

CHAPTER 1135

THE HONG KONG ACADEMY FOR PERFORMING ARTS ORDINANCE

To provide for the establishment of The Hong Kong Academy for Performing Arts and for matters connected therewith.

[1 July 1984] L.N. 178 of 1984
(Originally 38 of 1984)

PART I

PRELIMINARY

1 Short title

This Ordinance may be cited as The Hong Kong Academy for Performing Arts Ordinance.

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"academic awards" (學術名銜) includes degrees, diplomas and honorary degrees and diplomas;

"Academic Board" (教務委員會) means the Academic Board of the Academy appointed under section 18;

"Academy" (學院) means The Hong Kong Academy for Performing Arts established by section 3;

"Chairman" (主席) and "Deputy Chairman" (副主席) mean respectively the Chairman of the Council and the Deputy Chairman of the Council;

"Council" (校董會) means the Council of the Academy established by section 9;

"Director" (校長) means the Director of the Academy appointed under section 15(1)(a) and any person for the time being acting in that capacity;

"eligible staff" (有資格的教職員) means the full time teaching and instructional staff of the Academy and other fulltime staff of the Academy of a rank or grade equivalent thereto;

"financial year" (財政年度) means the period fixed by the Academy under section 21(3).

PART II

THE ACADEMY

3 Establishment, incorporation and objects of Academy

(1) There is hereby established a corporation to be known as The Hong Kong Academy for Performing Arts(香港演藝學院), which shall, in that name, be a body corporate with perpetual succession and be capable of suing and being sued.

(2) The objects of the Academy shall, subject to this Ordinance, be to foster and provide for training, education and research in the performing arts and related technical arts.

4 President and Patrons

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

- (1) There shall be a President of the Academy.
- (2) The Chief Executive shall be the President of the Academy. (Amended 59 of 2000 s. 3)
- (3) The Academy may appoint such persons to be Patron of the Academy as it thinks fit.

5 Seal of the Academy

The Academy shall have a common seal, and the fixing of the seal shall be-

- (a) authorized or ratified by resolution of the Council; and
- (b) authenticated by the signature of any 2 members of the Council authorized by the Council, either generally or specially, to act for that purpose.

6 Documents of the Academy

- (1) The Academy may make and execute any document in the performance or exercise of its functions or powers or in connection with any matter reasonably incidental to or consequential upon the performance or exercise of its functions or powers.
- (2) Any document purporting to be duly executed under the seal of the Academy shall be admitted in evidence and shall, unless the contrary is proved, be deemed to have been duly executed.

7 The powers of the Academy

Subject to section 8, the Academy shall have power to do all such things as are necessary for, or incidental or conducive to or connected with the furtherance of its functions and may in particular, but without prejudice to the generality of the foregoing,-

- (a) acquire, take on lease, purchase, hold and enjoy property of any description for the purposes of the Academy and sell, let or otherwise dispose of or deal with the same in such manner and to such extent as the law would allow if the property were held by a natural person in the same interest;
- (b) enter into any contract;
- (c) erect, provide, equip, maintain, alter, remove, demolish, replace, enlarge, improve, keep in repair and regulate its buildings, premises, furniture and equipment;
- (d) set terms of remuneration and conditions of service for staff;
- (e) engage persons on a part time basis;
- (f) provide appropriate amenities (including residential accommodation and facilities for social activities and physical recreation) for its students and for persons in its service or employment;
- (g) receive and expend funds;
- (h) invest its funds in such manner and to such extent as it thinks necessary or expedient;
- (i) borrow money in such manner and on such security or terms as it thinks expedient;
- (j) apply for and receive any grant in aid for its functions on such conditions as it thinks fit;
- (k) engage any professional or expert person to advise it on any matter;
- (l) fix and collect fees and charges for courses of study;
- (m) fix and collect fees and charges and specify conditions for the use of the facilities and other services provided by it;
- (n) reduce, waive or refund fees and charges fixed in exercise of its powers under this section generally or in any particular case or class of case;
- (o) receive and solicit gifts, whether on trust or otherwise, and act as trustee of moneys or other property vested in it on trust;
- (p) print, reproduce, or publish or arrange for the printing, reproduction or publishing of any manuscript, book, play, music, script, programme, poster, advertisement or other material including video and audio material, as it deems expedient;
- (q) commission any play, script, composition, choreography or other work;
- (r) provide financial assistance, by way of grant or loan, to any person to enable or assist such person to receive education in the performing arts and related technical arts at the Academy or elsewhere;
- (s) organize, conduct and participate in events relating to the performing arts and related technical arts;
- (t) confer academic awards.

