

立法會
Legislative Council

LC Paper No. CB(4)432/15-16
(These minutes have been seen
by the Administration)

Ref: CB4/BC/3/14

Bills Committee on Kai Tak Cruise Terminal Bill

**Minutes of the third meeting held on
Tuesday, 8 December 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon SIN Chung-kai, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Cyd HO Sau-lan, JP
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon CHUNG Kwok-pan

**Public Officers
attending** : **Agenda item I**

Commerce and Economic Development Bureau

Miss Rosanna LAW, JP
Deputy Commissioner for Tourism

Mr George TSOI
Assistant Commissioner for Tourism 4

Ms Carrie LEE
Senior Administrative Officer (Tourism)4

Department of Justice

Mr Henry CHAN
Senior Government Counsel (Acting)

Miss Queenie WU
Government Counsel

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Lauren LI
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Action

I. Meeting with the Administration

Continuation of clause-by-clause examination of the Bill

(LC Paper No. CB(4)301/15-16(01) — List of follow-up action(s) arising from the discussion at the meeting on 24 November 2015

LC Paper No. CB(4)301/15-16(02) — Administration's consolidated response to issues raised at the meeting on 24 November 2015 and to the Assistant Legal Adviser's letter dated 20 November 2015

Action

LC Paper No. CB(4)301/15-16(03) — Paper on proposed offences and penalties in Kai Tak Cruise Terminal Bill prepared by the Legal Service Division

LC Paper No. CB(3)828/14-15 — The Bill

LC Paper No. CB(4)41/15-16(01) — Marked-up copy of related amendments to existing three items of subsidiary legislation prepared by the Legal Service Division (Restricted to members only)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

- Admin 2. Members requested the Administration to provide information/response to the following –
- (a) tenancy agreements on government premises that had been entered between private operators and on behalf of the Hong Kong Special Administrative Region Government public officers other than the Director of Lands;
 - (b) relevant provisions in the tenancy agreement signed between the Government and the terminal operator for the operation and management of Kai Tak Cruise Terminal ("KTCT") on the definition/meaning of "cruise ship", and in relation to clause 4(c) and (d) of the Bill;
 - (c) the Administration's considerations to delete the word "includes" in the definition of "cruise ship" and to add a provision in the Bill to empower the Commissioner for Tourism to approve any other vessels to use KTCT;
 - (d) reasons why the definition of "vehicle" in the Road Traffic Ordinance (Cap. 374) was not adopted in the Bill, and whether the definition of "vehicle" in the Bill included skateboard, hoverboard and roller shoes;

Action

- (e) improvement to the present drafting of clause 7(2) by setting out the scope of prohibited acts in the Terminal Area of KTCT or any part of it, or by cross-referencing to the general prohibitions under Part 5 of the Bill;
- (f) samples of "sign" showing their size, the wording and the font size of the words etc as stated in clause 7(3) and clause 8(4) of the Bill;
- (g) in respect of access to Terminal Area by persons or by vehicles/vessels under clauses 7 and 8, the difference between "specified" and "exhibited" in terms of their operation and degree of flexibility; and
- (h) in the absence of empowering provision in the Bill for making subsidiary legislation to provide a code of conduct, the considerations behind the operation of clause 21 which provided different powers to (i) "an authorized officer who is not a law enforcement officer" (clause 21(2)); (ii) "an authorized officer who is a law enforcement officer" (clause 21(3) and (5)); and (iii) just "an authorized officer" (clause 21(1) and (4)).

II. Any other businessDate of next meeting

3. The Chairman advised that the next meeting of the Bills Committee would be held on Tuesday, 19 January 2016 at 4:30 pm.
4. There being no other business, the meeting ended at 4:33 pm.

