

# Protection of the Harbour (Amendment) Bill 2024 to be gazetted tomorrow

The Government will gazette the Protection of the Harbour (Amendment) Bill 2024 (the Bill) tomorrow (December 6). By amending the existing legislation, the Bill seeks to, on the one hand, set out a clearer mechanism to regulate reclamations in the Victoria Harbour (the Harbour), in particular large-scale reclamations, for protecting the Harbour, and on the other hand, streamline the mechanism for small-scale reclamations which improve the Victoria Harbour to facilitate and promote harbourfront enhancement for public enjoyment and to strengthen harbour functions. The streamlined mechanism will also be applicable to non-permanent reclamations in the Harbour.

A spokesperson for the Development Bureau (DEVB) said, "The existing Protection of the Harbour Ordinance (PHO) prescribes the 'presumption against reclamation' in the Victoria Harbour (the Presumption) but does not stipulate any specific mechanism to ascertain whether a proposal can fulfill the 'overriding public need' to rebut the Presumption. Moreover, at present, the Presumption covers all harbour reclamations across the board, which is not conducive to reclamations for the purpose of improving the Harbour. As promenades on both sides of the Victoria Harbour are taking shape, and the community has aspired for better facilities and experiences along the harbourfront. Amending the PHO will help meet such aspiration."

The Government has earlier reaffirmed that there is no plan to initiate large-scale reclamation in the Victoria Harbour to form land for housing, commercial or industrial developments. Amendments in the Bill are proposed along two main directions, namely (1) small-scale reclamations proposed to be carried out in the Harbour for the purpose of harbourfront enhancement or harbour non-permanent reclamations meeting certain criteria may be handled according to streamlined procedures involving the granting of exemption from the Presumption by the Financial Secretary for such reclamations; and (2) other than the aforesaid harbour reclamations exempt from the Presumption, to enhance certainty and transparency, all harbour reclamations will continue to be subject to the existing stringent Presumption and will be required to go through the statutory procedures stipulated in the amended legislation, to ascertain whether the "overriding public need" test is fulfilled for rebutting the Presumption.

In respect of small-scale reclamations involved in improving the Victoria Harbour, only harbour reclamations as specified in the schedule of the Bill may be exempt from the Presumption, for example, for the construction of piers, viewing decks, breakwaters, etc., where the total area of the harbour occupied or covered by the structure, feature or device so constructed does not exceed 0.8 hectare.

In respect of harbour non-permanent reclamations, the reclamations may

be exempt from the Presumption if area of land formed in the Victoria Harbour does not exceed three hectares at any time during the works and the expected duration of the works does not exceed seven years.

According to the Bill, the Financial Secretary, in considering the granting of exemptions for the above two types of reclamations, must be satisfied that the relevant reclamation is in the public interest, including the public benefits that can be brought and the limited impact on the Harbour.

As regards the harbour reclamations not exempt from the Presumption, including large-scale reclamations, they are still subject to the stringent Presumption. To rebut the Presumption, it is necessary to undergo the statutory procedures in the Bill to determine whether the "overriding public need" test is met in rebutting the Presumption. To this end, the Bill incorporates the three considerations set out in earlier court judgment for rebutting the Presumption, which are (i) there is an overriding public need for the harbour reclamation that is not exempt from the Presumption and the need is compelling and present; (ii) there is no reasonable alternative to the reclamation; and (iii) the extent of the reclamation does not go beyond the minimum of that which is required by the overriding public need. Under the formalised mechanism proposed in the Bill, the project proponent is required to prepare a report to set out the assessment on whether the reclamation fulfills the "overriding public need", and the report must be published for public comments for a period of 60 days. The project proponent is required to submit the report and the comments received to the Chief Executive in Council within a specified period for determination on whether the Presumption is rebutted.

The DEVB consulted the Legislative Council (LegCo) Panel on Development and Harbourfront Commission (HC) twice in March last year and June this year, and conducted a five-month public engagement exercise last year. During the public engagement period, various stakeholders, including professional bodies, water-based activities organisations, fishermen's organisations, users with operations in the harbour, District Councils, local representatives and members of the general public were engaged. The proposals met with cross-party support from the LegCo to a large extent and most HC members were supportive. The public was also generally supportive of the proposed legislative framework.

The spokesperson continued, "The proposed amendments would provide greater flexibility in taking forward small-scale reclamations involved in improving the Victoria Harbour. The Government will fully support the LegCo's examination of the Bill, with the hope that the Bill could be passed and implemented as soon as possible, thereby enabling the Government to take forward some long-awaited harbour enhancement works and bringing the public a better harbourfront experience."

The Bill will be introduced into the LegCo for first reading on December 11. For details, please refer to the LegCo Brief issued today.