

立法會
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**Paper for the House Committee Meeting
on 9 October 2015**

**Legal Service Division Report on
Kai Tak Cruise Terminal Bill**

I. SUMMARY

- 1. The Bill**

The Bill seeks to provide for the designation of the Kai Tak Cruise Terminal (the Terminal) and for its use, operation, management and control. The Bill specifically proposes that the Terminal may be operated and managed on a commercial basis and that the charging of fees and rents is not limited by cost recovery consideration. The Bill also sets out prohibitions against certain acts, enforcement powers, corresponding offences and penalties.
- 2. Public Consultation**

The Administration has informed relevant advisory committees under the Marine Department (including Local Vessels Advisory Committee, Port Operations Committee and Port Area Security Advisory Committee) about the delineation of the restricted areas in the waters around the Terminal. The Administration has not received any adverse comments.
- 3. Consultation with LegCo Panel**

As advised by the Clerk to the Panel on Economic Development (the Panel), the Administration consulted the Panel on the legislative proposal for regulating the use of the Terminal at its meeting on 27 October 2014, and provided an information paper to the Panel in May 2015. Members did not raise any specific comments on the proposal.
- 4. Conclusion**

Since the Bill proposes to introduce a new legal framework for the management and control of the Terminal, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 July 2015. Members may refer to the LegCo Brief (File Ref.: TC CR/T4/22/9/2) issued by Commerce and Economic Development Bureau on 2 July 2015 for further details.

Object of the Bill

2. The Bill seeks to provide for the designation of the Kai Tak Cruise Terminal (the Terminal), for its use, operation, management and control, and for related matters.

Background

3. The Terminal has been in operation since June 2013. As a port facility in Hong Kong, the Terminal is generally within the ambits of the Shipping and Port Control Ordinance (Cap. 313)¹ and the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582) and its Rules (Cap. 582A)².

4. According to paragraphs 2 and 3 of the LegCo Brief and further information provided by the Administration, the specific security arrangements (including the designation of restricted areas) at the Terminal are currently governed by the Port Facility Security Plan (the Plan). The Plan is a set of detailed operational guidelines and procedures on the security arrangements within the Terminal. The Plan was prepared by the terminal operator and approved by the Director of Marine under Cap. 582A and the International Ship and Port Facility Security Code and is not subsidiary legislation. According to the Administration, the Plan does not empower the Commissioner for Tourism (the Commissioner) and law enforcement agencies to act against certain misconducts at the Terminal nor does it set out any penalty for such misconducts.

5. According to paragraph 4 of the LegCo Brief, the Administration's original plan to remedy the above situation is to make a piece of subsidiary legislation under Cap. 313. Upon further legal advice on the constraints of regulation-making power under section 80 of Cap. 313 in relation to the fee-charging level³, the Administration considers it necessary to introduce a new

¹ Cap. 313 provides, among others, for the regulation and control of ports and of vessels in Hong Kong. Part II of Cap. 313 regulates the port facilities and section 80 empowers the making of subsidiary legislation for the control over the use of port facilities.

² Cap. 582 implements the December 2002 amendments to the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security Code and related provisions in the Convention to enhance security of ships and port facilities. Section 25 of Cap. 582A requires a Port Facility Security Plan to be developed in respect of a designated port facility in accordance with the International Ship and Port Facility Security Code.

³ For details of the legal advice, please refer to Footnote 1 of the LegCo Brief.

piece of primary legislation for regulating the use, operation, management and control of the Terminal.

Provisions of the Bill

6. The Bill comprises six Parts and three Schedules. Part 1 sets out the short title and the interpretative provisions of the Bill. Part 2 provides for the designation of the Terminal, its use, operation and management. Parts 3 to 5 provide for the control of the Terminal. Part 6 deals with miscellaneous matters and related amendments. The major elements of the Bill are set out below.

Designation of the Terminal and restricted areas

7. The Bill seeks to designate the Terminal Area as a terminal, to be known as the "Kai Tak Cruise Terminal" (Clause 3 and Schedule 1 of the Bill). The Terminal Area will comprise the areas of land (including the terminal building) and water within the boundaries delineated and shown in the Terminal Area plan to be deposited in the Commissioner's office but it will not include the Kai Tak Cruise Terminal Park⁴ on the roof top of the terminal building.

8. The Commissioner may by notice published in the Gazette designate an area of land or water within the Terminal Area as a permanent restricted area or non-permanent restricted area to which entries by persons are restricted. Under Clause 9 of the Bill, such notice is not subsidiary legislation.

