

Kai Tak Cruise Terminal Bill

Draft Committee Stage Amendments Proposed by the Administration

PURPOSE

This paper sets out the draft Committee Stage amendments (CSAs) to the Kai Tak Cruise Terminal Bill (the Bill) proposed by the Administration for Members' reference.

BRIEF DESCRIPTIONS OF THE DRAFT CSA

2. The Administration has carefully considered the views and suggestions of Members at previous Bills Committee meetings, as well as the comments provided by the Legislative Council Secretariat Legal Service Division (LSD), and now proposes moving some CSAs to the Bill. Brief descriptions of the proposed CSAs are set out in the table below. Draft CSAs in conventional form and in mark-up form are at **Annex I** and **Annex II** respectively.

<i>Item no.</i>	<i>Clause(s) of the Bill to be amended/ added</i>	<i>Brief description of the proposed amendment(s)</i>
(1)	to be amended: 2 to be added: 22A	<p>In the light of Members' suggestions to improve the drafting of the definition of "cruise ship" under the Bill, we propose moving amendments to clause 2 to refine its drafting.</p> <p>In addition, having considered the views of LSD, we propose moving amendments to add a new provision (clause 22A) to expressly empower the Commissioner for Tourism ("the Commissioner") to approve a vessel to be a cruise ship.</p>
(2)	to be amended: 7, 8 & 19	Members suggested at the Bills Committee meetings that the powers to order a person to leave the Terminal Area, to prohibit access, to give directions or orders and to exhibit notices or signs in clauses 7, 8 and 19 should be exercised only on certain prescribed grounds.

<i>Item no.</i>	<i>Clause(s) of the Bill to be amended/ added</i>	<i>Brief description of the proposed amendment(s)</i>
		<p>In the light of Members’ suggestions and having considered the main policy objectives of the Bill, we propose moving amendments to clauses 7, 8 and 19 to qualify that the powers may be exercised when they are necessary for the operation, safety or security of the Terminal.</p>
(3)	to be amended: 16	<p>At the previous Bills Committee meetings, Members expressed concerns that the prohibited acts under clause 16(1) were too stringent, particularly when the Terminal Area also covers the ancillary commercial areas of the Kai Tak Cruise Terminal.</p> <p>While maintaining that the prohibitions in clause 16(1) are essential in upholding the smooth operation of the cruise terminal, we appreciate Members’ concern and would like to take it on board by revising the specific details of the prohibitions, such that only when a person fails to comply with the order or notice to prohibit the conduct of certain activities would he or she be considered as having committed an offence.</p> <p>We propose moving amendments to clause 16 along the above direction.</p>
(4)	to be amended: 17(2) & 17(3)	<p>Members suggested at previous Bills Committee meetings that the term “opinion” in clause 17(2) and (3) should be qualified by the term “reasonable”.</p> <p>We have explained at previous Bills Committee meetings that the Commissioner and an authorized officer should exercise the discretion reasonably, in good faith and on proper grounds in accordance with general administrative law principles notwithstanding that the term “reasonable” is not expressly included in clause 17(2) and (3).</p>

Item no.	Clause(s) of the Bill to be amended/ added	Brief description of the proposed amendment(s)
		That said, we note and appreciate Members' suggestion, and agreed that we can move amendments to include the term "reasonable" in clause 17(2) and (3).
(5)	to be amended: 18(2) <i>[English version only]</i>	<p>Members and LSD suggested refining the drafting of the English version of clause 18(2) in which the word "except" appeared twice, which might potentially cause ambiguity and confusion.</p> <p>We propose making a textual amendment to the English version of clause 18(2) to address the concern.</p>
(6)	to be amended: 20(1)(e)	<p>Members suggested at previous Bills Committee meetings that we should elaborate on the scope of the prohibition of "loitering" under clause 20(1)(e).</p> <p>In view of Members' suggestions, we propose moving amendment to revise the clause to read "loiter in the Terminal Area with intent to commit an arrestable offence".</p>
(7)	to be amended: 21(2)	<p>Members pointed out at previous Bills Committee meetings that the term "as soon as practicable" in clause 21(2) was not clear and consideration should be given to replace it with the term "forthwith" as in the case of similar provisions in other pieces of legislation (e.g. Cap. 313H).</p> <p>We have explained that given the wide coverage of the Terminal Area, some of which were at the sea, we considered that there might be occasions on which there would be practical difficulties for the Commissioner or an authorized officer to take the person being detained to a police station or deliver him into the custody of a police officer forthwith.</p> <p>Having considered Members' views and the actual</p>

