

Kai Tak Cruise Terminal Bill:

**Response to the Issues Arising from the Discussion
at the Seventh Meeting of the Legislative Council Bills Committee
held on 1 March 2016**

PURPOSE

This paper provides the Administration's responses to the issues arising from the discussion at the seventh meeting of the Bills Committee of the Kai Tak Cruise Terminal Bill ("the Bill") held on 1 March 2016 as set out in the list attached to the Clerk to Bills Committee's letter dated 8 March 2016 ("the List").

THE ADMINISTRATION'S RESPONSES

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

(a) Wordings of the prohibited acts under clause 20(1)(a), (b) and (d) of the Bill

3. Paragraph (a) of the List refers to the request for the Administration to explain and elaborate on the wordings of the prohibited acts covered by clause 20(1)(a), (b) and (d) of the Bill.

4. As explained at previous meetings, the policy objective of the Bill is to bring the relevant legal framework for regulating the use of Kai Tak Cruise Terminal (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. In view of the large areas covered by KTCT, we have also suitably made references to the legal framework for regulating the use of other important infrastructure, such as the Hong Kong International Airport and major tunnels, as well as the Summary Offences Ordinance (Cap. 228) in drafting the prohibited acts under the Bill.

5. The wordings of the prohibited acts covered by clause 20(1)(a) and (b) of the Bill are basically the same as those under regulation 32(1)(a) and (b) respectively of Cap. 313H; while the wordings of clause 20(1)(d) of the Bill is modelled on section 4A of Cap. 228. A comparison of the wordings is set out at **Annex A**. We consider the wordings in clause 20(1)(a), (b) and (d) can clearly reflect our policy objective.

(b) Prohibitions on loitering

6. Paragraph (b) of the List refers to the request for the Administration to review the need for clause 20(1)(e) of the Bill concerning the prohibition on loitering within the Terminal Area.

7. As explained at previous Bills Committee meeting and our response to outstanding issues issued in February 2016, KTCT covers a very large area and is more exposed to security threats and terrorist attacks. We consider it necessary to impose a prohibition on loitering without reasonable cause in the Bill to minimize security risk to KTCT.

8. Members may wish to note that loitering is also prohibited in other regulatory frameworks for important infrastructures that cover a large area. Examples include the Hong Kong International Airport¹, Mass Transit Railway², Eastern Harbour Crossing³, Tai Lam Tunnel and Yuen Long Approach Road⁴.

9. KTCT is an important tourism infrastructure covering a large area. We consider it necessary to prohibit loitering without reasonable cause within the Terminal Area to uphold its security. We note and appreciate Members'

¹ Section 20(1) of Airport Authority Bylaw (Cap. 483A) stipulates that “No person shall loiter in any part of the Bylaw Area without reasonable cause. An Authorized Officer or an Authorized Person may request a person to leave the Bylaw Area or any particular part thereof if that person is reasonably suspected of loitering in any part of the Bylaw Area without reasonable cause.”

² Bylaw 31 of Mass Transit Railway By-laws (Cap. 556B) stipulates that “No person shall loiter in or about any part of the railway premises.”

³ Bylaw 20 of Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215E) stipulates that “No person shall -loiter or remain after having been requested by a tunnel officer to leave the road tunnel area”.

⁴ Section 23(d) of Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474C) stipulates that “No person shall -loiter or remain in the toll area, after having been requested by a toll area control officer to leave the toll area;”.

concern that the prohibition of “loitering in the Terminal Area without reasonable cause” as prohibited under clause 20(1)(e) may be too broad. In the light of Members’ concern, we have reviewed the actual context and circumstances of KTCT and agree to move committee-stage amendment along the direction that “loitering with intent to commit an arrestable offence” would be prohibited under the Bill.

(c) *Prohibition on smoking*

10. Paragraph (c) of the List requests the Administration to consider allowing flexibility in clause 20(1)(h) to designate smoking areas within the Terminal Area when such need arises in the future.

11. The majority of areas within the Terminal Area are already designated “no smoking areas” covered by Part 1 of Schedule 2 to the Smoking (Public Health) Ordinance (Cap. 371), at which smoking or carrying a lighted cigarette, cigar or pipe is not allowed under section 3(2) of Cap. 371. The areas within the Terminal Area that are currently not “no smoking areas” under Cap. 371 include mainly the apron and the two podium gardens on the 2/F of the Terminal Building.

