

Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill

Response to Members' questions

Purpose

This miscellaneous paper sets out our response to Members' questions raised at Bills Committee meetings.

Item 1: Deployment of Divers

2. For maritime rescue operations, the Marine Police will take immediate rescue action if the victims are afloat or within sight. If divers are required, the Fire Services Department will deploy divers to the scene by land (a dedicated vehicle with the necessary diving apparatus and equipment) or by sea (a diving speedboat). In the case of deployment by land, with the assistance of the land crew, divers can be lowered from the road surface of the Shenzhen Bay Bridge to vessels underneath the Bridge (e.g. Police Launch or diving speedboat) as a diving platform to effect the rescue operation. Divers can be conveyed to the Shenzhen Bay Bridge in around 10 minutes from their nearest base in Tuen Mun.

Item 2: Response time of Shenzhen rescue parties

3. "深圳市海事局" is responsible for coordinating maritime rescue operation in Shenzhen waters including the area underneath the Shenzhen Bay Bridge. Upon receipt of a rescue request, they can mobilize patrol boats to reach the waters under the Shenzhen Bay Bridge within 30 minutes from their base at Shekou.

4. For land rescue at the Shenzhen Bay Port, the overall party in command is "深圳市公安局" which includes fire service team, traffic police team etc. Their officers stationing at the Shenzhen Bay Port will, upon notification of any emergency incidents, proceed to the scene within five minutes for rescue.

Item 3: Birth in the Hong Kong Port Area (HKPA)

5. Clause 5(1) of the Bill provides for the application of the laws of Hong Kong, including the Basic Law, in the HKPA except to such extent as otherwise provided by any enactment enacted or made on or after the HKPA commences operation. Clause 5(4) provides that for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong. Hence, birth in the HKPA will be regarded as birth in Hong Kong. For those who are eligible for right of abode if born in Hong Kong, they, if born in the HKPA, will be eligible for right of abode in Hong Kong.

Item 4: Hon Daniel Lam's questions

Question 1 (re transport network connecting the Shenzhen Bay Bridge)

6. We have provided the relevant information in our paper entitled "Traffic and Transport Arrangements for the Commissioning of Shenzhen Bay Port" (LC Paper No. CB(2)1465/06-07(01)).

Question 2 (re planning near the Shenzhen Bay Bridge)

7. We have provided the relevant information in our response to Hon Cheung Hok-ming's question no. 7 (LC Paper No. CB(2)1407/06-07(01)).

Question 3 (re mechanism to handle traffic congestion at the Shenzhen Bay Port)

8. We have provided the relevant information in our response to Hon Cheung Hok-ming's question no. 6 (LC Paper No. CB(2)1407/06-07(01)).

Question 4 (re liaison with Heung Yee Kuk, etc.)¹

9. To better co-ordinate the Administration's work with the Heung Yee Kuk, the Home Affairs Bureau has set up the Home Affairs Bureau-Heung Yee Kuk Liaison Committee. The Administration will liaise with Heung Yee Kuk on matters concerned through the Committee or the Executive Committee of the Heung Yee Kuk.

10. The HKPA is situated on a piece of newly reclaimed land in Shenzhen and will be used as a boundary crossing control point. There will not be any people residing in that area but there will be people working at the control point and running duty free shops etc. Given that the Heung Yee Kuk Ordinance (Cap. 1097) uses the expression "the people of the New Territories" (which is not defined) instead of "the inhabitants or residents of the New Territories" (**Annex A**), it seems to us that the ordinary meaning of that expression should cover people not confined to residents or inhabitants of the New Territories, e.g. those who work or run businesses in the New Territories. Thus, it appears those who work or own a shop within the HKPA should fall within the purview of the Heung Yee Kuk.

11. The New Territories Ordinance (Cap. 97) is divided into two parts. Part I does not relate to the rights of the indigenous inhabitants of the New Territories. While Part II of the New Territories Ordinance applies to the New Territories, the HKPA is situated on a piece of newly reclaimed land in Shenzhen. Upon the commencement of the HKPA, all

¹ The answers similarly apply to Hon Cheung Hok-ming's question no. 13 dated 1 March 2007.

HKPA land shall be unleased Government land. Further, as mentioned above, the HKPA will be used as a boundary crossing point. Hence, there will be nothing in the HKPA land (though it shall be regarded as an area lying within the New Territories under clause 5(5) of the Bill²) upon which the lawful traditional rights and interests of the indigenous inhabitants of the New Territories as protected under Article 40 of the Basic Law may operate.

