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**Report of the Bills Committee on Kai Tak Cruise Terminal Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Kai Tak Cruise Terminal Bill ("the Bills Committee").

**Background**

2. According to the Administration, the Kai Tak Cruise Terminal ("KTCT") has been in operation since June 2013. Around 70% of the area of KTCT has been leased to the terminal operator<sup>1</sup> for operation and management. The remaining areas include open space for the public (e.g. podium garden, public colonnade) overseen by a building management contractor and other Government facilities such as customs, immigration, quarantine, police and detention facilities managed by the relevant government departments. KTCT can also be converted to a venue for non-cruise events, including exhibitions due to the column-free architectural design of its waiting halls and baggage handling areas.

3. Before the enactment of the proposed legislation, the security arrangements within KTCT are governed by the Port Facility Security Plan ("PFSP") which was prepared by the terminal operator and approved by the Government under the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582A) and the International Ship and Port Facility Security Code.

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<sup>1</sup> The Government announced on 8 March 2012 that a 10-year tenancy for operating and managing the new cruise terminal at Kai Tak had been awarded to the Worldwide Cruise Terminals Consortium at a fixed rent of around \$13 million in total, plus a variable rent based on a sliding scale (ranged from 7.3% to 34%) linked to the operator's gross receipts.

Whilst PFSP has enabled a smooth and orderly operation of KTCT, it does not provide any enforcement power against misconducts within KTCT nor does it provide any corresponding penalties. The Administration therefore considers it necessary to introduce the Kai Tak Cruise Terminal Bill ("the Bill") to:

- (a) provide comprehensive legal backing for regulating the use, operation, management and control of KTCT, and to bring the relevant legal framework for regulating the use of KTCT broadly on par with that for other cross-boundary ferry piers in Hong Kong;
- (b) uphold the security and ensure the smooth operation of KTCT by stipulating the penalty and providing enforcement powers against certain offences; and
- (c) expressly confer on the Government and the terminal operator a fee-charging power for the purposes of operating and managing the Terminal Area on a commercial basis and provide that the level of fees charged may exceed the level for cost recovery.

### **The Bill**

4. 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 KTCT, its use, operation and management. Parts 3 to 5 provide for the control of KTCT. Part 6 deals with miscellaneous matters and related amendments. Schedule 1 designates KTCT and delineates the Terminal Area. Schedule 2 deals with the issue of a pass for access to restricted areas. Schedule 3 deals with related amendments.

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

### **The Bills Committee**

6. At the House Committee meeting on 9 October 2015, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon CHAN Kam-lam, the Bills Committee has held eight meetings to discuss the Bill with the Administration.

## **Deliberations of the Bills Committee**

7. The Bills Committee generally supports the implementation of the Bill. The major issues deliberated by the Bills Committee are set out below:

- (a) Need for legislation (paragraphs 8 – 10);
- (b) Designation of KTCT and restricted areas (paragraphs 11 – 14);
- (c) Definition of cruise ship (paragraphs 15 – 18);
- (d) Use of KTCT (paragraphs 19 – 22);
- (e) Operation and management of KTCT (paragraphs 23 – 28);
- (f) Authorization and delegation of powers (paragraphs 29 – 31);
- (g) Control of access (paragraphs 32 – 33);
- (h) General prohibitions (paragraphs 34 – 52); and
- (i) Enforcement powers (paragraphs 53 – 60).

### Need for legislation

8. The Bills Committee has examined the need for providing a regulatory framework to regulate the use, operation, management and control of KTCT. Members have considered whether KTCT can be covered by other existing legislation governing other designated port facilities such as the China Ferry Terminal under the Shipping and Port Control Ordinance (Cap. 313)<sup>2</sup>; and the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582) and its Rules (Cap. 582A)<sup>3</sup>.

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<sup>2</sup> 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.

<sup>3</sup> 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.

9. The Administration has explained that it is the Administration's original plan to make subsidiary legislation under Cap. 313 to provide for a regulatory framework for KTCT. However, in view of the mode of operation of KTCT, the limitation of the regulation making power under Cap. 313 and the ambit of the existing laws, it is not feasible to do so.