<i>Item no.</i>	<i>Clause(s) of the Bill to be amended/ added</i>	<i>Brief description of the proposed amendment(s)</i>
		<p>circumstances in the Kai Tak Cruise Terminal, we propose moving amendments to replace the term “as soon as practicable” with “to the extent practicable, forthwith”.</p>
(8)	to be amended: 21(4)	<p>In the course of considering the drafting of clause 21(4) at the previous Bills Committee meetings, we have the opportunity to review the clause thoroughly and considered that the power to remove a person could be exercised such that the person may be removed from the Terminal Area <u>or a restricted area</u> as the case may be. For instance, if a person fails to comply with an order to leave a restricted area (i.e. having committed an offence under clause 12), he or she may be removed from the restricted area, while being allowed to remain in other parts of the Terminal Area.</p> <p>In the light of the above, we propose moving amendments to better reflect our policy intention.</p>
(9)	to be amended: 22(1)	<p>At the Bills Committee meeting on 1 March 2016, Members enquired whether the phrase “[W]ithout limiting any other law” was indeed essential.</p> <p>We have reviewed the drafting of clause 22(1) and agree that the phrase “[W]ithout limiting any other law” could be removed. We therefore propose moving amendment to clause 22(1) accordingly.</p>

ADVISE SOUGHT

3. Members are invited to note the draft CSAs for reference.

Tourism Commission

Commerce and Economic Development Bureau

March 2016

Kai Tak Cruise Terminal Bill

Committee Stage

Amendments to be moved by
the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the definition of <i>cruise ship</i>, by deleting everything after “means” and substituting—</p> <p>“—</p> <p>(a) a vessel—</p> <p>(i) carrying or intended to be used to carry passengers exclusively for sightseeing or pleasure purposes; and</p> <p>(ii) plying, along a predetermined route, on any voyage—</p> <p>(A) from a port outside Hong Kong to the same or another port outside Hong Kong, during the course of which Hong Kong is an intermediate port of call; or</p> <p>(B) which begins, ends or begins and ends within the waters of Hong Kong, whether or not the vessel calls at any port outside Hong Kong during its course; or</p> <p>(b) a vessel approved as such under section 22A;”.</p>
7	<p>By deleting the heading and substituting “Access by persons to and from Terminal Area and order to leave”.</p>
7	<p>By deleting subclause (2) and substituting—</p> <p>“(2) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may order a person to leave the Terminal Area, or any part of it.”.</p>

- 7(3) By deleting “The Commissioner or an authorized” and substituting “If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or”.
- 7(4) By deleting “or (2)”.
- 7(5) By adding “an order given under subsection (2) or” after “comply with”.
- 8 By deleting subclause (4) and substituting—
- “(4) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may—
- (a) give a direction or an order to the driver of a vehicle or the owner or master of a vessel (including an order requiring the vehicle or vessel to leave the Terminal Area, or any part of it); or
- (b) exhibit a notice or sign in a conspicuous place within or near the Terminal Area for vehicles or vessels.”.
- 8(6) By deleting “, (2) or (4)” and substituting “or (2)”.
- 8 By adding—
- “(7) If the driver of a vehicle or the owner or master of a vessel, without reasonable excuse, fails to comply with a direction or an order given, or a notice or sign exhibited, under subsection (4) while the vehicle or vessel is within, entering or leaving the Terminal Area, the driver, owner or master commits an offence and is liable on conviction to a fine at level 1.”.

