

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

IMPORT AND EXPORT (ELECTRONIC CARGO INFORMATION) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 6 October 2009, the Council ADVISED and the Chief Executive ORDERED that the Import and Export (Electronic Cargo Information) Regulation (the Regulation), at **Annex A**, should be made under section 31 of the Import and Export Ordinance.

JUSTIFICATIONS

Need for Legislation

2. In May 2007, the Legislative Council (LegCo) enacted the Import and Export (Amendment) Ordinance 2007 (the Amendment Ordinance) to give the Chief Executive in Council the necessary regulation-making power for introducing an electronic advance cargo information system for customs clearance of road cargoes, now called the Road Cargo System (ROCARS). In November 2007, LegCo approved funds for developing the necessary infrastructure. Following competitive tendering, we awarded the infrastructure-related contracts in January 2009. We expect to roll out the system in early 2010. We need to make the Regulation to prescribe details of the system for mandatory submissions and to set a transitional period.

Fixed Transitional Period

3. We have specified in the Regulation a definite transitional period of 18 months for migration to the ROCARS mode. We reckon that this should give sufficient time for the industry to adjust their mode of operation, train up their staff and/or prepare their information technology system, as necessary. This also reflects a carefully-balanced consensus reached among stakeholders after extensive consultations since 2006.

4. It is important to encourage early migration to the system. Prescribing an implementation date for mandatory submissions upfront, which gives a clear and achievable target for all parties concerned to prepare themselves for migration to ROCARS, would better serve our objective of enabling Hong Kong to align early with international developments on electronic customs clearance¹.

5. To help ensure early migration to the system, the Customs and Excise Department (C&ED) will endeavour to first attract high and medium volume users (who account for about 70% of the estimated submissions) to use ROCARS within the first nine months of the transitional period. C&ED has been launching publicity and set up outreach teams to help individual companies. It will also arrange seminars and training for users of the system including truckers, and conduct joint testing for bulk users. We will articulate clearly to the industry the benefits offered by the new system.

6. We will put in extra efforts to help ensure timely migration to ROCARS should circumstances in the run up to the end of the transitional period so warrant.

Key Features of the System

7. The Regulation reflects the workflow agreed with industry players, which largely follows the format hitherto presented to LegCo. The key steps are as follows –

¹ In 2005, the World Customs Organization (WCO) adopted a framework of standards to secure and facilitate global trade, with the provision of electronic advance cargo information (e-ACI) for customs clearance as one of the core requirements. Most WCO members, including Hong Kong, have subscribed to the framework.

The United States and the European Union have promulgated e-ACI requirements for all imported cargoes. The Mainland is also requiring e-ACI submissions for all modes of transport by phases, with the road mode likely to be made mandatory in 2011.

- (a) a **shipper** or a **freight forwarder** acting as a shipper (or an agent of either party) provides a pre-defined set of cargo information to C&ED electronically through ROCARS before the cargo consignment enters or exits Hong Kong by truck;
- (b) as an acknowledgment, **ROCARS** returns a reference number for the cargo consignment to the shipper who would then pass it on to the relevant trucker;
- (c) not less than 30 minutes² before his truck is due to pass through a land boundary control point (LBCP), the **trucker** does the “bundling” work by providing to C&ED, through ROCARS :
 - (i) the reference number of the cargo consignment; and
 - (ii) his vehicle’s registration number;
- (d) **C&ED** performs risk profiling on the cargo before a truck arrives at a LBCP and determines in advance whether inspection is called for; and
- (e) an **instruction** on whether a truck needs to be inspected will be shown on a visual display unit at the LBCP. A truck not selected for inspection may leave immediately after the trucker has completed immigration clearance.

THE REGULATION

8. We have refined the Regulation in consultation with the stakeholders. The key provisions are as follows –

² As we reported at the meeting of the LegCo Panel on Commerce and Industry on 17 March 2009, following recent consultations with the industry, we have proposed an added flexibility. C&ED would signal the trucker via ROCARS that he may pass through a land boundary control point in less than 30 minutes if, at the time the bundling work is done, C&ED has already completed the risk profiling. This is possible for cases where the shipper or the freight forwarder has submitted the cargo information well in advance.

