

立法會
Legislative Council

LC Paper No. LS5/14-15

**Paper for the House Committee Meeting
on 17 October 2014**

**Legal Service Division Report on
District Cooling Services Bill**

I. SUMMARY

- 1. The Bill** The Bill proposes to provide for matters relating to the district cooling services (DCS) that would be provided by the Government, including the imposition of charges for the services and other related matters.

- 2. Public Consultation** According to the Administration, it has consulted various stakeholders from April to July 2012 on the DCS tariff charging mechanism and relevant arrangements. The stakeholders consulted welcomed the implementation of DCS at the Kai Tak Development and did not raise any objection to the mechanism.

- 3. Consultation with LegCo Panel** According to the Clerk to Panel on Environmental Affairs, the Panel was consulted on the proposal on 17 July 2014. Various concerns were expressed by members.

- 4. Conclusion** A letter has been issued by the Legal Service Division (LSD) to the Administration in respect of certain legal aspects of the Bill. The Administration's reply to the letter is pending. Members may wish to form a Bills Committee to study the Bill in detail. In the meantime, LSD is continuing with the scrutiny of the Bill.

II. REPORT

According to the LegCo Brief (File Ref.: ENB CR 4/2061/08) issued by the Environment Bureau dated 24 September 2014, the date of First Reading of the Bill is 8 October 2014, which is the date scheduled for the first LegCo meeting in the 2014-2015 session. However, Members may note that, on 7 October 2014, the President changed the date of the first LegCo meeting from 8 October 2014 to 15 October 2014 pursuant to Rule 14(3) of the Rules of Procedure of LegCo. As such, the date of the First Reading of the Bill is changed accordingly.

Object of the Bill

2. The Bill proposes to provide for matters relating to district cooling services provided by the Administration, including the imposition of charges for the services and other related matters.

Background

3. According to the LegCo Brief, a district cooling system is an energy-efficient air-conditioning system and an infrastructure facility in support of the sustainable and environmentally friendly development at the Kai Tak Development (KTD). The system will provide cooling services (known as district cooling services (DCS)) to public and private non-domestic developments in KTD. Further, private non-domestic projects in KTD will be required, under relevant provisions prescribed in the conditions of land sale, to construct and maintain district cooling system substations for connection to the cooling system in accordance with the guidelines issued by the Electrical and Mechanical Services Department (EMSD). The Administration proposes to legislate for the provision of DCS and the collection of charges to offset the operating expenses incurred by EMSD.

Key provisions of the Bill

Application to become an approved consumer (clauses 4 to 9)

4. The Bill proposes that an owner or occupier of a building or a person responsible for the management of a building may apply to the Director of Electrical and Mechanical Services (Director) to be an approved consumer of DCS if certain conditions are satisfied. Such conditions include an undertaking given by the applicant to be responsible for the construction,

installation and maintenance of the facilities for the building concerned to receive DCS as specified by the Director and to comply with any condition imposed by the Director relating to the provision of DCS. If the application is successful, the Director may provide DCS to the approved consumer and charge according to the proposed provisions.

5. It is noted that, according to the LegCo Brief, the Administration will "require private non-domestic projects in KTD to connect to the DCS...". However, there is no provision specifying such a requirement in the Bill. As such, the Administration has been requested to clarify the kinds of projects to which the Bill is proposed to be applicable.

DCS charges (clauses 10 to 17)

6. According to the LegCo Brief, an approved consumer would be charged in respect of DCS on a monthly basis in accordance with the proposed tariff¹. The proposed tariff comprises of capacity charge, consumption charge, capacity overrun charge and surcharges for unpaid charges. The respective rates of the capacity charge and consumption charge are proposed to be adjusted annually². The Administration will conduct tariff review at least once every five years. Further, the Director may require an approved consumer to pay a deposit to cover any charge or fee that is or may be payable in respect of the building concerned. In addition, a charge or fee which is proposed to be payable under the Bill is recoverable as a civil debt due to the Government³. Subject to the approval of the Financial Secretary, the parts of the charges and fees which are proposed to be received by the Government under the Bill that are required for the purpose of settling a payment that a person who has entered into an agreement with the Government for the management, operation and maintenance of the district cooling system is entitled to receive under the agreement or settling any other expenses arising from or in connection with the provision of DCS do not form part of the general revenue⁴.