10. The Administration has stressed that KTCT is an important infrastructure which supports the development of cruise tourism in Hong Kong. It has permanent customs, immigration, quarantine and police facilities with computers and communications systems containing confidential data, as well as detention facilities for law enforcement purpose. The PFSP which currently governs the security arrangements for KTCT does not empower the Commissioner for Tourism ("the Commissioner") and law enforcement agencies to act against some specific misconducts which may potentially jeopardize the security and smooth operation of KTCT, nor does it set out the corresponding penalty. Furthermore, KTCT is operated by a private terminal operator on a commercial basis under which the fees charged may exceed the cost-recovery level. According to the Government's legal advice, the regulation making powers under Cap. 313 have certain limitations. In particular, the sum of all fees charged under Cap. 313 may not exceed the total costs incurred. As such, there is a need to introduce a separate piece of primary legislation for the abovementioned purposes.

#### Designation of the Terminal Area and restricted areas (clauses 3, 9 and 10)

11. The Bills Committee notes that the Bill seeks to designate the Terminal Area as a terminal, to be known as the "Kai Tak Cruise Terminal". The Terminal Area comprises 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 office of the Commissioner but it will not include the Kai Tak Cruise Terminal Park<sup>4</sup> on the roof top of the terminal building.

12. Under the Bill, there are two types of restricted areas within the Terminal Area, namely permanent restricted area and non-permanent restricted area. Clause 9 of the Bill enables the Commissioner to designate an area within the Terminal Area as a permanent restricted area or non-permanent restricted area. Clause 10 of the Bill empowers the Commissioner to declare that a non-permanent restricted area temporarily ceases to be a restricted area. The Administration has pointed out that permanent restricted areas and non-permanent restricted areas to be designated by the Commissioner under

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<sup>4</sup> 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).

clause 9(1) of the Bill will be the same as the existing restricted areas under PFSP.

13. The Administration has advised that it envisages a need to re-designate the permanent restricted area and non-permanent restricted area within the Terminal Area from time to time, having regard to the operational needs to adjust the internal partitioning of the areas and rooms within the terminal building as well as the passenger flow during cruise operation. Under clause 9 of the Bill, re-designation can be made by publishing a notice in the Gazette, which is not subsidiary legislation. Such arrangement will allow the Administration to re-designate the two types of restricted areas in a timely manner. As regards the arrangements for temporary cessation of the "restricted area status" of non-permanent restricted area under clause 10(1) of the Bill, the Administration has advised that given the cessation is temporary in nature for the organizing of non-cruise events, a general notice exhibited in a conspicuous place is the appropriate way to declare the cessation during the specified period.

14. To avoid confusion, the Bills Committee has called on the Administration to duly inform users of KTCT of the changes in the boundaries of the permanent and non-permanent restricted areas, as well as the temporary cessation of non-permanent restricted areas.

#### Definition of cruise ship (clause 2)

15. Under clause 2 of the Bill, "cruise ship" is defined to mean 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,

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

16. The Bills Committee has expressed great concern on the definition of "cruise ship" which is defined to include, among others, "any other vessel approved by the Commissioner for the purposes of this Ordinance". In this connection, the Bills Committee has also noted the Legal Adviser to the Bills Committee's view that there is no express provision in the Bill empowering the Commissioner to approve vessels for this purpose.

17. The Administration has advised that KTCT is expected to receive mainly cruise ships as described in subparagraphs (a) and (b) of the definition of "cruise ship". However, there are occasions on which the Commissioner may consider appropriate to approve the berthing of "any other vessel", such as a floating library, at KTCT. The Administration stresses that the definition of "cruise ship" would enable KTCT to focus on the berthing of cruise ships, while at the same time, allow flexibility for hosting non-cruise events involving berthing of other vessels there. Depending on the development of the cruise tourism industry, there may also be vessels using KTCT that will include other entertainment or functional elements for passengers other than just for sightseeing or pleasure purposes in the future. As such, there is a need for the definition of "cruise ship" to include other vessels approved by the Commissioner to cater for the need of these circumstances.

18. To allay members' concerns, the Administration has agreed to move Committee stage amendments ("CSAs") to amend clause 2 of the Bill to refine its drafting and to add a new provision (clause 22A) to expressly empower the Commissioner to approve a vessel to be a cruise ship under the definition of "cruise ship" in clause 2 of the Bill, and to refine the drafting of the definition.

