

LEGISLATIVE COUNCIL BRIEF

Protection of the Harbour Ordinance (Chapter 531)

PROTECTION OF THE HARBOUR (AMENDMENT) BILL 2021

INTRODUCTION

1. Hon Alice MAK Mei-kuen, BBS, JP, Member of Legislative Council (LegCo) proposes to introduce the Protection of the Harbour (amendment) Bill 2021 (the Bill), at Annex, to the Legislative Council as a Private Member's Bill.

BACKGROUND AND JUSTIFICATIONS

2. This Bill proposes to amend the Protection of the Harbour Ordinance (PHO) to establish a central harbour area to not be affected by the new amendments, and to remove red tape induced by the PHO so as to ensure the smooth procedures of non-reclamation projects in the harbour and provide exemptions for reclamation projects for public purpose outside of the central harbour area from the PHO.

ENACTMENT AND AMENDMENT OF THE PHO

3. PHO was passed by LegCo in 1997 to protect and preserve the harbour by setting a presumption against reclamation in the harbour. The protected harbour area was defined at that time as the central harbour area:

On the east—a straight line drawn from the extreme south-east point of Hung Hom adjacent to Kowloon Bay to the extreme north point of Hong Kong Island at North Point.

On the west—a line following the course of the easternmost conduit of the tunnel defined in section 2 of the Western Harbour Crossing Ordinance (Cap. 436).”

4. Later, the protected harbour area was expanded when the PHO was amended in 1999. The amended area is the same as it is set in Schedule 3 of the Interpretation and General Clauses Ordinance (Cap.1):

On the east—A straight line drawn from the westernmost extremity of Siu Chau Wan Point to the westernmost extremity of Ah Kung Ngam Point (sometimes known as Kung Am);

On the west—A straight line drawn from the westernmost point of Island of Hong Kong to the westernmost point of Green Island, thence a straight line drawn from the westernmost point of Green Island to the south-easternmost point of Tsing Yi, thence along the eastern and northern coast lines of Tsing Yi to the westernmost extremity of Tsing Yi and thence a straight line drawn true north therefrom to the mainland.

PROTECTED AREA TOO WIDE AND PROVISIONS TOO RIGID

5. The original intention of the PHO is to prevent the harbour from narrowing down by restricting reclamation. However, the present PHO restricts not only reclamation, but almost all possibility of well using of the harbour and thus is not in line with the original intention.
6. According to papers submitted in 2017 by the Working Group on the PHO of the Harbourfront Commission, even smaller scale projects are subject to the PHO. The papers mentioned that the use of pontoons, cantilever slab, provision of permanent piers and landing step would be subjected to the PHO since they would deprive part of the normal functions of the harbour. The building of breakwaters and the replacement of seawalls with either sloping or vertical wave-absorbing seawalls are all likely to be considered as reclamation.
7. All in all, PHO not only restricts reclamation inside the harbour area, but almost all projects that optimize harbourfront and utilize the harbour. Here are some major examples:

The Central–Wan Chai Bypass project

8. The idea of constructing the Central–Wan Chai Bypass (CWB) was first mentioned in 1983, it is intended to ease the traffic congestion in Central and the first phase of construction works began in 1993. An organization applied for judicial review in 2003 to challenge the CWB project of violating the PHO so that the second phase of the project was forced to stop. The CWB project took 35 years to complete and was finally opened fully in 2019. The project was delayed a total of 16 years by the judicial review.

Connection between Kwun Tong and the old airport runway

9. Constructing a bridge between Kwun Tong and the end of the old airport runway would make the crossing much easier, making it much more convenient for citizens to use the infrastructure built on the old runway. However, as the location is included in the area protected by the PHO, not only the construction of a fixed bridge is prohibited, even the construction of bascule bridges, use of pontoons or any structure that would cover the surface of the sea has the possibility of violating the PHO. Earlier this year, the Administration suggested the construction of a pedestrian and bicycle overpass spanning the Kwun Tong Typhoon Shelter. Whether this suggestion may comply with the PHO is still uncertain.

Operation of Tsing Yi shipyards

10. Tsing Yi shipyards are situated inside the range of the PHO. In order to facilitate ships access for maintenance, wooden piles need to be driven on the sea surface. This operation is not allowed under the PHO and it hinders the normal operation of the shipyards.

Boardwalk underneath Island Eastern Corridor

11. The Boardwalk underneath Island Eastern Corridor (IEC) was first suggested in the 2012 Hong Kong Island East Harbour-front Study. The starting of the IEC construction was delayed by 8 years in order to find ways to stay in compliance with the PHO. The right of citizens to use harbourfront is thus deprived.

PROPOSED AMENDMENTS

12. Amendments to the PHO are suggested to remove red tape and make sure non-reclamation works can be carried out smoothly and to exempt reclamation works for public purpose outside the central harbour area from the PHO.

I. CENTRAL HARBOUR AREA

13. There are three parts of amendments, the first part is to set up central harbour area so the core part of the harbour remains unaffected by the new amendments. This area would be the same as the area in the bill passed in 1997.

On the east—a straight line drawn from the extreme south-east point of Hung Hom adjacent to Kowloon Bay to the extreme north point of Hong Kong Island at North Point.

On the west—a line following the course of the easternmost conduit of the tunnel defined in section 2 of the Western Harbour Crossing Ordinance (Cap. 436).”.

