

**立法會**  
**Legislative Council**

LC Paper No. LS40/02-03

**Paper for the House Committee Meeting  
on 24 January 2003**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 10 January 2003**

**Date of Tabling in LegCo** : 15 January 2003

**Amendment to be made by** : 12 February 2003 (or 5 March 2003 if  
extended by resolution)

**Ocean Park Corporation Ordinance (Cap. 388)**  
**Ocean Park Bylaw (L.N. 1)**

Under section 39 of the Ocean Park Corporation Ordinance (Cap. 388) (“the Ordinance”), Ocean Park Corporation (“the Corporation”) may make by-laws for the management and control of Ocean Park (“the Park”) and may provide that a contravention of any by-law shall be an offence punishable with a fine not exceeding \$2,000 and imprisonment for not more than 3 months.

2. The Ocean Park Bylaw (“the 2002 Bylaw”) was made by the Corporation under section 39 of the Ordinance on 10 December 2002 and shall come into operation on 20 March 2003.

3. The 2002 Bylaw regulates the admission to, opening and closing of the Park. It also governs the use of facilities at the Park and its amusement rides and the conduct of persons in the Park. For example, a person is prohibited from doing the following acts in the Park:

- (a) behaving otherwise than in an orderly manner or behaving in an obscene or indecent manner;
- (b) putting his feet on or lie down on a seat or bench;
- (c) using obscene language, shouting or conducting himself in a manner so as to cause a nuisance or annoyance to a visitor or an animal;
- (d) spitting in an unhygienic manner;

- (e) parking a motor vehicle in a car park in such a manner that the motor vehicle unnecessarily projects over any line or other mark that delineates the parking space in which the motor vehicle is parked;
- (f) using a radio, cassette recorder, compact disc player or similar equipment, except when used with an earphone or headset sufficiently insulated to avoid leakage of sound;
- (g) playing any ball game, or going, riding or moving on any device or shoe fitted with wheels (except for the conveyance of a child or an invalid or disabled person) unless in designated area;
- (h) failing to produce proof of his identity and his true address to an attendant upon request if the attendant reasonably suspects that he has contravened any provision of the Bylaw; and
- (i) failing to hand over property that appears to have been lost or misplaced by another person to an attendant of the Park or a police officer as soon as practicable when he comes into possession of such property.

4. Under the 2002 Bylaw, a person is prohibited from doing the following acts in the Park without authority granted by the Corporation:

- (a) bringing any food or drink into the Park;
- (b) straying from a path provided for pedestrian use;
- (c) using a loudspeaker or other public addressing equipment;
- (d) delivering a public speech, public lecture or public sermon or conducting a public prayer;
- (e) conducting or entering into any public discussion or public debate, or conducting or taking part in any public meeting or public procession; and
- (f) distributing any book, pamphlet or other printed matter or any sample of goods.

5. The 2002 Bylaw also prohibits a person from doing the following acts in the Park without authority granted by the Corporation:

- (a) open, close or interfere with the door of a cable car; and
- (b) whilst aboard a cable car, fail to remain seated except-

- (i) when boarding or alighting from the cable car; or
- (ii) under the direction of an attendant if a cable car becomes disabled, damaged or unable to proceed.

6. The Administration is of the view that it is not necessary to provide for an exception in the Bylaw to allow a passenger to open the cable car door in case of emergency because:

*"even in the case of emergencies, under the Park's emergency procedures, a visitor should not open the cable car door. It is solely the responsibility of the rescuer/an attendant to open the cable car door. Even if it were the case that the cable car is suspended outside the terminal, the rescuer/an attendant would utilise the emergency equipment to reach the cable car and open the door."*

7. (a) The 2002 Bylaw provide that any lost property which comes into possession of the Corporation shall be:

- (i) disposed of by sale or otherwise as soon as practicable if the property is perishable, noxious or otherwise offensive; and
- (ii) deemed to be the property of the Corporation if unclaimed within 3 months after it comes into the Corporation's possession and the Corporation may dispose of the property by sale or otherwise.

(b) If the former owner of the property proves his ownership of the property to the satisfaction of the Corporation within 12 months of the sale or disposal of the property by the Corporation, the Corporation shall pay to the former owner the balance of the sale proceeds after deduction of expenses.

8. An issue that has been raised with the Administration is the status of the Ocean Park Corporation: By-laws ("the 1988 By-laws") made by order of the Board of the Corporation on 28 April 1988 pursuant to and in exercise of the powers conferred by sections 17, 18 and 39 of the Ordinance for the management of the Park. The 1988 By-laws provide that they should come into operation on 1 June 1988 and any person who contravenes a By-law commits an offence and is liable to a fine not exceeding \$2,000 and imprisonment for 3 months.

