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**Report of the Bills Committee on
Shenzhen Bay Port Hong Kong Port Area Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill.

Background

2. A new control point, the Shenzhen Bay Port, will be set up at Shekou in Shenzhen on the Mainland. It will be linked to Ngau Hom Shek in the north-western part of the New Territories of Hong Kong through the Shenzhen Bay Bridge (also known as the Hong Kong-Shenzhen Western Corridor). The Hong Kong Special Administrative Region (HKSAR) Government has reached consensus with the Mainland to implement the co-location arrangement for customs and immigration clearance at the Shenzhen Bay Port, wherein a Hong Kong Port Area will be set up.

3. The Standing Committee of the National People's Congress (NPCSC) decided on 31 October 2006, *inter alia*, that the HKSAR is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of the HKSAR from the day on which the Shenzhen Bay Port commences operation, and the HKSAR is to administer the Shenzhen Bay Port Hong Kong Port Area as a closed area (NPCSC's Decision). On 30 December 2006, the State Council issued an Official Reply to stipulate the area and the land use period of the Hong Kong Port Area at the Shenzhen Bay Port. Local legislation will be required to implement the co-location arrangement.

The Bill

4. The Bill seeks -
- (a) to declare an area in the Shenzhen Bay Port on the Mainland as the Shenzhen Bay Port Hong Kong Port Area;
 - (b) to apply the laws of Hong Kong in the Hong Kong Port Area, and to provide for the jurisdiction of Hong Kong courts;
 - (c) to extend the territorial limit of certain pre-existing rights and obligations to include the Hong Kong Port Area;
 - (d) to make provisions for the construction of certain documents made subsequent to the declaration of the Hong Kong Port Area; and
 - (e) to make provisions for related purposes.

The Bills Committee

5. At the House Committee meeting on 23 February 2007, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon LAU Kong-wah, the Bills Committee has held 16 meetings with the Administration. The Bills Committee has met with the Hong Kong Bar Association (Bar), and discussed with the Hong Kong Federation of Insurers (HKFI) the extension of territorial limit of pre-existing insurance policies relating to the mandatory motor vehicle third party risks insurance and employee compensation insurance. The Bills Committee has also conducted a visit to the proposed Hong Kong Port Area at the Shenzhen Bay Port.

Deliberations of the Bills Committee

Constitutional and jurisdictional issues

7. Some members have expressed concern about the legal basis for enacting the Bill, and the constitutional basis of the decision of NPCSC in authorizing the HKSAR to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port. They are also concerned whether the Legislative Council (LegCo) has the competence to enact the Bill the intended extent of which is geographically outside the boundary of the HKSAR. In addition, members have asked whether there are any Mainland laws that may prevail over NPCSC's Decision.

8. The Administration has responded that the Shenzhen Bay Port is located at Shekou in Shenzhen. Under the co-location arrangement, the HKSAR will exercise jurisdiction over the Hong Kong Port Area within the Shenzhen Bay Port according to the laws of Hong Kong. However, under the Basic Law and particularly the principle of "one country, two systems", this jurisdictional arrangement cannot be unilaterally effected without additional authorization by an appropriate organ of the Central Authorities. Against this background, NPCSC decided on 31 October 2006 that the HKSAR is authorized to exercise jurisdiction over the Hong Kong Port Area according to the laws of Hong Kong from the day on which the Shenzhen Bay Port commences operation, and the HKSAR is to administer the Hong Kong Port Area as a closed area.

9. The Administration has explained that the authorization was given by NPCSC in accordance with its power under the Constitution of the People's Republic of China (PRC). Article 57 of the Constitution provides that the National People's Congress (NPC) is the highest organ of the state power. Its permanent body is NPCSC. Article 58 provides that NPC and NPCSC exercise the legislative power of the State. Such legislative power of NPCSC is more particularly prescribed in Article 67 of the Constitution. Under Article 20 of the Basic Law, the HKSAR is competent to acquire and exercise the powers granted to it under the NPCSC's Decision. Article 20 of the Basic Law provides that the HKSAR may enjoy other powers granted to it by NPC, NPCSC or the Central People's Government. The Article enables further powers to be delegated to the HKSAR by the Central Authorities if and when appropriate.

10. Regarding the status of the NPCSC's Decision, the Administration has explained that the NPCSC's authorization on 31 October 2006 is considered part of the law under the Mainland legal system. The basis for this view is that, according to some leading Mainland legal academics, "laws" in the Mainland refer to the following documents which are of the same legal force and status -

- (a) basic laws (基本法律) enacted by NPC;
- (b) other laws other than the basic laws (基本法律以外的其他法律) enacted by NPCSC; and
- (c) resolutions or decisions which are regulatory in nature (規範性決議和決定) made by NPC and NPCSC.

Given that the purpose of the NPCSC's Decision is to authorize the HKSAR to exercise jurisdiction over the Hong Kong Port Area according to Hong Kong laws, it is regulatory in nature. It should therefore be regarded as a "law" (法律) under the Mainland legal system.

11. The Administration has further explained that under Article 79 of the Legislation Law of PRC, the NPCSC's Decision, as a law, will have a higher status when compared

with administrative regulations, local regulations and rules. Furthermore, by virtue of Article 83 of the same law, the NPCSC's Decision will prevail over any prior inconsistent laws. In his "Explanations on the Proposal for Authorizing the Hong Kong Special Administrative Region to Administer the Hong Kong Port Area at the Shenzhen Bay Port" delivered at the 23rd session of the Standing Committee of the 10th NPC on 22 August 2006, Mr Chen Zuor, Deputy Director of the Hong Kong and Macau Affairs Office, State Council, considered that a decision made by NPCSC for the purpose of the co-location arrangement has a legal status-cum-authority which is most sufficient according to the Constitution.

12. As regards the HKSAR's jurisdiction over the Hong Kong Port Area, the Administration has explained that the NPCSC's Decision states that the HKSAR is authorized to exercise jurisdiction over the Hong Kong Port Area according to the laws of Hong Kong. By necessary implication of the authorization, Mainland laws shall not apply to the Hong Kong Port Area, as if it were a part of the HKSAR. The NPCSC's Decision also states that the HKSAR is to administer the Hong Kong Port Area as a closed area. This provision is an integral part of the NPCSC's authorization to the HKSAR exercising jurisdiction over the Hong Kong Port Area according to the laws of Hong Kong.

13. Regarding the legislative competence of LegCo, the Bar is of the view that according to the NPCSC's Decision, it is the HKSAR (with all its powers and authorities) that has jurisdiction over the Hong Kong Port Area. The HKSAR thus may exercise the powers it has been granted under the Basic Law, including the legislative power, in respect of the Hong Kong Port Area. Such jurisdiction is to be exercised in accordance with the laws of the HKSAR. By necessary implication, the HKSAR may legislate in respect of the Hong Kong Port Area, including enacting the Bill the intended extent of which is the Hong Kong Port Area.

