

政府總部  
香港下亞厘畢道



LC Paper No. CB(2)1211/06-07(01)

GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF.: SBCR 6/3/2098/02

來函檔號 YOUR REF.:

Telephone No. : (852) 2810 2506

Fax No. : (852) 2868 1552

1 March 2007

Clerk to Bills Committee  
Bills Committee on  
Shenzhen Bay Port Hong Kong Port Area Bill  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong  
(Attn: Mr Raymond Lam)

Dear Mr Lam,

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

I refer to the discussions at the Bills Committee meeting on 1 March 2007, and attach a copy of our correspondence with the Hong Kong Bar Association on the legislative proposals of the Bill for Members' reference –

- (a) a letter dated 24 January 2006 from the Security Bureau to the Hong Kong Bar Association (**Annex A**);
- (b) a letter dated 11 February 2006 from the Hong Kong Bar Association to the Security Bureau (**Annex B**);
- (c) a letter dated 10 November 2006 from the Security Bureau to the Hong Kong Bar Association (**Annex C**); and

- (d) a letter dated 6 February 2007 from the Security Bureau to the Hong Kong Bar Association (**Annex D**) (without attachment, which is the LegCo Brief on the Bill issued on 6 February 2007).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Alan K M CHU". The signature is written in a cursive, flowing style.

(Alan K M CHU)  
for Secretary for Security

政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF: SBCR 6/3/2098/02

來函檔號 YOUR REF:

Telephone No. : (852) 2810 2506

Fax No. : (852) 2868 1552

24 January 2006

~~CONFIDENTIAL~~ MDG

Mr Philip Dykes, S. C.  
Chairman  
Hong Kong Bar Association  
LG2, High Court  
38 Queensway  
Hong Kong

Dear Mr Dykes,

Hong Kong Port Areas Bill

I write to seek your Association's views on our proposed approach to deal with territorial limit of pre-existing and future rights and obligations in the light of the setting up of the proposed Hong Kong Port Areas (HKPAs) on the Mainland.

By way of background, we are in the process of formulating the Hong Kong Port Areas Bill (the Bill) for the implementation of the arrangement to co-locate customs and immigration facilities of both the Mainland and Hong Kong in the HKPAs to be set up on the Mainland (the co-location arrangement). The main purpose of the Bill is to apply the laws of Hong Kong to any HKPAs, which is to be declared under the Bill (HKPA declaration), and provide for related purposes.

~~CONFIDENTIAL~~ DGM

2

When implementing the co-location arrangement, one of the key issues is whether the territorial limit of certain pre-existing and future rights and obligations should be extended to include the HKPAs. After extensive consultation within the Administration, we do not propose to make an extension in the case of territorial limits that may be spelt out in private contracts, whether pre-existing or new. However, we propose to –

- (a) extend the territorial limit of rights and obligations arising from certain court orders and statutory powers or duties *before* a HKPA declaration to include the HKPA; and
- (b) assist in the construction of all court orders, and an extensive scope of documents arising from statutory powers or duties, that are made *on or after* a HKPA declaration.

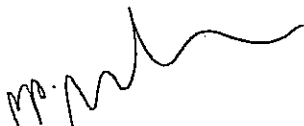
Details of our proposed approach and the relevant rationale are set out in the paper at Appendix.

Since we are still refining details of our legislative proposals, we should be grateful if you would help ensure that any further circulation of this letter (including its Appendix) would be limited to Members and personnel of your Association.

We aim to introduce the Bill into the Legislative Council within the current legislative session, and should be grateful to hear from you by 13 February 2006, if possible.

If you would like to discuss our legislative proposals further, please do not hesitate to contact me to arrange a mutually convenient appointment.

Yours sincerely,

  
(Alan K. M. CHU)  
for Secretary for Security

~~CONFIDENTIAL~~ DGM

Hong Kong Port Areas Bill:

Proposed approach to deal with  
territorial limit of rights and obligations

Background

Our consensus with the Mainland is to implement the co-location arrangement for both passenger and cargo clearance at the Shenzhen Bay Port, a new control point which will be set up at Shekou in Shenzhen for the Hong Kong-Shenzhen Western Corridor (HKSWC). According to the current project programme, construction of our boundary crossing facilities is scheduled for completion by end 2006.