- (a) **Section 1** sets a transitional period by stipulating that the Regulation will commence 18 months after the Amendment Ordinance comes into operation. We intend to appoint a date in early 2010, which is the system roll-out date, as the commencement date for the Amendment Ordinance. As such, the Regulation is to take effect 18 months afterwards, i.e. by the third quarter of 2011;
- (b) **Sections 4 and 8** stipulate certain requirements for the lodging of information relating to the cargo to be imported or exported by a prescribed vehicle with the Commissioner of Customs and Excise (the Commissioner) by electronic means. Offences are created for the contravention of the above requirements, with penalties prescribed.

If an offence involves any prohibited article and the offender knows that a prohibited article is involved, it will be punishable by a heavier penalty, including imprisonment;

- (c) **Section 7** provides that if a prescribed vehicle carries any cargo into or out of Hong Kong, the person in charge of the prescribed vehicle must lodge the customs cargo reference number for the cargo consignment and the registration number of the prescribed vehicle with the Commissioner at least 30 minutes before the prescribed vehicle is to enter a customs clearance point.

As in sections 4 and 8 above, offences are created with penalties prescribed, with a heavier penalty for an offence involving any prohibited article; and

- (d) **Section 14** empowers the Commissioner to grant exemptions from all or part of the ROCARS requirements by a notice published in the Gazette, or under exceptional circumstances where compliance with those requirements is not practicable.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be as follows –

Publication in the Gazette	16 October 2009
Tabling at LegCo for negative vetting	21 October 2009

IMPLICATIONS OF THE PROPOSAL

10. We set out in our LegCo Brief for the Amendment Ordinance in April 2007 (ref : CIB CR/89/14/21/1) the economic, sustainability, financial and civil service implications of ROCARS implementation. The making of the Regulation does not affect our earlier assessment. Details are at **Annex B**.

11. The proposal has no environmental implications. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the binding effect of the Ordinance.

PUBLIC CONSULTATION

12. We have consulted C&ED's two user groups with shippers and truckers respectively on the Regulation. We obtained their agreement after taking on board their comments.

13. We have also consulted the Hong Kong Logistics Development Council. While the Council has indicated support, a few members have asked questions about implementation issues (e.g. possible further across-the-board reduction of the 30-minute standard lead time for "bundling", and data interface/connectivity with other electronic platforms). They have not raised further questions after our clarifications.

14. When consulted on 17 March 2009 (ref : LC Paper No. CB(1)1008/08-09(06)), the LegCo Panel on Commerce and Industry supported the making of the Regulation. Some members invited the Administration to consider designating the date for mandatory submissions after the system had been tried out for a certain period, say six to 12 months. Following further discussions, it is noted that the

approach of designating a fixed transitional period in the Regulation should be acceptable to the industry.

PUBLICITY

15. A press release will be issued on 16 October 2009. A spokesperson will be available to handle media and public enquiries.

ENQUIRIES

16. Enquiries on this brief may be directed to Ms Wendy Cheung, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) at telephone number 2918 7575.

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
14 October 2009

**IMPORT AND EXPORT (ELECTRONIC CARGO
INFORMATION) REGULATION**

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IMPORT AND EXPORT (ELECTRONIC CARGO INFORMATION) REGULATION

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

1. Commencement

This Regulation comes into operation on the expiry of the period of 18 months beginning on the day on which the Import and Export (Amendment) Ordinance 2007 (8 of 2007) comes into operation.

2. Interpretation

In this Regulation –

“customs cargo reference number” (海關貨物編號), in relation to any cargo, means the customs cargo reference number assigned to the cargo under section 5;

“customs clearance point” (海關清關站) means a customs clearance point designated under section 13;

“information system” (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“prescribed vehicle” (訂明車輛) means a vehicle in respect of which this Regulation applies;

“Road Cargo System” (道路貨物資料系統) means an information system designated under section 12;

“undeclared cargo” (未報關貨物) means any cargo in relation to which information has not been lodged as required by section 4(1).