Council Business Division 4
Legislative Council Secretariat
4 January 2016

**Proceedings of the third meeting of
the Bills Committee on Kai Tak Cruise Terminal Bill
on Tuesday, 8 December 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
000213 – 000904	Chairman Administration	Chairman's opening remarks Briefing by the Administration on part of its written response (LC Paper No. CB(4)301/15-16(02)) to issues arising from the meeting held on 24 November 2015 and Assistant Legal Adviser 9 ("ALA9")'s letter to the Administration dated 20 November (LC Paper No. CB(4)244/15-16(02))	
000905 – 001759	Chairman Mr James TO Administration	<u>Interpretation of "cruise ship"</u> Noting that "cruise ship" was defined to include, among others "any other vessel approved by the Commissioner (i.e. Commissioner for Tourism) for the purposes of this Ordinance", Mr James TO asked whether the policy intent of the approval was to fence off vessels other than those described in paragraphs (a) and (b) of the definition. He was also concerned that without the reference to tonnages, some sight-seeing ferries might fall under the definition of either (a) or (b) of the definition. The Administration advised that the Kai Tak Cruise Terminal ("KTCT") was expected to receive mainly cruise ships as described in paragraph (a) and (b) of the definition of "cruise ship". However, there were occasions on which the Commissioner might consider appropriate to approve the berthing of "any other vessel", such as floating library, at KTCT. It further advised that since the apron of KTCT's berths was about 20 metres above the sea level, passengers in small vessels were unable to embark/disembark unless with the aid of pontoons. The Administration stressed that such definition would enable KTCT to focus on the berthing of cruise ships, while at the same time, allow flexibility for hosting non-cruise events involving other vessels there.	
001800 – 002315	Chairman Mr James TO Administration	Discussion on the relationship between property manager and terminal operator, and the definition of tenancy agreement	

