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**Joint Subcommittee to Monitor the Implementation of the
West Kowloon Cultural District Project**

Meeting on 1 June 2020

Updated background brief on the development of M+

Purpose

This paper provides background information on the development of M+ and summarizes the major views and concerns expressed by members of the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") on relevant issues.

Background

2. M+ will be a new museum for visual culture in Hong Kong located at the western end of the West Kowloon Cultural District ("WKCD"). According to the West Kowloon Cultural District Authority ("WKCDA"), the mission of M+ is to focus on the 20th and 21st century visual culture, broadly defined, from a Hong Kong perspective, the perspective of now, and with a global vision, with its collections encompassing the three main disciplines of visual art, design and architecture, and moving image. Following an international competition, the Swiss architectural firm Herzog & de Meuron, in joint venture with Hong Kong-based TFP Farrells and Ove Arup & Partners Hong Kong, was selected in June 2013 to design and administer the M+ project. The M+ building and the Conservation and Storage Facility ("CSF") together will provide approximately 65 000 square metres in gross floor area.

Inception of M+

3. The M+ main works contract was awarded to Hsin Chong Construction Company Limited ("HCC") in September 2015 after a selective tendering process. The contract, valued at \$5.944 billion, included works on the M+ building, CSF, a retail, dining and entertainment/other arts and cultural facilities building (P39B), an interfacing car park and some related public infrastructure works. In February 2018, WKCD indicated that the M+ building was targeted for completion in 2019 with opening a year later.¹

4. In July 2018, some media reports revealed that WKCD had paid the subcontractors of HCC directly in respect of the works for the M+ project since February 2017. On 17 August 2018, WKCD informed the Joint Subcommittee that the employment of HCC under the M+ main works contract was terminated with effect from the same day.²

5. WKCD subsequently carried out a restricted tender and appointed Gammon Construction Limited ("GCL") as the new management contractor on 7 September 2018 to oversee the completion of the M+ project. The works at the M+ site resumed on 21 September 2018. According to WKCD,³ the outturn cost to complete the M+ project was anticipated to be higher than the original contract sum of \$5.944 billion largely because of the delays caused by HCC and its termination. Moreover, at the time of replacing HCC with GCL, there were many unresolved claims and variations between HCC and its subcontractors.

6. In November 2019, WKCD indicated that as at the end of October 2019, it had issued over 200 novation agreements and deeds of transfers to existing subcontractors for the completion of the M+ project. The M+ building was targeted to secure the Occupation Permit ("OP") in the second quarter of 2020 with opening of the museum nine to 12 months later in the first quarter of 2021.⁴ In March 2020, WKCD indicated in a press release⁵ that all construction projects in WKCD, including M+, had been affected by the outbreak of coronavirus disease-2019 ("COVID-19"),

¹ Source: [LC Paper No. CB\(1\)559/17-18\(01\)](#)

² Please refer to the letter from WKCD on the M+ main works contract [[LC Paper No. CB\(1\)1333/17-18\(01\)](#)].

³ Source: [LC Paper No. CB\(1\)1128/18-19\(01\)](#)

⁴ Source: [LC Paper No. CB\(1\)149/19-20\(02\)](#)

⁵ Source: [Press release](#) of WKCD on 25 March 2020

resulting in delays in obtaining OP for M+ by several weeks. Yet, WKCDA was still hopeful of obtaining OP for M+ by the end of the second quarter of 2020 and opening M+ nine to 12 months later.

Collection and acquisition for M+

7. According to WKCDA,⁶ the M+ collection and the M+ Sigg collection included about 6 387 works as at the end of April 2019, of which works from Hong Kong accounted for around 20%. M+ had also set up the M+ Collection Archives which contained more than 35 000 items, of which approximately 28% were from Hong Kong.

Governance structure for M+

8. A subsidiary company wholly-owned by WKCDA, namely M Plus Museum Limited ("M+ Ltd"), was incorporated in April 2016 with its own Board of Directors ("M+ Board") for formulating the vision and mission, as well as the strategies, policies and guidelines in relation to museological matters and professional standards of the museum's operations. In May 2016, the M+ Acquisitions Committee was established to review, approve and make recommendations to the M+ Board and the WKCDA Board on matters relating to acquisitions by M+.

9. In addition, a trustee company wholly-owned by WKCDA, namely M Plus Collections Limited ("M+ Collections Ltd"), was incorporated in August 2016 to serve as the trustee of the M+ Collections Trust to hold the legal interest in the M+ collection with a view to separating the legal and beneficial ownership of the collection and protecting it from possible inappropriate deaccession in the future. M+ Collections Ltd has engaged M+ Ltd to manage the M+ collection on a day-to-day basis while it provides an oversight of the M+ collection through an annual audit.⁷

Members' views and concerns

Cost, progress and monitoring of the M+ project

10. Members were very concerned about the repeated delays in the M+ project, and the impact of the termination of HCC's employment under the M+ main works contract and associated disputes on the development progress and project costs of M+.

