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21 May 2013

Mr Yick Wing Kin
Assistant Legal Advisor
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Yick,

Hong Kong Arts Development Council (Amendment) Bill 2013

I refer to your letter of 7 May 2013 on the above Bill. Our response to the questions raised in your letter is set out below.

Section 51(b) of the Interpretation and General Clauses Ordinance (Cap. 1) states that “[w]here any board, tribunal, commission, committee or similar body is established by or under any Ordinance, the powers of such board, tribunal, commission, committee or similar body shall not be affected by ... any defect in the appointment ... of a person purporting to be a member thereof. ...”. On the basis of section 51(b) of Cap. 1, the validity of the acts done by Hong Kong Arts Development Council (HKADC) in the exercise of its powers under the Hong Kong Arts Development Council Ordinance (Cap. 472) would not be affected despite any irregularities in the previous nomination exercises for appointments of members to the HKADC.

Besides, the relevant past appointments of members to the HKADC were made by the Chief Executive under Section 3(3)(a) of the Ordinance and there is a reasonable argument that these appointments are in line with the statutory objectives and are therefore valid. We do not consider it necessary to give retrospective effect to the proposed amendments or add a clause to validate the previous acts or decisions of and appointments to the HKADC.

Yours sincerely,



(Ms Elaine Mak)

for Secretary for Home Affairs

c.c. DoJ (Attn : Ms Leonora Ip, Sr Asst Law Draftsman)
(by Fax : 2869 1302)