

LEGISLATIVE COUNCIL BRIEF

Hong Kong Arts Development Council (Amendment) Bill 2013

INTRODUCTION

At the meeting of the Executive Council on 23 April 2013, the Council ADVISED and the Chief Executive (CE) ORDERED that the Hong Kong Arts Development Council (Amendment) Bill 2013 (the Amendment Bill) at **Annex A** should be introduced into the Legislative Council.

A

JUSTIFICATIONS

Relevant Provisions in the Hong Kong Arts Development Council Ordinance

2. Established in 1995, the Hong Kong Arts Development Council (HKADC) is a statutory body set up to promote the development of arts in Hong Kong. Under the Hong Kong Arts Development Council Ordinance (the Ordinance), the HKADC consists of not more than 27 members out of which up to ten may be nominated¹, for appointment by the CE under section 3(3)², by **“organizations or groups of organizations”** specified by the CE in the gazette, and each of these “organizations or groups of organizations” shall be representative of one or more of the ten arts interests i.e., literary arts, music, dance, drama, visual arts, film arts, arts administration, arts education, arts criticism, and Chinese opera (xiqu). An extract of the relevant provisions is at **Annex B**.

B

Arrangements for specifications and nominations under section 3 of the Ordinance and the existing practice

3. Section 3(5) provides that the CE may by notice in the gazette specify “organizations or groups of organizations” which are, in CE’s

¹ As stipulated in section 3(4) of the Ordinance, “[t]he other members referred to in [section 3(3)(a)] may include up to 10 persons nominated by organizations or groups of organizations specified under subsection (5), and each such organization or group of organizations may nominate for this purpose not more than one person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the Chief Executive, be experienced in the interest for which he has been nominated.”

² Section 3(3)(a) of the Ordinance provides that “The Council shall consist of ... a Chairman, a Vice-chairman and not more than 22 other members, each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years”.

opinion, representative of the arts interests, to make nomination under section 3(4) of the Ordinance. The nomination provided under section 3(4) of the Ordinance requires that each organization or group of organizations specified under section 3(5) may nominate not more than one person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the CE, be experienced in the interest for which he has been nominated.

4. In practice, however, both organizations and individual arts workers have been specified by notice in the gazette for the purpose of nominating ten respective arts representatives for appointment to the HKADC. Determination of the organizations and individuals to be specified by CE by notice in the gazette is an administrative arrangement whereby a set of criteria³ is approved by CE and administered by the Government which conducts the specification exercise and vets applications submitted by organizations and individuals. The specified individual arts workers will become voters who may take part in the nomination of persons for the respective arts interests. For specified arts organizations, they may register their members (who have joined the organization for not less than one year prior to the start date of the nomination exercise) or employees who engage in artistic production or arts administration for not less than one year as voters. A note on the process of the last nomination exercise conducted in 2010 is attached at **Annex C** for reference.

C

5. The details of the nomination process are not spelt out in the Ordinance. Instead, it is implemented by way of administrative arrangements. In view of the rapidly evolving and changing nature of the arts sector, we consider it appropriate to continue with the current practice of setting out the detailed guidelines and process by way of administrative arrangements so that the criteria and procedures can be adjusted from time to time to tie in with the changing art scene. At the same time, we will continue to ensure transparency and accessibility of these criteria and procedures through publicity on the website.

³ Eligible arts organisations should be registered bona fide arts organisations with an objective to promote arts development and set up for at least one year in Hong Kong prior to the commencement of the nomination exercise. Eligible individual arts workers should be current or former members, co-opted members, art advisers, examiners, awardees and grantees of the HKADC, or art advisers and grantees of the Leisure and Cultural Services Department (LCSD) or have collaborated with LCSD in holding art exhibitions / competitions or have participated in these programmes. Full-time or part-time teaching staff of local tertiary institutions, secondary and primary schools teaching arts subjects are also eligible for registration under “arts education”.

(a) Problem with specification of individual arts workers

6. The practice of specifying individual arts workers (alongside with organizations as provided under section 3(5)) by notice in the gazette started from the second nomination exercise in 1997. This was in response to strong calls from the arts community and from individual artists on the grounds of the diverse and special characteristics of the sector. The scope of individual arts workers taking part in the previous six nomination exercises has since continued to expand⁴. However, no corresponding amendments to the Ordinance were made to provide for the specification of individual arts workers, and such specification is in fact not consistent with the provisions of the Ordinance. Legislative amendments are required to be made to the Ordinance if the aforesaid practice is to continue.

(b) Problem with “cross-arts interest nomination”

7. The practice of “cross-arts interests nomination” has been introduced since the nomination exercise in 1999 whereby each voter may cast not more than one vote in each of the ten arts interests. In other words, a voter who is registered under one arts interest may also vote for candidates in the other nine art interests. The ten candidates who obtain the highest number of votes in respect of the respective arts interests will become nominated representatives of the ten arts interests. This practice, which is administrative in nature, aims to encourage both the voters and the candidates to attach more importance to the overall development of the arts instead of only their respective interest.