12. The apron is within the planned non-permanent restricted areas and is not generally accessible by the public. We do not see a need for designating smoking areas in the apron. As regards the two podium gardens, which are basically covered by lawns and soft landscaping, they are popular venues for families. We do not consider it appropriate to designate any smoking area within the podium gardens.

13. At the Bills Committee meeting held on 1 March 2016, some Members considered that the commercial areas at the rooftop might potentially be running wine bars or restaurants and there might be a need in future to allow flexibility in designating smoking areas for their customers. Members may note that the indoor commercial areas at the rooftop are already designated “no smoking areas” under Part 1 of Schedule 2 to Cap. 371. The outdoor parts of the rooftop are all within the Kai Tak Cruise Terminal Park and do not form part of the Terminal Area for the purposes of the regulatory framework under the Bill (see section 2 of Schedule 1 to the Bill). Therefore, even if power is conferred under the Bill to designate smoking areas within the Terminal Area, it would not serve the purpose of allowing smoking in the vicinity of the commercial areas at the rooftop.

(d) & (e) Prohibitions on anything done on board a vessel

14. Paragraphs (d) & (e) of the List refers to the request for the Administration to set out the prohibitions that are applicable for anything done on board a vessel and **not** applicable for anything done on board a vessel and the respective rationale.

15. Among the general prohibitions stipulated in Part 5 (i.e. clauses 15 to 20) of the Bill, it has been stipulated clearly in clause 16(3) and clause 20(2) that the prohibitions in clause 16(1) and clause 20(1) will not apply in relation to anything done on board a vessel.

16. The prohibitions in clause 16(1) and clause 20(1), if done on board a vessel, will very unlikely jeopardize the smooth operation and security of the Terminal Area. We hence do not regulate such acts on board a vessel under the regulatory regime provided for in the Bill.

(f) Enforcement actions for offences under clause 22 of the Bill

17. Paragraph (f) of the List refers to the request for the Administration to consider amending clause 21(4) to the effect that the person suspected of having committed an offence under clause 22 will not solely be removed from the Terminal Area, but may also be detained and taken to a police station or delivered into the custody of a police officer.

18. Members may note that according to clause 21(1) of the Bill, if the Commissioner or an authorized officer has reasonable grounds for suspecting that a person has committed an offence under this Ordinance (**i.e. including the offence under clause 22**), the Commissioner or officer may, without warrant and if necessary by using reasonable force, detain the person.

19. Members may also note that according to clause 21(2) of the Bill, if a person detained 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 take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232); or deliver the person into the custody of a police officer to be dealt with in accordance with that Ordinance.

20. In other words, the current drafting of the Bill has already empowered the Commissioner or an authorized officer to detain a person suspected of having committed an offence under clause 22 and then take him to a police station or deliver him into the custody of a police officer, in addition to removing him from the Terminal Area as provided for under clause 21(4) of the Bill.

21. In the light of Members' suggestion to amend the current drafting of clause 21(4), we have reviewed the clause thoroughly and considered the power to remove a person could be exercised such that the person can be removed from the Terminal Area "or a restricted area" as the case may be. We plan to move a committee-stage amendment along this direction.

(g) *Enforcement parties of the offence under clause 22(1) of the Bill*

22. Paragraph (g) of the List refers to the request for the Administration to consider the parties responsible for taking enforcement actions against the offences under clause 22(1).

23. According to clause 21, the provisions in the Bill, including the clause 22, may be enforced by the Commissioner (including her delegates) and authorized officers. The Commissioner may authorize or delegate her function to a suitable person in accordance with the provisions in clause 6 of the Bill. The Commissioner will take note of Members' view regarding the enforcement of clause 22(1) and consult relevant law enforcement agents in considering the relevant authorization and delegation.

(h) *Drafting of clause 22(1)*

24. Paragraph (h) of the List refers to the request for the Administration to explain the need for the phrase "[W]ithout limiting any other law" in clause 22(1) of the Bill.

25. We note and agree with Members that the same purpose can be achieved without the express reference to "[W]ithout limiting any other law" in clause 22(1) of the Bill. The Administration will move a committee-stage amendment to clause 22(1) to delete that reference. The details of the Administration's proposed committee-stage amendment are set out in a

separate paper.

(i) ***Obstruction to an authorized officer in the performance of a function or pretending to be an authorized officer***

26. Paragraph (i) of the List refers to the request for the Administration to provide examples of other pieces of legislation under which the obstruction of an authorized officer in the performance of a function or pretending to be an authorized officer will constitute a criminal offence. From the discussion at the seventh Bills Committee meeting held on 1 March 2016, we understand that Members were concerned about the case of authorized officers **not** being a public officer.

27. It is not uncommon for existing legislation to impose criminal sanctions on a person who obstructs an authorized officer who may not be a public officer in the performance of a function or pretends to be an authorized officer who may not necessarily be a public officer. Some examples of such legislation are at **Annex B**.

(j) ***Pass holder considered as being “unfit” to have access to the restricted area concerned***

28. Paragraph (j) of the List refers to the request for the Administration to provide examples of specific circumstances that a pass holder will be considered as being “unfit” to have access to the restricted area concerned.

29. A person may, on operational or security grounds, be considered as “unfit” to have access to a restricted area. For example, if a person working in the restricted area has repeatedly and intentionally irritate cruise passengers within the restricted area, he may be considered as being “unfit” to have access to a restricted area on operational ground. If it is discovered that a person either intends to cause or inadvertently repeatedly causes damage to the security system within the restricted areas, or has all the intention to expose the restricted area to security threats, he would reasonably be considered as being “unfit” to have access to a restricted area on security ground.

ADVICE SOUGHT

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

*Tourism Commission
Commerce and Economic Development Bureau
March 2016*

**Comparison of the Wordings under
Clause 20(1)(a), (b) and (d) of the KTCT Bill
with those in the Shipping and Port Control (Ferry Terminals)
Regulations (Cap. 313H)
and the Summary Offences Ordinance (Cap. 228)**

KTCT Bill		Cap. 313H	
<i>clause</i> 20(1)(a)	throw, deposit, leave or drop litter, paper or rubbish (other than in a bin or container provided for the purpose);	<i>reg.</i> 32(1)(a)	throw, deposit, leave or drop litter, paper or rubbish, save in bins or containers provided for the purpose;
<i>clause</i> 20(1)(b)	throw, deposit, leave or drop anything capable of causing injury to a person or damage to property;	<i>reg.</i> 32(1)(b)	throw, deposit, leave or drop anything capable of causing injury to person or damage to property;

KTCT Bill		Cap. 228	
<i>clause</i> 20(1)(d)	without reasonable excuse, set out or leave anything which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, another person or any vehicle or vessel;	<i>section</i> 4A	Any person who without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place shall be liable to a fine of \$5000 or to imprisonment for 3 months.

**Examples of Existing Legislation which Imposes Criminal Sanctions
on the Person who Obstructs an Authorized Officer
in the Performance of a Function or Pretend
to be an Authorized Officer**

(a) Airport Authority Bylaw (Cap. 483A)

Section 18 of Airport Authority Bylaw (Cap. 483A) stipulates that “No person shall, without lawful authority or reasonable excuse (a) wilfully **obstruct or interfere** with (i) the proper use of the Airport; or (ii) any Authorized Officer or Authorized Person in the execution of his duty or in the exercise of any powers conferred on him by this Bylaw; or (b) place any article or thing in any part of the Bylaw Area in such a way that may cause obstruction or restriction to movement of persons or vehicles.”

Authorized Person is defined in section 2 of Cap. 483A meaning a person appointed pursuant to section 59(1) of Cap. 483A (i.e. a person or a person of such class or description appointed by the Board, whether or not an employee of the Authority, to exercise all or any of the powers exercisable by an Authorized Person under Cap. 483A, including but without limitation the power under section 35(2)(f) of Cap. 483).

**(b) Hong Kong Examinations and Assessment Authority Ordinance
(Cap. 261)**

Section 16 of Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) stipulates that “Any person who, by any act or omission and whether or not with intent to procure any advantage or reward, falsely **pretends** that he is an employee, servant, agent or member of the Authority or aids, abets, counsels or procures any person to so pretend, commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.”

(c) Western Harbour Crossing Bylaw (Cap. 436D)

Section 23 of Western Harbour Crossing Bylaw (Cap. 436D) stipulates that “No person shall**obstruct or interfere** with any employee or agent of the Company in the execution of his duty;.....”.