

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.

Prepared by
Legal Service Division
Legislative Council Secretariat
15 April 2002

Ref: MS/24

**Meeting of the House Committee
on 25 February 1994**

**Report of the Subcommittee to study
the Airport Corporation White Bill**

Purpose

This paper reports on the discussion of the Subcommittee on the Airport Corporation White Bill.

Background

2. In accordance with the Memorandum of Understanding Concerning the Construction of the New Airport in Hong Kong and Related Questions (MOU), the Airport Corporation Bill has been 'modelled as far as possible' on the Mass Transit Railway Corporation Ordinance, with some variations which have been necessary to take account of the differences between running an international airport and a domestic railway.

3. The Airport Corporation's main function is to develop and run an airport at Chek Lap Kok in accordance with prudent commercial principles. Subject to the restrictions in the Land Grant, it may also develop some non-airport commercial/industrial activities on Chek Lap Kok (it is intended that about 100 hectares out of a total of 1,248 hectares will be allocated for such purposes).

4. The Bill provides all the powers necessary to carry out the above functions except the following : -

- (a) to operate an air traffic control or meteorological service (these are to be provided by Government);
- (b) to make any air service agreements (this will remain a Government function);
and
- (c) to carry on any activity outside Chek Lap Kok (unless specifically authorized by the Governor).

5. The Bill itself provides an extensive range of specific powers of Government direction or approval on the Corporation's performance, supply of information, financial arrangements, the levying of airport charges, the appointment of inspectors and the enactment of bylaws etc. The aim is to strike an appropriate balance in order to achieve the benefits of the public corporation approach while maintaining all the powers necessary to otherwise protect and promote the public interest.

The Subcommittee

6. At the House Committee meeting on 7 January 1994, Members agreed that a Subcommittee be formed to study the White Bill. The Subcommittee held its first meeting on 14 January 1994 with Hon Peter WONG elected as Chairman. A membership list of Subcommittee is at Appendix A.

Deliberation of the Subcommittee

7. The Subcommittee has held five meetings and the Administration has participated in four of them. The main areas of concern discussed by the Subcommittee were as follows:-

- (a) the name of the Corporation, particularly its Chinese translation is confusing and does not reflect its true status;
- (b) the desirability or otherwise of having one person as the "Executive Chairman";
- (c) checks and balance on the general powers vested in the Corporation under Clause 6 to be included in the Bill;
- (d) a need to define or provide guidelines on "direct" and "indirect" interests of members to be disclosed to the Corporation;
- (e) public access to the register of interests drawn up on declaration by members of the Corporation;
- (f) penalty or sanction to be imposed on members who knowingly fail to disclose his interest;
- (g) definition of "public interest" and the public officer's role and obligations at a meeting where issues involving public interest are considered;
- (h) compensation to be paid by Government to the Corporation for expenditure incurred by the Corporation in compliance with a direction issued by the Governor in Council under Clause 18(2);
- (i) definition and interpretation of "international obligation"; and the necessary mechanism to monitor and control the level of Passenger Terminal Charge apart from international obligations;
- (j) safeguards to prevent the control and ownership of the Airport Corporation core assets passing to outside parties;
- (k) the role that can be played by the Director of Audit and his working relationship with the Corporation's internal as well as external auditors;

- (l) LegCo's monitoring role and accountability of the Airport Corporation;
- (m) power of the Corporation to enact and enforce bylaws;
- (n) checks and balance on the power of detention to be exercised by the Corporation's personnel; and
- (o) the rationale for providing immunity to members of the Corporation in the performance of any functions under the Ordinance.

8. Members of the Subcommittee are unanimous in their views in three of the above areas i.e. the need to change the name of the Corporation, in particular, its Chinese translation; to have separate persons to be appointed as Chairman of the Corporation and its Chief Executive Officer and the vesting of power in the Director of Audit to initiate value for money audits. Details of the discussion on all the above points are recorded in the notes of the meetings. In addition, the Liberal Party and Hon Peter WONG have separately submitted detailed views on the White Bill. Members who are interested in the sighting of these documents can approach CAST8.

Recommendation

9. Apart from the three areas mentioned in paragraph 8 above, the Subcommittee has not attempted to reach consensus view on queries and suggestions put forward by Members at the meetings. It is therefore recommended that copies of the notes of meetings and all written submissions made by Members be forwarded to the Administration for consideration in the drafting of the Blue Bill.

