (1), the Director of Audit is entitled to—

- (a) have access at all reasonable times to all books of account, vouchers, other financial records and any other property in the custody or under the control of the Authority as he may reasonably require for the purpose of conducting an examination under that subsection; and
- (b) require any person who holds or is accountable for any such document or property to provide such information and explanations as he thinks fit.

(3) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.

28. Supplementary provisions to this Division

For the purposes of this Division, where the Authority has any subsidiary at any time in a financial year, the Authority shall, as soon as reasonably practicable after the end of that financial year, send to the Financial Secretary—

- (a) a copy of the report on the subsidiary’s affairs for that financial year; and
- (b) the audited statement of accounts of the subsidiary for that financial year.

Division 4—Other arrangements

29. Corporate plan

(1) The Authority shall, before the end of each financial year, send to the Secretary for Home Affairs for record purpose a corporate plan of the Authority for a period of 3 years beginning on the first day of the next financial year covering in relation to that period—

- (a) a programme of activities and projects that the Authority proposes to conduct or implement;
- (b) a financial plan including the projected revenue and expenditure, any proposed investment, any proposed loan and the purpose of taking out the loan, the amount and repayment schedule involved (if any), and the staffing requirement, of the Authority.

(2) The Authority shall send its first corporate plan to the Secretary for Home Affairs as soon as reasonably practicable after the Authority is established.

30. Business plan

(1) The Authority shall, before the end of each financial year, send to the Secretary for Home Affairs for record purpose a business plan of the Authority for the next financial year covering in relation to that year—

- (a) details of the activities and projects that are to be conducted or implemented under the corporate plan;
- (b) resources required to conduct or implement such activities and projects;
- (c) details of the financial plan including—
 - (i) the estimated revenue and expenditure;
 - (ii) any proposed loan (including allowances for interest payments); and
 - (iii) the staffing requirement.

(2) The Authority shall send its first business plan to the Secretary for Home Affairs at the same time when its first corporate plan is sent under section 29(2).

31. Reports, etc. to be laid before Legislative Council

(1) The Authority shall, within 6 months after the end of each financial year, submit to the Financial Secretary—

- (a) a report on the activities of the Authority for that financial year;

- (b) a copy of the statement of accounts prepared under section 25(2); and
- (c) a copy of the report submitted under section 26(3)(b).

(2) The Financial Secretary shall cause the documents received under subsection (1) to be laid on the table of the Legislative Council.

PART 5

MISCELLANEOUS

32. Secretary for Home Affairs may make regulations

(1) The Secretary for Home Affairs may make regulations for the purpose of securing the safe operation, management or maintenance of arts and cultural facilities, related facilities or ancillary facilities.

(2) Any regulations made under subsection (1) may—

- (a) be made to apply generally;
- (b) make different provisions for different circumstances and provide for a particular case or class of case;
- (c) be made so as to apply in such circumstances as are specified in the regulations.

33. Authority may make bylaws

(1) The Authority may make bylaws for one or more of the following purposes—

- (a) for the regulation, operation or management of arts and cultural facilities, related facilities or ancillary facilities;
- (b) for the conduct of all persons within any premises, buildings, structures, facilities or land (including public places) which the Authority holds or manages, whether within or outside the leased area.

(2) The following provisions apply in relation to bylaws made under subsection (1)—

- (a) any of the bylaws may provide that a contravention of any specified provision in the bylaws is an offence and may prescribe penalties not exceeding a fine at level 3;
- (b) without prejudice to any Ordinance relating to the prosecution of criminal offences or the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions under any of the bylaws may be brought in the name of the Authority;
- (c) all bylaws are subject to the approval of the Legislative Council.

34. Disclosure of interest

- (1) A Board member or a committee member shall—
 - (a) upon his first appointment; and
 - (b) on such occasion as the circumstances may require after the appointment,

disclose to the Authority his interest which is of a class or description determined by the Authority under subsection (2).

- (2) The Authority may, for the purposes of this section—
 - (a) determine the class or description of the interest required to be disclosed;
 - (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
 - (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority shall establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at its principal office.

(4) Where a Board member or a committee member makes a disclosure as required by subsection (1), the Authority shall cause his name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority shall cause particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority shall make available the register for inspection by the public at any reasonable time.

35. Common part is public place

For the purposes of any law, all common parts within the leased area to which the public has access is a public place.

36. Immunity

No personal liability is incurred by a Board member or a committee member in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance (including a function purportedly delegated or sub-delegated under this Ordinance).

37. Exemption from taxation

(1) The Authority is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

(2) The Authority is also exempt from stamp duty under the Stamp Duty Ordinance (Cap. 117) in respect of any instrument relating to—

- (a) the conveyance of any immovable property under which the beneficial interest of the property passes by way of gift to the Authority; or
- (b) the transfer of any stock within the meaning of that Ordinance, under which the beneficial interest of the stock passes by way of gift to the Authority.