9. The 1988 By-laws as provided by the Corporation through the Administration upon our enquiry cannot be located in the current Laws of Hong Kong. The Administration explains that:

- (a) it is not aware of the 1988 By-laws being published in the Gazette. The 1988 By-laws would appear to be currently unenforceable as "statutory legislation"; and
- (b) according to the Corporation's records, there have been some minor contraventions of the 1988 By-laws by the Park's visitors since 1988. None of these visitors were prosecuted by the Corporation. No enforcement action was taken.

10. Other drafting issues have been raised. Copies of our letters to the Administration (Annex B and C) and the Administration's response (Annex A) are enclosed in this report. The Administration proposes to make amendments to the 2002 Bylaw and is to confirm the arrangement for such amendments.

Encl

Prepared by  
LAI Shun-wo, Monna  
Assistant Legal Adviser  
Legislative Council Secretariat  
20 January 2003

OUR REF : L/M to HAB/CS/CR 6/1/48  
YOUR REF :  
TEL. No. : 2594 5656  
FAXLINE : 2824 3348

**By Fax**

21 January 2003

Miss Monna LAI  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong  
(Fax No.: 2877 5029)

Dear Ms. LAI,

**Ocean Park ByLaw**

Thank you for your letters of 15th January 2003 and 16 January 2003. After consulting the Ocean Park Corporation, our replies to your first letter are given below :-

- (a) Whether the 1988 Bylaw have ever been published in the Gazette in any form?**

We are not aware of the 1988 Bylaw being published in the Gazette.

- (b) The legal status of the 1988 Bylaw.**

The 1988 Bylaw would appear to be currently unenforceable as statutory legislation, but they are incorporated into the contract between Ocean Park Corporation and visitors to Ocean Park made when admission tickets are purchased. Hence, those parts that are enforceable contractually may have legal effect.

- (c) **Whether there is any contravention of the 1988 Bylaw from their commencement date? How many person(s) who contravened the 1988 Bylaw has/have been prosecuted, the legal basis of such prosecution(s) and the punishment of such case(s)? How many person(s) who contravened the 1988 Bylaw has/have not been prosecuted and the reason(s) for not enforcing the 1988 Bylaw?**

According to Ocean Park Corporation's records, there have been some minor contraventions of the Bylaw by the Park's visitors since the year 1988. However, none of these visitors were prosecuted by the Ocean Park Corporation. No enforcement action was taken, consequent upon the contraventions having been addressed at the time without the need for Ocean Park Corporation to pursue a contractual claim.

- (d) **The legal effect of the commencement of the 2002 Bylaw on the 1988 Bylaw.**

The 2002 Bylaw is subsidiary legislation and will come into operation on 20th March 2003, subject to negative vetting by the Legislative Council. There will therefore, be no need for the 1988 Bylaw to continue to be incorporated into the contract between Ocean Park Corporation and visitors to Ocean Park made when admission tickets are purchased and this practise will cease.

As regards your second letter, our replies are :-

- (1) We have no objection to deleting the word "other" in the English text of section 11(3)(b) of the Ocean Park Bylaw.
- (2) We agree the relevant Chinese words in sections 16(1)(a) and 16(1)(b) could be the same for the sake of consistency, but we do not have a strong view on the same as we understand from a legal perspective there is no effect consequent upon there being a difference.
- (3) We note the concerns expressed by the Legislative Council Secretariat in relation to sections 22(5)(a) and 22(5)(e) of the Bylaw. However, even in the case of emergencies, under the Park's emergency procedures, a visitor should not open the cable car door. It is solely the responsibility of the rescuer/an attendant to open the cable car door. Even if

it were the case that the cable car is suspended outside the terminal, the rescuer/an attendant would utilise the emergency equipment to reach the cable car and open the door. Accordingly, there is no need for sections 22(5)(a) or 22(5)(e) of the Bylaw to be amended.

- (4) We confirm that the Ferris Wheel has two types of gondola, that is, the normal gondola with maximum capacity of 6 passengers and a specially-adapted gondola for disabled persons with maximum capacity of 4 passengers. For the sake of clarity, we propose amending the relevant Chinese text in the Schedule to the Bylaw as follows :-

“每一普通吊船不多於 6 名乘客；每一供傷殘人士使用的吊船則不多於 4 名乘客”

The belated reply is regretted.

