

立法會
Legislative Council

LC Paper No. CB(4)721/15-16
(These minutes have been seen
by the Administration)

Ref: CB4/BC/3/14

Bills Committee on Kai Tak Cruise Terminal Bill

**Minutes of the sixth meeting held on
Tuesday, 23 February 2016, at 8:30 am
in Conference Room 2B 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 Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon SIN Chung-kai, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Member attending : Hon WU Chi-wai, MH

Members absent : Hon Cyd HO Sau-lan, JP
Hon Alan LEONG Kah-kit, SC

**Public Officers
attending** : **Agenda item II**

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

Miss Queenie WU
Government Counsel

Clerk in attendance : Ms Shirley CHAN
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. Confirmation of minutes of meeting

(LC Paper No. CB(4)625/15-16 — Minutes of meeting held on
19 January 2016)

The minutes of the meeting held on 19 January 2016 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(4)631/15-16(01) — Administration's further
response to issues raised at the
meeting on 19 January 2016

Action

- LC Paper No. CB(4)631/15-16(02) — List of follow-up actions arising from the discussion at the meeting on 2 February 2016
- LC Paper No. CB(4)631/15-16(03) — Administration's response to issues raised at the meeting on 2 February 2016
- 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

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

Follow-up actions to be taken by the Administration

- Admin 3. The Administration was requested to –
- (a) for avoidance of doubt, consider moving an amendment to clarify whether the Commissioner for Tourism's ("the Commissioner") power under clause 4(c) of the Kai Tak Cruise Terminal Bill ("the Bill") was subject to limits or restrictions under other legislation such as section 13 of the Town Planning Ordinance (Cap. 131);
 - (b) explain why the prohibition of certain business and advertising activities under clause 16 would need to be applied to the whole Terminal Area ("TA"), but not simply the restricted areas;
 - (c) explain why persons engaging in business and advertising activities under clause 16(1) would commit a criminal offence under the Bill while similar conducts in the properties of LINK would not constitute a criminal offence;
 - (d) consider re-drafting the term "sell anything" under clause 16(1)(a) of the Bill to narrow down the scope of the prohibition so as to reflect the policy intent that transfer of goods between individuals would not be caught under the clause;

Action

- (e) consider amending clause 17 to the effect that the handling of persons causing "danger" would be different from those causing "nuisance", "annoyance" or "disturbance" so as to reflect the variation in the seriousness of offences;
- (f) reconsider replacing the term "in his or her opinion" with "in his or her reasonable opinion" in clause 17(2) and 17(3) of the Bill to expressly provide that the Commissioner and the authorized officer should act reasonably in exercising their powers;
- (g) consider amending clause 18(1) of the Bill to the effect that the offence in relation to interference with, meddling with or moving the equipment, machine, information or data mentioned would only be confined to those conducts affecting operation of the Kai Tak Cruise Terminal;
- (h) consider revising the English text of clause 18(2) in which the word "except" had appeared twice to improve the clarity of the provision;
- (i) regarding clause 19(1)(a) which required a person within TA to comply with reasonable directions or orders given by the Commissioner and the relevant authorized officer, consider setting out certain requirements or conditions in the clause so as to facilitate the test of reasonableness and to restrict the scope or purpose of the prohibition; and
- (j) reconsider whether the term "as soon as practicable" in clause 21(2) of the Bill might be amended as "immediately" with particular reference to similar provision in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H).

III. Any other businessDate of next meeting

4. The Chairman advised that the next meeting of the Bills Committee would be held on Tuesday, 1 March 2016 at 4:30 pm.

5. There being no other business, the meeting ended at 10:23 am.

Council Business Division 4
Legislative Council Secretariat
 16 March 2016

**Proceedings of the sixth meeting of
the Bills Committee on Kai Tak Cruise Terminal Bill
on Tuesday, 23 February 2016, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
000302 – 000419	Chairman	Confirmation of minutes of meeting Chairman's opening remarks	
Agenda item II – Meeting with the Administration			
000420 – 000655	Chairman Administration	Briefing by the Administration on its further response [LC Paper No. CB(4)631/15-16(01)] to issues arising from the meeting held on 19 January 2016	
000656 – 001653	Chairman Mr James TO Administration Mr YIU Si-wing	<p>Referring to paragraphs 3 to 5 of LC Paper No. CB(4)631/15-16(01), Mr James TO opined that a person detained under clause 21(2) of the Kai Tak Cruise Terminal Bill ("the Bill") should be taken to a police station or delivered into the custody of a police officer immediately without delay. He was concerned that the drafting of clause 21(2) might create a loophole for delay in handling detained persons. He urged the Administration to reconsider amending the term "as soon as practicable" in clause 21(2) to "immediately" with particular reference to similar provision in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H).</p> <p>In response, the Administration advised that –</p> <p>(a) the Administration's policy intent was that any person detained under clause 21(2) of the Bill should be taken to a police station or delivered into the custody of a police officer in the earliest practicable instance;</p> <p>(b) in drafting the Bill, due regard had been paid to the special circumstances that the Terminal Area ("TA") included a large area at sea. There would be occasions on which the Commissioner for Tourism ("the Commissioner") or the authorized officer might have practical difficulties to take the person being detained to a police station immediately; and</p> <p>(c) the Administration considered that the term "as soon as practicable after detaining the person" in clause 21(2) would better suit the context of the Kai Tak Cruise Terminal ("KTCT"). Nevertheless, the Administration would review the drafting of the clause in the light of Mr TO's concern.</p>	The Administration to follow up as per paragraph 3(j) of the minutes