2. The Shenzhen Bay Port will be divided into a Hong Kong Port Area (HKPA) and a Shenzhen Port Area. The HKPA will include the piece of land where the new control point of Hong Kong will be located, as well as the Shenzhen section of the HKSWC linking the said piece of land with the territory of Hong Kong. A location plan of the HKPA is at Annex A. With the requisite authorisation from the relevant Central Authorities, Hong Kong will be authorized to exercise jurisdiction over the HKPA, and the laws of Hong Kong shall be applied to the HKPA.

3. Legislation will be required for the implementation of the co-location arrangement and we are in the process of formulating a Hong Kong Port Areas Bill (the Bill). Through the Bill, we seek to –

- (a) enable certain areas in China that are outside Hong Kong to be declared as HKPAs pursuant to the relevant Central Authorities' authorisation. In this connection, we intend to empower the Chief Executive in Council to declare an area in China that is outside Hong Kong to be a HKPA (a HKPA declaration), and provide for the flexibility of declaring different HKPAs at different times;

- (b) apply the laws of Hong Kong to HKPAs. Our proposed approach is to apply the laws of Hong Kong (i.e. the laws for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong) to a HKPA except for those laws whose application to the HKPA will give rise to grave difficulties in enforcement or implementation. For the purpose of applying the laws of Hong Kong to a HKPA, the HKPA shall be regarded as an area lying within Hong Kong. In effect, it is an extension of Hong Kong's jurisdiction without changing Hong Kong's boundary;
- (c) provide for the court's jurisdiction. We intend to provide that Hong Kong courts shall have jurisdiction to hear or determine any cause or matter, civil or criminal, arising from the operation of the Bill (as enacted) and the court may make orders that adjudicate on, grants or imposes a right or obligation the territorial limit of which is confined to or includes any HKPA; and
- (d) provide for related purposes.

#### **Territorial limit of rights and obligations**

4. When implementing the co-location arrangement, one of the key issues is whether the territorial limit of pre-existing and future rights and obligations should include HKPAs. Our proposed approach is set out below.

#### ***Private contracts***

5. In view of possible property rights implications, the Bill will leave private contracts, whether pre-existing or new ones, untouched. It will be up to the contracting parties to negotiate an extension of their contracts to cover HKPAs as they see fit. Meanwhile, we are consulting the insurance industry on the arrangements to extend the relevant mandatory insurance policies to cover HKPAs.

*Pre-existing rights and obligations proposed to be dealt with by the Bill*

6. As regards pre-existing rights and obligations, basically, the Bill will only extend the territorial limit of those rights and obligations that arise from certain court orders or statutory powers or duties, and that are required for ensuring effective law enforcement and continuity of certain essential services in a HKPA. For example, a pre-existing warrant of arrest can be enforced in a HKPA; a qualified lawyer, doctor, or other recognised professional will be qualified to practise in a HKPA; and a driving licence will be valid in a HKPA, as they are in Hong Kong. The details of this proposed approach are set out in paragraphs 8 – 12 below.

7. The major problem of extending the territorial limit of pre-existing rights and obligations is that it could interfere with the rights and obligations of the parties concerned. Under our proposal, pre-existing rights and obligations, unless expressly provided for in the Bill, will not be extended to include a HKPA by virtue of the Bill.

*Pre-existing rights and obligations arising from ordinances or statutory powers or duties*

8. Under our proposed approach regarding pre-existing rights and obligations, we propose to extend the territorial limit of certain pre-existing rights and obligations that are conferred or imposed by certain Ordinances or arise by the exercise or performance of certain statutory powers or duties to include the HKPAs. These are rights and obligations –

- (a) that are of a description to be expressly specified in a Schedule to the HKPA Bill;
- (b) that have been acquired before the commencement of a HKPA declaration; and

- (c) that subsist, or the legal effect of which is suspended, as at that commencement.

If such a right or obligation has a territorial limit (whether express or not) confined to or including Hong Kong, then, the territorial limit of the right or obligation shall be extended to include the relevant HKPA.

9. For the purpose of paragraph 8 above, we consider that only pre-existing rights or obligations not arising from court orders set out at Annex B, for example, should be expressly specified.

*Pre-existing rights and obligations arising from court orders*

10. In the consultation carried out within the Administration, there was a suggestion that it is necessary to make specific provisions to deal with application of court orders to HKPAs because various court orders are made under the inherent jurisdiction of the courts, rather than statutory powers or duties.