14. The Administration shares the views of the Bar. The Administration has pointed out that there are no provisions in the Basic Law which expressly prohibit the legislature of the HKSAR from legislating extra-territorially. Article 2 of the Basic Law authorizes the HKSAR to exercise, *inter alia*, legislative power in accordance with the Basic Law. Article 17 further provides that the HKSAR has legislative power. Article 73 empowers LegCo to make laws in accordance with the Basic Law and the legal procedures. By its decision dated 31 October 2006, NPCSC authorized the HKSAR to exercise jurisdiction over the Hong Kong Port Area in the Shenzhen Bay Port according to the laws of the HKSAR from the day on which the Shenzhen Bay Port commences operation. The Bill seeks to extend the application of Hong Kong laws to the Hong Kong Port Area pursuant to the NPCSC's Decision. The HKSAR, under Article 20 of the Basic Law, is competent to acquire and exercise the powers granted to it under the NPCSC's Decision. Hence, the Administration is of the view that there is no doubt that the HKSAR, by virtue of the NPCSC's Decision, has legislative competence to enact the Bill.

15. Annex III to the Basic Law contains a list of the national laws to be applied in the HKSAR. Under Article 18(3) of the Basic Law, NPCSC may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the HKSAR and the HKSAR Government. Laws listed in Annex III to the Basic Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law. Members have asked whether the NPCSC's Decision is a national law; and if so, whether it should, in accordance with Article 18(3) of the Basic Law, be included in Annex III.

16. The Bar is inclined to the view that the NPCSC's Decision does not qualify as a national law under Annex III of the Basic Law. The Bar has pointed out that there does not appear to be any statutory definition of "law" either in the Constitution of PRC or the Legislation Law of PRC. "Laws" in its narrow sense are defined by Mainland legal scholars as those normative rules enacted by NPC and NPCSC which have general binding effect. The NPCSC's Decision merely authorizes the HKSAR to exercise its jurisdiction in and apply its law to the Hong Kong Port Area, it does not contain any normative rules with general binding effect. The NPCSC's Decision is a decision dealing with a specific case and is not to be applied in the HKSAR. Notwithstanding the lease contract for State-owned land with the People's Government of the Shenzhen Municipality of Guangdong Province, the Hong Kong Port Area remains not part of the HKSAR. Rather, after the authorization from NPCSC, the Bill seeks to extend existing laws of the HKSAR to the Hong Kong Port Area. The Bar has pointed out that a further support of this view would be in Article 18(2) of the Basic Law which provides that national laws listed in Annex III of the Basic Law shall be applied in the HKSAR by way of promulgation or legislation. The Bar considers that it is clear that the NPCSC's Decision cannot be applied in the HKSAR by promulgation.

17. The Administration has pointed out that the NPCSC's Decision should be regarded as a "law" under the Mainland legal system. As the NPCSC's Decision in substance provides for a port area in Shenzhen where Hong Kong laws will apply to the exclusion of Mainland laws, it is normative in nature. Since it has legal force throughout the country, it is a national law. The Administration shares the view of the Bar that there is no need for the NPCSC's Decision to be included in Annex III for application in the HKSAR on the ground that it is not to be applied (實施) in the HKSAR under Article 18 of the Basic Law. The Administration concurs with the view of the Bar that notwithstanding the lease contract for State-owned land, the Hong Kong Port Area remains not part of the HKSAR.

18. The Administration has further explained that the provisions in Article 18 of the Basic Law have to be interpreted in the light of Article 20 of the Basic Law, which is a specific provision on additional authorization by the Central Authorities. There is nothing in Article 20 of the Basic Law which requires that an additional authorization by the Central Authorities would need to be included in Annex III of the Basic Law for it to be validly applied (適用) in the HKSAR. The NPCSC's Decision was intended to

confer, for the purpose of Article 20 of the Basic Law, additional powers on the HKSAR so that it may exercise its jurisdiction over the Hong Kong Port Area in accordance with Hong Kong laws. Whether the intended effect of the NPCSC's Decision can be achieved would hinge on whether the NPCSC's Decision is validly made, and whether the HKSAR is competent to acquire the additional powers conferred. The NPCSC's Decision was validly made by NPCSC according to its powers under the Constitution of PRC, and the HKSAR is competent to acquire the additional powers under Article 20. Furthermore, the NPCSC's Decision does not contain any provision which suggests that its coming into force is conditional upon its inclusion in Annex III of the Basic Law. The Administration's view is that the effective operation of the NPCSC's Decision is not conditional upon its inclusion in Annex III to the Basic Law.

19. Hon Margaret NG, Hon James TO and Hon Emily LAU have expressed concern that according to the Administration, the NPCSC's Decision is a national law and has legal force throughout the country; however, it will not be included in Annex III of the Basic Law. This will set a precedent for a national law to be implemented in Hong Kong without its inclusion in Annex III of the Basic Law.

20. Regarding the procedure which the Central Authorities shall follow in conferring additional powers on the HKSAR for the purpose of Article 20 of the Basic Law, the Administration has advised that it is a matter of Mainland law. This is akin to the enactment of the Basic Law under which NPC conferred various powers on the HKSAR for the purpose of implementing the basic policies of PRC regarding Hong Kong. There is no express limitation on the scope of additional powers that the HKSAR may acquire from the Central Authorities pursuant to Article 20 of the Basic Law. However, such additional powers have to be consistent with the Basic Law, and cannot deprive the HKSAR of the rights protected under the Basic Law.

21. Hon Emily LAU has requested the Secretary for Security to state in his speech to be made during the resumption of the Second Reading debate on the Bill that the additional powers conferred under Article 20 of the Basic Law will not deprive the rights of Hong Kong residents protected under the Basic Law.

Land use arrangements for the Hong Kong Port Area

22. By the "Official Reply of the State Council Concerning the Area of the Hong Kong Port Area at the Shenzhen Bay Port over which the Hong Kong Special Administrative Region is Authorized to Exercise Jurisdiction and the Land Use Period" dated 30 December 2006, the State Council -

- (a) stipulated the area of the Hong Kong Port Area at the Shenzhen Bay Port (the Stipulated Area); and

- (b) determined that the land use right of the Stipulated Area be acquired by the HKSAR by way of a lease under a lease contract for State-owned land signed between the HKSAR Government and the People's Government of the Shenzhen Municipality of Guangdong Province, that the land use period shall commence on the day on which the Shenzhen Bay Port commences operation and shall expire on 30 June 2047, and that with the State Council's approval of a submission made after the parties' mutual consultation and submitted in accordance with the relevant procedures, the land use right may be terminated earlier or the lease may be renewed after its expiry.