#### Use of KTCT (clause 4)

19. The use of KTCT is provided in clause 4 of the Bill which includes:

- (a) berthing or anchorage of cruise ships;
- (b) facilitating the embarkation and disembarkation of passengers of cruise ships;
- (c) carrying out any activity that the Commissioner considers appropriate; and
- (d) for ancillary purposes.

20. The Bills Committee has examined each of the uses of KTCT. It notes the concern of Mr James TO about the broad power granted to the Commissioner under clause 4(c) of the Bill. For the avoidance of doubt, he has requested the Administration to consider moving an amendment to clarify whether the Commissioner's power under clause 4(c) of the Bill is subject to limits or restrictions under other legislation such as section 13 of the Town Planning Ordinance (Cap. 131) which provides that "[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".

21. The Administration has explained that the main purpose of KTCT is for the berthing of cruise ships. Under clause 4(c) of the Bill, KTCT may be used to hold non-cruise events approved by the Commissioner. Such activities include MICE (meetings, incentives, conferences and exhibitions) events, car shows, brand promotion activities, product launches, christening of ships as well as film shootings. These activities typically take place at the time when the relevant venues at KTCT are not occupied by cruise berthing operations, and priority will be given to receiving cruise ships over holding non-cruise events.

22. The Administration has pointed out that the Commissioner, in exercising the power under clause 4(c) of the Bill, will need to observe all prevailing legislation applicable to KTCT in approving the uses of KTCT. By virtue of clause 26 of the Bill, the provisions in the Bill would not restrict, derogate from or otherwise interfere with a function under any law of a person in the service of the Government or the person's performance of the function. The Administration does not see a need to highlight the duty to observe the requirements under section 13 of Cap. 131 (or any particular legislation) through an express provision in the Bill. 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 under any statutory provision other than section 13 of Cap. 131. It may also cause confusion as to whether the Commissioner's powers conferred by other clauses of the Bill would also be subject to the limitations or restrictions of the prevailing legislation applicable to KTCT.

### Operation and management of KTCT

#### *Commercial basis (clause 5)*

23. The Bills Committee notes that clause 5 of the Bill empowers the Commissioner and the terminal operator to operate and manage KTCT on a commercial basis, including by charging fees and rents. It has enquired the legal meaning of "commercial basis" and whether the term "prudent commercial

principles" in section 6 of the Airport Authority Ordinance (Cap. 483) should be used in the Bill instead of the term "commercial basis". Views have also been expressed as to whether a mechanism has been set up to monitor the level of berthing fees charged by the terminal operator. To facilitate members' consideration, the Bills Committee has requested the Administration to provide a copy of the tenancy agreement of KTCT.

24. The Administration has advised that the meaning of operating KTCT on a "commercial basis" means making or intended to make a profit or having profit rather than other value as a primary aim. This is further elaborated in clause 5(4) of the Bill which stipulates that the terminal operator or the Commissioner may charge fees not limited by reference to the administrative or other costs incurred or likely to be incurred in operating and managing KTCT or the recovery of expenditure in operating and managing KTCT. Nevertheless, bidders for operating KTCT have been required to propose a ceiling on the berthing fees to be charged during the tender exercise. Thus, the successful bidder, i.e. the current terminal operator, can only charge berthing fees that are within such prescribed ceiling as agreed by the Government.

25. The Administration considers that the requirement regarding prudent commercial principles under legislation which governs statutory bodies/corporations seeks to impose restrictions on how they should conduct their businesses. Unlike those pieces of legislation, the Bill seeks to empower the Commissioner and the private terminal operator who may operate and manage KTCT on a commercial basis. Provided that the terminal operator, which is a private commercial entity, can comply with the requirements under the tenancy agreement, the Administration does not see a need to regulate its business decision under the Bill.

26. On the provision of the tenancy agreement of KTCT, the Administration has advised that it cannot unilaterally disclose the content of the agreement but it will ensure that the provisions of the tenancy agreement and the Bill are compatible. As an alternative to facilitate members' understanding, the Administration has provided a copy of the sample tenancy agreement which was available to the public when the Administration invited open tender for the terminal operator in 2011.

*Relationship among the Government, the Commissioner and the terminal operator*

27. The Bills Committee has examined the relationship among the Government, the Commissioner and the terminal operator in terms of the ultimate control, operation and management of KTCT, as well as whether the



Commissioner is given the statutory power to negotiate and enter into a tenancy agreement with the terminal operator on behalf of the Government.