II. Empower the Chief Executive in Council to decide whether the reclamation is for public purpose

14. The second part of the amendments is to empower the Chief Executive in Council to exempt reclamation for public purpose from the provisions of the PHO. The related clause is referencing to the Lands Resumption Ordinance (Cap. 124) :

“3. Resumption of land for public purpose

Whenever the Chief Executive in Council decides that the resumption of any land is required for a public purpose, the Chief Executive may order the resumption thereof under this Ordinance.”

15. That is to say, after the PHO is amended, CE in Council may decide whether the reclamation is for a public purpose. Even reclamation may be exempted for public purpose, the exemption can only be applied to the harbour area outside of the central harbour area.
16. It must be noted that after the PHO is amended, the “presumption against reclamation in the harbour” remains. Even if exemption is granted, all related works will still need to abide the existing procedures in the Town Planning Ordinance (Cap. 131) and Environmental Impact Assessment Ordinance (Cap.499). Those procedures will continue to serve as gatekeeper effectively.

III. REMOVING AMBIGUITY

17. Cause 3(1) of the PHO is amended to resolve the legal ambiguity of the word “reserve” so as to ensure non-reclamation works can proceed smoothly.

THE BILL

18. Clause 1 sets out the short title.
19. Clause 3 amends the long title of the PHO to comply with the amendment in clause 5.
20. Clause 4 adds the definitions of ***central harbour*** and ***reclamation for a public purpose*** to section 2 of the PHO which defines the waters within the boundaries, and how the reclamation for a public purpose is decided by the Chief Executive in Council.
21. Clause 5 repeals “preserve” in section 3(1) of the PHO to resolve the legal ambiguity so that the non-reclamation project in the harbour can proceed smoothly.
22. Clause 6 adds an additional section 5 to the PHO which exempts reclamation for public purpose where outside the central harbour area from section 3 of the PHO, and to empower the Chief Executive in Council to decide whether the reclamation is for public purpose.

23. Clause 7 adds a new schedule to the PHO which states the boundaries of the central harbour area that is defined in clause 4.

LEGISLATIVE TIMETABLE

24. The legislative timetable will be –

Publication in the Gazette	To be pending
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First Reading and commencement of Second Reading debate in LegCo	To be pending
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Resumption of Second Reading debate, committee stage and Third Reading	To be notified
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IMPLICATIONS OF THE PROPOSAL

The Bill would not affect the current binding effect of the PHO.

ENQUIRIES

25. Any enquiries on this brief should be addressed to Ms Wong at 2537 9618.

Hon Alice MAK Mei-kuen, BBS, JP

20 September, 2021

A BILL

To

Amend the Protection of the Harbour Ordinance to establish a central harbour area; to ensure non-reclamation projects in the harbour can be proceeded smoothly; and to exempt reclamation projects for public purpose outside the central harbour area from this Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Protection of the Harbour (Amendment) Ordinance 2021.

2. Protection of the Harbour Ordinance amended

The Protection of the Harbour Ordinance (Cap. 531) is amended as set out in sections 3 to 7.

3. Long title amended

The long title—

Repeal

“and preserve”.

4. Section 2 amended (interpretation)

(1) Section 2, Chinese text, definition of ~~填海~~—

Repeal

“工程。”

Substitute

“工程；”.

(2) Section 2—

Add in alphabetical order

“*central harbour* (中央海港) means the waters of Hong Kong within the boundaries specified in the Schedule;

reclamation for a public purpose (填海作公共用途) means reclamation for any purpose of whatever description which the Chief Executive in Council may decide to be a public purpose;”.

5. Section 3 amended (presumption against reclamation in the harbour)

Section 3(1)—

Repeal

“and preserved”.

6. Section 5 added

After section 4—

Add

“5. Exemption from section 3

Reclamation in the harbour is exempted from the provisions of section 3—

- (a) if the reclamation is outside the central harbour area; and
- (b) if the Chief Executive in Council decides that the reclamation is required for a public purpose.”.

7. Schedule added

After section 5—

Add**“Schedule**

[s. 2]

Boundaries of the Central Harbour

1. On the east—a straight line drawn from the extreme south-east point of Hung Hom adjacent to Kowloon Bay to the extreme north point of Hong Kong island at North Point.
 2. On the west—a line following the course of the easternmost conduit of the tunnel defined in section 2 of the Western Harbour Crossing Ordinance (Cap. 436).”.
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Explanatory Memorandum

The object of this Bill is to amend the Protection of the Harbour Ordinance (Cap. 531) (*Ordinance*) to establish a central harbour area; to ensure non-reclamation project can be proceeded smoothly, and to exempt reclamation projects for public purpose outside the central harbour area from this Ordinance.

2. Clause 1 sets out the short title.
3. Clause 2 amends the long title of the Ordinance to comply with the amendment in clause 5.
4. Clause 4 adds the definitions of *central harbour* and *reclamation for a public purpose* to section 2 of the Ordinance which define the waters within the boundaries, and the reclamation for a public purpose is decided by the Chief Executive in Council.
5. Clause 5 repeals “preserve” in section 3(1) of the Ordinance to resolve the legal ambiguity so that the non-reclamation project in the harbour can be proceeded.
6. Clause 6 adds a new section 5 to the Ordinance which exempts reclamation for public purpose where outside the central harbour area from section 3 of the Ordinance, and to empower the Chief Executive in Council to decide whether the reclamation is for public purpose.
7. Clause 7 adds a new schedule to the Ordinance which states the boundaries of the central harbour area that is defined in clause 4.