

Kai Tak Cruise Terminal Bill:

**Response to the Issues Arising from the Discussion
at the Sixth Meeting of the Legislative Council Bills Committee
held on 23 February 2016**

PURPOSE

This paper provides the Administration's responses to the issues arising from the discussion at the sixth meeting of the Bills Committee of the Kai Tak Cruise Terminal Bill ("the Bill") held on 23 February 2016 as set out in the list attached to the Clerk to Bills Committee's letter dated 25 February 2016 ("the List").

THE ADMINISTRATION'S RESPONSES

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

(a) Limitations of the Commissioner for Tourism's power under clause 4(c) of the Bill

3. Paragraph (a) of the List refers to the request for the Administration to consider including suitable provision in the Bill to specify whether the powers conferred on the Commissioner for Tourism ("the Commissioner") under clause 4(c) of the Bill would be subject to any limitations or restrictions under other existing pieces of legislation including section 13 of the Town Planning Ordinance (Cap. 131).

4. We wish to reiterate that, as explained in our written response dated 22 February 2016, clause 26 of the Bill has stipulated that 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*". We also pointed out in the same reply 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*".

5. We note and appreciate Members' suggestion to include an express provision in the Bill to specify the fact that the Commissioner will need to observe the requirements under other pieces of legislation including section 13 of the Town Planning Ordinance (Cap. 131) in exercising the powers conferred on her under clause 4(c) of the Bill for clarity sake and for the avoidance of doubt. We would, however, wish to point out that the Commissioner will indeed need to observe all prevailing legislation applicable to the Kai Tak Cruise Terminal ("KTCT") in approving the uses of KTCT (including but not limited to section 13 of Cap. 131) in exercising the powers conferred on her under clause 4(c) of the Bill. The provisions in the Bill would not override other statutory requirements or power as stipulated in other pieces of legislation.

6. In view of paragraphs 4 and 5 above, we do not see a need to highlight the need to observe the requirements under section 13 of Cap. 131 (or any particular legislation) through an express provision in the Bill. Indeed, we are concerned that this could have the unintended and undesirable effect of causing confusion as to whether the Commissioner's power conferred under clause 4(c) of the Bill is subject to the limitations or restrictions other than section 13 of Cap. 131 (as well as any particular legislation specified in the express provision). Furthermore, it may also cause confusion as to whether the Commissioner's power conferred by other clauses of the Bill would also be subject to the limitations or restrictions of the prevailing legislation applicable to KTCT (including section 13 of Cap. 131).

(b) Control on business activities and advertising within the Terminal Area of KTCT

7. Paragraph (b) of the List refers to the request for the Administration to explain why the control on business activities and advertising under clause 16 of the Bill is applicable to the whole Terminal Area, and not just the restricted areas.

8. The Bill provides a regulatory regime for the use, operation, management and control of the entire KTCT. Apart from regulating certain conduct (including business activities and advertising as covered by clause 16) within KTCT, it also provides for its uses, empowers its operation on

commercial basis and controls access thereto, so as to uphold the smooth operation and security of this critical tourism infrastructure.

9. All the facilities within the terminal building, including the Waiting Hall, the Baggage Hall, the offices and operation areas of Government facilities (including Customs, Immigration, Quarantine and Police), the commercial areas, the communal areas and supporting facilities (including car park and bus stop) and certain areas at sea are part and parcel of the whole Terminal Area. Among the areas within the terminal building mentioned above, there are areas with important boundary-crossing facilities and important plant rooms. They are designated as “restricted areas” under the Bill and the access to which are subject to further control as stipulated in Part 4 (i.e. clauses 9 to 14) of the Bill.

10. For the remaining parts of the Terminal Area not being the “restricted areas”, they are in general open to the public. Such areas are part and parcel of the terminal building and are also important in upholding the smooth operation and security of KTCT. For the integrity of the management of the terminal building (i.e. regulating its uses and prohibited acts, empowering its operation on commercial basis and controlling access thereto), the Terminal Area as a whole is therefore subject to the regulatory regime as provided for in the Bill.

11. We are aware that the eateries, retail counters, money exchange shop etc. located in the 5,600 square metres of ancillary commercial areas within the Terminal Area of KTCT may need to conduct the business and advertising activities which are subject to the regulation of clause 16 of the Bill. Our original intention was that the Commissioner will assess the actual circumstances and give permissions to these commercial sub-tenants so that their businesses would not be affected by clause 16. In the light of the discussion and Members’ suggestions raised at the sixth and seventh Bills Committee meetings, we will make suitable amendments to clause 16, and the details of these amendments are set out in a separate paper on the Administration’s proposed committee-stage amendments.