Advice Sought

10. Members are invited to support the recommendation of the Subcommittee at paragraph 9 above.

OMLEGCO
22.2.94

**Subcommittee to study the
Airport Corporation White Bill**

Membership List

Hon Peter WONG Hong-yuen, OBE, JP (Chairman)
Hon LI Wah-ming (Deputy Chairman)
Hon Mrs Selina CHOW, OBE, JP
Hon TAM Yiu-chung
Hon Edward S T HO, OBE, JP
Hon Mrs Miriam LAU Kin-ye, OBE, JP
Hon LAU Wah-sum, OBE, JP
Dr Hon LEONG Che-hung, OBE, JP
Hon Albert CHAN Wai-yip
Hon Vincent CHENG Hoi-chuen, OBE, JP
Hon Marvin CHEUNG Kin-tung, OBE, JP
Hon CHEUNG Man-kwong
Hon CHIM Pui-chung
Dr Hon HUANG Chen-ya, MBE
Hon Emily LAU Wai-hing
Hon LEE Wing-tat
Hon Eric LI Ka-cheung, JP
Hon Steven POON Kwok-lim
Dr Hon Samuel WONG Ping-wai, MBE, JP
Dr Hon Philip WONG Yu-hong
Hon Howard YOUNG, JP
Hon Roger LUK Koon-hoo
Hon Anna WU Hung-yuk

Clause 6 of the Bill provides that the amendments will apply to all existing franchises.

Mr President, let me assure Honourable Members that the Government has no intention of taking over public bus services except in very exceptional circumstances and, even so, for no longer than it takes for private enterprise to resume operations. The Bill before this Council simply seeks to safeguard the interests of the travelling public. With these remarks, I recommend the Bill to Honourable Members.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

AIRPORT AUTHORITY BILL

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to reconstitute the Provisional Airport Authority and to provide that from the commencement hereof it shall be known in the English language as the Airport Authority and in the Chinese language as "機場管理局", to enable it to provide, operate, develop and maintain an airport for civil aviation in the vicinity of Chek Lap Kok and otherwise to define its functions, to make provision for the safe, secure and efficient operation of such airport and for connected purposes."

He said: Mr President, I move that the Airport Authority Bill be read a Second time.

The purpose of the Bill is to reconstitute the Provisional Airport Authority (PAA) as the Airport Authority (AA) to enable it to provide, operate, develop and maintain our new airport at Chek Lap Kok. The Bill defines the functions of the Authority and makes provision for the safe, secure and efficient operation of the airport.

In January 1994, we published the Airport Corporation Bill in the form of a White Bill for public consultation. Members of this Council formed a Subcommittee to study the White Bill. We are most grateful for the comments and suggestions put forward by members of the Subcommittee. In addition, we would like to thank the Honourable Peter WONG who sent us a separate written submission and the Honourable Albert CHAN, the Honourable Frederick FUNG, the Honourable Fred LI, the Honourable Steven POON and the Honourable TAM Yiu-chung who put forward comments on behalf of the organizations they represent. We would also like to thank members of the Airport Consultative Committee, as well as other organizations and members of the public for taking time to study and comment on the White Bill.

In the course of the public consultation exercise, we received 19 written submissions. We held 14 meetings with the Subcommittee of this Council, the Ad Hoc Study Group of the Airport Consultative Committee and a number of organizations. The comments and suggestions put to us focused mainly on the name, structure, powers and functions of the Authority, employment of staff, the extent of governmental control, monitoring and auditing, payment of compensation and charges. We have studied each and every comment received. In line with the "Memorandum of Understanding Concerning the Construction of the Airport in Hong Kong and Related Questions" (MOU), we have also consulted the Chinese side of the Airport Committee of the Joint Liaison Group.

The objectives and structure of the Airport Authority Bill are the same as those in the 1994 White Bill. In drafting the Bill, we have aimed to address as many of the comments and suggestions received as possible. We have also taken into account fully the agreements reached with the Chinese side.

Name

Under the Bill, the PAA will be re-named the "Airport Authority" (AA) in English and "機場管理局" in Chinese.

Structure

During the public consultation process, we have received suggestions that in order to provide a wide range of checks and balances on the Authority and on its management, the Authority should have a Board. It has also been suggested that the Authority's Chairman and Chief Executive Officer should be separate persons. Accordingly, clause 4 of the Bill now provides that the affairs of the Authority shall be under the care and management of a Board. Clause 3(3)(a) of the Bill also makes it clear that the Chairman and the Chief Executive Officer will be different persons with different roles and responsibilities.

