

Kai Tak Cruise Terminal Bill

**Response to the Issues Arising from the Discussion
at the Fourth Meeting of the Legislative Council Bills Committee
held on 19 January 2016**

PURPOSE

Further to the letter dated 1 February 2016 issued by the Administration to the Legislative Council Secretariat on the above, this paper provides the Administration's responses to the remaining issues (i.e. items (b), (f) and (g)) arising from the discussion at the fourth meeting of the Bills Committee of the Kai Tak Cruise Terminal Bill ("the Bill") held on 19 January 2016 as set out in the list attached to the Clerk to Bills Committee's letter dated 26 January 2016 ("the List").

THE ADMINISTRATION'S RESPONSES

2. The Administration's responses, following the numbering of the List, are as follows –

(b) drafting of clause 21(2) of the Bill

3. Paragraph (b) of the List refers to the request for the Administration to consider aligning the terms "**as soon as practicable after detaining the person**" in clause 21(2)¹ of the Bill with the wording of the similar provision in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H). Specifically, Members may note that the term "**forthwith**" is used in regulation 36² of Cap. 313H.

¹ Clause 21(2) of the Bill stipulates that –

"[i]f a person is detained under subsection (1) by the Commissioner or by an authorized officer who is not a law enforcement officer, then the Commissioner or officer must, as soon as practicable after detaining the person (a) take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232); or (b) deliver the person into the custody of a police officer to be dealt with in accordance with that Ordinance"

² Regulation 36 of Cap. 313H stipulates that –

"[a]n authorized officer may, if he has reasonable grounds for believing that any person has contravened regulation 12, without warrant arrest that person and forthwith take him to a police station there to be dealt with in accordance with the Police Force Ordinance (Cap. 232)."

4. Our policy intention is that any person detained under clause 21(1) of the Bill by the Commissioner or an authorized officer who is not a law enforcement officer should be taken to a police station or delivered into the custody of a police officer to be dealt with in accordance with the Police Force Ordinance (Cap. 232) in the earliest practicable instance.

5. Having considered the coverage of the Terminal Area and paying due regard to the peculiar circumstances that the Terminal Area includes a large area (975.2m x 125.5m) at sea, we envisage that there will be occasions on which the Commissioner or the authorized officer may have practical difficulties to take the person being detained to a police station forthwith or immediately. For instance, the Commissioner or the authorized officer who detains a person in the middle of the sea (being part of the Terminal Area) may have practical need to wait for the arrival of a vessel to deliver himself and the detained person back to the land as soon as possible, rather than taking the detained persons to a police officer forthwith or immediately (through, say, swimming back). In view of the circumstances of the Kai Tak Cruise Terminal (KTCT), we consider the terms **“as soon as practicable after detaining the person”** in clause 21(2) will better suit the context of the KTCT.

(f) activities “that the Commissioner considers appropriate” under Clause 4(c) of the Bill

6. Paragraph (f) of the List enquires whether the power conferred to the Commissioner for Tourism under clause 4(c) of the Bill to allow *“any activity that the Commissioner considers appropriate”* at KTCT would override the restrictions imposed on such use of KTCT by the Town Planning Board; and whether the Commissioner’s power under clause 4(c) of the Bill is subject to any limits or restrictions.

7. According to clause 26 of the Bill, the to-be-enacted Ordinance would *“not restrict, derogate from or otherwise interfere with (a) a function under any law of a person in the service of the Government; or (b) the person’s performance of the function.”* Members may also note that according to section 13 of the Town Planning Ordinance (Cap. 131), *“[a]pproved plans shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them”*.

8. Accordingly, while clause 4(c) of the Bill enables the Commissioner to approve the appropriate uses of KTCT other than for the berthing of cruise ships, the Commissioner has to observe other applicable legislation, including the Town Planning Ordinance (Cap. 131) in the course of exercising the power.

(g) delegation to the employees of terminal operator and property manager

9. Paragraph (g) of the List requests the Administration to provide details (including ranks and other requirements) of the employees of the terminal operator and property manager to whom functions of the Commissioner would be delegated or sub-delegated under clause 6 of the Bill.

10. As explained *vide* our reply dated 15 January 2016 to Hon James To's letter (both documents were circulated to all Members), in delegating his or her functions under clause 6(3) of the Bill, the Commissioner would set out appropriate conditions for the delegation to the terminal operator or property manager, as well as that for the sub-delegation of the delegated functions by these two parties to their employees. Such conditions would include the rank of employees to whom sub-delegation should be made, and the requirements to ensure that the sub-delegated employees will clearly understand the relevant conditions.

11. As explained at the Bills Committee meeting on 19 January 2016, the Administration's position is that the Commissioner's certain functions under the Bill (including the functions to order a person to leave) will only be delegated to the employees of the terminal operator and property manager at or above supervisory level. We have no intention to delegate any enforcement power to frontline staff such as cleaners.

ADVICE SOUGHT

12. Members are invited to note the Administration's responses in this paper for information.