8 Academy to be subject to the directions of the Chief Executive in Council

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

- (1) The Chief Executive in Council may give to the Academy such directions as he thinks fit with respect to the exercise of its powers or the performance of its functions under this Ordinance, either generally or in any particular case.
 - (2) In the exercise of its powers and the performance of its functions under this Ordinance the Academy shall comply with any directions given by the Chief Executive in Council under subsection (1).
 - (3) The Chief Executive in Council may delegate the powers conferred upon him by this section to a public officer.
- (Amended 59 of 2000 s. 3)

PART III

THE COUNCIL

9 Establishment of the Council

- (1) There is hereby established a Council to be known as the Council of The Hong Kong Academy for Performing Arts.
- (2) The Council shall be the governing and executive body of the Academy and, as such, may exercise all the powers conferred and shall perform all the duties imposed on the Academy by this Ordinance.

10 Membership of the Council

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

- (1) The following persons shall be members of the Council- (a) the Director ex officio;
 - (b) 2 persons elected by the eligible staff from among their number, in accordance with rules made under section 24, and appointed by the Chief Executive; and
 - (c) not more than 15 other persons appointed by the Chief Executive of whom not more than 6 shall be public officers.
- (2) (a) The Chief Executive shall appoint from the members of the Council appointed under subsection (1)(c)-
 - (i) 1 person as Chairman;
 - (ii) 1 person as Deputy Chairman; and
 - (iii) 1 person as Treasurer.
 - (b) The Deputy Chairman shall act as Chairman if the Chairman is absent from Hong Kong or is, for any other reason, unable to act as Chairman.
 - (c) If for any period both the Chairman and the Deputy Chairman are absent from Hong Kong or are, for any other reason, unable to perform the functions of their respective offices the members of the Council appointed under subsection (1)(c) may appoint one of their number to act as Chairman during that period.
- (3) (a) Every member of the Council who is a public officer shall hold office as such member at the discretion of the Chief Executive.
 - (b) Without prejudice to section 42 of the Interpretation and General Clauses Ordinance (Cap 1), a member of the Council, other than the Director or a public officer, shall be appointed for a period of 3 years or such lesser period as the Chief Executive may in any particular case appoint, but may from time to time be re-appointed.
 - (c) A member of the Council, other than the Director or a public officer, may at any time by notice in writing to the Chief Executive resign from the Council.
- (4) Upon the expiry of the appointment of any member of the Council, other than the Director, whether by effluxion of time or as a result of resignation or otherwise, the procedure for a new appointment, or re-appointment, as the case may be, shall be as if the position thus vacated were being filled for the first time.

(Amended 59 of 2000 s. 3)

11 Meetings and procedure of the Council

- (1) Meetings of the Council shall be held at such times and places as the Chairman or person acting as Chairman may appoint.
- (2) 8 members of the Council shall form a quorum at a meeting of the Council.
- (3) Except as otherwise provided in section 15, any question before the Council at any meeting shall be decided by a majority of votes of the members of the Council present and voting thereon and in the event of an equality of votes the Chairman or person acting as Chairman shall have a casting vote in addition to his original vote.
- (4) (a) If a member of the Council has an interest in any matters to be considered at a meeting of the Council at which he is present, he shall as soon as possible after the commencement of the meeting state the fact and nature of the interest and shall, if required by the Council, withdraw while the matter is considered and in any case shall not vote thereon.
(b) In this subsection "interest" (利害關係) includes a pecuniary interest.
- (5) A meeting of the Council-
 - (a) may be adjourned by the Chairman or person acting as Chairman; (b) shall be adjourned where the Council so resolves.
- (6) Subject to this Ordinance, the Council may determine its own procedure and may exclude from any meeting or any part thereof the Director or any member of the Council appointed under section 10(1)(b) when in the opinion of the Chairman, or the person acting as Chairman, such exclusion is in the best interest of the Academy.

12 Transaction of business by circulation of papers

The Council may transact any of its business by circulation of papers, and a resolution in writing which is approved in writing by a majority of the members of the Council shall be as valid and effectual as if it had been passed at a meeting of the Council.

13 Appointment and functions of committees

- (1) The Council may create and appoint the members of such committees for any general or special purposes as it thinks fit and any such committee may consist partly of persons who are not members of the Council.
- (2) The chairman of any committee appointed under subsection (1) shall be appointed by the Council from among the members of the Council.
- (3) Subject to the directions of the Council, each committee may determine its own procedure at its meetings.

14 Power of Council to delegate to a committee or the Chairman

- (1) Subject to subsection (2), the Council may by resolution, with or without restrictions or conditions as it thinks fit, delegate in writing any of its powers and duties to-
 - (a) any committee created under section 13(1);
 - (b) the Chairman.
- (2) Save as otherwise provided for in this Ordinance the Council shall not delegate the power to-
 - (a) approve the programme and estimates required to be submitted under section 20;
 - (b) authorize the submission of the statements and reports required to be submitted under section 23(1); (c) make rules under section 24;
 - (d) make by-laws under section 25.