11. Hence, we propose to make specific provisions to extend the territorial limit of pre-existing rights or obligations granted or imposed by certain court orders to include HKPAs. These are pre-existing rights and obligations granted or imposed by court orders –

- (a) that are of a description to be expressly specified in a Schedule to the HKPA Bill;
- (b) that have been made before the commencement of a HKPA declaration; and
- (c) that subsist, or the legal effect of which is suspended, as at that commencement.

If such a right or obligation has a territorial limit (whether express or not) confined to or including Hong Kong, then, the territorial limit of the right or obligation shall be extended to include the relevant HKPA.



12. For the purpose of paragraph 11 above, we consider that only the court orders set out at Annex C, for example, should be expressly specified.

*Future rights and obligations proposed to be dealt with by the Bill*

13. As regards future documents made on or after the declaration of any HKPA, the Bill will deal with the construction of all court orders and an extensive scope of documents arising from statutory powers or duties, for the sake of certainty and clarity.

*Future documents arising from statutory powers or duties*

14. Under our proposed approach regarding future documents, we propose to assist in the construction of references to Hong Kong in an extensive scope of future documents (other than court orders) that are made by the exercise or performance of such statutory powers or duties as expressly specified in a Schedule to the HKPA Bill on or after the commencement of a HKPA declaration. If any such reference describes the territorial limit of a right or obligation, then, unless the contrary intention appears, the territorial limit shall be construed as including the relevant HKPA.

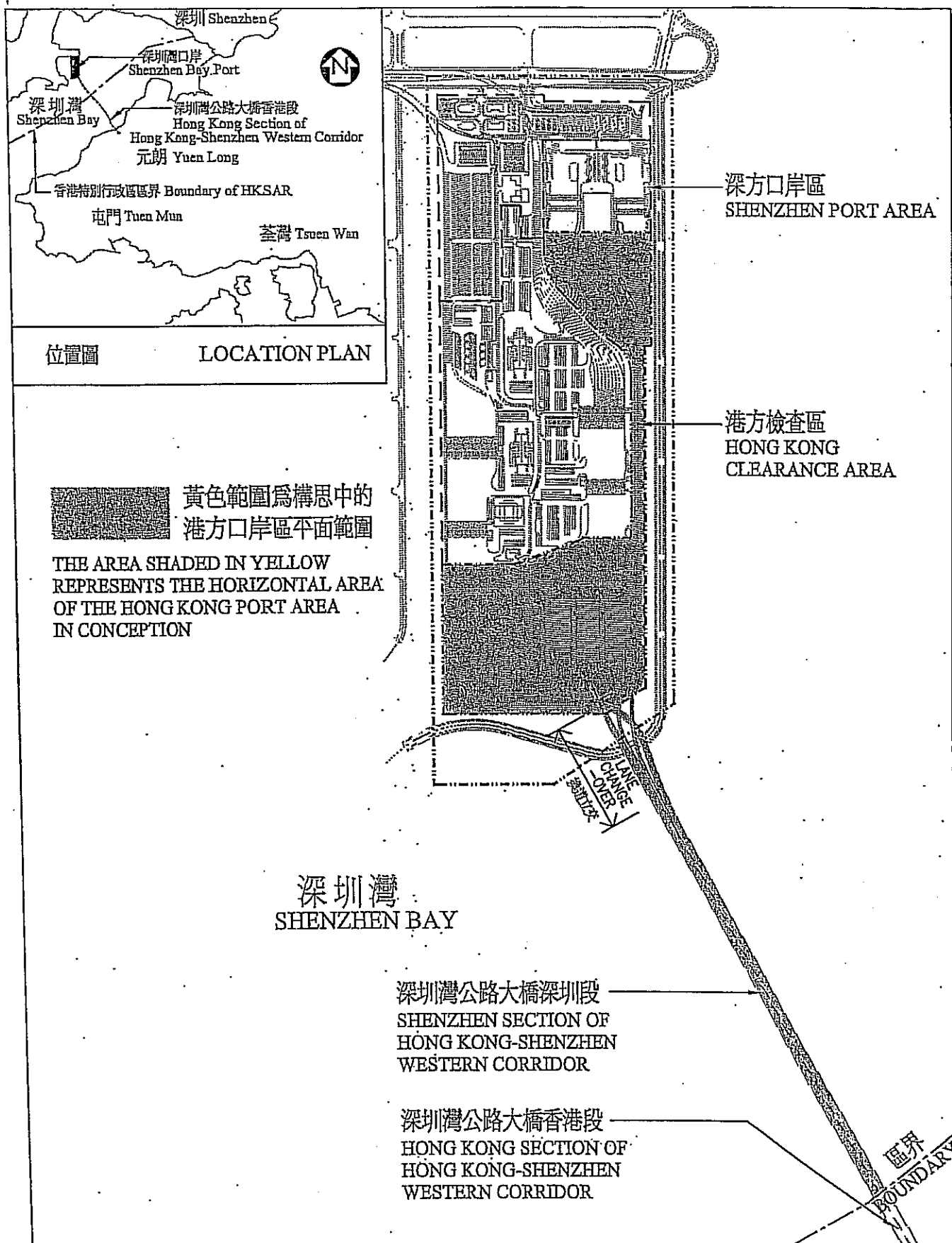
15. The application of a general construction aid to all documents indiscriminately may invite questions. Hence, the construction aid will not apply to rights or obligations that arise other than by the exercise or performance of a statutory power or duty as expressly specified. For the purpose of paragraph 14 above, we consider that it would be sufficient for us to expressly specify, for example, the following statutory powers or duties –