(c) Imposing criminal offence on unauthorized business activities and advertising under the Bill

12. Paragraph (c) of the List requests the Administration to explain the

reasons for imposing criminal sanctions under the Bill for unauthorized business activities and advertising while similar conducts in the properties of LINK would not constitute a criminal offence.

13. Members may wish to note that the properties of LINK and KTCT are of totally different natures. The commercial areas of KTCT form part of the terminal building, which is a critical tourism infrastructure and the smooth operation of KTCT is of paramount importance. It is therefore necessary for all areas of KTCT to be regulated under the regime as mentioned in paragraph 10 above. We do not consider it appropriate to compare the regulatory regime of KTCT with that of the properties under LINK which are basically pure commercial venues in nature.

14. As mentioned at previous meetings, our policy objective is 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. We have therefore made reference to the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H) which regulates other cross-boundary ferry terminals in Hong Kong in drafting the KTCT Bill. Members may note that similar provisions on the control of business activities could be found in regulation 29 of Cap. 313H. Please note that similar control is also imposed in respect of other important infrastructures, e.g. Hong Kong International Airport (under Airport Authority Bylaw (Cap. 483A)) and the Mass Transit Railway system (under Mass Transit Railway By-laws (Cap. 556B)).

(e) Handling of person causing danger, nuisance, etc. under clause 17 of the Bill

15. Paragraph (e) of the List refers to the request for the Administration to consider amending clause 17 of the Bill such that the handling of persons causing “nuisance or annoyance” to another person within the Terminal Area would be different from those causing “danger” to another person within the Terminal Area. We also note Members’ concerns that it may be too stringent to impose criminal sanction on a person who causes “nuisance or annoyance to another person within the Terminal Area” under cause 17(1) of the Bill.

16. We would like to reiterate that one of the key objectives of the Bill is to provide for a regulatory framework to uphold the security of KTCT as an

important tourism infrastructure and to ensure its smooth operation. The causing of “nuisance” and “annoyance” within the Terminal Area could seriously jeopardize the security and cause obstruction to the operation of the Terminal. Therefore, the Administration maintains the policy view that it is necessary to impose criminal sanction on a person causing any nuisance or annoyance to another person with the Terminal Area.

17. Members may also wish to note that similar prohibitions on causing “nuisance” and “annoyance” are imposed for important infrastructures. Examples include the Hong Kong International Airport¹ and the Mass Transit Railway².

(g) Interference with equipment prohibited under clause 18(1) of the Bill

18. Paragraph (g) of the List refers to the request for the Administration to consider amending clause 18(1) of the Bill such that only the conduct of interference with, meddling with or moving any equipment, machines, information or data that could affect the operation of KTCT would constitute a criminal offence.

19. We must stress that the act of interfering with, meddling with or moving any equipment or machine within the Terminal Area and information or data stored in such equipment or machine may lead to very serious consequences.

20. We must also point out that there are possibilities that such behaviours would cause serious damage to the equipment or leakage of important personal information, although the operation of KTCT may not be directly affected at the time when the actions are taken. For instance, the unauthorized interference of the control / switchboard of the passenger boarding bridge may cause serious damage to the electronic components or serious personal injuries of the staff or other users while not directly affecting the operation of KTCT. The unauthorized interference of the computer system may lead to leakage of personal information of cruise passengers or

¹ Section 17(1) of the Airport Authority Bylaw (Cap. 483A) stipulates that “No person shall conduct himself in any part of the Bylaw Area so as to cause a **nuisance or annoyance** to other persons.” The corresponding level of fine is at Level 2.

² Bylaw 25 of the Mass Transit Railway By-laws (Cap. 556B) stipulates that “No person shall conduct himself on any train or in any part of the railway premises so as to cause a **nuisance or annoyance** to other passengers.” The corresponding level of fine is at \$5,000.

commercially sensitive information to outside parties while not affecting the operation of KTCT at all.

21. Given the very serious potential consequences of such behaviours, the Administration considers it pertinent and responsible to prohibit such behaviours and could not agree to the suggestion that the prohibitions be restricted to conduct affecting the operation of KTCT.

Items (d), (f), (h), (i) and (j)

22. Paragraph (d), (f), (h), (i) and (j) of the List refer to the requests for the Administration to consider moving amendments to the Bill.

23. We have carefully considered the proposals and we accept that suitable amendments could be made to the Bill. The Administration plans to make committee-stage amendments to the Bill and the wordings of the amendments will be set out in a separate paper.

ADVICE SOUGHT

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

***Tourism Commission
Commerce and Economic Development Bureau
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