- 16 By deleting subclause (1) and substituting—
- “(1) The Commissioner or an authorized officer may give an order, or exhibit a notice in a conspicuous place within the Terminal Area, to prohibit any person from doing any of the following within the Terminal Area—
- (a) selling anything;
 - (b) offering anything for sale, or offering any service;
 - (c) displaying or exhibiting any material for the purpose of advertisement or publicity (except where it is displayed or exhibited inside, or on the body of, a vehicle);
 - (d) distributing any material;
 - (e) making any public announcement—
 - (i) by radio or television; or
 - (ii) by video or cinematographic film.”.
- 16(2) By deleting “Subsection (1)” and substituting “The prohibition under subsection (1)”.
- 16(3) By deleting “Subsection (1)” and substituting “The prohibition under subsection (1)”.
- 16(4) By deleting “contravenes” and substituting “fails to comply with an order given, or a notice exhibited, under”.
- 17(2) By adding “reasonable” after “his or her”.
- 17(3) By adding “reasonable” after “his or her”.
- 18(2) In the English text, by deleting “Terminal Area except” and substituting “Terminal Area unless the activation is”.
- 19 By deleting the clause and substituting—
- “19. Compliance with direction, notice, etc.**

- (1) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may give a reasonable direction or order to any person.
- (2) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may exhibit a notice or sign in a conspicuous place within the Terminal Area.
- (3) If a person, without reasonable excuse, fails to comply with a direction or an order given under subsection (1), or a notice or sign exhibited under subsection (2), while the person is within the Terminal Area, the person commits an offence and is liable on conviction to a fine at level 1.”.

20(1)(e) By deleting “without reasonable cause” and substituting “with intent to commit an arrestable offence”.

21(2) By deleting “as soon as practicable” and substituting “to the extent practicable, forthwith”.

21(4) By adding “or a restricted area” after “Terminal Area”.

22(1) By deleting “Without limiting any other law, a” and substituting “A”.

New By adding—

“22A. Commissioner may approve vessels as cruise ships

For the purposes of the definition of *cruise ship* in section 2, the Commissioner may approve a vessel not falling within paragraph (a) of that definition as a cruise ship.”.

Schedule 2 In the Chinese text, in section 4(1)(e), by deleting “ ° ” and substituting “ , ”.

Kai Tak Cruise Terminal Bill

Committee Stage

Proposed amendments to be moved by
the Secretary for Commerce and Economic Development

Definition of cruise ships to include other vessels

2. Interpretation

In this Ordinance—

...

cruise ship (郵輪) means—

~~(a) any~~ vessel—

~~(a)~~ carrying or intended to be used to carry passengers exclusively for sightseeing or pleasure purposes; and

~~(b)~~ plying, along a predetermined route, on any voyage—

~~(i)~~ from a port outside Hong Kong to the same or another port outside Hong Kong, during the course of which Hong Kong is an intermediate port of call; or

~~(ii)~~ which begins, ends or begins and ends within the waters of Hong Kong, whether or not the vessel calls at any port outside Hong Kong during its course; ~~;~~ or

(b) a vessel approved as such under section 22A;

~~and includes any other vessel approved by the Commissioner for the purposes of this Ordinance;~~

22A. Commissioner may approve vessels as cruise ships

For the purposes of the definition of *cruise ship* in section 2, the Commissioner may approve a vessel not falling within paragraph (a) of that definition as a cruise ship.

Controls on “operation, safety and security” grounds

7. Access by persons to and from ~~and remaining in~~ Terminal Area and order to leave by persons

(1) A person must not enter or leave the Terminal Area except—

(a) by an entrance or exit of the Terminal Area specified by the Commissioner or an authorized officer; or

(b) by means of a vessel.

