

**Kai Tak Cruise Terminal Bill:**

**Response to Issues Raised by  
the Legal Service Division of the Legislative Council Secretariat and  
Members at the Second Bills Committee Meeting on 24 November 2015**

This paper sets out the Government's response to –

- (a) the issues raised by the Legal Service Division (LSD) of the Legislative Council Secretariat *vide* its letter of 20 November 2015; and
- (b) the outstanding follow-up actions arising from the discussion at the second meeting of the Bills Committee held on 24 November 2015 as set out *vide* Clerk to Bills Committee's letter of 26 November 2015 .

**Interpretation**

*Interpretation of Cruise Ship*

2. Paragraph 1 of the Annex to LSD's letter points out that while "cruise ship" is defined to include, among others, "*any other vessel approved by the Commissioner for the purposes of this Ordinance*", there is no provision in the Bill that empowers the Commissioner to approve "vessels" to be "cruise ships". Members also asked at the second Bills Committee meeting on 24 November 2015 that whether this part of the interpretation was indeed necessary, given that the berthing of vessels other than "cruise ships" could be a type of "*activity that the Commissioner considers appropriate*" and hence covered by clause 4(c) as a permissible "use" of the Terminal.

3. There are occasions on which vessels other than those for "*carrying or intended to be used to carry passengers exclusively for sightseeing or pleasure purposes*" would berth at the Kai Tak Cruise Terminal (KTCT). Some examples include the berthing of floating library or floating hotel. Insofar as the regulatory regime as provided for in the Bill is concerned, our policy intention is that these vessels would be regulated in the same manner as typical cruise ships carrying passengers for sightseeing or pleasure

purposes, such as their access to and control within the Terminal Area. We therefore consider it necessary to include in the definition of “cruise ship” other vessels that are approved by the Commissioner for Tourism for the purposes of the Bill.

4. Some Members mentioned at the second Bills Committee meeting on 24 November 2015 that some vessels might, while carrying passengers for sightseeing or pleasure purposes, be serving other purposes, such as for transporting goods or mails. We wish to supplement that, depending on the development of the cruise tourism industry, there may also be vessels using the KTCT that will include other entertainment or functional elements for passengers other than just for sightseeing or pleasure purposes in the future. We therefore see a need for the definition of “cruise ship” to include other vessels approved by the Commissioner for Tourism to cater for the need of these circumstances.

5. Although there is no separate provision in the Bill which empowers the Commissioner to approve vessels as “cruise ships” for the purposes of the Bill, we consider that the reference to “*any other vessel approved by the Commissioner*” in the definition of “cruise ship” has impliedly given the Commissioner for Tourism the power to do so. We do not consider it absolutely necessary to include a separate provision to empower the Commissioner for Tourism to approve “vessels” for the purposes of the definition of “cruise ships”.

#### *Chinese Equivalent of “Property Manager”*

6. LSD suggests in paragraph 2 of the Annex to its letter that we may consider amending “*管理者*”, being the Chinese equivalent of “property manager”, to “*物業管理者*”. As explained at the Bills Committee meeting on 24 November 2015, our policy view is that the Chinese terms “*管理者*” and “*物業管理者*” have no material difference. From the policy point of view, we further consider that the Chinese term “*管理者*” is a better equivalent of the term than “*經理*” or “*經理人*” and has accurately reflected the meaning of “property manager”. From the drafting point of view, “*管理者*”, being a concise label, is clearly defined under clause 2 and would not cause any difficulty in interpretation. Hence, we do not consider it necessary to amend the term to “*物業管理者*”.

### *Inclusion of “Vessel” Not Used in Navigation*

7. LSD asks in paragraph 3 of the Annex to its letter the reasons for including, by reference to section 2 of the Shipping and Port Control Ordinance (Cap. 313), “*vessels in Hong Kong or in the waters of Hong Kong not used in navigation or not constructed or adapted for use in navigation*” in the definition of “vessel”.

8. Our policy intention is that regardless of whether the vessels are for use in navigation or not, they will still be subject to the regulatory regime as provided for under the Bill. For instance, a vessel that is not for use in navigation (e.g. a pontoon) is subject to certain access control under clause 8 to ensure the smooth operation of the Terminal Area.