23. Members have asked whether the lease contract in respect of the Hong Kong Port Area has been finalized. Members have also asked about the land development and land usage costs for the Hong Kong Port Area.

24. The Administration has advised that it has reached consensus with the Shenzhen Municipal People's Government on the lease contract, which will cover the following -

- (a) the land use right of the Hong Kong Port Area will be acquired by way of a lease contract. The land use period shall commence on the day on which the Shenzhen Bay Port commences operation and expire on 30 June 2047. With the State Council's approval of a submission made after both sides' mutual consultation and submitted in accordance with the relevant procedure, the land use right may be terminated earlier or the lease may be renewed after its expiry;
- (b) the land to be leased under the lease contract is the Clearance Area in the Hong Kong Port Area. The area of the Hong Kong Port Area land is about 41.565 hectares, and its Particularized Description (paragraph 27 below refers) will be reflected in the lease contract;
- (c) the Hong Kong Port Area land will be subject to a rental (i.e. land usage cost) payable on an annual basis. For the first five years, the rental is some RMB6 million each year. Thereafter, the rental will be under periodic review and adjustment;
- (d) the use of the land in the Hong Kong Port Area is for the purposes of the boundary crossing facilities in the new control point, including complementary facilities for the operation or effective monitoring of the control point. Any addition, alteration, expansion or removal of facilities in the Hong Kong Port Area have to be in harmony with the surrounding landscape of the Shenzhen city;
- (e) the Hong Kong side can rent out some parts of the buildings, structures or areas within the leased land in order to provide for complementary

facilities necessary for the operation of the control point, such as duty free shops;

- (f) the ownership of the leased land shall rest with the State. Underground natural resources and anything buried under the leased land shall not be covered by the land use right granted under the lease contract; and
- (g) the Hong Kong side shall keep and maintain the leased land in good conditions. Both sides have agreed that where construction works or activities are carried out at the Shenzhen Bay Port, all reasonable cautious measures shall be taken to ensure the safety of the personnel of the control point and that no loss or damage will be caused to the properties.

25. The Administration has informed the Bills Committee that drafting of the lease contract is drawing to a close. The lease contract, when finalized, will be submitted to the State Council for approval and will be signed by both sides. The Administration will provide LegCo with a copy of the signed lease contract in due course. The lease contract will take effect on the day the Shenzhen Bay Port commences operation. The rental will be funded out of the recurrent provisions under the relevant departments.

26. As regards the land development cost, the Administration has advised that the whole site in the Shenzhen Bay Port where the boundary crossing facilities of the two sides will be co-located was developed by the Shenzhen side. Hong Kong is responsible for the cost for developing the land of the Hong Kong Port Area. The Shenzhen Municipal People's Government has undertaken to provide the Administration with audited data relating to the land development cost to be borne by the HKSAR Government. The Administration will in due course submit a funding request to the Finance Committee to meet the land development cost.

Boundary of the Hong Kong Port Area

27. Clause 3 of the Bill declares the area delineated by the Particularized Description in Schedule 1 to the Bill as the Hong Kong Port Area. The Particularized Description comprises the description of the area of the Clearance Area set out in Part 1 of that Schedule, and the description of the area of the Shenzhen section of the Shenzhen Bay Bridge set out in Part 2 of that Schedule. The Particularized Description of the area of the Hong Kong Port Area covers its vertical and horizontal limit.

28. As the State Council has not stipulated the vertical limit within the Hong Kong Port Area, members have queried the reasons for such stipulation in the Bill. Members have also asked about the details of the boundary of the Hong Kong Port Area.

29. The Administration has responded that the Particularized Description of the area of the Hong Kong Port Area, including its vertical limit, in the Bill reflects the consensus reached by the Shenzhen side and the Hong Kong side. The delineation of

the vertical limit of the area of the Hong Kong Port Area can avoid the separation of the air space above and the waters below the Shenzhen section of the Shenzhen Bay Bridge and the roads below the Bridge into two parts, which will affect the traffic on the Shenzhen side. It can also avoid the division of the deep underground space of the Clearance Area into two parts, which will obstruct future possible constructions by the Shenzhen side, e.g. the laying of underground pipelines.

30. Regarding the vertical limit of the Clearance Area, the Administration has advised that the upper limit is set at an elevation of +60 m (National Vertical Datum 1985, the same below) and the lower limit is set at a depth of -60 m, except for the link roads for passenger vehicles, i.e. road linking the Clearance Area for goods and the Clearance Area for passengers. As far as the link roads for passenger vehicles are concerned, vertically, the upper limit is set at an elevation of +60 m and the lower limit is set at a depth of -10 m. As for the vertical limit of the Shenzhen section of the Shenzhen Bay Bridge, the upper limit of Ramps A - E, i.e. flyovers for changing over of lanes, is set at an elevation of +60 m and the lower limit is the bottom parallel edge lines of the bridge box girders. The upper limit of the remaining portion of the Shenzhen section of the Bridge is set at an elevation of +160 m and the lower limit is the bottom parallel edge lines of the bridge box girders.

31. At the suggestion of members, the Administration will, by way of Committee Stage amendments (CSAs), include in the Bill maps showing the coordinates of the Hong Kong Port Area to facilitate public understanding of the boundary of the Hong Kong Port Area.

32. Members have asked whether signage will be erected for indicating the Hong Kong Port Area boundary and the road section within the Hong Kong Port Area on the Shenzhen section of the Shenzhen Bay Bridge.

33. The Administration has advised that it is considering erecting signage for indicating the road section within the Hong Kong Port Area on the Shenzhen section of the Shenzhen Bay Bridge. As for the vehicular accesses inside the Hong Kong Clearance Area, the demarcation of the Hong Kong and Shenzhen Port Areas boundary will be indicated by a white road marking. However, no signage will be erected in order not to confuse drivers.

Definition of "public officer"

34. Under the Bill, "public officer" means -

- (a) a person holding an office of emolument under the Government (whether such office be permanent or temporary), including a principal official of the Government appointed in accordance with the Basic Law; and
- (b) the Chief Executive (CE) (including CE in Council).

35. The Administration has explained that the definition of "public officer" is relevant to clause 9 (as read with Schedules 2 and 3 of the Bill), which deals with the extension of the territorial limit of pre-existing rights and obligations arising from the exercise or performance of statutory powers or duties. The inclusion of CE in the definition reflects the policy intent to include statutory powers or duties that are conferred or imposed on CE, which are quite common in the legislation of Hong Kong.