PART 6

CONSEQUENTIAL AMENDMENTS

Prevention of Bribery Ordinance

38. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding—

“110. West Kowloon Cultural District Authority (including any committees established under the West Kowloon Cultural District Authority Ordinance (of 2008)).

111. Any entity established under section 5(2)(h) of the West Kowloon Cultural District Authority Ordinance (of 2008).”.

The Ombudsman Ordinance

39. Organizations to which this Ordinance applies

Part I of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by adding—

“West Kowloon Cultural District Authority.”.

SCHEDULE

[s. 12]

PROVISIONS WITH RESPECT TO BOARD MEMBERS AND PROCEEDINGS
OF AND OTHER MATTERS CONCERNING BOARD

PART 1

APPOINTMENT AND REMOVAL OF BOARD MEMBERS

1. Term of office of Board members

Subject to sections 5 and 6, any Board member (other than the Chief Executive Officer)—

- (a) where he is not a public officer, is to be appointed by the Chief Executive for a term not exceeding 3 years; and
- (b) where he is a public officer, is to hold office at the discretion of the Chief Executive.

2. Other terms and conditions of appointment of Board members

Any Board member (other than the Chief Executive Officer) who is not a public officer holds office on such terms and conditions of appointment as the Chief Executive may from time to time determine.

3. Resignation of Board members

(1) Any Board member (other than the Chief Executive Officer) who is not a public officer may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

4. Removal of Board members

If the Chief Executive is satisfied that any Board member (other than the Chief Executive Officer) who is not a public officer is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause, the Chief Executive may by notice in writing remove the member from office.

5. **Acting Chairman**

(1) If at any time the Chairman is absent from Hong Kong or the Chief Executive is satisfied that the Chairman is unable, because of temporary incapacity or otherwise, to act as the Chairman—

- (a) the Chief Executive may appoint any Vice-Chairman to act in his place; or
- (b) where all Vice-Chairmen are also absent from Hong Kong or are unable to act as Vice-Chairman for any other reason, the Chief Executive may appoint any other Board member to act in the place of the Chairman.

(2) An appointment under subsection (1) is to continue in force until it is revoked by the Chief Executive or an appointment is made under section 6 of this Ordinance (whichever first occurs).

(3) This section applies where the Chairman is not a public officer.

6. **Temporary Board members**

(1) If at any time any Board member who is not a public officer (other than the Chairman and the Chief Executive Officer) is absent from Hong Kong or the Chief Executive is satisfied that the member is unable, because of temporary incapacity or otherwise, to act as a Board member, the Chief Executive may appoint another person to act in place of the member.

(2) An appointment under subsection (1) is to continue in force until it is revoked by the Chief Executive or an appointment is made under section 6 of this Ordinance (whichever first occurs).

PART 2

CHIEF EXECUTIVE OFFICER

7. **Terms and conditions of appointment of Chief Executive Officer**

The Chief Executive Officer holds office on such terms and conditions of appointment as the Authority may from time to time determine.

8. **Functions of Chief Executive Officer**

(1) Subject to subsection (2), the Chief Executive Officer—

- (a) shall be responsible for the general management and administration of the Authority's affairs; and

- (b) shall perform such functions as are for the time being assigned to him under this section or delegated to him under section 11(1) of this Ordinance.
 - (2) The Authority may—
 - (a) assign to the Chief Executive Officer any function specified by the Authority;
 - (b) direct that any function assigned under paragraph (a) shall be performed by the Chief Executive Officer only in a manner, or subject to conditions or modifications, that is specified by the Authority; and
 - (c) direct that a function assigned under paragraph (a) is not to be performed by the Chief Executive Officer.
 - (3) An assignment or direction under subsection (2) is to remain in force for such period as is specified by the Authority at the time of the assignment or direction or, if no period is specified, until it is withdrawn by the Authority.

9. Chief Executive Officer not to take part in certain Board meetings

(1) Without affecting the generality of section 15, where a matter relating to the terms and conditions of appointment or removal of the Chief Executive Officer is brought up for discussion or consideration in a Board meeting, he shall not—

- (a) take part in the deliberation of the Board with respect to the matter; or
- (b) vote on any question concerning it,

unless two-thirds of the other Board members present at the meeting decide otherwise.

(2) Where the Chief Executive Officer is neither permitted to take part in the deliberation of the Board nor vote on the question, then for so long as the matter is being discussed or considered at the Board meeting, his presence is disregarded for the purpose of forming a quorum for the meeting.

10. Removal of Chief Executive Officer

The Authority may, with the prior approval of the Chief Executive, remove the Chief Executive Officer.

