

Legislative Council
Panel on Home Affairs and Panel on Development
Joint Subcommittee to Monitor the Implementation of the
West Kowloon Cultural District Project

Follow-up to meeting on 19 May 2015

Update on the development of Xiqu Centre

- 1. The Administration and West Kowloon Cultural District Authority (“WKCDA”) were requested to follow up on members' concern that the design of the pedestrian passageways leading to the West Kowloon Cultural District (“WKCD”), whether newly constructed or existing ones, should match the artistic and cultural ambience of WKCD.**

The Administration and WKCDA recognise that the proposed and existing pedestrian connections would be the main routes linking the Kowloon Station developments, MTR Austin Station and Jordan district to WKCD. In designing the proposed pedestrian connections and upgrading the existing Austin Road subway, consideration will be given to providing pleasant experiences for pedestrians approaching WKCD and matching the distinct characteristics of the district. When the designs of the proposed pedestrian connections have been developed, the Administration and WKCDA will consult the relevant stakeholders including the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project (“Joint Subcommittee”).

On the upgrading/beautification works for the existing Austin Road subway, the Home Affairs Bureau together with the Architectural Services Department (“ArchSD”), with the support of other relevant Government departments, plan to launch an internal design competition within ArchSD to select a design that best matches the ambience of WKCD. Upon selection of the winning design, the upgrading/beautification works will be implemented by the relevant Government department.

Update on the development of M+

1. The Administration/WKCDA were requested to advise in writing

-
- (a) **the functions, mode of operation, and composition of the Collections Trust to be set up; and**

At the last Joint Subcommittee meeting on 19 May 2015, Members were briefed on the rationale and the benefits of setting up the M+ Limited (“M+ Ltd.”) so as to put in place a separate governance structure to create a clearer identity for M+ as an institution and to ensure the M+ governance structure has the right expertise while supporting curatorial independence and artistic freedom. Under the new governance structure, it is WKCDA’s intention to establish the M+ Collections Trust to hold the legal interest of the M+ collection. While the Collections Trust will retain the legal ownership of the M+ collection and place the responsibility for exhibition, management, operation, and conservation/maintenance activities with M+’s administration (i.e. M+ Ltd.), the Collections Trust, among other things, maintains an overview of the development and security of the collection by way of an audit process. This is to ensure that over time the M+ collection will continue to be properly managed, exhibited and conserved.

The functions, mode of operation, and composition of the Collections Trust are set out in the ensuing paragraphs.

Functions

The proposed functions of the Collections Trust are:

- (a) to own the M+ collection and to arrange for M+ Ltd. to manage it on a day-to-day basis;
- (b) to provide oversight of the development and management of the M+ collection, as represented by an annual audit of the collection including its physical development, security and use, with a view to ensuring M+ Ltd. is executing the

purposes of the Trust in the manner agreed between the trustee and M+ Ltd.;

- (c) to protect the public's investment in the M+ collection, by separating the legal ownership of the collection from the assets of M+ Ltd.; and
- (d) to ensure that deaccessioning, if any, only takes place according to the criteria laid down in the trust instrument.

Mode of Operation

(a) The Collections Trust & M+ Ltd.

The proposed Collections Trust will be a separate entity to be set up by the WKCDA using a subsidiary company as the trustee¹ with no direct connection with the governance structures of the WKCDA and M+ Ltd.. The relationship between WKCDA and M+ Ltd. is set out in detail in LC Paper no. CB(2)1463/14-15(03).

Whilst there will be an operational/legal relationship between the trustee of the Collections Trust and M+ Ltd. in terms of the museum functions (in that M+ Ltd. will manage the M+ collection for the Trust), there will be no direct governance relationship between the two. However, to enable an effective operation of the trustee company, the Museum Director (who will remain an employee of the WKCDA) and the museum staff of M+ Ltd. will be required to attend meetings of the Board of the trustee company to report and answer questions from the directors of the trustee on matters such as the management and development of the M+ collection, any deaccessioning proposals, etc.

¹ At law any trust is administered and operated by trustees who are fiduciaries and bear legal responsibility for their administration of the trust. A company limited by guarantee is proposed to be set up as the trustee of the M+ Collections Trust with the appointment of directors (collectively forming the Board of the trustee company) to be responsible for the governance of the company and the administration of the trust.