28. The Administration has explained that under the current tenancy agreement, the Government is the "landlord" and the terminal operator is the "tenant" of a major part of KTCT for cruise operation and ancillary purposes. The Government also monitors the operation of KTCT. The Commissioner has the delegated authority from the Chief Executive of the Hong Kong Special Administrative Region to carry out the management, use and development of the land at the KTCT site. Such delegation was published in the Gazette on 10 March 2011 as Government Notice 1823 of 2011. With the delegation, the Commissioner has entered into a tenancy agreement with the terminal operator for the operation and management of KTCT on behalf of the Government as the Landlord.

#### Authorization and delegation of powers (clause 6)

29. Under clause 6 of the Bill, the Commissioner may, in writing, delegate certain functions to a terminal operator or a property manager who in turn may sub-delegate that function to the delegate's employee. Some members are concerned about the appropriateness of the delegation and the sub-delegation, and the power granted to non-public officers in carrying out the functions.

30. The Administration has advised that in delegating the functions under the Bill, the Commissioner will set out appropriate conditions for the delegation to the terminal operator or property manager, as well as that for the sub-delegation of the delegated functions by these two parties to their employees. Such conditions will include the rank of employees to whom sub-delegation should be made, and the requirements to ensure that the sub-delegated employees will clearly understand the relevant conditions.

31. The Administration has stated its policy intention that only those functions that are absolutely necessary for the terminal operator and the property manager to carry out their duties in ensuring the smooth and safe operation of KTCT will be delegated to them. It has no intention to delegate the power to order a person to leave, as well as other enforcement power to frontline staff of the terminal operator and the property manager. The Commissioner may only delegate such power to the employees of the terminal operator and property manager at supervisory or managerial level. Upon the request from members, the Administration has provided a list setting out its intended delegation of functions to the terminal operator and property manager under the Bill at **Appendix II**.

### Control of access (clauses 7 and 8)

32. Clauses 7 and 8 of the Bill regulate the access to and from the Terminal Area by any person and by any vehicle or vessel respectively. These clauses also empower the Commissioner and authorized officers to order any person, vehicle or vessel to leave the Terminal Area. The Bills Committee is concerned that the present drafting of clause 7(2) of the Bill will empower the Commissioner or an authorized officer to order a person who remains in the Terminal Area to leave without giving any reasons. The Bills Committee is of the view that the power to order a person to leave should only be exercised on reasonable and justifiable grounds.

33. The Administration considers it necessary to empower the Commissioner or an authorized officer to order a person to leave the Terminal Area, or any part of it, for maintaining the smooth operation and upholding the security of KTCT, particularly for forestalling potential terrorist attack. Noting the concerns expressed by members, the Administration has agreed to move certain CSAs to clauses 7 and 8 of the Bill to qualify that the power conferred on the Commissioner may only be exercised when it is necessary for the operation, safety or security of KTCT.

### General prohibitions (clauses 15 to 20)

#### *Potential overlap in the scope of prohibited acts*

34. The Bills Committee notes that general prohibitions in the Terminal Area are set out in Part 5 of the Bill. The Bills Committee has examined whether there is any potential overlap in the scope of prohibited acts as set out under clause 16 (business activities and advertising), clause 17 (danger, nuisance, etc.) and clause 20 (other prohibited acts) of the Bill.

35. The Administration has advised that its 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. The Administration has therefore modeled on the relevant provisions in the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H) which regulates other cross-boundary ferry terminals in Hong Kong in the drafting of clauses 16, 17 and 20 of the Bill. The Administration has considered carefully and come to the view that the prohibitions in clauses 16, 17 and 20 of the Bill are all essential in upholding the smooth operation, safety and security of KTCT. It recognizes the possibility that more than one of these three clauses may apply to a specific case. For instance, the act of offering anything for sale, as prohibited under clause 16(1)(a) of the Bill, may, depending on the facts and

circumstances of the case, also cause nuisance or annoyance to another person within the Terminal Area, as prohibited under clause 17 of the Bill. That said, none of the prohibited acts is entirely the same with another, and all the prohibitions in clauses 16, 17 and 20 of the Bill are essential in upholding the smooth operation, safety and security of KTCT.