9. The plans indicating the proposed boundaries of the Terminal Area and the restricted areas are at Annex B to the LegCo Brief.

Use of the Terminal

10. The Terminal is to be used for the berthing or anchorage of cruise ships; facilitating the embarkation and disembarkation of passengers of cruise ships; carrying out any activity that the Commissioner considers appropriate; and for ancillary purposes (Clause 4 of the Bill).

Operation and management of the Terminal

11. The Commissioner and, subject to the tenancy agreement between the Government and a terminal operator, the operator may operate and manage the Terminal on a commercial basis. The Commissioner or a terminal operator may determine, demand and collect fees or rents for specified purposes, for example, fees for the berthing of cruise ships. The fees and rents to be charged are not limited by reference to the administrative or other costs incurred or likely

⁴ The Park has been set aside for use as a public pleasure ground under section 106 of the Public Health and Municipal Services Ordinance (Cap. 132).

to be incurred, or the recovery of expenditure, in operating and managing the Terminal. Subject to the tenancy agreement between the Government and a terminal operator, any moneys received by the operator in the course of operating and managing the Terminal are not moneys raised or received for the purposes of the Government under the Public Finance Ordinance (Cap. 2) and may be retained by the operator (Clause 5 of the Bill).

Control of the Terminal

12. The Bill seeks to regulate the access to and from the Terminal Area by persons and vehicles. A person is prohibited from entering or remaining in a restricted area unless with a valid pass (Parts 3 and 4 of the Bill). The provisions on the issue, validity and cancellation of passes are set out in Schedule 2 to the Bill.

13. Other general prohibitions in the Terminal Area are set out in Part 5 of the Bill. The prohibited acts include embarkation and disembarkation by passengers while the vessel is in motion or otherwise than by a gangway except with the permission of the Commissioner or an authorized officer; unauthorized business activities and advertising; acts that cause danger or nuisance to others; acts that interfere with the equipment at the Terminal; non-compliance with notices without reasonable excuse; and other misconducts such as littering, loitering, fishing, begging and smoking in the Terminal Area.

14. Under the Bill, non-compliance with the prohibition provisions under Parts 4 and 5 is an offence. The maximum penalties for these proposed offences range from a fine at level 1 (\$2,000) to a fine at level 4 (\$25,000) and imprisonment for 6 months.

Other related matters

15. Part 6 of the Bill provides for miscellaneous matters including the enforcement powers of the Commissioner and authorized officers in relation to the prohibited acts (Clause 21), offences relating to the performance of functions by the Commissioner or authorized officers (Clause 22), amendment of Schedules 1 and 2 by the Commissioner (Clause 23), public inspection of the plans deposited in the Commissioner's office (Clause 24) and the admissibility of the Terminal Area plan or the plan of the restricted areas in legal proceedings. Schedule 3 to the Bill sets out the consequential amendments to three pieces of subsidiary legislation in relation to immigration service.

Commencement

16. The Bill contains no commencement provision. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill would come into operation on the day of gazettal after its enactment.

Public Consultation

17. According to paragraph 18 of the LegCo Brief, the Administration has informed relevant advisory committees under the Marine Department (including Local Vessels Advisory Committee, Port Operations Committee and Port Area Security Advisory Committee) about the delineation of the restricted areas in the waters around the Terminal and the Administration did not receive any adverse comments.

Consultation with LegCo Panel

18. As advised by the Clerk to the Panel on Economic Development (the Panel), the Panel was briefed on the latest development of the Terminal since its commissioning in mid-2013, including the legislative proposal for regulating the use of the Terminal, at its meeting on 27 October 2014. In response to a member's concern about the Administration's delay in enacting the required law for the control of the Terminal, the Administration explained that there was no question of delay on the matter as the terminal operator needed to comply with the security requirements set out in the Plan. However, having regard to the operational experience, the Administration considered that a new piece of primary legislation, instead of subsidiary legislation, would better serve the operation and security needs of the Terminal. In May 2015, the Administration provided an information paper on the progress of the legislative proposal (LC Paper No. CB(4)1033/14-15(01)) which was circulated to Panel members for their information. Members did not raise specific comments on the proposal.

Conclusion

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill proposes to introduce a new legal framework for regulating the use, operation, management and control of the Terminal, Members may wish to form a Bills Committee to study the Bill in detail.

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