### **Use of Terminal**

9. In paragraph 4 of the Annex to its letter, LSD asks for our elaboration on (i) including the term “facilitating” in describing the use of the Terminal for embarkation and disembarkation of passenger in clause 4(b); (ii) the nature and example of activities that the Commissioner for Tourism may consider appropriate in clause 4(c); and (iii) the scope of “ancillary purposes” in clause 4(d).

10. We would like to provide the following elaboration for Members’ information -

- (i) KTCT provides equipment and facilities that assist the embarkation and disembarkation of passengers of cruise ships. Specifically, for typical cruise ships that are over 10 storeys, disembarking passengers are connected to the terminal building through the passenger bridges. In other words, KTCT facilitates the embarkation and disembarkation of passengers of cruise ships and hence the use of the term “facilitating” under clause 4(b).
- (ii) Examples of the nature of the activities that the Commissioner for Tourism may consider appropriate under clause 4(c) include MICE (meetings, incentives, conferences and exhibitions) events, car shows, brand promotion activities, product launches, christening of ships as well as film shootings. These activities typically take place at the time when the relevant venues at KTCT

are not occupied by cruise berthing operations.

- (iii) The scope of ancillary purposes under clause 4(d) includes any use that supports the operation of the Terminal. Examples include the reprovisioning and cleansing activities for cruise ships, commercial activities (restaurants, shops, money exchange kiosk), visitors services (kiosks operated by the Hong Kong Tourism Board), and transportation (car park and coach bay) facilities and services.

## **Control of the Terminal**

11. As stated in paragraph 5 of the Annex to its letter, LSD notes that unlike the Shipping and Port Control (Ferry Terminal) Regulations (Cap. 313H) which provides that the relevant terminals shall be under the control of the Director of Marine, there is no provision expressly conferring the control of KTCT on the Commissioner for Tourism under the Bill. LSD invites our elaboration on the difference in drafting approaches.

12. As elaborated at the Bills Committee meeting on 24 November 2015, the difference is not on the drafting approaches, but on the specific control vested in the Director of Marine and the Commissioner for Tourism under Cap. 313H and the Bill respectively. As stipulated in the Bill, the Commissioner for Tourism is empowered to control the operation and management of the Terminal (clause 5), the access to the Terminal area (clauses 7 and 8) and the designation and control of the access to the restricted area (clauses 9-14). At the same time, the Terminal Area includes Hong Kong waters and the control of which is subject to relevant marine-related legislation which is not under the Commissioner for Tourism's purview. Against the above, we do not consider it appropriate to include an overarching provision expressly conferring the control of the Terminal Area on the Commissioner for Tourism.

## **Operation and Management of Terminal**

### *Commercial Basis*

13. In relation to clause 5 of the Bill, LSD enquires in paragraph 6(a) of the Annex to its letter the legal meaning of "commercial basis" and whether

the term “prudent commercial principles” in section 6 of the Airport Authority Ordinance (Cap. 483) should be used in the Bill instead of the term “commercial basis”. Members also raised similar questions at the Bills Committee meeting on 24 November 2015.

14. From our policy perspective, the meaning of operating KTCT on a “commercial basis” means making or intended to make a profit or having profit rather than other value as a primary aim. This is further elaborated in clause 5(4) which stipulates that the terminal operator or the Commissioner (as the case may be) may charge fees not limited by reference to the administrative or other costs incurred or likely to be incurred in operating and managing the Terminal or the recovery of expenditure in operating and managing the Terminal.

15. We note in the relevant legislation which governs the operation and management of certain statutory bodies / corporations specifies that the statutory bodies / corporations shall conduct its business according to “prudent commercial principles”. Examples include section 7 of the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565), section 12 (1) of Kowloon-Canton Railway Corporation Ordinance (Cap. 372), and section 6(1) of the Airport Authority Ordinance (Cap. 483).

16. We consider that the legislation which governs these statutory bodies / corporations seeks to impose restrictions on how they should conduct their businesses. Unlike the above pieces of legislation, the KTCT Bill seeks to empower the Commissioner and the private terminal operator who may operate and manage the Terminal on a commercial basis as stipulated in clause 5(3) and clause 5(4). The terminal operator is a private commercial entity. Provided that it can comply with the requirements under the tenancy agreement, we consider that it can operate in accordance with its business decision, and we do not see a need to regulate, under the Bill, its business decision. Given the differences in the objectives between the relevant pieces of legislation which govern the operation and management of certain statutory bodies / corporations versus the KTCT Bill, the terms used are therefore intended to serve different purposes.