(2) ~~A person must not remain in the Terminal Area, or any part of it, after being ordered to leave the Terminal Area, or that part of it, by~~ If the Commissioner or an authorized officer considers it necessary for the operation, safety or security

of the Terminal, the Commissioner or officer may order a person to leave the Terminal Area, or any part of it.

- (3) ~~If~~ If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may, by notice or sign exhibited in a conspicuous place within or near the Terminal Area, prohibit access by any person or class of persons to the Terminal Area, or any part of it.
- (4) A person who, without reasonable excuse, contravenes subsection (1) ~~or (2)~~ commits an offence and is liable on conviction to a fine at level 1.
- (5) A person who, without reasonable excuse, fails to comply with an order given under subsection (2) or a notice or sign exhibited under subsection (3) commits an offence and is liable on conviction to a fine at level 1.

8. Vehicles and vessels within, entering, leaving Terminal Area etc.

- (1) A person must not drive a vehicle into or out of the Terminal Area except by an entrance or exit of the Terminal Area specified by the Commissioner or an authorized officer.
- (2) Except with the permission of the Commissioner or an authorized officer, a person must not—
 - (a) navigate a vessel into, within or out of the Terminal Area; or
 - (b) cause an object to float on, or be in, the sea within the Terminal Area.
- (3) Subsection (2) does not apply in relation to—
 - (a) the navigation of a vessel that is used by a person acting in his or her capacity as a public officer;
 - (b) the navigation of a vessel that is scheduled to be berthed or anchored within the Terminal Area; or
 - (c) the use of a life-saving appliance in an emergency.
- (4) ~~While a vehicle or vessel is within, entering or leaving the Terminal Area, the driver of the vehicle or the owner or master of the vessel must comply with~~ If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may —
 - (a) give a direction or an order to the driver of a vehicle or the owner or master of a vessel given by the Commissioner or an authorized officer (including an order requiring directing the vehicle or vessel to leave the Terminal Area, or any part of it); ~~and/or~~
 - (b) exhibit a notice or sign ~~exhibited~~ in a conspicuous place within or near the Terminal Area for vehicles or vessels by the Commissioner or an authorized officer.
- (5) Without limiting subsection (4)(b), the Commissioner or an authorized officer may exhibit a notice or sign under that subsection to prohibit access by—
 - (a) any vehicle or class of vehicles; or
 - (b) any vessel or class of vessels, to the Terminal Area, or any part of it.
- (6) A person who, without reasonable excuse, contravenes subsection (1), or (2) ~~or (4)~~ commits an offence and is liable on conviction to a fine at level 1.

(7) If the driver of a vehicle or the owner or master of a vessel, without reasonable excuse, fails to comply with a direction or an order given, or a notice or sign exhibited, under subsection (4) while the vehicle or vessel is within, entering or leaving the Terminal Area, the driver, owner or master commits an offence and is liable on conviction to a fine at level 1.

19. Compliance with direction, notice, etc.

~~(1) A person, while within the Terminal Area, must comply with—~~

~~(a) a reasonable direction or order given by the Commissioner or an authorized officer; or~~

~~(b) a notice or sign exhibited by the Commissioner or an authorized officer.~~

~~(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.~~

(1) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may give a reasonable direction or order to any person.

(2) If the Commissioner or an authorized officer considers it necessary for the operation, safety or security of the Terminal, the Commissioner or officer may exhibit a notice or sign in a conspicuous place within the Terminal Area.

(3) If a person, without reasonable excuse, fails to comply with a direction or an order given under subsection (1), or a notice or sign exhibited under subsection (2), while the person is within the Terminal Area, the person commits an offence and is liable on conviction to a fine at level 1.