Localization

Some commentators suggested that given the importance of the Authority, it should adopt a localization policy for employment of staff and that the Chairman and, if possible, the Chief Executive Officer should be "locals". Others specifically suggested that the Chairman should be a Hong Kong permanent resident. Clause 3(3)(a) of the Bill now provides that the Chairman shall be a Hong Kong permanent resident as defined in the Immigration Ordinance. As regards employment of staff, the Authority's plan is to fill all senior posts, including that for the Chief Executive Officer, with Hong Kong permanent residents and the Authority will recruit from sources outside Hong Kong only in the absence of suitable local candidates.

Powers and functions

On the powers and functions of the Authority, comments we have received focused mainly on the scope of activities and powers of the Authority relating to charging of land and property, borrowing and delegation of functions. Some felt that the powers of the Authority in the White Bill were too wide. Others were concerned that in the unlikely event that the Authority fails to repay its debt or exercises its power to charge or to delegate in a wrong manner, it may inadvertently lose control of the airport.

As regards the activities of the Authority, in addition to providing, developing, operating and maintaining the airport, clauses 5(2) and (3) and 7(2)(f) of the Bill now provide that the Authority may only engage in "airport-related" activities. By "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.

Turning now to the charging and disposal of land and buildings by the Authority, the Land Grant referred to in clause 16 of the Bill will specifically prohibit the Authority from disposing of land and buildings required for the operation of the airport or charging them in such a way which would jeopardize the operation of the airport. Clause 16(1) of the Bill further provides that the restriction over charging and disposal of land and buildings in the Land Grant cannot be changed except with the prior approval of the Financial Secretary.

As regards the Authority's power to borrow, clause 28(4) of the Bill provides that the Governor may direct the Authority not to borrow above a particular level without the prior written consent of the Financial Secretary.

As regards delegation and sub-delegation of the Authority's functions, the White Bill already provided that some powers of the Authority could not be delegated. These include the power to delegate, the power to form or acquire a subsidiary, the power to acquire or dispose of shares in a subsidiary and the power to make bylaws. The White Bill also provided that the Financial Secretary would be given powers to revoke any delegation made and irrevocable delegations have to be approved by him in advance. In the Bill we have put before Members today, we have included one additional residual safeguard. Clause 9(3) of the Bill provides that the Financial Secretary may direct the Authority not to delegate functions except with his prior consent. This would ensure that in effect, the Government could at any time forbid the delegation of any function of the Authority.

Auditing

On auditing of the affairs of the Authority, we have received divided views. There was strong support for strengthening the auditing functions of the Authority. Some have said that since a considerable proportion of the Authority's funds comes from the public purse, the Director of Audit should be given the power in the Airport Authority Ordinance to initiate value-for-money audits on the Authority. Some felt that the Director of Audit should also audit the annual accounts of the Authority. On the other hand, others were content to leave the regular annual auditing functions in the hands of private sector professional auditors. Some also felt that, as long as the Director of Audit could carry out value-for-money audits on the Authority, clause 29(6) of the White Bill already provided adequate powers.

It is clearly most important that the activities of the Authority are subject to rigorous and effective audit procedures. With this object in mind, we have decided to strengthen the mechanism for audit within the Authority by providing in the Bill that the Authority must establish an Audit Committee. Clause 31 of the Bill provides that the functions of the Audit Committee are to consider matters relating to the financial affairs or audits of the Authority as it considers necessary or desirable and any other matters referred to it. It further provides that neither the Chief Executive Officer nor any other employees of the Authority could be a member of the Audit Committee and that its chairman shall be a member of the Authority. The Committee is expected to play a proactive role and may instigate value-for-money studies in any area where it considers the management approach may be made more cost-effective and efficient.

As regards the role of the Director of Audit, section 15 of the Audit Ordinance provides that "Notwithstanding that he is not empowered by any Ordinance to audit, examine or inquire into the accounts of a person, body corporate or other body, the Director may audit, examine or inquire into the records and accounts of any person, body corporate or other body if he is authorized in writing to do so by the Governor in the public interest". Clause 32(7) of the Airport Authority Bill makes it clear that this section of the Audit Ordinance applies to the Authority. So the Governor could, if necessary, authorize the Director of Audit to audit, examine or inquire into the records and accounts of the Airport Authority.