36. As it is Government's position that "public officer" as defined under the Interpretation and General Clauses Ordinance (Cap. 1) does not include CE, members consider that reference to CE should be deleted in order not to give rise to confusion. The Administration has agreed to delete the references to CE and CE in Council in the definition of "public officer" in the Bill. Instead, references to CE and CE in Council will be added to Schedule 3 to achieve the policy intent.

Definition of "Relevant Date"

37. Under the Bill, "Relevant Date" means the date on which both clauses 3 and 5 come into operation. At the suggestion of members, the Administration has agreed to move a CSA to spell out in the definition of "Relevant Date" that the date appointed for the coming into operation of clauses 3 and 5 is the day on which the Shenzhen Bay Port commences operation.

Application of laws of Hong Kong in Hong Kong Port Area

38. Clause 5(1) of the Bill provides for the application of the laws of Hong Kong in the Hong Kong Port Area except to such extent as otherwise provided by any enactment enacted or made on or after the Hong Kong Port Area commences operation. CE in Council is empowered under clause 5(2) to make subsidiary legislation to modify any enactment (other than the Bill as enacted or any of its provisions) from the laws of Hong Kong that apply in the Hong Kong Port Area. Clause 5(3) provides that the subsidiary legislation made under clause 5(2) is subject to the approval of LegCo. Members have queried the need for clause 5(2). Members consider that any modifications or exclusions should be made by way of an amendment bill.

39. The Administration has explained that the intention of clause 5(2) is to allow flexibility to deal with unforeseen circumstances. As the Administration does not have any experience in implementing the co-location arrangement, it is prudent to include the clause in the Bill. Modifications or exclusions will only be made in respect of those laws the application of which to the Hong Kong Port Area will cause grave difficulties in enforcement or implementation.

40. As the Administration is unable to provide concrete examples that justify the need for clause 5(2), and members have indicated their readiness to speed up the consideration and enactment of urgent legislation to modify or exclude any Hong Kong

laws in their application to the Hong Kong Port Area should the need arise in future, the Administration has, at the request of members, agreed to delete clause 5(2). Consequentially, clause 5(3) will also be deleted.

41. Under the Bill, "laws of Hong Kong" means the laws for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong, including all the sources of the laws of Hong Kong specified in Article 18 of the Basic Law. Given that "law" is already defined in Cap. 1, some members have queried the need for the definition in the Bill and whether there is any difference in their meaning.

42. The Administration has explained that as Cap. 1 provides the definition of "law", and not "laws of Hong Kong". The provision of the definition of "laws of Hong Kong" in the Bill is to avoid possible argument on the construction of clause 5 in future. The meaning of "laws of Hong Kong" is consistent with the meaning of "law" in Cap. 1.

43. Members have agreed to retain the definition of "laws of Hong Kong" in the Bill.

44. At the suggestion of members, the Administration will delete clause 5(6) which is an avoidance of doubt provision regarding the meaning of "laws of Hong Kong".

Land in Hong Kong Port Area be regarded as Government land

45. Clause 6 of the Bill provides that land within the Hong Kong Port Area is regarded, for the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, as part and parcel of the Government land lying within Hong Kong. Any right or interest in any such land disposed of by subsequent dealings is regarded as a right or interest derived directly or indirectly (as the case may be) from the Government.

46. Hon Margaret NG has expressed reservations about the need for clause 6. Hon Margaret NG has pointed out that the land in the Hong Kong Port Area is acquired by way of a lease contract and the HKSAR Government merely has the land use right. As such, she has queried how the Hong Kong Port Area could be regarded as Government land. She has also queried whether the HKSAR Government would have the right to lease out or grant the land within the Hong Kong Port Area to other persons.

47. The Administration has responded that under the Bill, the laws of Hong Kong apply in the Hong Kong Port Area as if it were an area lying within Hong Kong. Under the laws of Hong Kong, there are provisions governing Government land, whether leased or unleased. Clause 6 provides for the status (i.e. Government land) to be accorded to land within the Hong Kong Port Area for the purpose of applying the laws of Hong Kong. The application of Hong Kong laws in the Hong Kong Port Area pursuant to clause 5 also includes the Basic Law. Thus, Article 7 of the Basic Law will apply accordingly. Article 7 provides that in respect of land and natural resources within Hong Kong, the HKSAR Government shall be responsible for their management, use and development and for their lease or grant to others for use or

development. On the other hand, when the HKSAR Government disposes of any right or interest in the Hong Kong Port Area land, it will comply with the terms and conditions provided for in the lease contract. In this regard, underground natural resources will not be covered by the land use right under the lease contract.

48. Some members have suggested that a provision should be added to reflect the fact that the land use right of the Hong Kong Port Area is acquired by way of a lease as mentioned in paragraph (3)(b) of the preamble. The Administration has agreed to move a CSA to this effect.

49. Hon Margaret NG maintains her reservations about clause 6.

50. Under clause 5(5) of the Bill, the Hong Kong Port Area shall be regarded as an area lying within the New Territories. Members have asked whether the traditional rights and interests of the indigenous inhabitants of the New Territories as protected under Article 40 of the Basic Law, the New Territories Ordinance (Cap. 97) and the Heung Yee Kuk Ordinance (Cap. 1097) will apply in the Hong Kong Port Area.

51. The Administration has explained that the Hong Kong Port Area 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 uses the expression "the people of the New Territories" (which is not defined) instead of "the inhabitants or residents of the New Territories", it seems 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. It appears that those who work or own a shop in the Hong Kong Port Area should fall within the purview of the Heung Yee Kuk. The Administration has also explained that the New Territories Ordinance 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 Hong Kong Port Area is situated on a piece of newly reclaimed land in Shenzhen. Upon the commencement of the Hong Kong Port Area, all Hong Kong Port Area land shall be unleased Government land. Further, the Hong Kong Port Area will be used as a boundary crossing point. Hence, there will be nothing in the Hong Kong Port Area land 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.

Pre-existing rights and obligations

The Administration's approach

52. Part 3 of the Bill (Clauses 8 to 10) extends the territorial limits of certain pre-existing rights and obligations to include the Hong Kong Port Area.

53. The Administration has explained that when implementing the co-location arrangement, one of the key issues is whether the territorial limits of rights and obligations that exist before the Hong Kong Port Area comes into operation should include the Hong Kong Port Area. For instance, a pre-existing warrant for the arrest of a person issued by a Hong Kong court will only enable an arrest within Hong Kong proper as the court has jurisdiction over Hong Kong proper only. Statutory extension of the territorial limits of pre-existing rights and obligations that are confined to Hong Kong to include the Hong Kong Port Area could amount to an interference with the rights and obligations of the parties concerned. This may infringe Articles 6 and 105 of the Basic Law, which respectively relates to protecting the right of private ownership of property, and right to the acquisition, use, disposal and inheritance of property. However, if the pre-existing rights and obligations are left intact, it may give rise to inconvenience or even injustice.