36. The Bills Committee has also enquired about the need of clause 19(1) of the Bill which requires a person, while within the Terminal Area, must comply with a reasonable direction/order given, or a notice/sign exhibited by the Commissioner or an authorized officer while specific offences are already provided for in other provisions such as clause 7(3) of the Bill which regulates access to and from and remaining in the Terminal Area by a person.

37. The Administration has explained that clause 19 of the Bill refers to any general directions/orders and notices/signs while clauses 7(3) and 8(4) of the Bill are confined to those relating to the access of person, vehicle and vessel to the Terminal Area only. The scope of clause 19 of the Bill is wider to suit the actual operational needs. For instance, for operational reasons, the employees of the terminal operator (as the Commissioner's delegates) may give a direction to prohibit visitors from bringing certain objects to the Terminal Area during the periods with non-cruise events. Clause 19 of the Bill therefore provides that all visitors within the Terminal Area must comply with such direction.

38. To allay members' concerns on the extent of power of the Commissioner, the Administration agrees to move CSAs to clause 19 of the Bill to qualify that the power conferred on the Commissioner may only be exercised when it is necessary for the operation, safety or security of KTCT.

#### *Drafting of clause 20(1)*

39. The Bills Committee is also concerned about the drafting in relation to some prohibited acts under clause 20(1) of the Bill which are of the same nature or difficult to comprehend. Examples include references to "litter, paper or rubbish" in clause 20(1)(a) of the Bill, "drop anything capable of causing injury to a person or damage to property" in clause 20(1)(b) of the Bill, "leave anything which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, another person or any vehicle or vessel" in clause 20(1)(d) of the Bill. Mr Paul TSE has also pointed out that general prohibitions on conduct are normally provided in subsidiary legislation rather than primary legislation to allow greater flexibility in any changes in future.

40. Regarding the drafting of clause 20(1) of the Bill, the Administration has advised that it has made reference to Cap. 313H. In view of the large areas covered by KTCT, the Administration has also suitably made reference to the legal frameworks for regulating the use of other important infrastructures, such as the Hong Kong International Airport and major tunnels, as well as the Summary Offences Ordinance (Cap. 228) in drafting the prohibitions under the Bill. The wordings of the prohibitions covered by clause 20(1)(a) and (b) of the Bill are basically the same as those under regulation 32(1)(a) and (b) of Cap. 313H; while the wordings of clause 20(1)(d) of the Bill are modelled on section 4A of Cap. 228.

41. Having regard to members' concern, the Administration has reviewed and agreed to move a CSA to delete the word "paper" in clause 20(1)(a) of the Bill and such deletion will not compromise the efficiency in maintaining the smooth operation and upholding the safety and security of KTCT.

*Business and advertising activities (clause 16)*

42. Clause 16 of the Bill prohibits certain business and advertising activities within KTCT. The Bills Committee is generally of the view that the scope of prohibitions under clause 16 of the Bill should be more specific, and that the prohibited acts covered therein should not be too stringent, particularly when the Terminal Area also covers the ancillary commercial areas of KTCT. Mr James TO is of the view that the Bill should specify clearly that the Commissioner and the authorized officers should act reasonably in exercising their powers. Regarding the prohibition on certain business and advertising activities within the Terminal Area under clause 16(1) of the Bill, there is a need to narrow down the scope of prohibitions against certain activities such as the reference to "sell anything". Mr To's view is to ensure that the daily business activities of the commercial sub-tenants and usual activities of the general public, such as sharing of goods between individuals for personal consumption in KTCT will not be inadvertently caught by the clause.

43. The Administration has advised that eateries, retail counters, money exchange shop, etc. within the Terminal Area of KTCT may need to conduct the business and advertising activities which fall under clause 16 of the Bill. The Administration's original intention was that the Commissioner would assess the actual circumstances and give permissions to these commercial sub-tenants so that their businesses would not be affected by clause 16 of the Bill. In the light of members' concerns and suggestions, the Administration will propose amendments to clause 16 of the Bill along the direction that 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 conducting certain activities and only when a person fails to comply with such order or notice would he or she be considered as having committed an offence.