Used in combination, section 15 of the Audit Ordinance and clause 31 of the Airport Authority Bill provide strong powers, and I believe them to be sufficient. Like the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation, the Airport Authority will be required to operate on prudent commercial principles. Like the two railway corporations, it will be expected to raise considerable sums of money in the international capital markets and it is important that it develops the same strong reputation amongst lenders and international credit rating agencies. This can only be achieved if a proper balance is struck between the need for prudent oversight of the

Authority's activities and the need for it to be allowed to operate effectively as a commercially independent entity, and be seen to be so.

Compensation

Turning now to the payment of compensation, we have received suggestions that the Authority, which is wholly owned by the Government, should be obliged to act in the public interest and should not be paid any compensation for losses incurred as a result of being directed by the Governor in Council to take certain courses of action. There is, however, another angle to this issue. Lenders to the Authority will want to be assured that the Authority will be able to generate the necessary revenues to service and repay its debt and that its ability to do so will not be adversely affected by a direction given by the Government. Balancing the two considerations, we decided that the circumstances under which compensation will be payable should be qualified. Clause 20(2) of the Bill now provides that compensation will only be payable where compliance with a direction given by the Governor in Council in the public interest results in the Authority's being unable to conduct its business according to prudent commercial principles and to pay a debt or otherwise being unable to discharge any of its legal obligations. In addition, clause 20(3) of the Bill provides that an application for compensation shall be made by, and only by, the Board of the Authority.

Quorum for meetings

A number of commentators expressed concern that the quorum requirement for meetings of the Authority in the White Bill was too low as compared to that for other statutory bodies. Clause 18(8) of the Bill now specifies that the quorum for all meetings of the Board shall be at least half of the members of the Authority including the Chairman and Chief Executive Officer. The minimum number of public officers in the quorum is now two.

Airport charges

We have received suggestions that the Government or the Legislative Council should be given wider powers to vet and approve airport charges. These stemmed from a concern that the Authority might try to levy high fees in order to maximize profits. Others have noted however that doing so might significantly undermine the Authority's ability to conduct its business according to prudent commercial principles. Clause 34 of the Bill now provides that the Authority may make a scheme or schemes for determining airport charges and before making such a scheme, it shall submit to the Governor in Council for approval a draft of the proposed scheme together with a statement specifying the date on which the charges are intended to operate and reasons for the proposed scheme. Separately, we have taken the opportunity to refine the definition of "airport charges" in the Bill. At the time the White Bill was drafted, it was thought that aircraft passenger charges would be subject to international obligations applying to Hong Kong. Accordingly these charges were included

under the definition of "airport charges" in the White Bill. It now transpires that, as a result of the conclusion of negotiations between the United Kingdom and the United States of America on air services, aircraft passenger charges would not be subject to international obligations applying to Hong Kong. The definition of "airport charges" in the Airport Authority Bill has therefore been amended accordingly.

Conclusion

Mr President, in drafting the Airport Authority Bill we have attempted to take into account all views and suggestions put to us. We have strengthened government controls over the Authority. We have defined more clearly the Authority's powers and functions, structure and procedures. We have sought to strike that delicate balance between controlling the Authority but at the same time not restricting its activities in such a way as to render it impossible to conduct its business in accordance with prudent commercial principles. Mr President, I commend this Bill to this Council and I look forward to further discussion with Members.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1994

Resumption of debate on Second Reading which was moved on 7 December 1994

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 7 December 1994

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Ref: HB/C/31/94

**Meeting of the House Committee
on 7 July 1995**

**Report of the Bills Committee to study the
Airport Authority Bill**

Purpose

This paper reports on the deliberations of the Bills Committee to study the Airport Authority Bill and seeks Members' endorsement for the Bill to resume its Second Reading Debate on 19 July 1995.

The Bill

2. The Airport Authority Bill (the Bill) seeks to reconstitute the Provisional Airport Authority (PAA).
3. The Bill sets out the powers and functions of the AA to provide, operate, develop and maintain Hong Kong's new international airport at Chek Lap Kok, and makes provision for the safe, secure and efficient operation of the airport.
4. The objectives and structure of the Bill are the same as those in the Airport Corporation Bill (the White Bill) published in January 1994. However, the Bill has taken into account public suggestions and opinion on the White Bill.

The Bills Committee

5. At the House Committee meeting on 26 May 1995, Members agreed that a Bills Committee should be formed to study the Airport Authority Bill. The Bills Committee held its first meeting on 1 June 1995 and Hon Peter WONG and Dr Hon Samuel WONG were elected Chairman and Vice-Chairman respectively. The membership list of the Bills Committee is at Appendix I.