8. While section 3(4) does not provide details as to how the organizations specified under section 3(5) may decide on their nomination, the practice of cross-arts interest nomination is inconsistent with the statutory scheme under section 3 of the Ordinance which provides that each organization or group of organizations specified in the gazette notice may nominate not more than one person for each of the interests represented by that organization or group of organizations. In that regard, legislative amendments to the Ordinance will be necessary if the practice of cross-arts interest nomination is to continue in future nomination exercises.

⁴ For the nomination exercise in 1997, artists who were project grantees of the HKADC and the then Municipal Councils as well as all former and serving HKADC members and co-opted members were included. In the last nomination exercise in 2010, all former and current arts advisers and examiners of HKADC, arts advisers of the Leisure and Cultural Services Department (LCSD), people who have received LCSD’s grants, sponsorship, venue sponsorship or performance fees or those who have been LCSD’s partners in arts exhibitions/ competitions, as well as teaching staff on arts disciplines from primary to tertiary levels were included.

THE AMENDMENT BILL

Individuals to be specified under Section 3(5)

9. Amendments will be made to modify section 3(5) of the Ordinance to change from specifying **organizations or groups of organizations** to specifying **organizations or individuals** for each of the arts interests listed in that section.

Cross-arts interest nomination

10. Amendments will be made to section 3(4) of the Ordinance to remove the restriction on cross-arts interest nomination. Under the existing provision, organizations or groups of organizations specified by the CE by notice in the Gazette may only nominate persons for each of the interests represented by that organization or group of organizations.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be –

Publication in the Gazette	3 May 2013
First Reading and commencement of Second Reading debate	8 May 2013
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

12. The Amendment Bill is in conformity with the Basic Law, including the provisions concerning human rights.

13. The proposal has no civil service, environmental, financial, economic, productivity, sustainability and family implications. The amendments proposed will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

14. We briefed the Legislative Council Panel on Home Affairs on 18 January 2013 on arrangements for the nomination exercise to be held this year, and informed the Panel of our plan to make the above proposed legislative amendments to the Ordinance. Members did not raise any objection to the legislative proposal.

PUBLICITY

15. A spokesperson will be available to respond to public enquiries on the Amendment Bill.

ENQUIRIES

16. Any enquiries on this brief may be addressed to Ms Elaine Mak, Principal Assistant Secretary for Home Affairs (Culture)¹, at telephone number 3509 8125.

Home Affairs Bureau
30 April 2013

A BILL

To

Amend the Hong Kong Arts Development Council Ordinance to remove the restriction of cross-interest nomination of persons for appointment as members of the Hong Kong Arts Development Council; and to modify the provision on specification of nominators to provide for specifying organizations or individuals (or both) for each of the interests listed in the Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Hong Kong Arts Development Council (Amendment) Ordinance 2013.

2. Hong Kong Arts Development Council Ordinance amended

The Hong Kong Arts Development Council Ordinance (Cap. 472) is amended as set out in section 3.

3. Section 3 amended (establishment of the Council)

(1) Section 3(4)—

Repeal

“organizations or groups of organizations specified under subsection (5), and each such organization or group of organizations may nominate for this purpose”

Substitute

“organizations and individuals specified under subsection (5), and organizations and individuals so specified representing an

interest may (for that interest) or all organizations and individuals so specified may (for any or all interests listed under subsection (5)) make nomination for this purpose so that”.

(2) Section 3(4)—

Repeal

“for each of the interests represented by that organization or group of organizations”

Substitute

“is nominated for each of the interests”.

(3) Section 3(5)—

Repeal

“for the purposes of subsection (4) up to 10 organizations or groups of organizations each of which shall, in the opinion of the Chief Executive, be representative of one or more of the following interests”

Substitute

“, for each of the following interests, organizations or individuals (or both) which or who are, in the opinion of the Chief Executive, representative of that interest”.

Explanatory Memorandum

This Bill amends the Hong Kong Arts Development Council Ordinance (Cap. 472) (*the Ordinance*).

2. Under section 3(4) and (5) of the Ordinance—
 - (a) organizations or groups of organizations may be specified by the Chief Executive for the purpose of nominating persons for appointment as members of the Hong Kong Arts Development Council; and
 - (b) each such organization or group of organizations may nominate not more than one person for each of the interests represented by that organization or group of organizations.

3. The object of the Bill is to amend those provisions—
 - (a) to change from specifying organizations or groups of organizations to specifying organizations or individuals (or both) for each of the interests listed in section 3(5) of the Ordinance; and
 - (b) to remove the restriction of cross-interest nomination under section 3(4) of the Ordinance.

