

立法會 *Legislative Council*

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Bills Committee on Kai Tak Cruise Terminal Bill

Background brief

Purpose

This paper provides background information on the Kai Tak Cruise Terminal Bill ("the Bill"). It also summarizes the major views and concerns expressed by members of the Panel on Economic Development ("the Panel") during previous discussions on the subject.

Background

2. The Kai Tak Cruise Terminal ("KTCT"), comprising two berths, a cruise terminal building and some ancillary facilities, has been commissioned for use since June 2013. It is managed and operated by the Worldwide Cruise Terminals Consortium under a 10-year tenancy granted by the Government. The first berth can accommodate the existing largest cruise vessels in the world. The second berth, which can accommodate normal-sized vessels, has also commenced operation in September 2014. It will be able to receive the world's largest cruise vessels after carrying out the remaining seabed dredging works subsequent to the completion of gas pipe works by the Hong Kong and China Gas Company Limited. The remaining works is targeted to be completed around end-2015 to early 2016.

3. As a port facility, KTCT is generally within the ambit of the Shipping and Port Control Ordinance (Cap. 313)¹ and the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582) and its Rules (Cap. 582A)²

¹ Cap. 313 provides, among others, for the regulation and control of ports and of vessels in Hong Kong. Part II of Cap. 313 regulates the port facilities and section 80 empowers the making of subsidiary legislation for the control over the use of port facilities.

² Cap. 582 implements the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security Code and related provisions in the Convention to enhance security of ships and port facilities. Section 25 of Cap. 582A requires a Port Facility Security Plan to be developed in respect of a designated port facility in accordance with the International Ship and Port Facility Security Code.

("the Rules"). Since the commissioning of KTCT, its security arrangements (including the designation of restricted areas) thereat have been governed by the Port Facility Security Plan ("the Plan") which is a set of detailed operational guidelines and procedures on the security arrangements within KTCT. The Plan was prepared by the terminal operator and approved by the Director of Marine under the Rules and the International Ship and Port Facility Security Code. According to the Administration, the Plan does not empower the Commissioner for Tourism ("the Commissioner") and law enforcement agencies to act against certain misconducts at KTCT nor does it set out any penalty for such misconducts.

4. As KCTC has permanent customs, immigration, quarantine and police facilities, the Administration considers it necessary to provide more comprehensive legal backing for regulating the use, operation and management of and enforcing the restrictions and prohibitions of certain conducts (e.g. unauthorized entry into restricted areas) at KTCT to uphold its security and to ensure its smooth operation. The Administration's original plan was to make subsidiary legislation under Cap. 313 to bring the relevant legal framework for regulating the use of KTCT broadly on par with that for other cross-boundary ferry terminals in Hong Kong. After considering the limitations of the regulation making powers under Cap. 313 in respect of fee-charging³, the Administration decided to enact a new piece of primary legislation to reflect the intended charging scheme with an express "fee-charging" provision, and provide for the necessary enforcement powers which are originally beyond the vires of the proposed subsidiary legislation.

The Bill

5. Comprising six Parts and three Schedules, the Bill seeks to provide for -
- (a) delineating a Terminal Area and empowering the Commissioner to designate areas within it as restricted areas⁴, which will include the waters around KTCT to ensure smooth operation of its two berths

³ According to the Administration's legal advice, although the fee of a *particular* service, facility or matter may be set at a level that exceeds the administrative or other costs incurred in the provision of that service, facility or matter as empowered under s.80(1A) of Cap. 313, there is no provision enabling the charging of fees not limited by reference to the amount of administrative or other costs incurred or likely incurred by the Government or other authority in the discharge of its functions under Cap. 313. As such, over cost-recovery in the "*overall*" sense is not allowed. In other words, the sum of all fees charged under Cap. 313 may not exceed the total costs incurred.

