

Kai Tak Cruise Terminal Bill:

**Response to the Issues Arising from the Discussion
at the Third Meeting of the Legislative Council Bills Committee
held on 8 December 2015**

PURPOSE

This paper provides the Administration's responses to the issues arising from the discussion at the third meeting of the Bills Committee held on 8 December 2015 as set out in the list attached to the Clerk to Bills Committee's letter dated 14 December 2015 ("the List").

THE ADMINISTRATION'S RESPONSES

2. The Administration's responses, following the numbering of the List, are as follows -

(a) *Examples of tenancy agreements between private operators and the Hong Kong Special Administrative Region Government on Government premises*

3. Paragraph (a) of the List refers to the request for the Administration to provide examples of tenancy agreements between private operators and the Hong Kong Special Administrative Region ("HKSAR") Government for Government premises that were signed by public officers, other than the Director of Lands, on behalf of the HKSAR Government.

4. As mentioned at the Bills Committee meeting on 8 December 2015, apart from the Commissioner for Tourism who has been delegated with the authority to be responsible for the management, use and development of the land at the Kai Tak Cruise Terminal ("KTCT") site, other public officers (other than Director of Lands), such as the Commissioner for Heritage (C for H), the Director of Leisure and Cultural Services (DLCS) and the Director of Environmental Protection (DEP), have been delegated with such authority for other sites. Examples of the agreements that these public

officers have entered into with private operators on behalf of the HKSAR Government are as follows -

- (i) the tenancy agreements signed between the C for H on behalf of the HKSAR Government and the selected non-profit-making organisations for the management, operation and maintenance of the revitalised historic buildings under the Revitalising Historic Buildings Through Partnership Scheme, such as the Savannah College of Art and Design Hong Kong Campus (former North Kowloon Magistracy), Tai O Heritage Hotel (Old Tai O Police Station) and Jao Tsung-I Academy (former Lai Chi Kok Hospital);
- (ii) the tenancy agreements signed between the DLCS on behalf of the HKSAR Government and various private operators for the operation of fee-paying public car parks in leisure venues selected through open tender; and
- (iii) the tenancy agreements signed between DEP / Deputy DEP on behalf of the HKSAR Government and various tenants for operation of a variety of recycling businesses in the EcoPark.

(b) Definition of “cruise ship”

5. Paragraph (b) of the List refers to the request for the Administration to provide extracts from the tenancy agreement of KTCT that are relevant to the definition of “cruise ship” and the non-cruise events / ancillary purposes covered by clauses 4(c) and 4(d) of the Bill.

6. The Administration cannot unilaterally disclose the content of the tenancy agreement. Nevertheless, we may refer Members to the sample tenancy agreement which was available to the public when we invited open tender for the terminal operator in 2011.

7. There is no specific definition of “cruise ship” in the sample tenancy agreement. Nevertheless, the sample tenancy agreement states that –

“Only cruise vessels are allowed to berth at the Cruise Terminal. Except with prior written approval of the Landlord, vessels other than cruise vessels are not allowed to berth at the Cruise Terminal.....”.

Pursuant to the above provision, the power to approve the berthing of vessels (other than cruise vessels) at KTCT during the tenancy is vested with the Government as the Landlord (represented by the Commissioner). This aligns with our policy intent behind the Bill that the Commissioner is empowered to approve any other vessels as “cruise ships” for the purposes of the Ordinance, and for carrying out any activity that the Commissioner considers appropriate.

8. In respect of the non-cruise events, the sample tenancy agreement provides that –

“..... the Tenant is allowed to use the Premises (excluding Apron Area) and any part thereof for the purpose of temporary non-cruise related uses subject to prior written approval of the Landlord.....”

“The Apron Area shall not be used for any purpose other than for the purpose of berthing of vessels....., and other uses as approved by the Landlord in writing.....”

With the above provisions, the Commissioner may approve the carrying out of any activity which she thinks fit. This aligns with clause 4(c) of the Bill.

