



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2801 4458)

20 November 2015

Mr TSOI Kin-pan, George  
Assistant Commissioner for Tourism 4  
Commerce and Economic Development Bureau  
22/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

Dear Mr TSOI,

**Re: Kai Tak Cruise Terminal Bill**

I am scrutinizing the Bill and would be grateful if you would clarify the matters as set out in the **Annex**. I would be grateful if you could let me have the Administration's reply in bilingual form as soon as possible.

Yours sincerely,

(Clara TAM)  
Assistant Legal Adviser

Encl.

cc. DoJ (Attn: Miss Queenie WU (By Fax: 3918 4613))  
Clerk to Bills Committee  
LA  
SALA2

## Definitions

1. Under clause 2 of the Bill, "cruise ship" is defined to include, apart from vessels as described in subparagraphs (a) and (b), any other vessels as approved by the Commissioner for Tourism for the purpose of this Ordinance". However, it is noted that there is no provision in the Bill empowering the Commissioner to approve vessels for this purpose. Please consider adding a provision in clause 5 to provide a legal basis for such statutory power.
2. In the definition of "property manager", please consider amending the corresponding Chinese rendition "管理者" to "物業管理者" so as to reflect the nature of the property services to be provided by the property manager in the Chinese text of the Bill.
3. In the Bill, "vessel" is defined to have the meaning given by section 2 of the Shipping and Port Control Ordinance (Cap. 313), which includes "(a) any ship, junk, boat, dynamically supported craft, seaplane, or any other description of vessel used in navigation; and (b) any other description of vessel in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation". Please explain the reason(s) for including in the definition of "vessel" for the purpose of the Bill the vessels in the Hong Kong not used in navigation or not constructed or adapted for use in navigation.

## Use of Terminal

4. Clause 4 of the Bill provides for the use of the Terminal. Please explain the following -
  - (a) the reasons for providing for "facilitating the embarkation and disembarkation of passengers of cruise ships" but not "the embarkation and disembarkation of passengers of cruise ships" in clause 4(b) as the ancillary purpose under clause 4(d) shall include the purpose of facilitating the embarkation and disembarkation of passengers;
  - (b) the nature of the activities the Commissioner For Tourism (the Commissioner) may consider appropriate under clause 4(c) and please give some examples of these activities as illustration; and
  - (c) the intended scope of "ancillary purposes" in clause 4(d) and please give some examples of these purposes as illustration.

### **Control of the Terminal**

5. Under the Bill, the Commissioner for Tourism is empowered to operate and manage the Kai Tak Cruise Terminal (the Terminal) on a commercial basis. There is no provision expressly conferring the control of the Terminal on the Commissioner as in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H) which provides that the terminal shall be under the control of the Director of Marine (section 4). Please explain the reasons for the difference in the drafting approach.

### **Operation and management of Terminal**

6. In relation to clause 5, please explain the following -

- (a) the legal meaning of "on commercial basis" and the reasons for not providing any condition or qualification for the operation and management of the Terminal on a commercial basis under subclause (1), such as "prudent commercial principles" in section 6 of the Airport Authority Ordinance (Cap. 483);
- (b) the relationship between the Commissioner and the terminal operator who enters into a tenancy agreement as the tenant with the Government in terms of the ultimate control, operation and management of the Terminal (subclause (2));
- (c) whether the Commissioner is given the statutory power to negotiate and enter into the tenancy agreement on behalf of the Government with the terminal operator and if the answer is in affirmative, the relevant legal provision(s) conferring such statutory power to the Commissioner and the extent of such power and whether such power is subject to any controls, limitations or conditions.

### **Authorization and delegation by the Commissioner**

7. In relation to clause 6, please clarify the following -

- (a) in case of a delegation to the terminal operator or property manager which is not a public officer, sections 43 and 44 of the Interpretation and General Clauses Ordinance (Cap. 1) are not applicable. Whether the delegation made under clause 6 shall preclude the Commissioner from exercising or performing at any

time any of the powers or functions so delegated; if yes, please consider adding a provision to expressly provide for the effect of such delegation; and

- (b) function(s) that may be delegated by the Commissioner to the property manager who are contracted to provide property management services in relation to any part of the Terminal Area specified in the contract concerned.

### **Restricted Areas**

8. Under clauses 9(5) and 10(3) of the Bill, the notices to be published by the Commissioner in relation to the designation of permanent and non-permanent restricted areas and the cessation of restricted areas respectively are not subsidiary legislation. Please provide the reasons for such arrangement.

### **Bona fide passengers and crew members' exemption**

9. Under clause 14(2) of the Bill, a bona fide passenger and crew member may be exempted from the prohibition of entry to the restricted areas if he/she is in possession of a valid travel document or a valid document issued by the owner or master of the vessel for identifying the passengers or crew members of the vessel. Under regulation 23 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H), for a passenger to invoke the bona fide passenger exemption, the passenger must have a valid travel document and a valid passenger ticket. Please consider whether it is appropriate to align the requirement with that under Cap. 313H which has the effect of excluding persons who have valid travel document but do not have valid documentary proof from being qualified as a bona fide passenger.

### **General prohibitions**

10. In clause 15(1)(b), the Chinese rendition "過道" is adopted for the term "gangway" instead of "跳板" as adopted in Cap. 313H and other legislation relating to vessels, e.g. section 4 of the Merchant Shipping (Local Vessels) (Works) Regulation (Cap. 548I). It is noted "過道" is mainly used for "gangway" used in buildings (Regulation 73 of the Miscellaneous Licences Regulations (Cap. 114A) or buses (section 74 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap 374A)). Please clarify.

11. Clause 19 provides that a person who fails to comply with a reasonable direction or order given by the Commissioner or an authorized officer; or a notice or sign exhibited by the Commissioner or an authorized officer is an offence and is liable on conviction to a fine at level 1. It is noted that specific offences are provided in various other provisions, e.g. clauses 7(3) and 8(4) (relating to notice and sign exhibited in the Terminal Area). Please provide the reasons for the need to put in place clause 19 in view of the specific offence provisions. Also, please consider whether it is appropriate to amend the English heading "compliance with direction, notice, etc." of clause 19 to "Non-compliance with direction, notice, etc." to tally with the heading of Part 5 (General Prohibitions).

12. Please consider amending the Chinese heading "其他受禁行為" of Clause 20 to "其他受禁止行為" to make it more comprehensible for readers.

13. Under Clause 21(1), provides for the enforcement powers which includes, without warrant and if necessary by using reasonable force, detaining a person who is suspected to have committed an offence under the Ordinance (if enacted). Since some offences provided in the Bill relate to minor misconducts, e.g. littering, fishing and smoking (under clause 20), the enforcement powers under clause 21(1) which makes no references to specific offences may be disproportionate for these minor offences. Please clarify the legislative intent.

### **Related amendments**

14. It is noted that, in the existing legislation proposed to be amended, the Chinese rendition "留作" is adopted for "set aside" while in sections 1 and 2 of Schedule 3 to the Bill, "劃為" is adopted as the corresponding Chinese rendition. It seems that "留作" is a more appropriate rendition. Please also consider adopting "留作" to achieve consistency with the existing legislation.

15. Regarding the proposed amendments to section 2(1)(c) of the Immigration (Anchorage and Landing Places) Order (Cap. 115C), please explain the reasons for not excluding a cruise ship as set out in the proposed new section 2(1)(bb).