

Paper for the Panel on Economic Services

**The meaning of "airport-related activities"
in the Airport Authority Ordinance (Cap. 483)**

Background

During the discussion of the Administration's paper (CB(1)1310/01-02(03)) entitled "Proposed Airport Authority (Permitted Airport-Related Activities) Order" at the meeting of the Panel on Economic Services held on 20 March 2002, members of the Panel made a request for an opinion on the meaning of "airport-related activities" in the Airport Authority Ordinance (Cap. 483) (the Ordinance).

Powers of the Airport Authority in relation to "airport-related activities"

2. The Airport Authority (AA) is created by statute. It has to act within its powers as provided in the Ordinance. According to section 7(1) of the Ordinance, it has the general power to do anything which is requisite, expedient for, conducive or incidental to the performance of its functions. The functions of AA are stipulated in section 5. Briefly, the AA is -

- (a) to operate and develop an airport at and in the vicinity of Chek Lap Kok and to provide such facilities, amenities or services as are requisite or expedient;
- (b) to carry on any airport-related activity in trade, commerce or industry at or from the Leased Area; and
- (c) to carry on such airport-related activities at any place, and subject to any conditions, as the Chief Executive may specify by order published in the gazette.

3. The activities that AA is not permitted to do are to establish or operate either a meteorological service or an air traffic control service or make any service agreement with the government of any country or territory or any person outside Hong Kong (section 8 of the Ordinance).

The ordinary meaning of "airport-related activities"

4. The word "activities" ordinarily means things that a person chooses to do. An "airport" is a place used for affording facilities for the landing and taking off of aircraft. The term "airport-related activities" as used in the Ordinance should therefore cover any activity that AA chooses to do that has a relation to Chek Lap Kok Airport.

Legislative history and intent

5. Before the introduction of the Airport Authority Bill, the Administration published the Airport Corporation Bill in the form of a White Bill for public consultation. Clause 4(3) of the White Bill (similar to the current section 5(3) of the Ordinance) provides that "... the Corporation may engage in, or carry on such activities as the Governor may ... permit ...". (The then Legislative Council formed a Subcommittee to study the White Bill. Please refer to LegCo Paper No. 1789/93-94 for the Subcommittee's report to the House Committee on 25 February 1994 (see the attached LC Paper No. LS73/01-02(01)).

6. On 24 May 1995, the Airport Authority Bill was introduced into the then Legislative Council. The Secretary for Economic Services, in moving the Second Reading of the Bill, said that they had received comments that the powers of the Authority as provided in the White Bill were too wide. The word "airport-related" was therefore added before the word "activities" in clause 5(3) of the Bill. He said, "[B]y 'airport-related', we mean that the Authority should only undertake activities which are essential or conducive to the efficient operation of the airport or which are related to the development and running of an airport, for example, the development of hotels, freight forwarding facilities, offices or other commercial and retail premises. We do not envisage that the Authority will undertake activities which are not normally undertaken by airports in other territories." (see the attached LC Paper No. LS73/01-02(02)).

7. A Bills Committee was formed to scrutinize the Bill. A report was submitted to the House Committee on 7 July 1995 (LegCo Paper No. 1111/94-95 dated 4 July 1995, see the attached LC Paper No. LS73/01-02(03)). During the clause-by-clause examination of the Bill, members of the Bills Committee urged the Administration to define the term "airport-related activities". The Administration declined to do so and said that it would be difficult to come up with a legally precise definition because of the dynamic nature of the airport business. Also it did not want to inadvertently deprive the Authority of the ability to respond to changing circumstances.

Conclusion

8. To determine whether any activity is within the meaning of "airport-related activities", that activity may have to be examined in the context of -

- (a) whether it falls outside a restricted activity as specified in section 8 of the Ordinance;
- (b) whether it is essential or conducive to the operation of the airport, or related to the development and running of the airport;
- (c) whether it is an activity that is "normally undertaken by airports in other territories"; and
- (d) if it is an activity permitted or assigned by the Chief Executive by order, whether the Chief Executive has specified any places or any conditions restricting that activity.

Encl.

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