Deliberations of the Bills Committee

6. The Bills Committee held eight meetings with the Administration. The Bills Committee studied the Bill clause by clause. At the last meeting held on 4 July, 1995, the Administration indicated that it would consider proposing a number of Committee Stage Amendments to the Bill and making a

statement on a number of issues on moving the resumption of the Second Reading Debate of the Bill. These had yet to be finalised as further consultation with experts would be necessary. The main issues considered by the Bills Committee and the gist of its discussions are summarised in the following paragraphs.

The Airport Authority and the Board

7. Members asked and the Administration clarified the relationship between the Airport Authority (AA) and the Board as follows: the AA was a legal person; the Board of the AA was not nor did it have to be. The AA would perform its functions at all times through the Board and no corporate act could be performed by an individual or a group of members of the AA. In the light of Members' comments, the Administration would consider proposing a Committee Stage Amendment to Clause 13(2) to replace the term "Authority by the term "Board".

Measures to protect the public interest

8. The Administration assured Members that there were many measures within the Bill to ensure that although the AA were to conduct its business according to prudent commercial principles, the public interest would be safeguarded. These measures included: (a) objectives specified required AA to have regard to safety, security, economy and operational efficiency in the conduct of its business; (b) the public officer members (at least two to make up a quorum of Board meeting) to state public interests at meetings (clause 14(a)); (c) Governor-in-Council could give directions to the AA (clause 20); (d) Financial Secretary (FS) could require AA not to delegate any functions except with his consent (clause 9(3)); (e) FS might require AA to revoke a delegation other than an irrevocable delegation approved by him (clause 9(2)(d)); (f) the Governor might direct AA not to borrow above a specified limit without the prior written consent of FS (clause 28(4)(a)); (g) AA could only invest funds, for the time being available for investment, in such classes or descriptions of investment approved in writing by FS (clause 25); (h) the Chief Secretary might require AA to remedy defects e.g. as regards the physical condition of the airport (clause 39); (i) the Chairman and the Chief Executive Officer being separate persons (clause 3(3)(a)); and (j) AA would be subject to stringent controls on charging and alienation of land and buildings on the airport island in the Land Grant and such restrictions in the Land Grant could not be changed except with the prior approval of the FS (clause 16(1)).

9. Members asked the Administration to consider stating in the Secretary for Economic Services' speech on the resumption of the Second Reading Debate of the Bill on how Government would see the role of public officers on the Board of the AA. The Administration agreed to consider.

10. The Democratic Party however remained concerned that general public interest had not achieved the right balance as against prudent commercial interest in the Bill in the operational objectives of the AA. They would consider proposing a Committee Stage Amendment to include this principle in Clause 6.

The extent of power of the Governor in Council in giving directions to the Airport Authority

11. Members noted that the provision in clause 20(1) meant that if the AA had a discretionary power to do something, then a directive might be given by the Governor in Council in relation to it. However, the Governor in Council could not direct the AA to do or omit to do anything which the AA was not permitted to do or was obliged to do under the Ordinance other than clause 6.

The Management of the Airport Authority

12. In the light of Members' suggestions, the Administration indicated that they would consider the following Committee Stage Amendments:

- (a) delegation and sub-delegation of AA's functions as set out in clause 9 be made only to AA members, employees, subsidiaries, and committees established by the AA unless with the prior approval of the Financial Secretary (clause 9);
- (b) the chairman of a committee established by the AA to be an AA member (clause 10(2)(d));
- (c) the quorum of a meeting of the Board to include two non-public officers (clause 11(8)) and to add the phrase "and the CEO(if any)" after the word "Chairman" in parentheses (clause 11(13)); and
- (d) the assignment of functions of the Chief Executive Officer would make reference to section 3(6)(b)(ii) (clause 15(1)(b)) and such assignment or direction could have an expiry or termination date (clause 15(1)(d)).

13. The Administration indicated it would consider including in the Secretary for Economic Services' speech on the resumption of the Second Reading Debate of the Bill a statement to the effect that it was open to relevant professional bodies to give views relating to the appointment of AA members to the Administration for consideration. Nevertheless, the Democratic Party would move a Committee Stage Amendment to clause 3(3)(a) to the effect that one-third of its Members would be nominated by the Legislative Council.

Enhancing public monitoring of the Airport Authority

14. The Administration indicated that it would consider a Committee Stage Amendment to the effect that the AA would keep a register of interests declared by AA Members under clause 13(1) which would be made available for public inspection on request.