54. In striking a balance, the Administration proposes to extend the territorial limits of pre-existing rights and obligations as set out in Schedule 2 and Part 2 of Schedule 4 to the Bill to ensure effective law enforcement and continuity of certain essential services in the Hong Kong Port Area. The Bill will not automatically extend the territorial limits of pre-existing rights or obligations of a private nature, e.g. wills, insurance policies and contracts, to cover the Hong Kong Port Area. Parties concerned may vary their rights and obligations to cover the Hong Kong Port Area as they consider appropriate.

Extension of territorial limit of pre-existing insurance policies

55. Members have expressed concern about the impact on motor vehicle third party risks insurance policies and employees' compensation insurance policies in existence before the Hong Kong Port Area comes into operation, as their coverage does not include the Hong Kong Port Area.

56. HKFI has informed the Bills Committee that its initial assessment is that any additional insurance risks arising from the opening of the Hong Kong Port Area should be rather minimal. However, it is necessary to ensure that the coverage of those policies in existence before the coming into operation of the Hong Kong Port Area does not, by default, discontinue or get restricted in the Hong Kong Port Area. HKFI is considering two possible options, namely -

- (a) to issue an endorsement on each of the policies involved extending their coverage accordingly to include the Hong Kong Port Area until their expiry or renewal; or
- (b) to have some form of a market agreement between insurers and the Insurance Authority to extend the coverage of such policies to the Hong Kong Port Area.

57. HKFI has explained that the option referred to in paragraph 56(a) above would require a considerable amount of administrative work as the number of policies involved would be sizeable; assistance from the Transport Department and the Labour Department is required. HKFI is inclined to adopt the option referred to in paragraph 56(b) above as it appears to be much simpler and is easier to implement.

58. Some members have queried whether the implementation of such a market agreement is equivalent to the issuing of an endorsement on each of the policies involved. They are concerned about the legal effect of the agreement, its enforceability and possible legal challenge. They have suggested that the Administration consider reflecting the market agreement in the Bill, if consent is given by the insurance industry. In their view, the Administration has responsibility to ensure that the coverage of motor vehicle third party risk insurance policies and employees' compensation insurance policies is valid. Hon James TO considers it preferable to add a provision to the Bill to the effect that such insurance coverage will automatically include the Hong Kong Port Area. Alternatively, consideration should be given to the execution of an unilateral deed by all relevant insurers with a copy of the deed deposited with the Insurance Authority.

59. HKFI has responded that the implementation of the market agreement, which has legal effect, would have the same effect of issuing endorsement on each of the policies. There are also similar market agreements in place. For instance, the Employees' Compensation Insurance Residual Scheme will soon be launched to assist employers who have difficulties in finding such insurance cover, while the Motor Insurers' Bureau of Hong Kong has been operating on the basis of a market agreement between the industry and the Government for the past 20 years.

60. As an insurance policy is a contract between the policyholder and insurer, the Administration has reaffirmed its policy of not interfering with private contracts. The Administration has stated that the market agreement is a legally binding agreement executed by the Government acting through IA and the insurers. A key statutory duty discharged by IA is to protect the interest of policyholders. In this light, any failure on the part of an insurance company to abide by the market agreement will reflect adversely on its probity and integrity, hence hampering its ability to meet the "fit and proper" requirement of the Insurance Companies Ordinance (Cap. 41). Regulatory powers vested with IA could therefore be relied upon to ensure compliance with the market agreement. Even though individual policyholders are not parties to the market agreement, disputing parties can draw reference to the market agreement in court proceedings and the insurers will be estopped from breaching their undertaking. IA as signatory party to the market agreement stands ready to render assistance to policyholders in this regard. To notify the public, particularly the policyholders, of the details of the market agreement and the list of subscribing companies, HKFI is considering making a prominent announcement upon the launching of the market agreement. Relevant government departments will also help disseminate such information. Companies which choose not to participate in the market agreement will

be requested to inform their policyholders either by issuing an endorsement to each of them or advising them to seek extra coverage for the Hong Kong Port Area.

61. Regarding some members' suggestions of making reference to the market agreement in the Bill and providing a statutory basis to the insured for some legal actions against non-compliance with the market agreement, the Administration considers that such sanctions will run against the fundamental spirit of a market agreement and frustrate goodwill extended by the industry. Furthermore, this course of action may have read-across implications on other market agreements. As regards the suggestion of a unilateral deed, the Administration has advised that some insurance companies will be wary of the resulting legal implications and thus unlikely to pursue the deed with full vigor.

62. Hon Bernard CHAN has pointed out that the present market agreement is being drawn up on the understanding that it will not be implemented on a statutory basis. Otherwise, the discussion of such an agreement may need to start afresh.

63. The Administration has then informed members that all relevant insurance companies have indicated their willingness to participate in the market agreement. Having regard to the successful implementation of previous market agreements and the various safeguards available, the Administration is content that the market agreement would provide a satisfactory solution to extending policy coverage to the Hong Kong Port Area.

64. Hon James TO maintains his view that it is preferable to add a provision to the Bill to the effect that such insurance coverage will automatically include the Hong Kong Port Area; or alternatively, the execution of an unilateral deed. Hon James TO has indicated that he will propose CSAs to reflect the market agreement in the Bill.

Pre-existing rights and obligations not affected unless clause 9 or 10 applies

65. Under clause 8 of the Bill, no person is entitled to contend in any proceedings (whether civil, criminal or otherwise) that clause 5(4) has the effect of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area. Clause 9 or 10 may apply to extend the territorial limit of a pre-existing right or obligation. Clause 5(4) provides that for the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, the Hong Kong Port Area is regarded as an area lying within Hong Kong. Members have enquired how clause 8 will operate.

66. The Administration has explained that the territorial limit of pre-existing rights and obligations, other than those specified in clause 9 and 10, would not be affected by the enactment of the Bill. Clause 8 avoids any unnecessary argument in any civil, criminal or other proceedings, e.g. disciplinary proceedings, that the territorial limit of a particular pre-existing right or obligation is extended on the basis of clause 5(4). By virtue of clause 8, it may not be argued for example that a pre-existing copyright licence

that enables the sale of copies of a copyright work in Hong Kong only will enable the sale of copies of the copyright work in the Hong Kong Port Area on the basis of clause 5(4). Similarly, in any criminal proceedings for an offence under section 118(1) of the Copyright Ordinance (Cap. 528), the defendant may not raise the argument that a pre-existing licence granted to him that enables the sale of copies of the copyright work in Hong Kong only is also a licence that enables him to sell the infringing copies in the Hong Kong Port Area on the basis of clause 5(4).