PART IV

DIRECTOR AND STAFF

15 Appointment of Director and other staff

- (1) The Academy shall-
 - (a) in accordance with subsection (2), appoint a Director who shall be responsible to the Council and in whom shall be vested the management, conduct and administration of the Academy, the maintenance of academic standards and the discipline of students thereof;
 - (b) appoint such other persons to be employees of the Academy as it may consider expedient.
- (2) The Director shall be appointed by resolution passed by the votes of not less than 9 members of the Council.
- (3) The Director may be removed from office by resolution passed by the votes of not less than 9 members of the Council on the ground of his mis-conduct, incompetence or inefficiency or for other good cause.
- (4) If for any period the Director is unable by reason of absence from Hong Kong or incapacity to perform the functions of his office or if for any period the office is vacant, the Academy may appoint a person to act as Director during that period.
- (5) In this section "members of the Council" (校董會成員) does not include members of the Council appointed under section 10(1)(b).

16 Power of the Council to delegate to the Director

- (1) Subject to subsection (2), the Council may by resolution, with or without restrictions or conditions as it thinks fit, delegate in writing to the Director any of its powers and duties.
- (2) The Council shall not delegate to the Director the power to-
 - (a) approve the programme and estimates required to be submitted under section 20;
 - (b) authorize the submission of the statements and reports required to be submitted under section 23(1);
 - (c) make rules under section 24;
 - (d) make by-laws under section 25;
 - (e) appoint an acting Director.

17 Power of the Director to delegate

- (1) Subject to subsection (2), the Director may in writing, with or without restrictions or conditions as he thinks fit, delegate to such person or committee of persons as he thinks fit, his powers and duties, including any power or duty of the Council delegated to him under section 16.
- (2) The power conferred by this section on the Director to delegate any power or duty of the Council delegated to him under section 16, and the exercise by any person or committee of persons of any such power or duty delegated by the Director under this section, shall be subject to any restriction or condition imposed by the Council in respect of the Director's exercise thereof under section 16.

PART V

ACADEMIC BOARD

18 Academic Board of the Academy

- (1) There shall be an Academic Board of the Academy. (2) The Academic Board shall consist of-
 - (a) the Director, who shall be Chairman;
 - (b) such other persons as may be appointed by the Council.
- (3) The appointment of persons under subsection (2)(b) shall be in accordance with rules made under section 24.

19 Powers of the Academic Board

- (1) The Academic Board shall, subject to this Ordinance, have the power and duty to-
 - (a) review and develop the academic programmes of the Academy;
 - (b) direct and regulate the training, education and research conducted in the Academy;
 - (c) regulate the admission of persons to approved courses of study in the Academy and their attendance at such courses;
 - (d) regulate the examinations leading to the conferment of academic awards of the Academy;
 - (e) provide for the welfare and discipline of students;
 - (f) advise the Council on any matter which may be referred to it by the Council;
 - (g) recommend the conferment of academic awards (other than honorary awards); and
 - (h) determine its own procedure.
- (2) The Academic Board may make rules, not inconsistent with any rules made under section 24, for the better exercise and performance of its powers and duties under subsection (1).

PART VI

FINANCIAL ESTIMATES AND PROGRAMME

20 Programme and estimates

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

The Academy shall submit to a person nominated by the Chief Executive, at such time and in respect of such periods as the Chief Executive may direct, a programme of its proposed activities and estimates of its income and expenditure.

(Amended 59 of 2000 s. 3)

21 Accounts

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

- (1) The Academy shall maintain proper accounts and records of all income and expenditure.
- (2) After the end of each financial year the Academy shall cause to be prepared statements of income and expenditure relating to the previous financial year and of the assets and liabilities of the Academy on the last day thereof.
- (3) The Academy may, from time to time, with the prior approval of the Chief Executive, fix a period to be the financial year of the Academy.

(Amended 59 of 2000 s. 3)

22 Auditors

- (1) The Academy shall appoint an auditor who shall be entitled at any time-
 - (a) to have access to such books of account, vouchers and other records of the Academy; and
 - (b) to require such information and explanation, as he considers necessary to discharge his functions.
- (2) The auditor shall audit the statements prepared under section 21(2) and shall report thereon to the Academy.

23 Statements and reports to be submitted to the Chief Executive and laid on table of Legislative Council

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

- (1) The Academy shall, not later than 6 months after the end of each financial year, or by such later date as the Chief Executive may allow in any particular year, submit to the Chief Executive a report on the activities of the Academy and copies of the statements prepared under section 21(2) and of the report made under section 22(2).
- (2) The Chief Executive shall cause the reports and statements received by him under subsection (1) to be laid on the table of the Legislative Council not later than 3 months after their receipt.