15. The Democratic Party would reconsider whether it would move a Committee Stage Amendment to require that all declarations including those made at the time of appointment or made at the meetings of the Board under clause 13(1) and (2) should be open for inspection by the public.

16. Since the Administration preferred to leave the opening up of meetings of the AA to the AA itself, the Democratic Party would move a Committee Stage Amendment providing that meetings of the AA should be open to the public except those meetings concerning commercially sensitive or specific personnel matters.

Financial Aspect of the Airport Authority

17. Members suggested: (a) to replace the term "expenses" by "expenditure" in clause 24; (b) the Chinese text of clause 29(4) should be improved; and (c) the statement of accounts referred to in clause 32(2) should be amended to take into account of the fact that the profit and loss account and the cash flow statement covered the whole financial year. The Administration indicated that it would consider Committee Stage Amendments in these respects.

The Audit Committee

18. Members discussed in detail the role of the Audit Committee, and agreed that it should be responsible to the AA. Members noted that Government would, through public officers on

the Board, be aware of issues considered by and areas of concern, if any, of the Audit Committee. There were divided views among Members as to whether the Director of Audit, the Director of Accounting Services or representative of the Finance Branch should sit on the Audit Committee. The Administration explained to Members that although it could not see the reason why the Chairman of the Audit Committee had to be a non-public officer, it envisaged that in practice that would be the case. The Administration was asked to consider saying in the Secretary for Economic Services' speech on the resumption of the Second Reading Debate of the Bill something to that effect. Members would like to know generally about the work done by the Audit Committee. The Administration indicated that it would consider including in the Secretary for Economic Services' speech on the resumption of the Second Reading Debate of the Bill a statement to the effect that it would ask the AA to consider including a section on the work of the Audit Committee in its annual report.

19. The Administration indicated it would consider a Committee Stage Amendment to the effect that the Audit Committee should consist of a minimum of three members (clause 31(1)).

The Auditor

20. The Administration indicated that it would consider a Committee Stage Amendment to the effect that the "auditor" in clause 32(3) should not be a member of the AA, a member of the Audit Committee, or an employee of the AA. The Administration drew Members' attention to section 29(2) of the Professional Accountants Ordinance.

21. Subject to confirmation with his professional colleagues, Hon Eric LI thought that it would not be necessary to move a Committee Stage Amendment to replace the term "auditor" by "an independent firm of Certified Public Accountant" if the Administration decided to move the amendment set out in paragraph 20 above.

22. The Democratic Party however would move a Committee Stage Amendment to clause 32 to amend the auditing provisions so that the AA's statement of accounts was audited by the Director of Audit and where necessary, the AA would remunerate the Director of Audit for services rendered.

The business plan

23. The Administration indicated that it would consider requiring the authority to send to the FS its five-year business

plan rather than one-year business-plan (clause 33). Furthermore, the Administration would consider stating in the Secretary for Economic Services' speech that the AA would brief LegCo on its commercial ventures and major expansion plans from time to time.

The airport charges

24. The Administration would consider including in the Secretary for the Economic Services' speech on resuming the Second Reading Debate of the Bill some reference to consultations in relation to airport charges.

General Powers of the Airport Authority

25. The Administration also indicated that it would consider a Committee Stage Amendment to delete the words "airport-related business or other" in clause 7(2)(f).

Committee Stage Amendments

26. The Administration, after finalising its position on Committee Stage Amendments under consideration in consultation with experts, would prepare relevant draft Committee Stage Amendments for Members' consideration.

27. The Democratic Party would separately prepare their draft Committee Stage Amendments.

Recommendation

28. The Bills Committee recommends that subject to the Committee Stage Amendments of the Administration, the Bill should resume its Second Reading Debate at the Legislative Council sitting on 19 July 1995.

Advice sought

29. Members are invited to support the recommendation of the Bills Committee in paragraph 28 above.

LegCo Secretariat
4 July 1995

**Bills Committee to study
the Airport Authority Bill**

Membership List

Hon Peter WONG Hong-yuen (Chairman)
Dr Hon Samuel WONG (Deputy Chairman)
Hon Ronald Arculli
Hon Martin Barrow
Hon J D McGregor
Hon Albert CHAN Wai-yip
Hon CHIM Pui-chung
Hon LEE Wing-tat
Hon Eric LI
Hon Steven POON
Hon Howard YOUNG
Hon TSO Shiu-wai