Control on business activities and advertising

16. Business activities and advertising

~~(1) Except with the permission of the Commissioner or an authorized officer, a person must not, may give an order, or exhibit a notice in a conspicuous place within the Terminal Area, to prohibit any person from doing any of the following within the Terminal Area—~~

~~(a) selling anything;~~

~~(b) offering anything for sale, or offering any service;~~

~~(c) displaying or exhibiting any material for the purpose of advertisement or publicity (except where it is displayed or exhibited inside, or on the body of, a vehicle);~~

~~(d) distributing any material; or—~~

~~(e) making any public announcement—~~

~~(i) by radio or television; or~~

~~(ii) by video or cinematographic film.~~

(2) The prohibition under S subsection (1) does not affect the performance of a function—

(a) by a person acting in his or her capacity as a public officer; or

- (b) by a person who is an employee of the Hong Kong Tourism Board acting in the course of that employment.
- (3) The prohibition under Ssubsection (1) does not apply in relation to anything done on board a vessel.
- (4) A person who, without reasonable excuse, ~~contravenes~~ fails to comply with an order given, or a notice exhibited, under subsection (1) commits an offence and is liable on conviction to a fine at level 1.

Prohibition on causing of danger, nuisance, etc

17. Danger, nuisance, etc.

- (1) A person must not cause any danger, nuisance or annoyance to another person within the Terminal Area.
- (2) The Commissioner or an authorized officer may prohibit a person from entering, or order a person to leave, the Terminal Area, or any part of it, if, in his or her reasonable opinion, the person has caused, is causing or will probably cause disturbance to the operation of the Terminal.
- (3) The Commissioner or an authorized officer may prohibit a person from entering, or order a person to leave, the Terminal Area, or any part of it, if, in his or her reasonable opinion, the person—
- (a) is under the influence of alcohol, medicine or drug; and
- (b) is a probable danger or source of nuisance or annoyance to another person within the Terminal Area.
- (4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.
- (5) A person who, without reasonable excuse, fails to comply with a prohibition or an order imposed on the person under subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 1.
- (6) To avoid doubt, subsection (2) or (3) does not limit section 7(2) or (3).

Interference with equipment

- 18(2) Except with the permission of the Commissioner or an authorized officer or with lawful authority, a person must not activate any emergency or safety device within the Terminal Area ~~except unless the activation is~~ —
- (a) for the purpose for which the device is provided; and
- (b) in accordance with any instructions shown on the device.

Prohibition on “loitering”

20. Other prohibited acts

- (1) A person must not, while within the Terminal Area—
 - (a) throw, deposit, leave or drop litter, paper or rubbish (other than in a bin or container provided for the purpose);
 - (b) throw, deposit, leave or drop anything capable of causing injury to a person or damage to property;
 - (c) open, remove or climb over any wall, fence, railing, barrier, gate or post constructed or erected within the Terminal Area;
 - (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;
 - (e) loiter in the Terminal Area ~~without reasonable cause~~ with intent to commit an arrestable offence;
 - (f) beg;
 - (g) fish; or
 - (h) smoke or carry a lighted cigarette, cigar or pipe.
- (2) Subsection (1) does not apply in relation to anything done on board a vessel.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

Power to detain (amendment to English text only)

21. Enforcement powers

- (4) If the Commissioner or an authorized officer has reasonable grounds for suspecting that a person has committed an offence under this Ordinance, the Commissioner or officer may, without warrant and if necessary by using reasonable force, detain the person.
- (5) If 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 to the extent~~ practicable, forthwith 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.

Power to remove person committing offences relating to performance of functions under this Ordinance

21. Enforcement powers

- (4) If the Commissioner or an authorized officer has reasonable grounds for suspecting that a person has committed an offence under section 7, 12 or 22, the Commissioner or officer may, without warrant and if necessary by using reasonable force, remove the person from the Terminal Area or a restricted area.

Miscellaneous

22. Offences relating to performance of functions under this Ordinance

- (1) ~~Without limiting any other law, A~~ person commits an offence if the person—
- (a) wilfully obstructs the Commissioner or an authorized officer in the performance of a function under this Ordinance; or
 - (b) falsely pretends to be a person acting under the authorization or delegation by the Commissioner under this Ordinance.

Textual

Schedule 2 In the Chinese text, in section 4(1)(e), by deleting “ ° ” and substituting “ , ”.

- ENDS -