- (a) a statutory power or duty conferred or imposed on a public officer, public body or public authority; and
- (b) a statutory power or duty conferred or imposed on a regulatory body for it to –

- (i) admit (howsoever described) a person to a profession, trade or business; or
- (ii) permit a person to engage in (howsoever described) a profession, trade or business.

*Future court orders*

16. Again, since various court orders are not made under statutory powers or duties, we propose to make specific provisions to assist in the construction of references of Hong Kong in court orders that are made on or after the commencement of a HKPA declaration. If any such reference describes the territorial limit of a right or obligation granted or imposed by the court order, then, unless the contrary intention appears from the court order, the territorial limit shall be construed as including the relevant HKPA.



位置圖 LOCATION PLAN

黃色範圍為構思中的  
港方口岸區平面範圍

THE AREA SHADED IN YELLOW  
REPRESENTS THE HORIZONTAL AREA  
OF THE HONG KONG PORT AREA  
IN CONCEPTION

深圳灣  
SHENZHEN BAY

深圳灣公路大橋深圳段  
SHENZHEN SECTION OF  
HONG KONG-SHENZHEN  
WESTERN CORRIDOR

深圳灣公路大橋香港段  
HONG KONG SECTION OF  
HONG KONG-SHENZHEN  
WESTERN CORRIDOR

深圳灣口岸及大橋平面圖  
SITE PLAN OF  
SHENZHEN BAY PORT  
AND BRIDGE

drawn by K.H. CHAN

date 11-2005

drawing no. AB/6596/XA110

scale 1:15000  
(in A4 SIZE)

approved K.C. TAM

date 11-2005

PROJECT MANAGEMENT BRANCH



ARCHITECTURAL  
SERVICES  
DEPARTMENT

List of pre-existing rights and obligations  
(other than rights and obligations arising from court orders)  
to be specified

For the purpose of paragraph 8 of the paper, we consider that pre-existing rights and obligations granted or imposed by virtue of, for example, the following documents (other than court orders) should be expressly specified –

- (a) a deportation order made under the Immigration Ordinance;
- (b) a removal order made under the Immigration Ordinance;
- (c) a warrant for the arrest of a person made under an Ordinance;  
and
- (d) a licence, permit, approval, registration, enrolment or any other authority (howsoever described), or exemption (howsoever described) –
  - (i) issued or given under an Ordinance by a public officer, public body or public authority; or
  - (ii) issued or given under an Ordinance by a regulatory body (proposed to mean a person that regulates standards of competence within a profession, trade or business) for the purpose of –
    - (A) admitting (howsoever described) a person to a profession, trade or business; or
    - (B) permitting a person to engage in (howsoever described) a profession, trade or business.

List of pre-existing court orders to be specified

For the purpose of paragraph 11 of the paper, we consider that the following pre-existing court orders, for example, should be expressly specified –

- (a) an order or direction to the effect that a person shall not leave or be removed from Hong Kong;
- (b) a warrant for the arrest of a person;
- (c) a notice issued under section 17A(1) of the Prevention of Bribery Ordinance (Cap.201) (i.e. a notice requiring a person to surrender any travel document in his possession; a person to whom such notice is addressed shall not leave Hong Kong under certain circumstances);
- (d) a detention order authorizing the seizure or detention of any plants, animals, goods, articles, or any other things on or after its or their importation into Hong Kong; and
- (e) an injunction prohibiting the importation into or exportation from Hong Kong of any plants, animals, goods, articles, or other things.



## HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong  
 DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org  
 Telephone: 2869 0210 Fax: 2869 0189

11<sup>th</sup> February 2006

Your Ref: SBCR 6/3/2098/02

Mr. Alan K.M. Chu  
 for Secretary for Security  
 Government Secretariat  
 Lower Albert Road  
 Hong Kong.

~~CONFIDENTIAL~~  
 paper (published on  
 Bar Association's  
 website) DG M

Dear Mr. Chu,

Re: Hong Kong Port Areas Bill

Thank you for your letter dated 24<sup>th</sup> January 2006.

I enclose herewith a paper prepared by the Hong Kong Bar Association on the Hong Kong Port Areas Bill which has been adopted at the Bar Council Meeting held on 9<sup>th</sup> February 2006 for your consideration.

Due to the confidential nature of the paper, I would like to draw your attention that the said paper should not be released to public until gazettal of the Bill and would be obliged if you would inform the Hong Kong Bar Association after the Bill is gazetted.

Yours sincerely,

*P. J. Dykes*  
 Philip Dykes SC  
 Chairman

/al

### 香港大律師公會

香港金鐘道三十八號高等法院低層二樓

#### Chairman 主席:

Mr. Philip Dykes, S.C. 戴啓思

#### Vice Chairmen 副主席:

Mr. Clive Grossman, S.C. 郭兆銘

Mr. Rimsky Yuen, S.C. 袁國強

#### Hon. Secretary & Treasurer

名譽秘書及財政:

Ms. Lisa Wong 黃國瑛

#### Administrator 行政幹事:

Miss Mendy Chong 張文迪

#### Members 執行委員會委員:

Ms. Teresa Cheng SC

Mr. Peter Duncan SC

Mr. Leo Remedios

Mr. Anthony Ismail

Mr. Joseph Tse

Ms. Christina Lee

Mr. Andrew Mak

Mr. Michael Liu

Mr. P Y Lo

Mr. Lawrence Ng

鄧若驊

鄧樂勁

李美度士

石善明

謝若瑟

李耀華

麥業成

廖建華

羅沛然

吳港發

Mr. Richard Khaw

Mr. Frederick Chan

Mr. Giles Surman

Ms. Jennifer Tsang

Ms. Glenys Newall

Mr. Lin Feng

Ms. Audrey Campbell-Moffat

Ms. Elaine Liu

Mr. Newman Lam

許偉強

陳慶輝

蘇明哲

曾昭珍

林峰

金貝理

廖玉玲

林承演

## Hong Kong Port Areas Bill

### Views of the Hong Kong Bar Association

(Embargoed from Public Release Until Gazettal of Bill) *(Released)*

1. The Security Bureau consults the Hong Kong Bar Association (the Bar) on a confidential basis in respect of the proposed approach to deal with "territorial limit of pre-existing and future rights and obligations" in the light of the setting up of "Hong Kong Port Area" (HKPA) at a designated location in Mainland China under an arrangement to co-locate customs and immigration facilities of both Mainland and Hong Kong in a HKPA. The Security Bureau is undertaking the consultation in relation to the formulation of legislative proposals to declare HKPAs and to apply the laws of Hong Kong to the HKPAs.
2. The Bar submits its views on the proposed approach to deal with territorial limit of rights and obligations on the understanding that the views will be embargoed from public release by placing an electronic copy at the Bar's website until the gazettal of the Hong Kong Port Areas Bill (the Bill).