Yours sincerely,

(WONG Kwok-wing)  
for Secretary for Home Affairs

b.c.c. Ocean Park Corporation (Attn.: Mr. Matthias LI & Mr. Doman  
KWAN)  
Department of Justice (Attn.: Miss Leonora IP & Mr. John  
WONG)

**Annex B**

LS/S/14/01-02  
2869 9370  
2877 5029

Secretary for Home Affairs  
Home Affairs Bureau  
(Attn: Miss Florence IP  
Executive Assistant)  
41/F, Revenue Tower  
5 Gloucester Road  
Wan Chai  
Hong Kong

By Fax (2824 3348) and By Post

16 January 2003

Dear Miss IP,

**Ocean Park Bylaw (L.N. 1 of 2003)**

We are scrutinising the legal and drafting aspects of the above bylaw and shall be grateful for your clarification of the following points:

1. Clause 11(3)(b) provides that any lost property which comes into the Corporation's possession shall be retained by the Corporation for a period of 3 months after the property has come into the Corporation's possession and, if at the end of that period the property remains unclaimed, shall be deemed to become the property of the Corporation free of **all other** rights and encumbrances and the Corporation may dispose of the property by sale or otherwise.

The Chinese version of the underlined phrase is "而不受一切權利及產權負擔的影響", which means "free of **all** rights and encumbrances". For the sake of consistency between the English and Chinese versions, should the words "其他" be inserted after "一切" in the Chinese version or the word "other" be deleted in the English version?

2. Clauses 16(1) (a) and (b) provide that "parking charge as specified from time to time by notice at the entrance to the car park" have to be paid. However, the Chinese version of this phrase in the two



clauses are different. As the English version of these clauses are the same, should the Chinese version of these clauses also be the same for the sake of consistency?

3. Clause 22 (5)(a) provides that a person shall not without authority granted by the Corporation, open, close or interfere with the door of a cable car. Clause 22 (5)(e) provides that a person has to remain seated whilst aboard a cable car, except when boarding or alighting from the cable car or under the direction of an attendant if a cable car becomes disabled, damaged or unable to proceed. Should an exception be provided in these clauses to allow a person not to remain seated and open the door of the cable car in order to alight from the cable car in case of emergency?

4. The schedule provides that the maximum capacity of Ferris Wheel shall be not more than 6 in each normal gondola and not more than 4 in each gondola for disabled persons. The Chinese version of this restriction is "每一普通吊船不多於 6 名乘客;就傷殘人士而言, 每一吊船則不多於 4 名乘客". Please clarify whether there are two types of gondola, i.e. normal gondola and gondola for disabled persons or there is only one type of gondola with maximum capacity of 4 when the passengers are disabled and 6 for other passengers.

The bylaw will be considered in the House Committee meeting to be held on 24 January 2003. It will be appreciated if your reply, in both Chinese and English, could reach us by close of play, 18 January 2003.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser

c.c. LA  
SALA2  
D of J (Attn : Miss Leonora IP, GC)

LS/S/14/01-02  
2869 9370  
2877 5029

Secretary for Home Affairs  
and By Post

Home Affairs Bureau  
(Attn: Miss Florence IP  
Executive Assistant)

41/F, Revenue Tower  
5 Gloucester Road  
Wan Chai  
Hong Kong

By Fax (2824 3348)

15 January 2003

Dear Miss IP,

**Ocean Park Bylaw (L.N. 1 of 2003)**

I refer to our telephone conversation yesterday and the Ocean Park Corporation: By-laws made by the order of the Board of the Ocean Park Corporation on 28 April 1988 ("the 1988 By-laws") provided by you.

I note that:

- (a) The 1988 By-laws cannot be located in the current Laws of Hong Kong.
- (b) Clause 1.1 of the 1988 By-laws provides that they are made pursuant to and in exercise of the powers conferred by sections 17, 18 and 39 of the Ocean Park Corporation Ordinance, Cap 388 ("the Ordinance").
- (c) Clause 1.2 of the 1988 By-laws provides that they should come into operation on 1 June 1988.
- (d) Clause 15.4 of the 1988 By-laws provides that any person who contravenes a By-law commits an offence and is liable to a fine not exceeding \$2,000 and imprisonment for 3 months.
- (e) The Ocean Park Bylaw, made by the Ocean Park Corporation under section 39 of the Ordinance on 10 December 2002, ("the 2002 Bylaw") was gazetted on 10

January 2003 and shall come into operation on 20 March 2003.

I shall be grateful if you can clarify the following issues:

- (a) Whether the 1988 By-laws have ever been published in the Gazette in any form?
- (b) The legal status of the 1988 By-laws.
- (c) Whether there is any contravention of the 1988 Bylaws from their commencement date? How many person(s) who contravened the 1988 By-laws has/have been prosecuted, the legal basis of such prosecution(s) and the punishment of such case(s)? How many person(s) who contravened the 1988 By-laws has/have not been prosecuted and the reason(s) for not enforcing the 1988 By-laws?
- (d) The legal effect of the commencement of the 2002 Bylaw on the 1988 By-laws.

The 2002 Bylaw will be considered in the House Committee meeting to be held on 24 January 2003. It will be appreciated if your reply, in both Chinese and English, could reach us by close of play, 18 January 2003.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser