

# 立法會 *Legislative Council*

LC Paper No. CB(2)1181/06-07(03)

Ref : CB2/BC/5/06

## **Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Legislative proposals to implement the co-location arrangement**

#### **Purpose**

This paper summarises the discussion by the Panel on Security on the Administration's proposals to implement the arrangement to co-locate the customs and immigration facilities of the Mainland and Hong Kong on the Mainland.

#### **The Administration's proposal**

2. At its meeting on 7 March 2006, the Panel on Security was consulted on the Administration's proposals to implement the arrangement to co-locate the customs and immigration facilities of the Mainland and Hong Kong on the Mainland.

3. The Administration informed the Panel that the Shenzhen Bay Port, where the co-location arrangement would be implemented, was a new control point to be set up at Shekou in Shenzhen. It would be linked to Ngau Hom Shek in the north-western part of the New Territories of the Hong Kong Special Administrative Region through the Hong Kong-Shenzhen Western Corridor (HKSWC). The Shenzhen Bay Port would be divided into a Hong Kong Port Area (HKPA) and a Shenzhen Port Area. The HKPA would include a piece of land where the new control point of Hong Kong would be located, as well as the Shenzhen section of HKSWC linking the said piece of land with the territory of Hong Kong. Legislation would be required for the implementation of the co-location arrangement. The major legislative proposals would include the following -

- (a) empowering the Chief Executive in Council to declare an area in the Mainland to be a HKPA pursuant to the relevant Central Authorities' authorisation;
- (b) applying the laws of Hong Kong to any HKPA;
- (c) providing for land in a HKPA to be regarded as Government land for the purpose of applying the laws of Hong Kong to the HKPA;
- (d) empowering the Chief Executive in Council to modify or exclude any legislation in its application to any HKPA;
- (e) providing Hong Kong courts with the jurisdiction and power in HKPAs;
- (f) extending the territorial limit of certain rights and obligations to include HKPAs; and
- (g) assisting in the construction of certain documents (including court orders) made on or after the declaration of any HKPA.

### **Discussion by the Panel**

4. At the meeting on 7 March 2006, members raised a number of queries about the Administration's proposals including -

- (a) the reasons for empowering the Chief Executive in Council to modify or exclude any legislation in its application to any HKPA;
- (b) whether the Chief Executive in Council could, in addition to the issuance of an order to modify or exclude the application of any legislation to any HKPA, issue another order to a totally different effect from that of the excluded legislation;
- (c) whether only entry clearance but not exit clearance at control points would be conducted;
- (d) whether the requirement for staff members of the Immigration Department (ImmD) to work at HKPA would amount to unilateral change of the terms and conditions of employment; and
- (e) the impact on the coverage of employees' compensation for staff members of ImmD working in HKPA and coverage of insurance policies procured by individuals.

5. The Administration responded that the proposal to empower the Chief Executive in Council to modify or exclude any legislation in its application to HKPA was to provide a mechanism for dealing with unforeseen situations. After an order had been issued to exclude the application of certain legislation to HKPA, there might be a need to issue another order in place of the excluded legislation.

6. The Administration considered that the abolition of exit clearance might cause problems, such as an increase in the number of overstayers. It was also necessary to maintain exit clearance since some persons should not be allowed to leave Hong Kong.

7. Regarding the requirement for staff members of ImmD to work at HKPA, the Administration advised that it appeared that the consent of the existing staff would have to be sought before they were deployed to work at HKPA. Requirement for working at HKPA would be included in the terms and conditions of employment for new appointees.

8. As regards insurance coverage, the Administration explained that the coverage of employees' compensation for staff members of ImmD working in HKPA would be the same as that for those working at other control points in Hong Kong. The Administration had discussed with the Hong Kong Federation of Insurers the impact of the proposed legislation on insurance cover procured by individuals. The Federation noted that most insurance policies should be unaffected, although it would be necessary to examine the terms and conditions of individual insurance policies.

9. Hon James TO suggested that the exclusion of the application of certain legislation to HKPA should be made by way of primary legislation rather than subsidiary legislation. If the said exclusion was to be made by way of subsidiary legislation, the making of such subsidiary legislation should be subject to positive vetting by the Legislative Council.

### **Relevant papers**

10. Members may wish to refer to the Administration's paper on "Legislative proposals for the implementation of the co-location arrangement" (LC Paper No. CB(2)1277/05-06(03)) for the Panel meeting on 7 March 2006 and the minutes of the meeting (LC Paper No. CB(2)1828/05-06). The documents are available on the website of the Council (<http://www.legco.gov.hk/yr05-06/english/panels/se/general/se0506.htm>).