9. As regards the use of the Terminal for ancillary purposes, the sample tenancy agreement provides that –

“..... the Terminal Operation Area shall not be used for any purpose other than..... loading and unloading of cruise supplies and luggage of passengers and crews, and such other ancillary or supporting facilities as may in the opinion of the Landlord be essential to the operation, safety and security of the Cruise Terminal.....”

The above provision aligns with clause 4(d) of the Bill.

(c) *The drafting of the interpretation of “cruise ship”*

10. As stated in paragraph (c) of the List, the Administration is invited to consider refining the drafting of the interpretation of “cruise ship”.

11. The drafting of the interpretation of “cruise ship” was thoroughly discussed at the Bills Committee meetings on 24 November 2015 and 8 December 2015. In the light of the comments from Members and the Legal Service Division of Legislative Council Secretariat, we will consider revising its drafting and adding a separate clause in the Bill empowering the Commissioner to approve other vessels as cruise ships for the purposes of the Ordinance.

(d) *Interpretation of “vehicle”*

12. Paragraph (d) of the List invites the Administration’s explanation on why the interpretation of “vehicle” in the Road Traffic Ordinance (Cap. 374) is not adopted in the Bill.

13. The respective interpretations of “vehicle” in the Bill and Cap. 374 are as follows –

The Bill: any vehicle whether or not mechanically propelled

Cap. 374: any vehicle whether or not mechanically propelled which is constructed or adapted for use on roads but does not include a vehicle of the North-west Railway or a tram

14. Members may wish to note that the Bill and Cap. 374 serve separate purposes. Whilst Cap. 374 has detailed regulations on vehicles - which is constructed or adapted for use on roads - including the registration, licensing, construction and maintenance, etc, the Bill focuses mainly on the control of access of all vehicles, regardless of whether they are constructed

or adapted for use on roads. One example includes forklifts used on the apron for reprovisioning and transporting luggage. Against this legislative intent, we have made reference to the interpretation of “vehicles” under Cap. 374 and suitably adapt it to achieve our policy objective in the Bill. Members may also note that the definition of “vehicle” in the Bill is the same as that in the Airport Authority Ordinance (Cap. 483).

15. Whether or not a specific equipment is a “vehicle” depends on facts and circumstances, including the structure and the way and purposes for which it is used. Our policy objective is to control the access of skateboard and hoverboard as other vehicles. We consider that the current definition of “vehicle” in the Bill can already cover skateboard and hoverboard. For roller shoes, our policy view is that the person wearing roller shoes should be subject to the same control as any other person within the Terminal Area.

(e) Control of access to Terminal Area

16. Paragraph (e) of the List refers to the request for the Administration to consider improving the current drafting of clause 7(2) in the light of the comments and concerns on the extent of the power as raised by Members at the Bills Committee meeting on 8 December 2015.

17. From our policy point of view, we see a need to empower the Commissioner or an authorized officer to order a person to leave the Terminal Area, or any part of it, for maintaining the smooth operation and upholding the security of KTCT, particularly for forestalling potential terrorist attack. Noting the concerns expressed by Members on the circumstances of exercising the power to order a person to leave the Terminal Area or any part of it, we will explore to qualify the power and confine it to be exercised for the operation, safety and security of the Terminal Area only. We believe that this will address Members’ comments that the power to order a person to leave should only be exercised on reasonable and justifiable grounds.

(f) Samples of signages for control of access to Terminal Area

18. As set out in paragraph (f) of the List, we have been asked to provide samples of “sign” referred to in clause 7(3) and clause 8(4) of the Bill.

19. We provide at Annex photos of some of the existing signages at KTCT which will continue to be used after the enactment of the Bill and hence are relevant to its clauses 7(3) and 8(4).

(g) Entrances or exits of the Terminal Area

20. Regarding the query that paragraph (g) of the List refers, we wish to point out that “specified” and “exhibited” are used under different context of the Bill to serve different purposes.