*Handling of person causing danger, nuisance, etc. (clause 17)*

44. Clause 17 of the Bill creates offences relating to acts causing danger, nuisance, annoyance or disturbance. There are views 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 clause 17(1) of the Bill. To reflect the different levels of seriousness of offences, the Administration has been requested to consider amending clause 17 of the Bill to the effect that the handling of persons causing "nuisance or annoyance" to another person within the Terminal Area will be different from those causing "danger" to another person within the Terminal Area.

45. The Administration is of the view that the causing of "nuisance" and "annoyance" within the Terminal Area could seriously jeopardize the security and cause obstruction to the operation of KTCT. Therefore, it maintains the policy view that it is necessary to impose criminal sanction on a person causing any nuisance or annoyance to another person within the Terminal Area. Similar prohibitions on causing "nuisance" and "annoyance" are imposed for important infrastructures such as the Hong Kong International Airport and the Mass Transit Railway.

46. The Bills Committee is generally of the view that the phrase "in his or her opinion" in clause 17(2) and 17(3) of the Bill should be amended to "in his or her reasonable opinion" to bring in an objective standard. After consideration, the Administration agrees to move CSAs to clause 17(2) and 17(3) of the Bill to include the term "reasonable".

*Interference with equipment (clause 18)*

47. As clause 18 of the Bill creates an offence relating to interference with equipment or machines, members have expressed the view that criminal offence should only be applied to those conducts which could affect the operation of KTCT.

48. The Administration has stressed 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. 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. 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.

*Prohibition on loitering within KTCT under clause 20(1)(e)*

49. The Bills Committee notes with concern that under clause 20(1)(e) of the Bill, a person who loiters in the Terminal Area without reasonable cause will commit an offence. Since it is difficult to set an objective standard to assess the "reasonable cause" given by a person who loiters in the Terminal Area, some members have suggested that the clause should be deleted.

50. The Administration has advised that unlike other cross-boundary ferry terminals in Hong Kong, KTCT covers a very large area and is more exposed to potential security threats and terrorist attacks. The Administration considers it necessary to prohibit loitering without reasonable cause within the Terminal Area to uphold its security. Besides, loitering is also prohibited in other regulatory frameworks for important infrastructures that cover a large area. Examples include the Hong Kong International Airport, Mass Transit Railway, Eastern Harbour Crossing, Tai Lam Tunnel and Yuen Long Approach Road. Nevertheless, in view of members' suggestion, the Administration will move a CSA to revise the clause to read "loiter in the Terminal Area with intent to commit an arrestable offence".

*Prohibition on smoking under clause 20(1)(h)*

51. Smoking is prohibited in the Terminal Area under clause 20(1)(h) of the Bill. Some members consider that the commercial areas at the rooftop may potentially be running wine bars or restaurants and there may be a need in future to allow flexibility in designating smoking areas. The Administration has been requested to consider allowing the flexibility of designating smoking areas in some open space in the Terminal Area to avoid the need for conducting another legislative exercise to provide smoking areas in the Terminal Area in future.

52. The Administration has advised that a 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), in which smoking is not allowed. 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. The apron is within the planned non-permanent restricted areas and is not generally accessible by the public. As the two podium gardens are popular venues for families, it may not be appropriate to designate any smoking area within the podium gardens. The Administration has also advised 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. Therefore, even if power is conferred under the Bill to designate smoking areas within the Terminal Area, it will not serve the purpose of allowing smoking in the vicinity of the commercial areas at the rooftop.

### Enforcement powers

#### *Power to detain (clause 21)*

53. Clause 21 of the Bill sets out the enforcement powers of the Commissioner and authorized officers in relation to the prohibited acts. The Bills Committee has queried why it is necessary to empower authorized officers/delegates to detain any person who is suspected to have committed an offence under the Bill, including some minor offences such as littering, fishing and smoking.

54. The Administration has explained that under clause 21(1) of the Bill, a person who is suspected of committing an offence and is detained by the Commissioner or by an authorized officer (other than a law enforcement officer) will need to be dealt with by the Police in accordance with the Police Force Ordinance (Cap. 232). Regardless of the severity of the offences, the Commissioner and authorized officer will need a power to detain that person so as to be able to give an order to that person not to leave before the person can be handed to a police officer as soon as practicable. Thus, the power to detain a person suspected of having committed an offence under the Bill, regardless of the severity of the offence, is essential for the enforcement of the prohibitions under the Bill. In any event, the detention power in clause 21(1) of the Bill will be qualified by the conditions in clause 21(2) and (3) of the Bill.