⁴ There will be permanent and non-permanent restricted areas. The Commissioner may declare by notice published in the Gazette that certain non-permanent restricted areas cease to be restricted areas during a specified period of time for better utilization of KTCT for other use (e.g. as event venue during non-cruise days).

and the terminal building (except the KTCT Park⁵ on the roof top) (please see the plans indicating the proposed boundaries of the Terminal Area and the restricted areas at Annex B to Legislative Council Brief (File Ref.: TC CR/T4/22/9/2) issued by Commerce and Economic Development Bureau on 2 July 2015) (Clauses 3, 9 and 10, and Schedule 1);

- (b) controlling the access to and from and remaining in the Terminal Area (Clauses 7 and 8) and in the restricted areas (Clause 12), and issuance, cancellation and surrender of passes for access to the restricted areas (Schedule 2);
- (c) empowering the Commissioner and the terminal operator to charge fees on a commercial basis and providing that the level of fees charged may exceed the level for cost recovery. To avoid doubt, subject to the tenancy agreement between the Government and a terminal operator, any moneys received by the operator in the course of operating and managing KTCT are not moneys raised or received for the proposes of the Government under the Public Finance Ordinance (Cap. 2) and may be retained by the operator (Clause 5);
- (d) some general prohibitions within the Terminal Area, including the control of unauthorized business activities and advertising; acts that cause danger, nuisance etc. to others; acts that interfere with the equipment at KTCT (e.g. the radar and plant rooms); non-compliance with notices without reasonable excuse; and other prohibited acts such as fishing, begging, littering and smoking, etc. (Clauses 15 to 20);
- (e) empowering the Commissioner and authorized officers to enforce the provisions in relation to the prohibited acts mentioned above, and the corresponding penalty for contravening certain provisions in the Bill (Clause 21); and
- (f) setting out the consequential amendments to three pieces of subsidiary legislation in relation to immigration service (Schedule 3).

⁵ The KTCT Park has been set aside for use as a public pleasure ground under section 106 of the Public Health and Municipal Services Ordinance (Cap. 132).

Views and concerns expressed by Panel members

6. The Panel has discussed about the Administration's plan to submit a legislative proposal to regulate the use of KTCT at its meetings on 22 July 2013 and 27 October 2014, and members' views and concerns expressed at the meetings are summarized below.

7. Panel members in general supported regulating the use of KTCT by way of legislation. However, some members opined that the restriction on access to KTCT should be based purely on genuine security needs. The Administration explained that KTCT was a new facility and the experience gained in the inaugural berthing in June 2013 had provided useful insights on designating the restricted areas in KTCT in such a way to address the security needs without affecting the smooth operation of cruise liners and the terminal operator. The restricted areas were limited to the apron, the customs and immigration hall and some important plant rooms.

8. There was a query why the legislative proposal was not introduced earlier. A member considered that the Administration should be accountable for overlooking the operational and security needs of KTCT. The Administration explained that the terminal operator was required to comply with the security requirements as stipulated in PFSP to handle KTCT's security matters and berthing arrangements. Having regard to the operational experience in making security arrangement gained since its commissioning, the Administration considered that a new piece of primary legislation, instead of subsidiary legislation, would better serve the operations and security needs of KTCT. Nevertheless, there was no question of delay in introducing the legislation.

9. Concern was raised whether the approach of the legislative proposal for KTCT could model on that for the Ocean Terminal. The Administration advised that KTCT was designed with a view that Hong Kong would become a homeport for cruise liners. Unlike the Ocean Terminal, KTCT was equipped with regular immigration and baggage handling facilities to allow the berthing of the largest cruise vessels in the world.

10. The Administration has also circulated an information paper which sets out the framework of the Bill to the Panel in May 2015, and members have not raised any specific comments about the legislative proposal.

Latest development

11. The Bill was tabled at the Council meeting on 8 July 2015. The House Committee decided on 9 October 2015 to set up a Bills Committee to scrutinize the Bill.

Relevant papers

12. A list of the relevant papers is set out below -

<http://www.legco.gov.hk/yr12-13/english/panels/e/dev/minutes/e/dev20130722.pdf>

<http://www.legco.gov.hk/yr14-15/english/panels/e/dev/papers/e/dev20141027cb4-63-4-e.pdf>

<http://www.legco.gov.hk/yr14-15/english/panels/e/dev/papers/e/dev20141027cb4-63-3-e.pdf>

<http://www.legco.gov.hk/yr14-15/english/panels/e/dev/minutes/e/dev20141027.pdf>

http://www.legco.gov.hk/yr14-15/english/bills/brief/b201507032_brf.pdf

<http://www.legco.gov.hk/yr14-15/english/hc/papers/hc20151009ls-85-e.pdf>

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