67. Members have pointed out that some private contracts may contain provisions that allow extension of territorial limit and have raised the concern that clause 8 as presently drafted may unintentionally restrict such contracts. To address this point, the Administration will introduce a CSA to clause 8(1) to spell out explicitly that no person is entitled to contend that the territorial limit of a particular pre-existing right or obligation is extended to include the Hong Kong Port Area if the sole ground for such contention is that clause 5(4) has the effect of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area.

Extension of territorial limit of certain pre-existing rights and obligations

68. Clause 9 of the Bill deals with certain pre-existing rights or obligations arising from the exercise or performance of statutory powers or duties. The Administration has explained that such rights and obligations are set out in Schedule 2 to the Bill, e.g. deportation orders, removal orders, warrants for the arrest of a person, certain licences, etc. If such a right or obligation has a territorial limit confined to or including Hong Kong, then, pursuant to clause 9(1), its territorial limit is extended to include the Hong Kong Port Area. Hence, a pre-existing warrant of arrest can be enforced in the Hong Kong Port Area, a qualified doctor or other recognized professionals will be qualified to practise in the Hong Kong Port Area, and a driving licence issued by the Transport Department will cover the Hong Kong Port Area.

69. Clause 9(3) empowers CE in Council to amend Schedule 2 by an order published in the Gazette. Members have queried the need for the provision. As Schedule 2 relates to certain pre-existing rights and obligations, members consider that any amendment to the Schedule should be subject to the approval of LegCo.

70. The Administration has explained that the provision is to cater for unforeseen circumstances in future. Nevertheless, having regard to members' concern on the impact on pre-existing rights and obligations and having noted members' readiness to speed up the consideration and enactment of urgent legislation to deal with pre-existing rights and obligations should the need arise in future, the Administration has agreed to delete clause 9(3). Consequentially, clause 9(4), which sets out the condition that an amendment under clause 9(3) must satisfy, will also be deleted.

Extension of territorial limit of certain rights and obligations conferred or imposed by pre-existing court orders

71. Clause 10 of the Bill deals with certain pre-existing rights and obligations arising from court orders. Such rights and obligations are set out in Part 2 of Schedule 4. Clause 10(3) empowers CE in Council to amend Schedule 4 by an order published in Gazette. Similar to clause 9(3), the Administration has agreed to delete clause 10(3).

Retrospective effect of certain orders

72. Clause 14 of the Bill provides for certain subsidiary legislation made under the Bill after its enactment to take effect retrospectively. The subsidiary legislation includes an order made under clauses 5(2), 9(3) or 10(3). The Administration has proposed to delete clause 14 consequential upon the deletion of clauses 5(2), 9(3) and 10(3).

Exercise of statutory powers in relation to the Hong Kong Port Area before its commissioning

73. An enactment that is applied in the Hong Kong Port Area by virtue of clause 5 takes effect in relation to the Hong Kong Port Area on the day on which clause 5 comes into operation (i.e. the day on which the Hong Kong Port Area comes into being). Under clause 15, a power to do anything under the enactment may be exercised in relation to the Hong Kong Port Area before the said day, but such an exercise of power is not effective before the Hong Kong Port Area comes into being. Members have enquired about the need for such provisions and the statutory powers to be exercised.

74. The Administration has explained that in preparation for the commissioning of the Hong Kong Port Area, it plans to exercise certain statutory powers pursuant to clause 15 after the Bill has been enacted and published in the Gazette but before the Hong Kong Port Area comes into being. Subsidiary legislation which the Administration plans to make before the commissioning of the Hong Kong Port Area includes -

- (a) designation of roads in the Hong Kong Port Area as permitted operating areas for New Territories taxis under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E);
- (b) designation of certain places in the Hong Kong Port Area as detention places under the Immigration Ordinance (Cap. 115) and the Immigration Services Ordinance (Cap. 331);
- (c) granting general permission under the Public Order Ordinance (Cap. 245) to allow persons of certain categories to enter or leave the Hong Kong Port Area which would be a closed area; and

- (d) making an exemption order under the Environmental Impact Assessment Ordinance (Cap. 499). According to this Ordinance, an environmental permit is required for the operation of the Shenzhen section of the Shenzhen Bay Bridge. The exemption order will temporarily exempt the project from this requirement so that the Administration could carry out the necessary statutory procedure to apply for such a permit during the exemption period.

75. The Administration also plans to exercise other statutory powers before the commissioning of the Hong Kong Port Area, including designation of speed limits of roads in the Hong Kong Port Area and designation of the Shenzhen Bay Bridge and its connecting roads as expressways under the Road Traffic Ordinance (Cap. 374); designation of roads in the Hong Kong Port Area as closed roads and certain roads in the Hong Kong Port Area as prohibited zones and restricted zones; as well as granting of certain exemptions and issuing of certain permits under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) and the Road Traffic (Traffic Control) Regulations (Cap. 374G). Under clause 15(2), the relevant subsidiary legislation or documents can only come into effect on or after the day on which the Hong Kong Port Area comes into being.

76. In addition, the Administration will seek to designate the Hong Kong section of the Shenzhen Bay Bridge and the related local road in the vicinity as a closed area from the day on which the Hong Kong Port Area comes into being, and grant general permission for persons of certain categories to enter or leave the closed area under the Public Order Ordinance (Cap. 245).

Commencement date of the Bill

77. Clause 1(2) and (3) provides for the provisions of the Bill to commence on different dates. The Administration has explained that clauses 1 and 15 shall come into operation on the day on which the Bill, when enacted, is published in the Gazette to enable the exercise of statutory powers in relation to the Hong Kong Port Area before its commissioning. Other clauses shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette. It will be the day on which the Shenzhen Bay Port commences operation, being the day on which the Hong Kong Port Area comes into being. The date of commissioning of the Shenzhen Bay Port will be announced by the State Council.

Expiry of the Bill

78. At the suggestion of members, the Administration will add provisions (a new clause 14) to the effect that the Bill, when enacted, shall expire at midnight on 30 June 2047, which is the day on which the land use period of the land use right of the Hong Kong Port Area acquired by way of the lease contract mentioned in paragraph (3)(b) of

the preamble is to expire. If the land use right is terminated earlier or the lease is renewed after its expiry, the Secretary for Security shall by notice in the Gazette publicize the date on which the land use right or the lease (as so terminated earlier or renewed) is to expire.

79. The new clause 14 reflects the fact that the temporal operation of the Bill as enacted is linked with the term (or such term as may be terminated earlier or renewed, if applicable) of the lease contract of the Hong Kong Port Area referred to in paragraph (3) of the preamble of the Bill. The Administration has pointed out the likelihood of the need for a bill nearer the time of such expiry to deal with issues that would be ascertainable by then.