⁶ Source: [LC Paper No. CB\(1\)1128/18-19\(01\)](#)

⁷ Source: [WKCDA's Annual Report 2016/2017](#)

11. WKCDA advised that the delay of the M+ project was due to a number of factors, including the termination of HCC's employment, complexity of the project and uncertainties during construction. The outbreak of COVID-19 had a further negative impact on the works progress. WKCDA had been closely monitoring the situation and endeavouring to pull back any lost time, so that the M+ building could obtain OP in the second quarter of 2020 as scheduled.

12. On the project costs of M+, WKCDA was still determining the full cost, including losses and damage to the Authority, of HCC's defaults and subsequent termination. While the final cost of the M+ project could only be determined after the expiry of the one-year defects liability period, which started following the practical completion of the project in around 2021, the additional costs expended since the termination of HCC's employment were in excess of \$400 million. As the joint provisional liquidators appointed to HCC had served a notice of dispute to WKCDA on 9 April 2019 over the termination of the M+ main works contract with HCC, WKCDA was working its way through the contractual dispute resolution process, which involved assessment by an independent contract administrator, mediation and arbitration.

13. Given the failure of HCC to make timely wage payments and WKCDA had made direct payments to the key subcontractors for months from February 2017, members were disappointed that WKCDA was acting in hindsight to terminate HCC's employment only in August 2018 and had misjudged the financial situation of HCC. They also questioned the effectiveness of the system put in place by WKCDA to monitor its contractors/subcontractors.

14. WKCDA responded that it was not until May 2018 when Hsin Chong Group Holdings Limited, HCC's parent company, made an announcement on the default on their US\$300 million 8.75% senior notes due 2018 that the insolvency of HCC was irrefutably clear. Due to HCC's deteriorating financial situation, in particular its cash flow, WKCDA decided to make direct payments to the key subcontractors from February 2017 to ensure that the works continued. Yet, as HCC was still unable to pay its subcontractors after WKCDA ceased the direct payment arrangement in July 2018 and failed to advance the project in line with the agreed timetable, WKCDA terminated the employment of HCC under the M+ main works contract on 17 August 2018. A chronology of events leading to the decision of the WKCDA Board to terminate HCC's employment was submitted to the Joint Subcommittee ([Annex 1 to LC Paper No. CB\(1\)1376/17-18\(01\)](#)). In addition, WKCDA advised that

a system of independent contract management had been put in place by WKCDA and functioning well in ensuring the funding requests submitted by main contractor based on the works carried out by the subcontractors were all checked and verified.

Positioning of M+

15. Members were concerned about the positioning of M+, in particular whether it would place more emphasis on featuring local visual culture and history, and how M+ would rank among other major museums around the world. Regarding the co-ordination between M+ and the public museums managed by the Leisure and Cultural Services Department ("LCSD"), members urged WKCDA to strengthen communication with LCSD on each other's scope of collections and acquisition of artworks.

16. According to WKCDA, M+'s ambitions were to be the first museum of its kind in Asia and ranked among the top five museums for visual culture in the world. In terms of geographical priorities, Hong Kong Art would always be the core of the collections of M+ and would be well represented in the collections. M+ would acquire works from regions further away from Hong Kong more selectively and strategically, whereas the acquisition strategy would be more inclusive for regions closer to Hong Kong.

17. The Administration advised that the collection policy of LCSD museums focused mainly on Hong Kong, and given their different positioning, LCSD museums and M+ should complement each other in their collections. LCSD and WKCDA would continue to strengthen communication in this regard and would also explore the possibility of loaning appropriate exhibits to each other in order to make good use of resources.

Acquisition of artworks

18. Members asked about the amount of funding earmarked for acquiring artworks by M+. Some members were concerned that the prices of M+ acquisitions would be used in the art market to influence the prices of artworks, and urged WKCDA to exercise caution in selecting and acquiring artworks.

19. WKCDA advised that \$1.2 billion tranche of funds was earmarked for collection acquisition and related costs of M+. The M+ Acquisitions Committee had been set up to advise WKCDA on matters relating to acquisitions for the M+ collection and an acquisition policy for M+ had

been formulated. All proposed acquisitions (both purchases and donations) would be carefully reviewed in accordance with the strategy and acquisition criteria laid down under the M+ acquisition policy, and had to be approved by different tiers of authority according to the value of the artworks. Moreover, in early 2017, M+ officially launched the M+ Council for New Art, a patronage scheme to allow M+ to support the acquisition of artworks of young artists from the Greater China region and beyond.