*Two Matters of Constitutional Importance*

3. Before stating its views on the proposed approach to deal with territorial limit of rights and obligations, the Bar would make reference to two matters of constitutional importance.
4. The Bar is informed that the Central Authorities will make an authorization for the HKSAR to exercise jurisdiction over the HKPA at the Shenzhen Bay Port, a place outside the territory of the HKSAR where a new and co-located control point will be established for the Hong Kong-Shenzhen Western Corridor; and for the application of the laws of the HKSAR to the HKPA.
5. The Bar understands, from the information supplied, that the Central Authorities' authorization involves law-making at the national level and will bind both the Mainland and Hong Kong systems if made and applied in accordance with the Basic Law of the HKSAR. However, the Bar has not been informed as to manner in which the authorization is intended to be made and applied to the HKSAR in accordance with the Basic Law of the HKSAR. The Bar considers this issue to be of constitutional importance and would be obliged to submit its views if the Security Bureau is minded to indicate to the Bar the present inclinations between the Mainland and HKSAR authorities on this matter.



6. A distinction should be made between a Central Authorities' authorization for laws of the HKSAR to apply to a part of Mainland China outside the territory of the HKSAR (which is law-making in the Mainland system) and the Legislative Council of the HKSAR enacting an Ordinance intended to apply the laws of the HKSAR to the same location (which is law-making in the HKSAR system). The latter issue is concerned with the extent of a HKSAR Ordinance.
7. Bennion on Statutory Interpretation (4th Ed) s 102 makes a distinction between extent and application an Act of Parliament. Extent defines the area within which the enactment is law. Application is concerned with the persons and matters in relation to which the enactment operates, which may be within or outside the area of its extent.
8. In the case of the HKSAR, the extent of a HKSAR Ordinance is by reference to the geographical extent of the HKSAR, conveniently stated in Sch 2 of the Interpretation and General Clauses Ordinance (Cap 1) as "the land and sea comprised within the boundary of the administrative division of the Hong Kong Special Administrative Region of the People's Republic of China promulgated by the Order of the State Council of the People's Republic of China No 221 dated 1 July 1997 and published at SS No 5 to Gazette No

6/1997 of the Gazette” (reproduced in Laws of Hong Kong, Looseleaf Edition, Vol 1, p 14/1).

9. Accordingly, the Bar doubts whether the Legislative Council of the HKSAR, as presently empowered under the Basic Law of the HKSAR, has the legislative competence to enact an Ordinance whose intended extent is a geographical location outside the administrative division of the HKSAR. The Bar maintains its doubts notwithstanding the opinion of Professor Yash Ghai in *Hong Kong's New Constitutional Order* (2nd Ed) p 391 that “the HKSAR legislature is not precluded from legislating on matters which are the responsibility of the Central Authorities or concern their relationship with the HKSAR”. Professor Ghai was, in the Bar’s view, addressing the different issue of subject matter of legislation.

10. The Bar considers that a solution to this issue is for the Central Authorities’ authorization to confer additional legislative power on the Legislative Council of the HKSAR to enact legislation extending to the location, albeit part of Mainland China, of the declared HKPA. Article 20 of the Basic Law of the HKSAR makes provision for the granting of “other powers” to the HKSAR by the National People’s Congress, the Standing Committee of the NPC, and the Central People’s Government. Given that the “other power” that may have to be granted in the present case is legislative power, it is appropriate for

the granting authority to be the Standing Committee of the NPC.

*Proposed Approach to Territorial Limit of Rights and Obligations*

11. The Bar submits its views on the proposed approach to deal with territorial limit of rights and obligations in the paragraphs below.
12. The Bar notes from paragraph 3(c) of the Security Bureau's paper that it is intended that the Bill will, inter alia, make provision for the jurisdiction of the HKSAR courts. The Bar considers that while such provisions may resolve by designation the forum of adjudication, there may be still be a difficulty on the applicable law, particularly in relation to the jurisdiction where there is put into question the title, right or interest to a part of a HKPA (such as questions arising out of the leasing of premises, or rarely, adverse possession of premises), given the intention that the HKPA will remain a part of Mainland China in spite of its newly declared status.
13. The Bar does not object to the approach to be taken in relation to private contracts, as indicated in paragraph 5 of the Security Bureau's paper. The Bar does not foresee any insurmountable difficulty in the extension of the consumer related contracts (such as those relating to insurance and consumer

credit) to cover activities in HKPAs, provided that there are adequate provisions in the Bill to provide for: (a) the applicable law; and (b) the forum for the adjudication of disputes arising out of, or in the course of, acts or omissions, in a HKPA.