Time marker	Speaker	Subject(s)	Action required
002316 – 003349	Chairman Mr James TO Administration	<p><u>Operation and management of KTCT</u></p> <p><i>Commercial basis</i></p> <p>In reply to Mr James TO, the Administration referred to section 12(1) and section 12(2) of Kowloon-Canton Railway Corporation Ordinance (Cap. 372) as an example and advised that the legislation governing the statutory corporation sought to impose restrictions on how they should conduct its businesses. However, the objective of the Bill was to enable KTCT to be operated and managed on a commercial basis as stipulated in clause 5 of the Bill.</p> <p><i>Relationship between the Government, the Commissioner and the terminal operator</i></p> <p>Members noted that the Commissioner had been delegated vide Government Notice 1823 of 2011 published in the Gazette on 10 March 2011 to enter into the tenancy agreement for the operation and management of KTCT on behalf of the Hong Kong Special Administrative Region Government as the Landlord. Mr James TO considered it more appropriate for the Director of Lands to sign the tenancy agreement with private operators after the subject officers had cleared all policy matters regarding the tenancies. The Administration advised that there were cases in which officers other than Director of Lands being delegated with the power to manage, use and develop different government sites and undertook to provide examples after the meeting.</p>	The Administration to follow up as per paragraph 3(a) of the minutes
003350 – 005652	Chairman Mr SIN Chung-kai Administration Mr James TO Mr Paul TSE ALA9	<p><u>Interpretation of "cruise ship"</u></p> <p>Mr James TO reiterated his concern about defining "cruise ship" to include "any other vessel approved by the Commissioner for the purposes of this Ordinance" and pointed out that the Commissioner's decision might be subject to judicial review ("JR"). He suggested deleting the said phrase in the definition, and adding the phrase in clause 4.</p> <p>Mr Paul TSE considered the said approval of the Commissioner a commercial decision and queried whether it would be subject to JR. In response, the Administration advised that whether an act or decision was subject to JR was to be decided by the court considering the circumstances of the case. Generally speaking, it was less likely for a commercial decision made by a private operator to be subject to JR.</p>	The Administration to follow up as per paragraph 3(b) and 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>In reply to Mr James TO's further concern, the Administration explained that the main purpose of KTCT was for the berthing of cruise ships, and priority would be given to receiving cruise ships over holding non-cruise events, and the use of KTCT was subject to the provisions in clause 4. Mr TO did not subscribe to the Administration's explanation as the power of the Commissioner under clause 4(c) and (d) was very broad. The Administration undertook to provide relevant extract of the tenancy agreement to facilitate further discussion by the Bills Committee.</p> <p>In response to Mr SIN Chung-kai's concern, the Administration explained its consideration that it was not absolutely necessary to include a separate provision to empower the Commissioner to approve "vessel" for the purposes of the definition of "cruise ship".</p> <p>In this connection, ALA9 referred to the concern in her letter (LC Paper No. CB(4)244/15-16(03)) that there was no provision in the Bill empowering the Commissioner to approve vessels for this purpose. She remarked that according to "Drafting Legislation in Hong Kong: A Guide to Styles and Practices" published by the Department of Justice, drafters were advised not to "include a substantive provision in a definition". She also advised that some authorities on legislation drafting e.g. Thornton mentioned that inclusion of substantive matter in a definition might bring ambiguity as to whether the provision might or might not be construed to confer a power.</p> <p>Members discussed the semantics and syntax of the definition of "cruise ship". The Administration undertook to further consider the drafting of the definition of "cruise ship" taking into account comments made by ALA9.</p>	
005653 – 010201	Chairman Mr James TO Administration	<p><u>Continuation of clause-by-clause examination of the Bill</u></p> <p><u>Clause 8 – Vehicles and vessels within, entering, leaving Terminal Area etc.</u></p> <p>Mr James TO enquired about the reasons why the definition of "vehicle" in the Road Traffic Ordinance (Cap. 374) was not adopted in the Bill, and whether the definition of "vehicle" in the Bill included skateboard, hoverboard and roller shoes. The Administration undertook to provide more information on the matter.</p>	The Administration to follow up as per paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
010202 – 010359	Chairman Mr SIN Chung-kai Administration	<p><u>Clause 7 – Access to and from and remaining in Terminal Area by persons</u></p> <p>Mr SIN Chung-kai asked about the level of penalty in other similar legislation for the similar offences committed under clause 7(4) and (5) of the Bill.</p> <p>The Administration advised that according to the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H) which governed the operation and management of China Ferry Terminal ("CFT"), Hong Kong-Macau Ferry Terminal and Tuen Mun Ferry Terminal ("TMFT"), the level of penalty for committing the same offences under clause 7(4) and (5) was the same, i.e. a fine at level 1 (up to \$2,000).</p>	
010400 – 010744	Chairman Ir Dr LO Wai-kwok Administration	<p>Discussion on the measures to be implemented for signifying the restricted area in the waters of KTCT to avoid any unauthorized access by vessels</p> <p>In reply to Ir Dr LO Wai-kwok, the Administration advised that two big signs signifying the seaward restricted area would be erected at the apron which was around 20 metres above the sea level for the safety of small vessels. The location of the seaward restricted area would be shown on the Harbour Facilities & Layout for users' reference. Also, the Hong Kong Police Force and Marine Department would continue to patrol the area to remind vessels about the boundary of the seaward restricted area.</p>	
010745 – 011035	Chairman Mr SIN Chung-kai Administration	<p>Discussion on an alert system for vessels in times of foggy weather with low visibility on the sea</p> <p>The Administration advised that measures ensuring the safety of vessels in times of foggy weather included the erection of signs, pilotage for cruise ships, sounding of horns, and services provided by tugboats.</p>	
011036 – 012640	Chairman Mr James TO Administration	<p>Mr James TO expressed grave concern that according to clause 7(2), the Commissioner (or the terminal operator/property manager, or persons sub-delegated by them) or an authorized officer might order a person who remained in the Terminal Area to leave without giving any reasons. He sought information on the operation of the provision.</p> <p>The Administration advised that the terminal operator was empowered to regulate the use of certain parts of</p>	The Administration to follow up as per paragraph 3(e) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>the Terminal Area and could prohibit the entry of persons and vehicles or disallow them to remain in the Terminal Area or any part of it when the area was already overcrowded. For example, according to clause 7(2), a person without ticket must not remain after being ordered to leave certain part of the Terminal Area where a fee-paying concert was being held. However, the Administration added that "reasonable excuse" was a defence in court with reference to clause 7(4) and 7(5).</p> <p>Mr James TO did not subscribe to the Administration's explanation, and considered clause 7(2) totally unacceptable. Instead of the usual practice of listing the prohibited acts in a code of conduct made under the related subsidiary legislation, the present drafting of clause 7(2) had implied an unlimited scope of prohibited acts whereby a person might be caught inadvertently and required to bear the burden of proof of innocence.</p>	
012641 – 013723	Chairman Mr Alan LEONG Administration	<p>In response to Mr Alan LEONG's concern about the person(s) authorized to enforce clauses 7 and 8 and the source of authorization, the Administration advised that according to clause 6, the Commissioner, or a public officer/terminal operator/property manager delegated by the Commissioner in writing by virtue of clause 6(3), and the employee of the terminal operator or property manager being further delegated in accordance with clause 6(5) might enforce clauses 7 and 8. The Administration further advised that the Bill did not have empowering provision for making subsidiary legislation to provide a code of conduct.</p> <p>Mr Alan LEONG referred to the West Kowloon Cultural District Authority Ordinance (Cap. 601) under which the West Kowloon Cultural District Authority ("Authority") was empowered to provide first-level enforcement. The Authority would invite the Police to intervene only when it considered necessary. The Administration responded that the KTCT Ordinance, when enacted, would be compatible with other law-enforcement legislation for maintaining security within the Terminal Area.</p>	
013724 – 014314	Chairman Ir Dr LO Wai-kwok Administration Mr James TO	In reply to Ir Dr LO Wai-kwok's concern about the Bill's modeling on similar legislation governing the use and operation of ferry terminals in Hong Kong, the Administration advised that reference had been drawn from Cap. 313H governing CFT and TMFT. For example, clause 7(2) of the Bill was modeled on section 9 of Cap. 313H.	The Administration to follow up as per paragraph 3(e) of the minutes