21. Members may note that in both clause 7(1) and clause 8(1), the entrance and exit of the Terminal Area are specified by the Commissioner or an authorized officer. There can be different ways to “specify” the entrances and exits, such as by directional signs exhibited or a security guard stationing at the vehicular access and directing vehicles into the Terminal Area..

22. According to clauses 7(3) and 8(4)(b), there may be notice or sign exhibited in a conspicuous place within or near the Terminal Area which a person / driver of a vehicle / owner or master of vessel must comply with. Such notice or sign must be displayed prominently.

(h) Enforcement powers

23. Paragraph (h) of the List refers to the request for the Administration to elaborate on the enforcement powers of different categories of authorized officers / delegates under clause 21 of the Bill.

24. In the Bill, an “authorized officer” means a public officer authorized by the Commissioner or a police officer on duty within the

Terminal Area. According to clause 6(1) of the Bill, the Commissioner may authorize a public officer, or any member of a class of public officers, to be an authorized officer for the purposes of this Ordinance. Apart from a police officer on duty within the Terminal Area who is already an authorized officer as defined under the Bill, the public officers so authorized may also include other law enforcement officers (i.e., an Immigration officer or a Customs and Excise officer). Clause 6(3) and (4) also states that the Commissioner may delegate certain of her functions under the Bill to, among others, a terminal operator or a property manager (collectively known as the “delegates”). The delegates may sub-delegate those functions to the delegate’s employees (collectively known as the “sub-delegates”) according to clause 6(5) of the Bill.

25. The enforcement power for different categories of authorized officers / delegates as provided for under clause 21 is summarized as follows –

		Power to detain	Power to remove from Terminal Area	Power to arrest
Commission for Tourism (including delegates and sub-delegates)		Yes (see Note 1)	Yes (for offence under clause 7, 12 or 22 only)	No
Authorized officer	law enforcement officer	Yes (see Note 2)	Yes (for offence under clause 7, 12 or 22 only)	Yes (for offence under clause 12 or 22 only)
	Other than law enforcement officer	Yes (see Note 1)	Yes (for offence under clause 7, 12 or 22 only)	No

Note 1: According to clause 21(2) of the Bill, if a person is detained by the Commissioner (including delegates and sub-delegates) or an authorized officer who is not a law enforcement officer, then the Commissioner or the officer must, **as soon as practicable after detaining the person** (a) take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232); or (b) deliver the person into the custody of a police officer to be dealt with in accordance with that Ordinance.

Note 2: According to clause 21(3) of the Bill, if a person is detained by an authorized officer who is a law enforcement officer, the officer may detain the person **for a reasonable period while the officer inquires about the suspected commission of the offence.**

26. In the paper issued by the Administration on 7 December 2015, we have explained the need and actual operation of the “power to detain” to be exercised by the Commissioner for Tourism (including the delegates and sub-delegates) and authorized officers (other than a law enforcement officer). Specifically, according to clause 21 of the Bill, a person suspected of committing an offence will need to be dealt with by the Police in accordance with the Police Force Ordinance (Cap. 232). Regardless of the severity of the offences, the Commissioner and authorized officer will in practice need a power to detain that person so as to be able to give an order to that person not to leave before the person can be handed to a police officer as soon as practicable. Thus, the power to detain a person suspected of committing an offence under the Bill is essential for its enforcement.

27. Similarly, the “power to detain” is needed by law enforcement officers. Depending on the actual situation, the person being detained by an authorized officer who is also a law enforcement officer does not have to be handled by the Police because law enforcement officers other than police officers (i.e., an Immigration officer or a Customs and Excise officer) are also professionally trained. They would be able to inquire about the suspected commission of the offence as stipulated under clause 21(3). After the inquiry, they can make appropriate decision on whether to release the person, to exercise further enforcement power under clause 21(4) (5), or to deliver the person to the Police.

28. The “power to remove” provided under clause 21(4) is necessary to ensure the smooth operation of KTCT. Such power facilitates the removal of anyone who contravenes clause 7, 12 or 22 and are causing security threats to KTCT or causing obstruction to the operation of KTCT.