7. It is noted that there is no relevant proposed provision in respect of the five-year tariff review in the Bill. Further, according to the LegCo Brief, the Administration has sought legal advice which indicates that "explicit statutory authority is required for the Government to impose a charge, fee or

¹ Members may refer to the LegCo Brief and the proposed Schedule 2 for further information on the calculation of the charges and components of the tariff.

² The capacity charge rate is proposed to be adjusted based on the Composite Consumer Price Index. The consumption charge rate is proposed to be adjusted to take into account the change in electricity tariff rate.

³ See clause 16 of the Bill.

⁴ See clause 17 of the Bill. According to section 3(1) of the Public Finance Ordinance (Cap.2), any moneys raised or received for the purposes of the Government shall, except otherwise provided by or in Cap. 2 or any other enactment, form part of the general revenue. Further, section 4 of Cap.2 provides that no expenditure shall be charged on the general revenue except as provided by or under Cap.2 or any other enactment.

levy.". The Administration has been requested to provide the legal considerations of not implementing the review through the Bill and the legal authorities of the advice.

Administration of DCS (clauses 18 to 21)

8. The Bill proposes that the Director may issue improvement notice to an approved consumer if the Director is of the opinion that the behaviour of, or an installation of the building by, the approved consumer is jeopardising or will jeopardise the operation or reliability of DCS. Further, a public officer who is authorised by the Director may enter a building for inspection or maintenance in respect of the district cooling system or DCS. The Bill further provides for the offences of obstructing an authorised officer and tampering with a facility maintained for the provision of DCS. A person who commits any of the offences is liable on conviction to a fine at level three, i.e. \$10,000 and to imprisonment for 6 months.

Appeal (clauses 22 to 30)

9. The Bill proposes that, in relation to the provision of DCS, a person who is aggrieved by a specified decision or direction made by the Director may appeal to an appeal board. The Secretary for the Environment is required to appoint an appeal board from a panel consisting of 4 categories of members, including legally qualified persons and engineers, to hear the appeal. The hearing of the appeal must be open to the public unless the appeal board determines that there is a good reason for the hearing to be held in camera.

Commencement

10. The Bill, if passed, will come into operation on the day on which the Bill is published in the Gazette as an Ordinance.

Public Consultation

11. According to the Administration, it has consulted various stakeholders from April to July 2012 on the DCS tariff charging mechanism and relevant arrangements. The parties consulted welcomed the implementation of the DCS and did not raise any objection to the mechanism.

Consultation with LegCo Panel

12. According to the Clerk to Panel on Environmental Affairs, the Panel was consulted on the proposal on 17 July 2014. On the charging arrangements, members were concerned that the building owners/building management offices might set the air-conditioning charges of their buildings well above the tariff collected by the Administration. As the use of the district cooling system by private non-domestic developments in Kai Tak was not mandatory, there were concerns that if the subscription rate of the cooling service was low, the Administration might not be able to achieve full cost recovery within the project life of the cooling system and the running cost would be shouldered by a few cooling system users. Some members also doubted the need for legislation to provide the legal backing for the collection of charges for using the DCS, rather than prescribing the charging arrangements in the conditions of land sale.

Conclusion

13. In the light of the concerns raised by the Panel, Members may wish to form a Bills Committee to study the Bill in detail. A letter has been issued to the Administration in respect of the enquiries mentioned in paragraphs 5 and 7 and above. We are still awaiting the Administration's reply. In the meantime, the LSD is continuing with the scrutiny of the Bill.

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