Time marker	Speaker	Subject(s)	Action required
		Mr James TO pointed out that the Hong Kong society had undergone a lot of changes since the making of Cap. 313H which did not have much reference value nowadays. Noting the Administration's advice that Part 5 had set out general prohibitions under the Bill, Mr James TO requested the Administration to improve the present drafting of clause 7(2) by cross-referencing to Part 5.	
014313 – 015227	Chairman Mr Paul TSE Administration Mr James TO	<p>Mr Paul TSE expressed concern about the checks and balance of the Bill when compared with Cap. 313H. Unlike the Bill under which the Commissioner had delegated his/her power to private operators who might in turn sub-delegate the functions to their employees to enforce the provisions therein, there was no provision in Cap. 313H for the controlling officer, i.e. the Director of Marine, to do so, given that such function might include power of detaining a person suspected of committing an offence under the Bill.</p> <p>The Administration advised that the Commissioner and authorized officer would need a power to detain a person suspected of committing an offence so as to be able to give an order to that person not to leave before the person could be handed to a police officer. Thus, the power to detain a person suspected of committing an offence under the Bill, regardless of the severity of the offence, was essential for the enforcement of the Bill.</p> <p>Mr James TO reminded the Administration of the difference in the training between public officers in the disciplinary forces and general security staff. He pointed out that the MTR Corporation ("MTR") had demonstrated to his satisfaction sufficient training had been provided to the relevant staff in enforcing MTR by-laws.</p>	
015228 – 015613	Chairman Mr James TO Administration	In reply to Mr James TO on the example of "class of persons" referred to in clause 7(3), the Administration advised that "class of persons" could refer to "persons aged under 18" and "non-ticket holders" when a party that served alcoholic drinks and required an admission ticket was held at KTCT.	The Administration to follow up as per paragraph 3(f) of the minutes
015614 – 020208	Chairman Mr James TO Administration	Referring to clauses 7 and 8 of the Bill, Mr James TO enquired whether an "entrance" and an "exit" literally existed in KTCT, and about the difference between "specified" and "exhibited" in terms of their operation and degree of flexibility.	The Administration to follow up as per paragraph 3(g) of the minutes

Time marker	Speaker	Subject(s)	Action required
		The Administration advised that there were an entrance and an exit in KTCT, which were permanent in nature and clearly specified with signs. Yet, changes could be accommodated having regard to actual operational need. Under special circumstances (e.g. when the main vehicular entrance was being blocked), there might be a need to open the emergency vehicular access as alternative entrance/exit.	
020209 – 020432	Chairman Mr Alan LEONG Administration	Mr Alan LEONG was concerned about the considerations behind the operation of clause 21.	The Administration to follow up as per paragraph 3(h) of the minutes
Agenda item II –Any other business			
020433 – 020456	Chairman	Date of next meeting	