

Kai Tak Cruise Terminal Bill:

**Justifications for Enacting a Piece of New Primary Legislation for
Regulating the Use, Operation, Management and Control of
the Kai Tak Cruise Terminal**

PURPOSE

This paper presents the need for enacting a piece of new primary legislation for regulating the use, operation, management and control of the Kai Tak Cruise Terminal (KTCT).

BACKGROUND

2. When presenting the need for enacting a piece of new primary legislation for regulating the use, operation, management and control of the KTCT at the Bills Committee meeting on 20 October 2015, Members requested, and the Administration undertook, to prepare a paper to set out the reasons (i) that justify the need for the legislation; and (ii) for not making subsidiary legislation / amendments to existing laws to serve the said objectives.

NEED FOR LEGISLATION

An important tourism infrastructure

3. The KTCT is an important infrastructure which supports the development of cruise tourism in Hong Kong. It is designed with reference to the mode of operation of cruise tourism in Hong Kong which includes the need to accommodate cruises with homeporting itineraries. It has permanent customs, immigration, quarantine and police facilities with computers and communications systems containing confidential data, as well as detention facilities for law enforcement purpose. Given the importance of this tourism infrastructure, we consider that there is a need to have a dedicated regulatory framework to uphold its security and smooth operation.

Regulating certain misconducts for maintaining security and smooth operation

4. As explained in the Legislative Council Brief (File Ref.: TC CR/T4/22/9/2) issued in July 2015, the Port Facility Security Plan which currently governs the security arrangements for the KTCT does not empower the Commissioner for Tourism and law enforcement agencies to act against

some specific misconducts which may potentially jeopardize its security and smooth operation, nor does it set out the corresponding penalty. For more effective enforcement of the restrictions and prohibitions of certain conducts at the KTCT, we consider it necessary to have a more comprehensive regulatory framework through legislative means.

NEED FOR A PIECE OF NEW PRIMARY LEGISLATION

Feasibility of making amendments / by-laws to Kowloon Wharf and Godown Company Limited Ordinance (Cap. 1023)

5. At the Bills Committee meeting on 20 October 2015, Members enquired whether we can amend or make by-laws under the *Kowloon Wharf and Godown Company Limited Ordinance* (Cap. 1023) to cater for the needs for a regulatory framework for the KTCT.

6. We had indeed considered, at the earliest stage of formulating this legislative proposal, as to whether Cap. 1023 could be the appropriate legislative vehicle for the KTCT. The ambit of Cap. 1023 and its by-laws is confined by its short title and long title. Its long title states that it is “to authorize the making of by-laws by the Hongkong and Kowloon Wharf and Godown Company, Limited”, and the by-laws made under this Ordinance should therefore be related to the said Company only. The KTCT is a Government-owned tourism infrastructure. Therefore, Cap. 1023 cannot be extended to provide the regulatory framework for the KTCT.

Feasibility of making subsidiary legislation under Shipping and Port Control Ordinance (Cap. 313)

7. We have also explored the option of simply providing the regulatory framework by way of subsidiary legislation under the *Shipping and Port Control Ordinance* (Cap. 313).

8. As we have explained in the Legislative Council Brief (File Ref.: TC CR/T4/22/9/2) issued in July 2015, the KTCT is operated by a private terminal operator on a commercial basis. The operator of the KTCT charges fees for the provision of services for arranging berthing and other supporting and ancillary services. The fees charged by such private terminal operator may exceed the cost-recovery level. Legal advice suggested that the regulation making powers under Cap. 313 have certain limitations. Specifically, it suggested that although the fee of a *particular* service, facility or matter may be set at a level that exceeds the administrative or other costs incurred in the provision of that service, facility or matter as empowered under s.80(1A) of

Cap. 313, there is no provision enabling the charging of fees not limited by reference to the amount of administrative or other costs incurred or likely incurred by the Government or other authority in the discharge of its functions under Cap. 313. As such, over cost-recovery in the “*overall*” sense is not allowed. In other words, the sum of all fees charged under Cap. 313 may not exceed the total costs incurred.

9. Besides, as explained in paragraph 3 above, the KTCT is an important tourism infrastructure which requires a dedicated regulatory framework. Having considered the importance of the KTCT and the constraints of the regulation making powers under Cap. 313, we are of the view that the regulations made under Cap. 313 would not be able to cater for the actual operational circumstances of the KTCT.

CONCLUSION

10. There is a need to provide a regulatory framework for the use, operation, management and control of the KTCT through legislative means. We have explored and considered the options of making subsidiary legislation / amendments to existing laws (including the *Shipping and Port Control Ordinance* (Cap. 313) and *Kowloon Wharf and Godown Company Limited Ordinance* (Cap. 1023)) to meet the objectives of that regulatory framework. However, having regard to the mode of operation of the KTCT and in view of the limitation of the regulation making power and the ambit of the existing laws, we concluded that it is not feasible to make subsidiary legislation / amendments to existing laws to achieve the intended objectives of the regulatory framework. We therefore need to enact a piece of new primary legislation for the KTCT.

ADVICE SOUGHT

11. Members are invited to note the content of this paper for information.

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Commerce and Economic Development Bureau
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