#### *Relationship between the Government, the Commissioner for Tourism and the terminal operator*

17. In paragraph 6(b) of the Annex to its letter, LSD enquires the relationship between the Commissioner for Tourism and the terminal operator

in terms of the ultimate control, operation and management of the Terminal. In paragraph 6(c) of the Annex to its letter, LSD also enquires whether the Commissioner is given the statutory power to negotiate and enter into the tenancy agreement with the terminal operator on behalf of the Government. At the Bills Committee meeting on 24 November 2015, Members requested, and the Government undertook to provide written elaboration on the relationship among the Government, the Commissioner for Tourism and the terminal operator.

18. Under the current tenancy agreement, the Government is the “landlord” and the terminal operator is the “tenant” of a major part of KTCT for cruise operation and ancillary purposes (including the ancillary commercial areas and transport facilities). The Government also monitors the operation of KTCT. The Commissioner for Tourism has delegated authority from the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) to carry out, on behalf of the HKSAR Government, the management, use and development of the land at the KTCT site. Such delegation was published in the Gazette on 10 March 2011 as Government Notice 1823 of 2011 (please see Annex).

19. With the delegation, the Commissioner for Tourism entered into the tenancy agreement for the operation and management of KTCT on behalf of the HKSAR Government as the Landlord.

### **Authorization and Delegation by the Commissioner**

20. Regarding the delegation by the Commissioner for Tourism under clause 6 of the Bill, LSD asks in paragraph 7 of the Annex to its letter (i) whether the delegation made shall preclude the Commissioner from exercising or performing at any time any of the powers or functions so delegated; and (ii) the function(s) that may be delegated by the Commissioner to the property manager.

21. Members may wish to note that –

- (i) section 44 (1) of Interpretation and General Clauses Ordinance (Cap. 1) specifies that “[w]here any Ordinance confers power upon any person to delegate the exercise on his behalf of any of the powers or the performance of any of the duties conferred or imposed upon him under any Ordinance, (a) such delegation shall

*not preclude the person so delegating from exercising or performing at any time any of the powers or duties so delegated.....”* Therefore, the delegation of functions by the Commissioner for Tourism under clause 6(3) to the terminal operator or property manager would not preclude the Commissioner from exercising or performing the functions so delegated.

- (ii) clauses 6(3) and (4) provide that the Commissioner for Tourism may delegate the functions under the KTCT Bill to, among others, the property manager, except for those under clauses 6(1), 6(3), 9(1) and 23(1). Examples of functions that could be delegated to the property manager include the power to order someone to leave the Terminal Area (clause 7), the power to demarcate and indicate the restricted area to members of the public who may enter it (clause 11).

## **Restricted Areas**

22. In paragraph 8 of the Annex to its letter, LSD asks the Government to elaborate on the arrangement, as well as their reasons, for designating permanent restricted area and non-permanent restricted area, and that for the temporary cessation of restricted area under clause 9 and clause 10 respectively. The relevant instruments are not subsidiary legislations.

23. We envisage a need to re-designate the permanent restricted area and non-permanent restricted area within the Terminal Area from time to time, having regard to the operational needs to adjust the internal partitioning of the areas and rooms within the terminal building as well as the passenger flow during cruise operation. For example, there may be operational need to make slight adjustments to the designated area for immigration facilities and hence the need to adjust the permanent restricted area within the Terminal Area. Under clause 9, such re-designation can be made by publishing a notice in the Gazette, which is not a subsidiary legislation, by the Commissioner for Tourism. Such arrangement will allow us to re-designate the permanent restricted area and non-permanent restricted area in a timely manner without going through the legislative process and hence enable us to respond quickly to the changing operational needs of the KTCT.

24. As regards the arrangements for temporary cessation of the “restricted area status” of non-permanent restricted area under clause 10(3) of the Bill, given the cessation is temporary in nature and that the purpose of designating the specific location as non-permanent restricted area is to allow flexibility in lifting its “restricted area status” in a timely and flexible manner for the organizing of non-cruise events, our view is that a general notice exhibited in a conspicuous place within or near the area in question, rather than making subsidiary legislation, is the appropriate way to declare the non-permanent restricted area ceases to be a restricted area during the specified period.