(Enacted 1995)

Chapter: 472 Title: **HONG KONG ARTS DEVELOPMENT COUNCIL ORDINANCE** Gazette Number: L.N. 130 of 2007
 Section: 3 Heading: **Establishment of the Council** Version Date: 01/07/2007

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) There is established a body corporate called the Hong Kong Arts Development Council.
 (2) The Council may sue and be sued.
 (3) The Council shall consist of-

- (a) a Chairman, a Vice-chairman and not more than 22 other members, each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years; (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)
 (b)-(c) (Repealed 78 of 1999 s. 7)
 (d) the Secretary for Home Affairs or his representative; (Amended L.N. 372 of 1996; L.N. 362 of 1997; L.N. 192 of 1998; L.N. 206 of 1998; 9 of 2000 s. 2)
 (e) the Permanent Secretary for Education or his representative; and (Amended 9 of 2000 s. 2; 3 of 2003 s. 41; L.N. 130 of 2007)
 (f) the Director of Leisure and Cultural Services or his representative. (Added 9 of 2000 s. 2)

(4) The other members referred to in subsection (3)(a) may include up to 10 persons nominated by organizations or groups of organizations specified under subsection (5), and each such organization or group of organizations may nominate for this purpose not more than 1 person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the Chief Executive, be experienced in the interest for which he has been nominated. (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)

(5) The Chief Executive may by notice in the Gazette specify for the purposes of subsection (4) up to 10 organizations or groups of organizations each of which shall, in the opinion of the Chief Executive, be representative of one or more of the following interests- (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)

- (a) literary arts;
 (b) music;
 (c) dance;
 (d) drama;
 (e) visual arts;
 (f) film arts;
 (g) arts administration;
 (h) arts education;
 (i) arts criticism; (Amended 9 of 2000 s. 2)
 (j) Chinese opera (Xiqu). (Added 9 of 2000 s. 2)

**NOMINATION OF ARTS INTERESTS REPRESENTATIVES
FOR APPOINTMENT TO
THE HONG KONG ARTS DEVELOPMENT COUNCIL**

Four-phase Nomination Exercise

(based on the last nomination exercise held in 2010)

(a) Phase 1 – registration of members of the nominating bodies

- ◆ Eligible arts organisations¹ or individual arts workers² may register as members of the nominating bodies of the respective arts interests. Registered members of the nominating bodies are published in the gazette³.

(b) Phase 2 – voter registration

- ◆ Arts organisations which have been registered as members of the nominating bodies may register their members or their employees who engage in artistic productions or arts administration as voters.
- ◆ Individual arts workers who are registered as members of nominating bodies in Phase 1 will automatically become voters and do not need to undergo voter registration through arts organisations.

¹ Eligible arts organisations should be registered bona fide arts organisations with an objective to promote arts development and set up for at least one year in Hong Kong prior to the commencement of the nomination exercise.

² Eligible individual arts workers should be current or former members, co-opted members, art advisers, examiners, awardees and grantees of the HKADC, or art advisers and grantees of the Leisure and Cultural Services Department (LCSD) or have collaborated with LCSD in holding art exhibitions / competitions or have participated in these programmes. Full-time or part-time teaching staff of local tertiary institutions, secondary and primary schools teaching arts subjects are also eligible for registration under “arts education”.

³ Membership of the nominating bodies, once gazetted, will continue to be valid in subsequent nomination exercises without the need for re-registration unless the arts organizations / individual arts workers concerned wish to update their particulars or change the arts interests they have registered.

(c) Phase 3 – candidate nomination

- ◆ Unless disqualified under section 3(6) of the HKADC Ordinance⁴, registered voters may seek candidature in their own arts interest. A valid candidate nomination should be backed by five proposers or 1% of the number of the registered voters from the same arts interest (whichever is the higher).

(d) Phase 4 – electioneering and polling

- ◆ Candidates may publicise their election platforms and are invited to attend a candidate forum organised by the nomination agent.
- ◆ Polling was held for three days from 17 to 19 September 2010 (Friday to Sunday) in order to facilitate voters' participation.
- ◆ Under a “cross voting system”, each voter may cast a maximum of 10 votes, one vote in each contested arts interest, for candidates standing for nomination. Introduced in 1999, the system aims to encourage members of the arts sector to take a broad view of the development of the dynamic sector.

⁴ For example, being an employee of the Government or the Legislative Council Commission; being a judicial officer; being an officer or member of any armed forces; being a salaried functionary of a government of any place outside Hong Kong; being an undischarged bankrupt; being of unsound mind; having been sentenced to death or imprisonment for a term exceeding three months in Hong Kong or any other territories or countries, and has not either suffered the punishment to which he was sentenced or such other punishment as may have been substituted by competent authority or received a free pardon.