(Amended 59 of 2000 s. 3)

PART VII

GENERAL

24 Power of Academy to make rules

The Academy may make rules for the better carrying out of the provisions of this Ordinance and in particular, but without prejudice to the generality of the foregoing may, by such rules, provide for the-

- (a) appointment of persons as members of the Academic Board and the quorum of the Academic Board;
- (b) powers, functions and duties of any committee created under section 13;
- (c) quorum and the regulation of the proceedings of any committee created under section 13;
- (d) discipline of persons in the employment of the Academy;
- (e) conferment of academic awards; and
- (f) holding and conduct of elections for electing representatives of the eligible staff for appointment to the Council under section 10(1)(b).

25 By-laws

- (1) The Academy may, under its common seal, make by-laws not inconsistent with this Ordinance for all or any of the following purposes-
 - (a) the management and control, including the closing or partial closing, of the premises;
 - (b) the fixing of the times or occasions during which the premises or any part thereof may be open to any class of persons;
 - (c) the regulation of the conduct of persons in or on the premises or any part thereof and for the arrest, detention and removal therefrom of any person who infringes any of the provisions of any by-law made pursuant to this section;
 - (d) the control (including prohibition) of trading, advertising or the erection of structures in or on the premises; the removal, storage and sale of any trading, advertising or construction materials that are brought into or remain in or on the premises in contravention of any by-law made under this section; the recovery of any costs incurred in respect of such removal, storage and sale; and the forfeiture of the proceeds of such sale;
 - (e) the general regulation and management of the premises and of any facility, equipment or fitting provided therein.
- (2) Any by-law made under this section may provide that a contravention of specified provisions thereof shall be an offence and may prescribe penalties therefor not exceeding a fine of \$2000 and imprisonment for 3 months.
- (3) Without prejudice to any Ordinance relating to the prosecution of criminal offences or to the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions under any by-law made under this section may be brought in the name of the Academy. (Amended L.N. 362 of 1997)
- (4) In this section "premises" (處所) means any premises or land of the Academy.

26 Unauthorized use of title of Academy

- (1) No person shall incorporate or form, or be a director, office bearer or organizer of, work in connection with, or be a member of, any company, body corporate, firm or organization which, without the written authority of the Academy-
 - (a) purports or holds itself out to be-
 - (i) the Academy or any branch or part thereof; or
 - (ii) connected or associated with the Academy in any manner whatsoever; or
 - (b) uses the title "The Hong Kong Academy for Performing Arts" or "香港演藝學院" or a title in any language which so closely resembles the title "The Hong Kong Academy for Performing Arts" or "香港演藝學院" as to be capable of deceiving or misleading any person into believing that the company, body corporate, firm or organization is-
 - (i) the Academy or any branch or part thereof; or
 - (ii) connected or associated with the Academy in any manner whatsoever.
- (2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$10000.

27 Transfer of rights and liabilities, and other transitional provisions

- (1) All property, whether movable or immovable, rights, obligations and liabilities of the Provisional Council immediately before the commencement of this Ordinance are as from such commencement the property, rights, obligations and liabilities of the Academy and the Academy shall have all necessary powers to enjoy that property, enforce those rights and discharge those obligations and liabilities.
- (2) Without limiting the generality of subsection (1), every agreement, whether in writing or not, to which the Provisional Council was a party immediately before the commencement of this Ordinance and whether or not such agreement is of such a nature that the rights and liabilities thereunder could be assigned, shall have effect from such commencement as if-
 - (a) the Academy had been party to such agreement in lieu of the Provisional Council; and
 - (b) for any reference, however worded and whether expressed or implied, to the Provisional Council there were substituted in respect of anything to be done or omitted on or after the commencement of this Ordinance a reference to the Academy.
- (3) Where necessary for the purpose of giving effect to subsection (1), subsection (2)(b) shall also apply to any document, not being an agreement, having references therein to the Provisional Council.
- (4) The appointment of any employee of the Provisional Council subsisting immediately before the commencement of this Ordinance shall be deemed to be made by the Academy under this Ordinance and for the purpose of determining the right to pension, gratuity or other benefits of such employee on the cessation of his service, there shall be no break in the continuity thereof by reason only of this section.
- (5) Where anything has been commenced by or under the authority of the Provisional Council before the commencement of this Ordinance such thing may be carried on and completed by or under the authority of the Academy.
- (6) In this section "Provisional Council" (臨時校董會) means the Provisional Council for The Hong Kong Academy for Performing Arts appointed by the Governor before the commencement of this Ordinance.