#### *Process to deliver a detained person to a police station or into the custody of a police officer (clause 21(2))*

55. The Bills Committee notes that if a person is detained under clause 21(2) of the Bill by the Commissioner or by an authorized officer who is not a law enforcement officer, the Commissioner or officer must, as soon as practicable 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. Mr James TO opines that a person detained under clause 21(2) of the Bill should be taken to a police station or delivered into the custody of a police officer immediately without delay. The

present drafting of clause 21(2) of the Bill may create a leeway for delay in handling detained persons. He holds the views that the term "as soon as practicable (在切實可行範圍內盡快)" in clause 21(2) of the Bill should be amended to "forthwith (立即)" with reference to similar provision in Cap. 313H. Mr YIU Si-wing however considers that in view of the circumstances of KTCT, it is reasonable to allow some flexibility for the Commissioner or the authorized officer to take the person being detained to a police station as soon as practicable.

56. The Administration has explained that its policy intention is that any person detained under clause 21(1) of the Bill by the Commissioner or an authorized officer who is not a law enforcement officer should be taken to a police station or delivered into the custody of a police officer to be dealt with in accordance with Cap. 232 in the earliest practicable instance. Having considered the coverage of the Terminal Area and paying due regard to the peculiar circumstances that the Terminal Area includes a large area at sea, the Administration envisages that there will be occasions on which the Commissioner or the authorized officer may have practical difficulties to take the person being detained to a police station forthwith or immediately. In the light of members' concerns, the Administration will propose CSAs to clause 21(2) of the Bill to replace the term "as soon as practicable" with "to the extent practicable, forthwith (在切實可行範圍內立即)".

#### *Offences relating to performance of functions (clause 22)*

57. Clause 22 of the Bill creates offences relating to the performance of functions which include wilfully obstructing the Commissioner or an authorized officer in the performance of a function and falsely pretending to be a person acting under the authorization or delegation by the Commissioner. In view of the seriousness of the offences, views have been expressed that a person suspected of having committed an offence under clause 22 of the Bill should not solely be removed from the Terminal Area but may be detained and taken to a police station or delivered into the custody of a police officer. Noting that law enforcement officers other than police officers, i.e. officers of the Customs and Excise Department and the Immigration Department, will also be responsible for taking enforcement actions in relation to the offences under clause 22(1) of the Bill, the Bills Committee opines that these enforcement officers should be equipped with the necessary knowledge and training. Views have also been expressed that the relevant enforcement actions may fall outside the ambit of the law enforcement duties of the officers of the Customs and Excise Department and the Immigration Department.



58. The Administration has advised that the current drafting of the Bill empowers the Commissioner or an authorized officer to detain a person suspected of having committed an offence under clause 22 of the Bill and then take the person to a police station or deliver the person into the custody of a police officer, in addition to removing the person from the Terminal Area as provided for under clause 21(4) of the Bill. Regarding the enforcement parties of the offence under clause 22(1) of the Bill, the Administration has advised that the Commissioner takes note of members' views and will consult relevant law enforcement agencies in considering the relevant authorization and delegation.

59. The Bills Committee notes that the current drafting of clause 21(4) of the Bill which provides that "[i]f 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". The Administration will move a CSA to clause 21(4) of the Bill so that the power to remove a person can be exercised such that the person can be removed from the Terminal Area "or a restricted area". The effect is that if a person fails to comply with an order to leave a restricted area, he or she may be removed from the restricted area, but may remain in other parts of the Terminal Area.

60. In response to members' request for improving the drafting of clause 22(1) of the Bill, the Administration will also move a CSA to clause 22(1) of the Bill to delete the phrase "Without limiting any other law" as the same purpose can be achieved without the phrase.

### **Committee stage amendments**

61. Apart from the CSAs mentioned in paragraphs 18, 33, 38, 41, 43, 46, 50, 56, 59 and 60 above, the Administration will also propose CSAs to clause 18(2) of the Bill to refine the drafting of the English version of the clause. A full set of the draft CSAs to be moved by the Administration is at **Appendix III**. The Bills Committee will not propose any CSAs to the Bill.

