

立法會
Legislative Council

LC Paper No. LS56/06-07

**Paper for the Bills Committee on
Shenzhen Bay Port Hong Kong Port Area Bill**

At the meeting of the Bills Committee on 30 March 2007, the Bills Committee discussed whether the decision of the Standing Committee of the Tenth National People's Congress (“the NPCSC Decision”) made on 31 October 2006 is a national law to be applied in the Hong Kong Special Administrative Region (“HKSAR”) under Article 18 of the Basic Law. This paper sets out the views and observations of the Legal Service Division on this issue.

2. Members may note that the first operative paragraph of the NPCSC Decision states that-

“HKSAR is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of HKSAR from the day on which the Shenzhen Bay Port commences operation, and HKSAR is to administer the Hong Kong Port Area at the Shenzhen Bay Port as a closed area”.

The wording shows that the location where the exercise of jurisdiction, application of the laws of HKSAR, and administering as a closed area are in the Hong Kong Port Area, which is in Shenzhen. In this light, the application of the NPCSC Decision is not in Hong Kong but in Shenzhen.

3. Members may recall that the Hong Kong Bar Association holds the same view that the NPCSC Decision is not to be applied in Hong Kong. Paragraph 12 of the submission of the Hong Kong Bar Association dated 20 March 2007 (LC Paper No. CB(2)1404/06-07(01)) states that-

“12. The NPCSC Decision authorizes the HKSAR to exercise jurisdiction in and apply its laws to the SBPHKPA (*i.e. Shenzhen Bay Port Hong Kong Port Area*). The NPCSC Decision is a decision dealing with a specific case and is not to be applied in the HKSAR (*emphasis added*), bearing in mind that notwithstanding the lease contract for State-owned land with the People’s Government of the Shenzhen Municipality of Guangdong Province, the SBPHKPA remains not part of the HKSAR. ”.

Members may also recall that the Administration shares the Bar's view that the NPCSC Decision is not to be applied in Hong Kong (paragraph 4 of the Administration's paper LC Paper No. CB(2)1479/06-07(01) refers).

4. If the view that the NPCSC Decision is not to be applied in Hong Kong is correct, then Article 18 of the Basic Law is not relevant as the NPCSC Decision is not something to be applied in Hong Kong.

5. On the point of the relevance or application of Article 18, members may recall that the Hong Kong Bar Association is inclined to the view that the NPCSC Decision does not qualify as an Annex III (*to the Basic Law*) law (its reasons are contained in paragraphs 8 to 13 of its submission (LC Paper No. CB(2)1404/06-07(01)). The Administration shares the Bar's view that there is no need for the NPCSC Decision to be included in Annex III on the ground that it is not to be applied in the HKSAR under Article 18 of the Basic Law (paragraph 4 of the Administration's paper LC Paper No. CB(2)1479/06-07(01) refers).

6. At the same meeting, some members expressed concern over the basis upon which HKSAR is enacting the Bill if the NPCSC Decision does not apply in the HKSAR. In our view, whilst the NPCSC Decision does not apply in the HKSAR, it contains an authorization given by NPCSC under Article 20 of the Basic Law which provides the legal basis for HKSAR, among other things, to enact laws according to which it exercises jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port pursuant to that decision.

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