29. The “power to arrest a person” and “power to seize, remove and detain anything” as provided under clause 21(5) are more impactful enforcement actions. Such powers should be exercised only when absolutely necessary (when the more serious offence under clause 12 or 22 is suspected to have been committed, the penalty of which involves imprisonment) and by law enforcement officers.

ADVICE SOUGHT

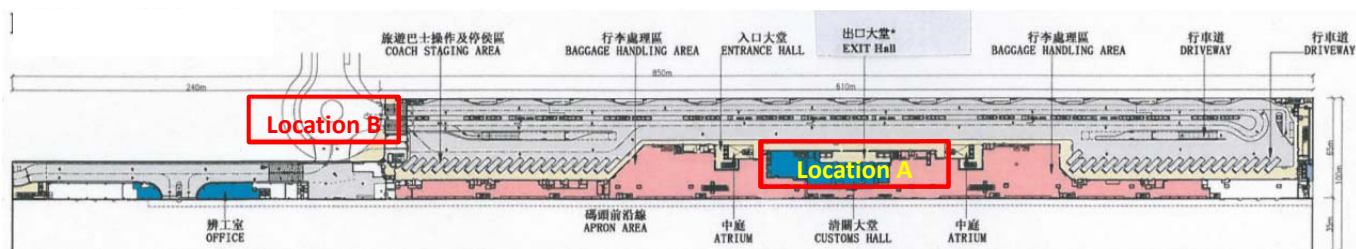
30. Members are invited to note the Administration's responses in this paper for information.

*Tourism Commission
Commerce and Economic Development Bureau
January 2016*

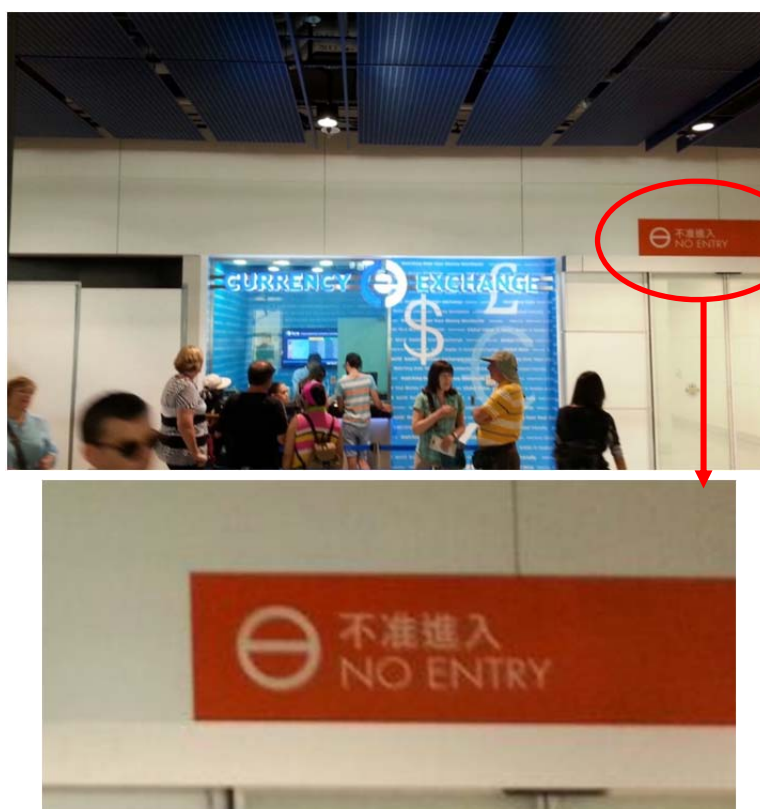
Annex

Signs within the Terminal Area

Floor Plan of KTCT – Ground Floor



Location A: In Exit Hall on Ground Floor



(a sign exhibited in a conspicuous place within the Terminal Area by the Commissioner referred to in clause 7(3))

Location B: Driveway on Ground Floor



(a sign exhibited in a conspicuous place within the Terminal Area by the Commissioner referred to in clause 8(4)(a))