Time marker	Speaker	Subject(s)	Action required
		Mr YIU Si-wing opined that in view of the circumstances of KTCT, it was reasonable to allow some flexibility for the Commissioner or the authorized officer to take the person being detained to a police station as soon as practicable.	
001654 – 002624	Chairman Mr James TO Administration	Mr James TO noted the Administration's response in LC Paper No. CB(4)631/15-16(01) that the Commissioner had to comply with other applicable legislation, including section 13 of the Town Planning Ordinance (Cap. 131), in the course of exercising his power under clause 4(c) of the Bill. For the avoidance of doubt, he enquired if the Administration would consider moving an amendment to clarify if the Commissioner's power under clause 4(c) was subject to restrictions under other legislation such as section 13 of Cap. 131.	The Administration to follow up as per paragraph 3(a) of the minutes
002625 – 002649	Chairman Mr James TO Administration	Discussion on delegation of powers to the employees of terminal operator and property manager	
002650 – 003534	Chairman Administration	Briefing by the Administration on its written response (LC Paper No. CB(4)631/15-16(03)) to issues arising from the meeting held on 2 February 2016	
003535 – 003959	Chairman Mr James TO Administration	Noting the Administration's response in paragraph 15 of LC Paper No. CB(4)631/15-16(03), Mr James TO requested the Administration to reconsider replacing the term "in his or her opinion" with "in his or her reasonable opinion" in clause 17(2) and 17(3) of the Bill. He further said that although under clause 17(5), a person would only commit an offence if he had failed to comply with a prohibition or an order without "reasonable excuse", such provision should not preclude the Administration from expressly providing that the Commissioner and the authorized officer should act reasonably in exercising their powers.	The Administration to follow up as per paragraph 3(f) of the minutes
004000 – 004310	Chairman Mr YIU Si-wing Administration	Opining that clause 17(2) might have already covered the prohibited acts under clause 17(3), Mr YIU Si-wing queried if clause 17(3) was necessary. The Administration advised that clause 17(2) covered the prohibited acts which had caused, were causing or would probably cause disturbance to the operation of KTCT, whereas clause 17(3) covered the acts which might not affect the operation of KTCT but might cause nuisance or annoyance to people within TA.	

Time marker	Speaker	Subject(s)	Action required
004311 – 005327	Chairman Mr James TO Administration Mr Paul TSE	<p>Mr James TO enquired if clause 17(1) of the Bill might have already covered the situation related to a person under the influence of alcohol described in clause 17(3)(a). Mr TO also enquired about the meaning of "nuisance" and "annoyance" in clause 17(1) and 17(3)(b).</p> <p>In response, the Administration advised that –</p> <p>(a) it was impossible to give an exhaustive account of situations causing "nuisance" and "annoyance";</p> <p>(b) clause 17(1) was a general provision which covered the situations where "danger", "nuisance" or "annoyance" had already been caused; and</p> <p>(c) clause 17(2) and 17(3) covered specific situations where "disturbance to the operation of the Terminal", "nuisance" or "annoyance" could have been caused or had not yet been caused.</p> <p>Mr James TO was of the view that the seriousness of the offences relating to "danger", "nuisance" and "annoyance" was different, with "danger" being a more serious offence. In this connection, Mr TO requested the Administration to review the drafting of clause 17 to the effect that the handling of persons causing "danger" would be different from those causing "nuisance" or "annoyance" to reflect the different degree of seriousness.</p>	The Administration to follow up as per paragraph 3(e) of the minutes
005328 – 005647	Chairman Mr Paul TSE Administration	In response to Mr Paul TSE's enquiry, the Administration advised that the power of the Commissioner and the authorized officer to enforce clause 7(2) or 7(3) of the Bill was not subject to clause 17(2) or 17(3). Clause 17(2) or 17(3) did not limit the generality of clause 7(2) or 7(3).	
005648 – 010027	Chairman Mr YIU Si-wing Mr James TO	<p>Mr YIU Si-wing opined that as KTCT would receive plenty of international visitors, it was reasonable to impose restrictions on certain acts which might cause nuisance or annoyance to other persons within TA.</p> <p>Mr James TO considered that there should be consistency in law enforcement regardless of where the prohibited acts took place.</p>	
010028 – 012541	Chairman Mr James TO Administration Mr Paul TSE Ir Dr LO Wai-kwok	Mr James TO considered that clause 16(1)(a) should target at combating illegal hawking activities, however, transfer of goods between individuals might also be covered by the current drafting of clause 16(1)(a).	