14. The Bar appreciates the approach proposed in paragraph 6 of the Security Bureau's paper in "extending the territorial limit" of a limited class of rights and obligations that are required for ensuring effective law enforcement and continuity of certain essential services in a HKPA. The Bar does not quarrel with the approach but considers that proper purpose to achieve with the approach is to ensure that limited class of rights and obligations provides satisfactory coverage to cater for the normal incidence or vicissitudes of activities conducted in a HKPA.

15. The Bar has examined paragraph 8 and Annex B of the Security Bureau's paper with this purpose in mind. The Bar has not found the exercise easy since Annex B only lists a few examples of the rights and obligations to be provided for in the Bill. The Bar finds that the class of rights and obligations adumbrated in the paper does not provide the satisfactory coverage required. For example, a vehicle skidded on leaked fuel oil unattended to at the HKSAR control point in a HKPA and collided into a wall of the HKSAR control point. The driver of the vehicle is injured. The driver would have had

a statutory cause of action under the Occupiers Liability Ordinance (Cap 314) against the HKSAR Government in its capacity as occupier of the HKSAR control point if the HKSAR control point were located within the territorial limits of the administrative division of the HKSAR but the presumption of the extent of an Ordinance would, in the absence of specific language, operate to disable the statutory cause of action by reason that the HKSAR control point in the example is located outside the territorial limits. While the Bar suspects that this example might come under the proposal in paragraph 3(b) of the Security Bureau's paper for the application of the laws of the HKSAR to HKPAs, it remains arguable that the statutory cause of action should be regarded as a pre-existing right or obligation and care should be taken to remove any internal inconsistency between these two proposals. As to the presumption of the extent of an Ordinance, see Bennion on Statutory Interpretation (4th Ed) ss 103 and 106.

16. The Bar has also examined Annex B in so far as it seeks to specify for the extension of the rights and obligations of barristers. The Bar notes that the barristers are admitted to practise as such by the High Court of the HKSAR under s 27 of the Legal Practitioners Ordinance (Cap 159) and that upon admission, the judge signs a certificate of admission. Thus it is necessary to add in the formulation of Annex B(d)(i) of "issued or given under an Ordinance by a public officer, public body or public authority"; the reference

to "court".

17. The Bar has examined paragraph 11 and Annex C of the Security Bureau's paper with the same purpose in mind as it has done in relation to paragraph 8 and Annex B. The Bar has also not found the exercise easy since Annex C only lists a few examples of the court orders to be provided for in the Bill. The Bar finds that the list in Annex C may not be exhaustive, in that, for example, it has not included an order of the court to disqualify a person from driving under the Road Traffic Ordinance (Cap 374).
  
18. Turning to future rights and obligations (whether arising from statutory powers or duties, or from court orders), the Bar notes that the proposed approach seems to hinge on a "reference to Hong Kong" in a "future document" of the territorial limit of a right or obligation. The Bar does not object to this approach. The Bar however submits that, to cater for the situation of barristers (as explained above), it is necessary to add in the formulation of paragraph 15(b) of the Security Bureau's paper of "a statutory power or duty conferred or imposed on a public officer, public body or public authority", the reference to "court".

Dated 11<sup>th</sup> February 2006.  
Hong Kong Bar Association

政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF: SBCR 6/3/2098/02

來函檔號 YOUR REF.:

Telephone No. : (852) 2810 2506

Fax No. : (852) 2868 1552

10 November 2006

Mr Philip Dykes, S. C.  
Chairman  
Hong Kong Bar Association  
LG2, High Court  
38 Queensway  
Hong Kong

Dear Mr Dykes,

### Hong Kong Port Areas Bill

I write further to our letter dated 24 January 2006 to keep you posted of the formulation of the Hong Kong Port Areas Bill which seeks to apply the laws of Hong Kong to Hong Kong Port Areas in the Mainland and provide for related purposes.

We are grateful for your letter dated 11 February 2006, in which your Association provided some useful feedback regarding our proposed approach to deal with territorial limits of rights and obligations in the light of the setting up of the proposed Hong Kong Port Areas. Your Association also raised concerns about the manner in which the requisite Central Authorities' authorization was to be made.

As you may be aware, the latest development is that, on 31 October 2006, the Standing Committee of the National People's Congress (NPCSC) made a decision to authorize Hong Kong to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of Hong Kong. A copy of the decision is attached.