(b) The Collections Trust & WKCDA

The relationship between the Trust and the WKCDA will be:

- (a) the funds and staffing support for the administration and operation of the Trust will be provided by WKCDA as approved by the WKCDA Board;
- (b) all funds of the Trust will be centrally managed by WKCDA;
- (c) as the Trust will not trade, make surpluses nor incur losses, it will not be subject to profits tax;
- (d) as a subsidiary of the WKCDA, the Trust's and the trustee company's accounts are expected to be consolidated with the WKCDA accounts purely for accounting purpose; and
- (e) as it is a legal requirement that the Trust's income and property must be applied solely towards the promotion of the objects of the Trust, save for such items as the reimbursement of out of pocket expenses, no portion of the income or property of the Trust shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the WKCDA or to the Board of Directors of the trustee company or any member of the Board of Directors. So any money unspent by the Trust or the trustee company in any financial year will be netted off the funds to be allocated to it in the following financial year.

Composition of the Proposed Trust

The trustee will be a company limited by guarantee with its directors appointed by the WKCDA. The WKCDA will consider appointing individuals with the right experience and expertise to oversee the development and management of the M+ collection to the trustee company in due course.

- (b) the relationship among and the respective responsibilities of the Collections Trust, M+ Limited and the WKCDA Board, particularly in regard to the selection and approval of acquisitions by M+.**

WKCDA Board will set both the overall policies for the governance of WKCDA and the overall strategic direction for the WKCD, including those related to M+. It will have oversight of M+ Ltd. (to be a subsidiary of WKCDA set up under the Companies Ordinance (Cap. 622)). Upon the establishment of M+ Ltd., matters concerning curatorship, programming, collection and acquisition will be under the purview of the Board of M+ Ltd. (“M+ Board”). M+ Board members will be appointed by and report to the WKCDA Board. The M+ collection is at present owned by WKCDA. It is intended that the M+ collection will be held legally by the M+ Collections Trust for the benefit of the Hong Kong community so as to achieve a governance regime that secures the curatorial independence of M+ while ensuring that the acquiring and exhibiting entity (M+ Ltd.) is transparent and fully accountable to the public. The M+ Collections Trust will not be involved in the acquisition process. Instead, the function of operating and running of M+ and management (including acquisition) of the collection will be provided by M+ Ltd..

The conditions, policy and procedures for acquisitions are laid down in the M+ Acquisition Policy which is available for public information at WKCDA’s website. According to the Policy, acquisitions by M+ are approved by different tiers of authority (namely, Executive Director, M+ (“ED, M+”), Interim Acquisition Committee, Museum Committee and the Board of WKCDA) depending on the purchase price or fair market value of the works.

Under the new governance structure, the selection and approval process of acquisitions will still follow the Acquisition Policy except that when M+ Ltd. is established, the existing Museum Committee and Interim Acquisition Committee under the Board of WKCDA will be dissolved and their functions will be taken up by the M+ Board and the formal Acquisition Committee respectively.

2. The Administration/WKCDA agreed to provide for members' reference information about the procedures on avoidance of conflict of interests for Chairman/members of the authorities involved in advising on/approving acquisitions by M+.

In order to avoid any potential conflict of interests in the acquisition process, provisions on declaration of interests are included in the existing Acquisition Policy. Specifically, paragraph 70(i) of the M+ Acquisition Policy provides that -

“In all collection-related activities, ED M+, museum employees and members of the Interim Acquisition Committee, Museum Committee as well as the WKCDA Board and any other persons who are in a position of responsibility, shall make every effort to anticipate and address situations in which a conflict of interest or the appearance of a conflict of interest, whether direct or indirect, exists. All interests that may be in conflict with an acquisition have to be declared in written form to the WKCDA before the start of the relevant acquisition discussion. The interested person is generally not required to withdraw from the relevant meeting but he/she will be disregarded for the purpose of forming a quorum to the meeting. He/she shall not vote on any question concerning the acquisition, influence or seek to influence the decision on the acquisition, or use or seek to use any information for personal benefit or the benefit of any party other than the WKCDA such that the interest of M+ is prejudiced. Where the declared interest is material (as determined by the Chairman of the approving authority) or is a direct pecuniary interest, the interested person shall withdraw from the meeting and all relevant papers circulated to him/her shall be returned to the Secretary of the approving authority. When a direct pecuniary interest or material interest is known before the meeting, the Secretary [to the relevant committee/Board] shall withhold circulation of relevant papers to the interested person. All cases of declaration of conflict of interest and the decisions made to mitigate the conflict shall be recorded in the minutes of the meeting. Any employees of the WKCDA who are found to have abused his/her position or violated the conflict of interest requirement mentioned above may be subject to disciplinary action and/or summary dismissal. Any employees and board/committee members who are found to have abused his/her position or violate the conflict of interest requirement mentioned above could also be subject to criminal sanction such as the common law offence of misconduct in public office”.

The full M+ Acquisition Policy can be downloaded from WKCDA's website.

**Hone Affairs Bureau
West Kowloon Cultural District Authority
July 2015**