Time marker	Speaker	Subject(s)	Action required
		<p>In reply, the Administration advised that –</p> <p>(a) the policy intent of clause 16 was to maintain order in KTCT and protect the interests of the terminal operator regarding the conduct of commercial activities within TA;</p> <p>(b) under clause 16(4) of the Bill, a person would only commit an offence if he had failed to comply with a prohibition or an order without "reasonable excuse"; and</p> <p>(c) reference had been made from regulation 29(a) of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H) in drafting clause 16(1)(a) of the Bill.</p> <p>Mr TO opined that the term "sell anything" under clause 16(1)(a) of the Bill should be re-drafted to narrow down the scope of the prohibition so as to reflect the policy intent that transfer of goods between individuals would not be caught under the clause.</p> <p>Mr Paul TSE was of the view that the scope of prohibition covered by clause 16(1)(a) should be more specific.</p> <p>Mr James TO asked why the prohibition of certain business and advertising activities under clause 16 would need to be applied to the whole TA, but not simply the restricted areas. He also enquired about the reasons why persons engaging in business and advertising activities under clause 16(1) would commit a criminal offence under the Bill while similar conducts in the properties of LINK would not constitute a criminal offence.</p> <p>In response, the Administration advised that from the experience of other cruise terminals overseas, persons engaging in business and advertising activities could be non-ticket holders who were not allowed to enter the restricted areas. It was essential to extend the coverage of the clause to the whole TA to regulate the business and advertising activities conducted at the part of the TA outside the restricted areas.</p>	<p>The Administration to follow up as per paragraph 3(d) of the minutes</p> <p>The Administration to follow up as per paragraphs 3(b) and 3(c) of the minutes</p>
Continuation of Clause-by-Clause Examination of the Bill			
012542 – 012647	Chairman Administration	<p>Part 5 – General Prohibitions</p> <p><u>Clause 17(4) to Clause 17(6)</u></p> <p>Members raised no query on the above clause.</p>	

Time marker	Speaker	Subject(s)	Action required
012648 – 014940	Chairman Administration Mr James TO Assistant Legal Adviser 9 ("ALA9")	<p><u>Clause 18 – Interference with equipment</u></p> <p>Mr TO's enquiry about and the Administration's response on the meaning of "meddle with" under clause 18(1) of the Bill.</p> <p>As clause 18(1) created an offence relating to interference with equipment or machines, Mr TO suggested amending the clause to the effect that the offence in relation to interference with, meddling with or moving the equipment, machine, information or data mentioned would only be confined to those conducts affecting the operation of KTCT.</p> <p>In response to Mr James TO's enquiry, the Administration advised that life saving equipment such as automated external defibrillator was qualified as an "emergency or safety device" under clause 18(2) of the Bill. Given the wide array of equipment present within TA, it was not possible to list out all the equipment and machines covered under clause 18.</p> <p>Mr TO's enquiry about and the Administration's response on the necessity of empowering the Commissioner to grant permission to persons for activating emergency or safety device within TA under clause 18(2).</p> <p>ALA9 sought clarification on the meaning of clause 18(2) in which the word "except" had appeared twice in the English text. ALA9 took the view that the present drafting might cause ambiguity in the meaning of the clause.</p> <p>The Chairman urged the Administration to consider revising the English text of the clause to improve the clarity of the provision.</p>	<p>Administration to follow up as per paragraph 3(g) of the minutes</p> <p>Administration to follow up as per paragraph 3(h) of the minutes</p>
014941 – 015417	Chairman Administration Mr James TO	<p><u>Clause 19 – Compliance with direction, notice, etc.</u></p> <p>Opining that clause 19(1)(a) of the Bill would confer too much discretion to the Commissioner and the relevant authorized officer, Mr James TO suggested that certain requirements or conditions should be set out in the clause to facilitate the test of reasonableness and restrict the scope or purpose of the prohibition.</p>	Administration to follow up as per paragraph 3(i) of the minutes
Agenda item III – Any other business			
015418 – 015430	Chairman	Date of next meeting	