Maintenance arrangement for the Shenzhen Bay Bridge

80. Members have expressed concern about the maintenance arrangement for the Shenzhen Bay Bridge in particular the Shenzhen section of the Bridge within the Hong Kong Port Area, and asked about the detailed arrangements.

81. The Administration has advised that the Highways Department of the HKSAR Government will be responsible for the maintenance of the Hong Kong section of the Shenzhen Bay Bridge and all roads within the Hong Kong Clearance Area. Different maintenance arrangements will be applied to different parts of the Shenzhen section of the Shenzhen Bay Bridge (including Ramps A to E) according to the demarcation of the Hong Kong Port Area boundary. The Shenzhen section of the Shenzhen Bay Bridge within the Hong Kong Port Area (including mainly the superstructures such as bridge surface, bridge deck, bridge tower, etc; and bridge facilities such as parapet, road lighting, etc.) will be maintained by the Highways Department under an entrustment arrangement between the Shenzhen Municipal People's Government and the HKSAR Government. The Shenzhen Municipal People's Government will be responsible for the maintenance of the Shenzhen section of the Shenzhen Bay Bridge outside the Hong Kong Port Area (mainly including substructures such as columns, foundations, etc).

82. The Administration is discussing with the Shenzhen Municipal People's Government the detailed maintenance arrangements. To ensure effective maintenance of the whole Bridge, the Maintenance Technical Group of the Shenzhen section of the Shenzhen Bay Bridge has been set up jointly by both Governments for coordinating maintenance matters. Both sides will share information on maintenance. Hong Kong will provide technical advice to the Shenzhen side where necessary.

Traffic and transport arrangements upon commissioning of the Shenzhen Bay Bridge

83. The Administration has informed members that cross-boundary passengers can cross the boundary through the Shenzhen section of the Shenzhen Bay Bridge by taking cross-boundary coaches and public transport services. A public transport interchange of about 8 000 square metres will be provided in the Hong Kong Port Area.

Cross-boundary coaches provide point-to-point cross-boundary transport services, while passengers from Hong Kong taking other public services to the Hong Kong Port Area will need to change for connecting public transport on Shenzhen side after going through immigration and customs clearance. In this connection, the Administration has agreed with the Mainland authorities to provide complementary public transport services at each side of the control point. The modes of public transport, number of routes, service hours and frequencies as well as carrying capacities of the public transport services to be provided by each side will be comparable to one another. Specifically, the Administration has planned one franchised bus route to/from Yuen Long East, one franchised bus route to/from Tuen Mun, and one green minibus route to/from Tin Shui Wai. Shenzhen will provide three bus routes to its side of the control point. The frequency of service will be at a headway of around 15 minutes. Taxi services will also be provided at both sides of the control point.

84. At present, all cross-boundary vehicles other than goods vehicles and the Lok Ma Chau-Huanggang Shuttle Buses are subject to quota restriction. The quota system is jointly administered by the Hong Kong and Guangdong authorities, with the number of quotas set at a level commensurate with the processing capacities of the control points. The Administration has reached agreement with the relevant Guangdong authorities on the number of quotas to be issued for cross-boundary private cars and coaches. For cross-boundary coaches, the Administration plans to issue 300 quotas before the commissioning of Shenzhen Bay Port. As for private cars, the Administration will initially issue 1 500 new quotas for the Shenzhen Bay Bridge. To ease congestion at the existing control points, existing holders of private car quotas at other crossings will be encouraged to switch to Shenzhen Bay Bridge. In this regard, the Administration will allow a three-month trial period after the commissioning of Shenzhen Bay Bridge, during which existing private car quota-holders can try to use the Bridge. The Administration will closely monitor the traffic situation and operation of the new control point, and review the number of quotas in conjunction with the Mainland authorities after the commissioning of the Shenzhen Bay Bridge.

85. Regarding the facilities of the public transport interchange at the Hong Kong side of the control point, the Administration has advised that there will be 11 pick-up/drop-off spaces and 70 stacking spaces for taxis, as well as seven pick-up/drop-off spaces and four stacking spaces for franchised buses and minibuses to provide for the operation of public transport services.

86. Members have expressed concern that the provision of public transport services at the Hong Kong side of the control point is far from adequate and will result in higher transport expenses for passengers using the control point. In addition, the size of the public transport interchange is too small and cannot cope with rising demand in the future. Members have suggested that non-franchised buses should be allowed to operate at the control point and cross-boundary coach services similar to the five groups (six routes) plying between various districts of Hong Kong and Huanggang control point should be provided at the Hong Kong Port Area. Some members have suggested

that the Administration should consider allowing holders of private car quotas to use different boundary crossings without restriction.

87. Members have also expressed concern about the adverse impact on traffic in the north-western part of the New Territories, in particular the Tuen Mun Road, to be brought about by the commissioning of the Shenzhen Bay Bridge, and queried the measures to be put in place to address the associated serious traffic congestion. Members have pointed out that given the impending commissioning of the Shenzhen Bay Bridge, LegCo passed a motion at its meeting on 8 March 2006 urging the Government to formulate as early as possible strategies to improve the traffic arrangements in the western and north-western parts of the New Territories. These include -

- (a) buying out the ownership of Route 3 at a reasonable price and opening it up for use by motorists;
- (b) constructing the Easterly Link Road that connects the Deep Bay Link and Route 3,
- (c) expeditiously completing the extension of Tuen Mun Road;
- (d) implementing the Northern Link project as early as possible and expeditiously completing the Kowloon Southern Link project; and
- (e) setting reasonable fares that are acceptable to the public, so as to encourage them to use the railway transport system.

88. The Administration has responded that the original planning of the new control point is to mainly cater for goods vehicles. The transport services to be provided at the Hong Kong Port Area are constrained by the area available at the public transport interchange. Thus, priority has to be given to public transport services such as franchised buses and minibuses. Nevertheless, the Administration will jointly with the Mainland authorities keep under review the provision of transport services at the control point having regard to the actual operation of the control point and the traffic situation.

89. Regarding the impact on traffic in the Northwest New Territories, the Administration is of the view that according to latest traffic projections, the existing and committed road networks together with necessary improvement measures, including the widening of Castle Peak Road and Yuen Long Highway, would be able to cope with the traffic demand (including that to be generated from the commissioning of the Shenzhen Bay Bridge and the Hong Kong-Zhuhai-Macao Bridge) in the region up to at least 2016. To ensure that the new transport infrastructure beyond 2016 would be provided in a timely manner, the Administration has been conducting further investigation and engineering feasibility studies on the proposed road projects as

recommended in the Northwest New Territories Traffic and Infrastructure Review. Plans are in hand to improve the overall operation of Tuen Mun Road. The proposed projects include widening the Tuen Mun Road at Tsing Yi Interchange, widening the Town Centre Section of Tuen Mun Road, and reconstructing and improving the expressway section of Tuen Mun Road. The Administration plans to commence the widening works at Tsing Tin Interchange in 2007 for completion by 2009, the widening works at the Town Centre Section in 2008 for completion by 2010, and the improvement works at the expressway section in 2008 for staged completion by 2012. In addition, the Administration plans to carry out improvement works to Ping Ha Road and Tin Ha Road in Yuen Long to enhance the connectivity of Northwest New Territories with the Shenzhen Bay Bridge.