### **Resumption of Second Reading debate on the Bill**

62. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 27 April 2016, subject to the moving of CSAs by the Administration.

**Advice sought**

63. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4  
Legislative Council Secretariat  
14 April 2016

**Bills Committee on Kai Tak Cruise Terminal Bill**

**Membership list**

**Chairman** Hon CHAN Kam-lam, SBS, JP

**Members** Hon James TO Kun-sun  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon WONG Kwok-kin, SBS  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Frankie YICK Chi-ming, JP  
Hon YIU Si-wing, BBS  
Hon SIN Chung-kai, SBS, JP  
Ir Dr LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Tony TSE Wai-chuen, BBS

(Total : 14 members)

**Clerk** Ms Shirley CHAN

**Legal Adviser** Ms Clara TAM

## Appendix II

### Delegation under the Kai Tak Cruise Terminal Bill

<u>Types of function</u>	<u>Party intended to be delegated with the function</u>
<p>➤ <b>Giving general directions and orders</b></p> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> <li>✧ specifying the entrance(s) and exit(s) of the Terminal Area [clause 7(1)]</li> <li>✧ demarcating the boundaries or entrances to restricted areas [clause 11]</li> <li>✧ specifying the entrance(s) and exit(s) of restricted areas [clause 12(2)]</li> <li>✧ giving permission to drive a vehicle into a restricted area [clause 12(4)]</li> <li>✧ giving permission to conduct business activities and advertising within the Terminal Area [clause 16(1)]</li> </ul>	Terminal Operator Property Manager
<p>➤ <b>Giving directions and orders in relation to berthing arrangements</b></p> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> <li>✧ giving permission for navigating a vessel into, within or out of the Terminal Area [clause 8(2)(a)]</li> <li>✧ giving permission to board or disembark from a vessel while the vessel is in motion or otherwise than by a gangway [clause 15(1)]</li> </ul>	Terminal Operator
<p>➤ <b>Giving order to leave the Terminal Area and restricted areas</b></p> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> <li>✧ ordering a person to leave the Terminal Area [clause 7(2) and clause 17(2)&amp;(3)]</li> <li>✧ ordering a person to leave a restricted area [clause 12(3)]</li> </ul>	Terminal Operator* Property Manager*
<p>➤ <b>Requiring a person to produce a pass for examination and escorting a person to get into a restricted area</b></p> <p><u>Examples include:</u></p>	Terminal Operator Property Manager

<u>Types of function</u>	<u>Party intended to be delegated with the function</u>
<ul style="list-style-type: none"> <li>✧ requiring a person to produce a pass for examination on entering the restricted area, and at any times while present in a restricted area [<i>clause 12(1)(a)(ii)</i>]</li> <li>✧ escorting a person to enter or remain in a restricted area [<i>clause 12(1)(b)</i>]</li> </ul>	
<p>➤ <b>Ceasing the restricted area status temporarily</b></p> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> <li>✧ declaring by notice that a non-permanent restricted area, or any part of it, specified in the notice ceases to be a restricted area to cater for operational need; or for carrying out any activity that the Commissioner considers appropriate [<i>clause 10(1)</i>]</li> </ul>	Terminal Operator*
<p>➤ <b>Issuing and cancelling a pass [<i>Schedule 2</i>]</b></p>	Terminal Operator*
<p>➤ <b>Enforcement powers</b></p> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> <li>✧ detaining a person suspected of having committed an offence under the Bill [<i>clause 21(1)</i>]</li> <li>✧ removing a person suspected of having committed an offence under section 7, 12 or 22 [<i>clause 21(4)</i>]</li> </ul>	Terminal Operator* Property Manager*

- \* The Administration intends to delegate such power to the employees of the terminal operator and property manager at supervisory or managerial level only and would state this clearly in the delegation document.

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 style="padding-left: 40px;">(i) carrying or intended to be used to carry passengers exclusively for sightseeing or pleasure purposes; and</p> <p style="padding-left: 40px;">(ii) plying, along a predetermined route, on any voyage—</p> <p style="padding-left: 80px;">(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 style="padding-left: 80px;">(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 “<b>Access by persons to and from Terminal Area and order to leave</b>”.</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)(a) By deleting “, paper”.
- 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 “ ’ ”.