Item 5: Local legislation only applying to the New Territories

Clause 5(5)

12. Clause 5(5) provides that, if an enactment applies –

- (a) only to a specific area in Hong Kong; or
- (b) by reference to different areas in Hong Kong,

then, for the purpose of determining whether the HKPA is included in such an area, the HKPA is regarded as an area known by its name that lies within the New Territories³ and outside New Kowloon⁴.

² Clause 5(1) as read with clause 5(4) of the Bill would mean that the laws of Hong Kong will apply to the HKPA as if it were part of Hong Kong. Clause 5(5) provides that the HKPA is regarded as an area known by its name (i.e. the Shenzhen Bay Port Hong Kong Port Area) that lies within the New Territories and outside New Kowloon.

³ Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that "New Territories" means the sea specified or referred to in Schedule 5A. Schedule 5A of the Ordinance specifies the area of the New Territories as all of Hong Kong except the land and sea comprised within the boundary of Hong Kong immediately before 9 June 1898.

⁴ "New Kowloon", as defined in the Interpretation and General Clauses Ordinance (Cap. 1), is part of the New Territories. Schedule 5 to the Interpretation and General Clauses Ordinance provides that "New Kowloon" means that portion of the New Territories which is delineated in red and shown upon a plan marked "New Kowloon" dated 8 December 1937, signed by the Director of Public Works, countersigned by the Governor and deposited in the Land Registry.

Need for clause 5(5)

13. According to clause 5(4) of the Bill, for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong.

14. Among the laws of Hong Kong, there are some enactments that apply only to the New Territories or by reference to different areas (the New Territories, Kowloon Area, New Kowloon etc.). Questions may arise as to whether or how these enactments are to apply to the HKPA, that is, whether (for the purpose of applying those enactments to the HKPA) the HKPA may be construed as part of the New Territories and whether it lies within or outside New Kowloon. For example, under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Director of Lands, Director of Housing and Director of Highways are designated as the Authority for the “Urban Area” and “New Territories, except New Kowloon” respectively for the purposes of the provisions of that Ordinance (*c.f. section 3*), and different rates of fees are applicable to the “Urban Area” and “New Territories, except New Kowloon” etc. (*c.f. Land (Miscellaneous Provisions) Regulation, Cap. 28 sub. leg. A*).

15. The HKPA could hardly be said to be geographically directly connected to New Kowloon or any part of the urban area of Hong Kong. Given the geographical location of the HKPA, we have included an express provision (i.e. clause 5(5)) in the Bill to provide that the HKPA is regarded as an area lying within the New Territories and outside New Kowloon for the purpose of applying the laws of Hong Kong in the HKPA.

16. Given the limited range of activities that may take place in the HKPA and the fact that the HKPA is a piece of newly reclaimed land, the impact of including the HKPA in the New Territories for the purpose of applying those enactments are minimal. **Annex B** lists out certain ordinances that only apply to the New Territories.

17. The approach adopted in clause 5(5) gives a clear direction on how to apply legislation containing references to the New Territories or New Kowloon as and when the need arises, such as the example mentioned in paragraph 14 above.

Security Bureau

2 April 2007

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Chapter:	1097	Title:	HEUNG YEE KUK ORDINANCE	Gazette Number:	4 of 2000
Section:	9	Heading:	Objects	Version Date:	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 4 of 2000 s. 3

PART III**FUNCTIONS OF THE KUK**

The objects of the Kuk shall be-

- (a) to promote and develop mutual co-operation and understanding among the people of the New Territories;
 - (b) to promote and develop co-operation and understanding between the Government and the people of the New Territories;
 - (c) to advise the Government on social and economic developments in the interests of the welfare and prosperity of the people of the New Territories;
 - (d) to encourage the observance of all such customs and traditional usages of the people of the New Territories as are conducive to their welfare and to the preservation of public morality; and
 - (e) to exercise such functions as they may be invited to from time to time by the Chief Executive.
- (Amended 4 of 2000 s. 3)

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Annex B

List of certain ordinances that only apply to the New Territories

1. New Territories Ordinance (Cap. 97)
2. Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121)
3. New Territories Leases (Extension) Ordinance (Cap. 150)
4. New Territories (Renewable Government Leases) Ordinance (Cap. 152)
5. New Territories Land (Exemption) Ordinance (Cap. 452)
6. New Territories Land Exchange Entitlements (Redemption) Ordinance (Cap. 495)