90. Separately, the Administration has been discussing with the franchisee of Route 3 the feasibility of rationalizing the utilization of Route 3 and the non-tolled Tuen Mun Road, including franchise extension in exchange for toll reduction. The Administration has also been encouraging the franchisee to offer more concessions to more vehicle types.

91. Regarding the Easterly Link Road, the Administration is of the view that so far there are no data or information justifying the cost-effectiveness of constructing the road. As regards the railway networks, the Administration has informed the Bills Committee that the Kowloon-Canton Railway Corporation (KCRC) will submit its plan on Northern Link in mid-2007. The construction works of the Kowloon Southern Link have commenced since the end of 2005. When the Kowloon Southern Link commences operation in 2009, West Rail passengers will be able to travel directly to urban Kowloon. The fare levels for passengers taking these new railways will be considered by the operator concerned in due course, taking into account, *inter alia*, the final decision on the proposed merger of the Mass Transit Railway and Kowloon-Canton Railway systems.

Emergency rescue arrangement

92. Members have expressed concern about the emergency rescue arrangement for Shenzhen Bay Bridge and Shenzhen Bay Port after their commissioning, and enquired about the details of the arrangement.

93. The Administration has advised members of the existing mechanism to facilitate cross-boundary search and rescue operation between Hong Kong and the Mainland as follows -

- (a) as far as maritime search and rescue operation at the Guangdong Province coastal waters is concerned, the Hong Kong Maritime Rescue Coordination Centre (HKMRCC) maintains a direct and close working relationship and seamless coordination with the Guangdong Provincial

Emergency Search and Rescue Centre (GDRCC). The two Centres do not require clearance from higher authorities for operation contact;

- (b) in case it comes to the attention of HKMRCC that an incident in the Guangdong Province coastal waters (including Shenzhen waters on the Mainland side of the Deep Bay) necessitates search and rescue operations, HKMRCC will alert GDRCC of the incident. Depending on the circumstances of the incident, e.g. whether the location where the incident occurs is close to Hong Kong and whether the deployment of Hong Kong resources is considered more effective for conducting the search and rescue operation, HKMRCC will coordinate with GDRCC and seek its permission for Hong Kong search and rescue resources to enter the Mainland waters to carry out the operation. Hong Kong search and rescue resources include search and rescue units of Marine Police, Fire Services Department and Government Flying Services; and
- (c) in case both sides have sent search and rescue resources to the scene, there would be on-scene communication and coordination. Cooperation and appropriate assistance will be offered by each party as the situation warrants, for the benefit of saving lives. For example, if the emergency incident occurs in the Mainland waters, Hong Kong rescue parties at the vicinity may proceed to rescue the victims within sight before the permission to enter into Mainland waters has been formally granted.

Any untoward incidents that necessitate the coordination between the Mainland and Hong Kong authorities in respect of maritime search and rescue operation at the waters under the Shenzhen Bay Bridge, which falls within the Guangdong Province coastal waters, will follow the established mechanism.

94. Regarding the operations in the vicinity of the Shenzhen Bay Bridge, the Administration has advised that for the rescue zone in Shenzhen waters, the Shenzhen rescue party will be the overall Rescue Commander and all persons rescued in Shenzhen waters will be sent to Shenzhen hospitals irrespective of their resident status. Any Hong Kong residents, whether rescued by the Hong Kong or Shenzhen rescue party, if sober, may request for transfer to Hong Kong hospitals for treatment. Depending on the resources available and individual circumstances, e.g. whether the persons concerned have sustained serious injuries and whether they are fit for transfer, their request may be entertained. The reverse will apply for the rescue zone in Hong Kong waters for the Hong Kong rescue party.

95. The Administration has informed members that to ensure the safe operation of the Hong Kong Port Area within the Shenzhen Bay Port, a fire station with ambulance facilities will be established there. A major fire appliance and an ambulance with staff will be deployed there to provide necessary round the clock emergency fire, rescue and ambulance cover. Resources on site are able to respond to incidents within the Hong

Kong Port Area in two to four minutes. Further operational reinforcement can be immediately deployed from the fire stations and ambulance depots located in the western region of the New Territories if necessary. The reinforcement is able to arrive at the Hong Kong Port Area within 10 minutes from their nearest bases at Tin Shui Wai and Fu Tei (Tuen Mun). The nearest hospital to the Shenzhen Bay Port in Hong Kong is the Tuen Mun Hospital, which can be reached in about 10 minutes.

96. The Administration has also informed members that discussions are underway between Hong Kong and Shenzhen authorities to map out contingency arrangements for untoward incidents, e.g. fire, rescue operations and emergency relief operations at the Shenzhen Bay Port. The two sides have agreed that relevant drills will be conducted both before and after the commencement of the Shenzhen Bay Port to familiarize both sides with the arrangements. Operational communication can be made through the existing fire control centres of both sides. Having regard to the principle that highest priority be accorded to saving lives, the two sides have agreed that both sides will initiate action immediately in case of urgent distress incidents, e.g. fire affecting the clearance area of the two sides, and may without prior notice take action to save lives even in the clearance area of the other side. In such cases, the other side will be alerted through the control centre at the earliest possible opportunity. The principle of "rescue action first, notification second" will be upheld.

97. Members consider that the HKSAR Government should arrange to transfer the persons concerned to Hong Kong hospitals for treatment as soon as possible if so requested.

Committee Stage amendments

98. Apart from the CSAs referred to in the above paragraphs, the Administration will move other minor or consequential textual amendments to the Bill.

99. Hon James TO has indicated that he will propose CSAs to the Bill (paragraph 64 above refers).

Consultation with the House Committee

100. The Bills Committee consulted the House Committee on 13 April 2007 and obtained its support for the Second Reading debate on the Bill to be resumed at the Council meeting on 25 April 2007.

Legislative Council Secretariat
17 April 2007

Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill

Membership list

Chairman Hon LAU Kong-wah, JP

Deputy Chairman Hon KWONG Chi-kin

Members

Hon Margaret NG
Hon James TO Kun-sun
Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon CHIM Pui-chung

(Total : 16 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Mr LEE Yu-sung

Date 1 March 2007