We are finalizing the Hong Kong Port Areas Bill in accordance with the authorization from the NPCSC, and aim to introduce the Bill into the Legislative Council within the first half of the current legislative session. Once the Bill has been gazetted, we will provide you with a further update.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan Chu', with a stylized flourish at the end.

(Alan K. M. CHU)  
for Secretary for Security



全國人民代表大會常務委員會  
關於授權香港特別行政區對深圳灣口岸  
港方口岸區實施管轄的決定

(2006年10月31日  
第十屆全國人民代表大會常務委員會  
第二十四次會議通過)

第十屆全國人民代表大會常務委員會第二十三次會議審議了國務院關於提請審議授權香港特別行政區對深圳灣口岸港方口岸區實施管轄的議案，第二十四次會議審議了關於授權香港特別行政區對深圳灣口岸港方口岸區實施管轄的決定(草案)。會議認為，爲了緩解內地與香港特別行政區交往日益增多帶來的陸路通關壓力，適應深圳市與香港特別行政區之間交通運輸和便利通關的客觀要求，促進內地和香港特別行政區之間的人員交流和經貿往來，推動兩地經濟共同發展，在深圳灣口岸內設立港方口岸區，專用於人員、交通工具、貨物的通關查驗，是必要的。全國人民代表大會常務委員會決定：

一、授權香港特別行政區自深圳灣口岸啓用之日起，對該口岸所設港方口岸區依照香港特別行政區法律實施管轄。

香港特別行政區對深圳灣口岸港方口岸區實行禁區式管理。

二、深圳灣口岸港方口岸區的範圍，由國務院規定。

三、深圳灣口岸港方口岸區土地使用期限，由國務院依照有關法律的規定確定。

(Courtesy Translation Prepared by the Department of Justice)

**Decision of the Standing Committee  
of the National People's Congress  
on Authorizing the Hong Kong Special Administrative Region to  
Exercise Jurisdiction over the Hong Kong Port Area  
at the Shenzhen Bay Port**

(Adopted at the 24<sup>th</sup> Meeting of the Standing Committee  
of the Tenth National People's Congress  
on 31 October 2006)

The Standing Committee of the Tenth National People's Congress examined at its 23<sup>rd</sup> Meeting the "Proposal for Authorizing the Hong Kong Special Administrative Region to Exercise Jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port" submitted by the State Council for consideration, and examined at its 24<sup>th</sup> Meeting the "Draft Decision on Authorizing the Hong Kong Special Administrative Region to Exercise Jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port". The Meeting is of the view that, to alleviate the mounting pressure on land control points arising from increasing interactions between the Mainland and the Hong Kong Special Administrative Region, to accommodate the objective demand for transport and for facilitation of clearance between Shenzhen and the Hong Kong Special Administrative Region, to promote the interflow of people and economic and trade activities between the Mainland and the Hong Kong Special Administrative Region, and to advance joint economic development of the two places, it is necessary to set up a Hong Kong Port Area at the Shenzhen Bay Port for the inspection and clearance of people, goods and vehicles. The Standing Committee of the National People's Congress decides as follows:

1. The Hong Kong Special Administrative Region is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of the Hong Kong Special Administrative Region from the day on which the Shenzhen Bay Port comes into operation.

The Hong Kong Special Administrative Region shall administer the Hong Kong Port Area at the Shenzhen Bay Port as a closed area.

2. The boundary of the Hong Kong Port Area at the Shenzhen Bay Port shall be stipulated by the State Council.

3. The land use period of the Hong Kong Port Area at the Shenzhen Bay Port shall be determined by the State Council according to the relevant legal provisions.

政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF.:

來函檔號 YOUR REF.:

Tel No. : 2810 2506

Fax No. : 2868 1552

6 February 2007


Mr Rimsky Yuen, S.C.  
Chairman  
Hong Kong Bar Association  
LG2, High Court  
38 Queensway  
Hong Kong

Dear Mr Yuen,

**Shenzhen Bay Port Hong Kong Port Area Bill**

Further to our letter of 10 November 2006, I write to inform that the above Bill will be introduced into the Legislative Council tomorrow and attach a copy of the Legislative Council Brief on the subject for your information, please.

Yours sincerely,

  
(Alan K M CHU)  
for Secretary for Security