PART 3

PROCEEDINGS OF BOARD

11. Board meetings

(1) Board meetings are to be held as often as may be necessary for the performance of the functions of the Board.

(2) Board meetings may be convened by the Chairman, any Vice-Chairman or any other 4 Board members.

12. Chairman to preside at Board meetings

At a Board meeting—

- (a) if the Chairman is present, he is to be the chairman of the meeting;
- (b) if the Chairman is not present but more than one Vice-Chairman is present, the Board members present are to choose one Vice-Chairman to be the chairman of the meeting;
- (c) if the Chairman is not present but a Vice-Chairman is present, the Vice-Chairman is to be the chairman of the meeting; or
- (d) if neither the Chairman nor any Vice-Chairman is present, the Board members present are to choose one of them to be the chairman of the meeting.

13. Quorum

(1) Subject to subsection (2), the quorum for a Board meeting is not less than half of the Board members.

(2) A quorum is not constituted unless—

- (a) 2 Board members (other than the Chairman and the Chief Executive Officer) who are not public officers are present; and
- (b) not less than 2 Board members (other than the Chairman) who are public officers are present.

14. Voting rights

(1) Subject to subsection (2) and sections 9 and 15, each Board member present at a Board meeting has one vote.

(2) In relation to any matter on which a decision is taken by vote in a Board meeting, and in the event that voting is equally divided, the chairman of the meeting has a casting vote.

15. Conflict of interest

(1) Subject to section 9, where a Board member who is in any way directly or indirectly interested in any contract or any other matter which is to be discussed or considered by the Board at a Board meeting—

(a) he shall (if he is present at the Board meeting)—

(i) disclose at the meeting the nature of his interest (and such disclosure is to be recorded in the minutes of the meeting);

(ii) withdraw from the meeting while the contract or matter to which the disclosure relates is being discussed or considered, unless—

(A) if he is not the chairman of the meeting, he is permitted by the chairman of the meeting to take part in such discussion or consideration; or

(B) if he is the chairman of the meeting, two-thirds of the other Board members present at the meeting decide so to permit him; and

(b) he shall not—

(i) vote on any question concerning the contract or matter, unless—

(A) if he is not the chairman of the meeting, he is permitted by the chairman of the meeting to vote on the question; or

(B) if he is the chairman of the meeting, two-thirds of the other Board members present at the meeting decide so to permit him; or

(ii) influence or seek to influence a decision of the Board concerning the contract or matter.

(2) Where a disclosure is made under subsection (1)(a)(i) and the Board member concerned is neither required to withdraw from the relevant meeting nor permitted to vote, then for so long as the contract or matter to which the disclosure relates is being discussed or considered at such meeting, his presence is disregarded for the purpose of forming a quorum for the meeting.

(3) Where a decision is made by the Board to enter into any contract with a Board member described in subsection (1), or with a person through whom any Board member has a direct or indirect interest in the contract, the parties to the contract are to be made public in such manner as the Board considers fit.

(4) The validity of any proceedings of the Board is not affected by the failure of a Board member to comply with this section.

(5) The public interest stated by a Board member who is a public officer under section 16 in respect of any matter does not, for the purposes of subsection (1), render the member interested in that matter.

16. Public officers to state public interest

Where at a Board meeting a Board member who is a public officer and is present considers that any matter which is to be or is being discussed or considered by the Board is or could be contrary to, or otherwise raises or puts in issue, or could so raise or put in issue, the public interest as perceived by him, he shall—

- (a) state to the meeting his opinion regarding the relation between the public interest, as so perceived, and the matter; and
- (b) where appropriate, state how, in his opinion, an actual or potential conflict with that interest, as so perceived, arises or could arise.

17. Board to regulate its proceedings and business

The Board may, subject to the requirements of this Ordinance, regulate its own proceedings and business relating to any Board meeting.

PART 4

EXECUTION OF DOCUMENTS BY BOARD

18. Seal and documents

(1) The corporate seal of the Authority may be affixed to a document only if it is authorized by a resolution of the Board.

(2) The affixing of the corporate seal is to be authenticated by the signatures of any 2 Board members authorized by the Board, either generally or specially in that behalf.

(3) Any document purporting to be a document duly executed under the corporate seal is admissible in evidence and is, unless the contrary is proved, to be deemed to be so executed.

(4) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under a corporate seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board in that behalf.

Explanatory Memorandum

The main objects of this Bill are to establish the West Kowloon Cultural District Authority (“the Authority”) as a statutory body and to provide for the structure, functions and powers of the Authority.

Part 1—Preliminary

2. Clause 1 provides for the short title of the Bill and empowers the Secretary for Home Affairs to appoint a day on which the Bill (when enacted) shall come into operation.

3. Clause 2 contains definitions that are necessary for the interpretation of the Bill.

Part 2—West Kowloon Cultural District Authority

4. Clause 3 incorporates the West Kowloon Cultural District Authority as a body corporate with perpetual succession and a corporate seal.