20. In response to some members' concerns about the arrangement adopted by WKCDA in 2012 for accepting and acquiring Dr Uli SIGG's collections,⁸ WKCDA advised that the "part gift/part purchase" arrangement, which was intended as a sign of commitment to the donor, was not an uncommon model internationally for museums to obtain collections. Given the scale, completeness and importance of Dr SIGG's collections, WKCDA considered it justifiable to accept the collections by way of such an arrangement, which had been approved by the WKCDA Board.

Independence of curators and freedom of expression

21. Some members were concerned how WKCDA would safeguard the independence and freedom of its curators in deciding on the artworks to acquire and display, and whether an artistic accountability system would be implemented in M+, under which curators would be accountable for their decisions on acquisitions and the arrangement of exhibitions. Some other members, however, were of the view that while respecting the freedom of expression, artworks which were indecent/obscene or contained political/insulting messages should not be regarded as art.

22. WKCDA stressed that it fully appreciated the independence and freedom of expression which were vital to the success of any cultural institution, and all acquisitions would be considered in accordance with the guidelines and procedures as laid down in the M+ acquisition policy. A number of seasoned curators who were highly respected in the international museum field had been recruited for the operation of M+, and they would not risk jeopardizing their professional standing by being subject to any types of censorship or regulation in their ways of work.

⁸ In June 2012, WKCDA decided to adopt the "part gift/part purchase" model in accepting a donation of 1 463 Chinese contemporary artworks, valued at around \$1.3 billion, from Dr SIGG of Switzerland and in acquiring from Dr SIGG 47 pieces of artworks for a sum of \$177 million.

Recruitment and training of staff

23. Some members considered that WKCDA should rely less on foreign experts and strive to recruit local art experts and museum professionals who were familiar with local arts and culture to support the development of M+. WKCDA advised that while the Authority was always trying to recruit locally, there was a need to bring in expertise from overseas countries especially in the early stages of the development of M+ and for certain positions for which there was no formal training locally. WKCDA believed that this would not only fill the gaps in the skills required for the success of M+, but also facilitate the transfer of knowledge to local talents and help build up local expertise. The M+ team had launched extensive internship programmes and a docent volunteer programme as part of its commitment to nurture local talents by offering them unique learning opportunities in renowned international art exhibitions and broadening their curatorial knowledge base.

Governance of M+

24. Some members were concerned whether the establishment of M+ Ltd would undermine the transparency of the operation and finances of M+ and its accountability to the Legislative Council ("LegCo"). Some members queried, under the new governance structure, whether the Administration and the WKCDA Board would be able to retain effective monitoring and control over the operation of M+, particularly in respect of control over assets and finances.

25. WKCDA explained that it was necessary for M+ to establish its own board to enable curatorial and museological decisions to be taken independently by museum professionals and board members with relevant experience and expertise. The new governance structure would help enhance public perception of the artistic freedom and curatorial independence of M+, strengthen the capacity of M+ to raise funds and solicit donations in artworks, and put M+ on a similar basis with other major contemporary arts museums around the world. The Administration and WKCDA assured members that while matters concerning curatorship, programming, collection and acquisition would be under the purview of the M+ Board, WKCDA would retain the overall monitoring and control over the finances of M+ Ltd. Funding allocation to M+ Ltd would continue to be managed centrally by WKCDA, and the business and corporate plans of M+ Ltd would be submitted to the WKCDA Board for approval after endorsement by the M+ Board. The work of M+ Ltd would be subject to the monitoring of LegCo to ensure public accountability.

Latest development

26. At the meeting to be held on 1 June 2020, the Administration and WKCDA will brief the Joint Subcommittee on the latest development of M+.

Relevant papers

27. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
26 May 2020

Development of M+

List of relevant papers

Committee	Date of meeting	Paper
Former Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project formed in the Fifth Legislative Council	23.4.2013 Item II	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	10.6.2013 Item III	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	29.11.2013 Item III	Agenda Minutes
	26.2.2014 (Issue date)	Letter dated 25.2.2014 from Hon Christopher CHUNG to the Secretary for Home Affairs regarding the acquisition of "Kiyotomo Sushi Bar" (Chinese version only)
	19.3.2014 (Issue date)	Response of WKCDA to the issues raised in the letter dated 25.2.2014 from Hon Christopher CHUNG

Committee	Date of meeting	Paper
	23.7.2014 Item I	Agenda Minutes Response of WKCDA to members' concerns raised at the meeting
	24.11.2014 Item II	Agenda Minutes
	19.5.2015 Item II	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	30.5.2016 Item II	Agenda Minutes
	21.6.2016 Item II	Agenda Minutes
Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project	20.12.2016 Item III	Agenda Minutes
	21.2.2017 Item III	Agenda Minutes
	11.9.2018 Item I	Agenda Minutes Response of the Administration/WKCDA to members' concerns raised at the meeting
	6.11.2018 Item III	Agenda Minutes Response of WKCDA to members' concerns raised at the meeting

Committee	Date of meeting	Paper
	10.6.2019 Item III	Agenda Minutes
	6.1.2020 Item II	Agenda