### **Bona Fide Passengers and Crew Members' Exemption**

25. In paragraph 9 of the Annex to its letter, LSD points out an observation that in regulation 23 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H), for a person to invoke the bona fide passenger and crew member exemption relating to the prohibition of entry to restricted areas, the passenger/crew member must have a valid travel document **and** a valid passenger ticket. As for the KTCT Bill, the bona fide passenger and crew member exemption may be invoked if the passenger/crew member is in possession of a valid travel document **or** a valid passenger ticket. LSD enquires whether there is a need to align the requirements for the exemption of bona fide passenger and crew member.

26. We would like to point out that there is an apparent difference between the operation of cross boundary ferries and cruises in that the passengers of the latter may remain on board of the vessels when they are at berth for accommodation or enjoying the on-board facilities. This is the scenario described in clause 14(1)(b) of the Bill.

27. When a cruise ship is berthing at KTCT and its passengers and crew members are staying on board, they are physically within the restricted area of KTCT. Members may be aware that it is the general practice of the cruise industry that the travel documents of these passengers and crew members on board are kept by the staff of the cruise line. Therefore, the passenger or crew member on board of a vessel may not be holding valid travel document **and** valid cruise document / ticket when they are within the restricted area.



28. Having regard to the unique operational circumstances of the cruise industry, our policy intention is that these passengers / crew members on board of a vessel at berth at KTCT should be considered as bona fide passengers and crew members if they are in possession of a valid travel document or a valid passenger ticket.

29. Notwithstanding the above, any passenger and crew member in possession of a valid travel document or a valid cruise document / ticket is still required to fulfill the requirements stipulated in clause 14 of the Bill to be qualified for invoking the bona fide passenger and crew member exemption relating to the prohibition of entry to restricted areas. If that passenger / crew member is not on board a vessel, he will need to prove that he is either having disembarked from a vessel (i.e. clause 14(1)(a)(i)) or for boarding a vessel (i.e. clause 14(1)(a)(ii)).

## **General Prohibitions**

### *Chinese Equivalent of “Gangway”*

30. In paragraph 10 of the Annex to its letter, LSD seeks our clarification on whether "跳板" instead of "過道" should be the proper Chinese equivalent of the term “gangway” in clause 15(1)(b).

31. Unlike the case of ferry operation, a “gangway” in the context of cruise operation may not simply be “a board connecting the vessel and the pier”, hence its Chinese equivalent "跳板" may not suit the context. Indeed cruise passengers usually disembark from cruise ships through an exit at either side of the vessels and connect to the terminal building through passenger bridges. As such, "過道" is a more accurate term.

### *Compliance with Direction, Notice, etc.*

32. In paragraph 11 of the Annex to its letter, LSD enquires about the need for clause 19(1) which requires a person, while within the Terminal Area, must comply with a reasonable direction/order given, or notice/sign exhibited by the Commissioner for Tourism or an authorized officer while the specific offences are already provided in other provisions such as clause 7(3) and clause 7(4). LSD also asks in the same paragraph whether the heading of clause 19 should be amended to read “Non-compliance with direction, notice, etc.”.

33. Clause 19 refers to any general directions/orders and notices/signs while clauses 7(3) and 8(4) are confined to those relating to the access of person, vehicle and vessel to the Terminal Area only. The scope of clause 19 is more general in nature to suit the actual operation needs. For instance, for operational reason, the employees of the terminal operator (as the Commissioner for Tourism's delegates) may give direction to prohibit visitors from bringing certain objects (e.g. glass bottle) to the Terminal Area during the periods with non-cruise events. Clause 19 therefore provides that all visitors within the Terminal Area must comply with such direction.

34. As regards the heading of clause 19, our view is that clause 19(1) indeed specifies the need to comply with direction and notice, etc., we therefore consider the current heading appropriate. In any event, the heading has no legislative effect.

#### *Chinese Equivalent of "Other Prohibited Acts"*

35. In paragraph 12 of the Annex to its letter, LSD suggests amending "其他受禁行為", being the Chinese equivalent of "Other prohibited acts", in the heading of clause 20 to "其他受禁止行為".

36. From our policy perspective, we do not see any material difference between "其他受禁止行為" and "其他受禁行為". We also note that in the Chief Executive Election (Election Petition) Rules (Cap. 569E), the Chinese equivalent of the term "prohibited conduct" is "受禁行為". Against this, we consider the heading "其他受禁行為" appropriate. In any event, the heading has no legislative effect.

#### *Power to Detain*

37. In paragraph 13 of the Annex to its letter, LSD considers clause 21(1) which provides for the power to detain with no reference to specific offences may be disproportionate for some minor offences such as littering, fishing and smoking and hence seeks our legislative intent.