5. Clause 4 sets out the functions of the Authority in respect of—

- (a) the preparation of a development plan for consideration by the Town Planning Board (“TPB”);
- (b) the development of the area leased to the Authority (“leased area”) in accordance with the land use and other requirements or conditions specified in the development plan as may be approved by the Chief Executive in Council under the Town Planning Ordinance (Cap. 131);
- (c) the provision of arts and cultural facilities and related facilities within the leased area and ancillary facilities outside such area;
- (d) the operation, management or maintenance of, or otherwise dealing with, arts and cultural facilities and related facilities within the leased area and ancillary facilities outside such area; and
- (e) the promotion of arts and culture generally within the local community.

6. Clause 5 sets out the powers of the Authority for the purpose of performing its functions under clause 4.

7. Clause 6 provides for the establishment of the Board of the Authority (“Board”). The Board is the governing and executive body of the Authority. This clause also sets out the composition of the Board and the maximum number of Board members is 20.

8. Clause 7 provides for the appointment of the Chief Executive Officer of the Authority.
9. Clause 8 provides for the establishment of the Audit Committee.
10. Clause 9 empowers the Board to establish any committees other than the Audit Committee.
11. Clause 10 provides for the appointment of employees of the Authority. The Authority may also engage consultants or advisors for their technical or professional services.
12. Clause 11 provides for the delegation and sub-delegation of functions of the Authority.
13. Clause 12 (as read with the Schedule) provides for matters concerning the Board, including its proceedings and other matters.
14. Clause 13 enables the Chief Executive in Council to give written directions to the Authority if he considers that it is in the public interest to do so.
15. Clause 14 empowers the Chief Executive to obtain from the Authority any information relating to its affairs or activities.
16. Clause 15 empowers the Financial Secretary to obtain from the Authority any information relating to its financial affairs.
17. Clause 16 requires the Chairman and the Chief Executive Officer of the Authority to attend meetings at the request of the Legislative Council or any of its committees.
18. Clause 17 requires the Authority to consult the public on matters concerning the development or operation of various facilities within and outside the leased area.

Part 3—Planning matters

19. Clause 18 requires the Authority to consult the Secretary for Home Affairs and the public in preparing a development plan for consideration by the TPB. This clause also deems a development plan which the TPB deems suitable for publication to be a draft plan prepared under the Town Planning Ordinance (Cap. 131) and relevant provisions of that Ordinance are to apply to the plan.

Part 4—Financial matters

20. Clause 19 lists the resources of the Authority and imposes an obligation on the Authority to manage its finances with due care and diligence.

21. Clause 20 deals with the investment power of the Authority. Under this clause, the investment to be made by the Authority is to fall within the classes or descriptions of investment that the Financial Secretary may specify in writing.
22. Clause 21 deals with the power of the Authority to borrow or otherwise raise moneys from the Government and other sources.
23. Clause 22 empowers the Authority to enter into other financial transactions for the purpose of reducing financial risks to which it may be exposed.
24. Clause 23 enables the Legislative Council or its Finance Committee to authorize, by an authorizing resolution, the Financial Secretary to grant guarantees for the benefit of the Authority. The guarantees, if granted, are subject to terms and conditions specified in the authorizing resolution.
25. Clause 24 enables the Authority to establish and maintain general and special reserve funds.
26. Clauses 25 to 27 deal with accounting arrangements, including—
 - (a) the preparation of statement of accounts;
 - (b) the appointment of auditor and submission of reports; and
 - (c) the power of the Director of Audit to conduct examinations on how the Authority expended its resources.
27. Clause 28 requires the Authority to send to the Financial Secretary reports on the affairs in respect of every subsidiary of the Authority and its audited statement of accounts for each financial year.
28. Clauses 29 and 30 require the Authority to send to the Secretary for Home Affairs, for the purpose of record, a corporate plan and a business plan of the Authority.
29. Clause 31 requires the Financial Secretary to table before the Legislative Council the statement of accounts and the auditor's report relating to each financial year of the Authority.

Part 5—Miscellaneous

30. Clause 32 enables the Secretary for Home Affairs to make regulations.
31. Clause 33 enables the Authority to make bylaws.
32. Clause 34 requires disclosure of interest by Board members and committee members. This clause also imposes a duty on the Authority to establish and maintain a register in relation to the disclosure of interest by those members.

33. Clause 35 deems all common parts within the leased area to be public place for the purposes of any law.
34. Clause 36 confers immunity on Board members and committee members for acts done or omissions made in good faith.
35. Clause 37 exempts the Authority from taxation.

Part 6—Consequential amendments

36. Clause 38 amends Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).
37. Clause 39 amends Schedule 1 to The Ombudsman Ordinance (Cap. 397).