38. According to clause 21 of the Bill, a person suspected of committing an offence who is detained by the Commissioner for Tourism (including the persons to whom the relevant function is delegated by the Commissioner) or by an authorized officer (other than a law enforcement officer) 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 for Tourism and authorized officer will 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, regardless of the severity of the offence, is essential for the enforcement of the Bill. In any event, the detention power in clause 21(1) will be qualified by the conditions in clauses 21(2) and 21(3).

## **Related Amendments**

### *Chinese Equivalent of “Set Aside”*

39. In paragraph 14 of the Annex to its letter, LSD invites the Government to adopt “留作” instead of “劃為” as the Chinese equivalent of “set aside” in “sections 1 and 3 of Schedule 3 to the Bill”. We note that “留作” has been used as the Chinese equivalent of “set aside” under the existing legislation. From the drafting point of view, “留作” bears the meaning of “預留” which implies that the place is “reserved” for the use (e.g. for places of detention) from the very beginning. It may not include the situation involving a change of use of an area which could be “set aside” later as a place of detention. Members may also note that “劃為” has been used as the Chinese equivalent of “set aside” under regulations 2 and 3 of the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548E). Therefore, we consider “劃為” is a more accurate Chinese equivalent of “set aside”.

### *Immigration Anchorages*

40. In paragraph 15 of the Annex to its letter, LSD invites the Government to explain why the proposed amendments to section 2(1)(c) of the Immigration (Anchorage and Landing Places) Order (Cap. 115C) does not exclude “cruise ship” as set out in the proposed new section 2(1)(bb).

41. We wish to point out that not all cruise ships as defined under clause 2 of the Bill will use KTCT. Our legislative intent is hence that cruise ships may use either KTCT or any of those specified in Schedule 1 of Cap. 115C as immigration anchorage. The current formulation would designate KTCT as an approved immigration anchorage for cruise ship, while at the same time, allow cruise ships to berth at other approved immigration anchorages in Schedule 1 of Cap. 115C, thereby achieving our legislative intent.

*Tourism Commission*  
*Commerce and Economic Development Bureau*  
*December 2015*

G.N. 1823

DELEGATION OF THE POWERS CONFERRED UNDER THE BASIC LAW  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF  
THE PEOPLE'S REPUBLIC OF CHINA ('THE BASIC LAW') AND  
SECTION 32 OF THE HONG KONG REUNIFICATION  
ORDINANCE IN RELATION TO LAND

WHEREAS:—

- (a) Article 7 of the Basic Law provides that the Government of the Hong Kong Special Administrative Region ('HKSAR') shall be responsible for the management, use and development of land within the HKSAR and for the lease or grant of land to individuals, legal persons or organizations for use or development;
- (b) section 32 of the Hong Kong Reunification Ordinance (Ordinance No. 110 of 1997) provides that the Chief Executive of the HKSAR may on behalf of the Government of the HKSAR lease or grant land within the HKSAR which is State property; and
- (c) as the Chief Executive of the HKSAR, I have now decided that the persons for the time being holding the offices specified in the Schedule should carry out on my behalf the responsibilities conferred under Article 7 of the Basic Law and section 32 of the Hong Kong Reunification Ordinance (Ordinance No. 110 of 1997) in relation to the land consisting of the new cruise terminal and the adjoining government land more particularly delineated and shown edged black on the plan on the next page;

NOW, THEREFORE, as the Chief Executive of the HKSAR, in addition to the delegation of 15 March 2003, the delegation of 6 October 2006, the delegation of 1 April 2009, and the delegation of 17 July 2009 published in the Government of HKSAR Gazette as Gazette Notice Nos. 2008 of 2003, 6439 of 2006, 2149 of 2009 and 4402 of 2009 respectively, I hereby delegate to the persons for the time being holding the offices specified in the Schedule below the power to carry out on my behalf the responsibilities conferred under Article 7 of the Basic Law and section 32 of the Hong Kong Reunification Ordinance (Ordinance No. 110 of 1997) in relation to the land consisting of the new cruise terminal and the adjoining government land more particularly delineated and shown edged black on the plan on the next page.

SCHEDULE

*Item Office*

1. Commissioner for Tourism
2. Deputy Commissioner for Tourism

*10 March 2011*

Donald TSANG *Chief Executive*