3. Application

(1) This Regulation applies in respect of any motor vehicle licensed or required to be licensed under the Road Traffic Ordinance (Cap. 374) other than –

(a) a private bus;

- (b) a private car;
- (c) a private light bus;
- (d) a public bus; and
- (e) a public light bus.

(2) In this section, “motor vehicle” (汽車), “private bus” (私家巴士), “private car” (私家車), “private light bus” (私家小巴), “public bus” (公共巴士) and “public light bus” (公共小巴) have the same meanings as in the Road Traffic Ordinance (Cap. 374).

4. Lodgement of cargo information before import or export

(1) A person must not import or export any cargo in or on a prescribed vehicle unless the information specified in Part 1 or 2 of Schedule 1 has been lodged with the Commissioner in relation to the cargo in accordance with subsections (2) and (3).

(2) The information must be lodged by sending an electronic record of the information to the Road Cargo System.

(3) The information must be lodged not earlier than 14 days before the date on which the cargo is expected to be imported or exported, as the case may be.

(4) A person who imports or exports any undeclared cargo in or on a prescribed vehicle commits an offence and is liable on conviction to a fine at level 3.

(5) A person who imports or exports any undeclared cargo in or on a prescribed vehicle, knowing that the cargo, or part of the cargo, consists of a prohibited article, commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

(6) It is a defence to a charge under subsection (4) or (5) if the defendant proves that the defendant did not know and could not with reasonable diligence have known that the cargo was undeclared cargo.

(7) Subsections (4) and (5) do not apply to a person who is in charge of a prescribed vehicle in or on which any undeclared cargo is imported or exported and who is not otherwise responsible for importing or exporting the cargo.

5. Commissioner to assign and issue customs cargo reference number

If information is lodged as required by section 4(1), the Commissioner must –

- (a) assign a customs cargo reference number to the cargo in relation to which the information is lodged; and
- (b) issue, in the form of an electronic record, the customs cargo reference number to the person who lodged the information.

6. Provision of customs cargo reference number etc. to person in charge of prescribed vehicle

(1) If –

- (a) a customs cargo reference number is issued to a person under section 5 in relation to any cargo; and
- (b) the person expects that another person is to be in charge of the prescribed vehicle in or on which the cargo is expected to be imported or exported,

the person referred to in paragraph (a) must, as soon as practicable after receipt of the customs cargo reference number –

- (c) furnish that other person with the number;
- (d) inform that other person that it is the customs cargo reference number of the cargo; and
- (e) provide to that other person the information relating to the cargo as specified in item 3 of Part 1 of Schedule 1, or

item 3 of Part 2 of Schedule 1, that has been lodged with the Commissioner under section 4(1).

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

7. Lodgement of customs cargo reference number etc. by person in charge of prescribed vehicle

(1) A prescribed vehicle must not carry any cargo into or out of Hong Kong unless the person in charge of the prescribed vehicle has lodged the following information with the Commissioner in accordance with subsection (2) –

- (a) the customs cargo reference number of the cargo; and
- (b) the registration mark of the prescribed vehicle within the meaning of the Road Traffic Ordinance (Cap. 374).

(2) The information must be lodged by –

- (a) sending the information by telephone to the Road Cargo System; or
- (b) sending an electronic record of the information to the Road Cargo System.

(3) After the person in charge of a prescribed vehicle has lodged the information as required by subsection (1), the person must wait for at least 30 minutes, or such lesser time as may be indicated by the Road Cargo System, before the person enters a customs clearance point in the prescribed vehicle.

(4) The person in charge of a prescribed vehicle commits an offence and is liable on conviction to a fine at level 3 if –

- (a) the prescribed vehicle carries any cargo into or out of Hong Kong; and
- (b) the person fails to lodge the information as required by subsection (1).

(5) The person in charge of a prescribed vehicle commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years if –

- (a) the prescribed vehicle carries into or out of Hong Kong any cargo that consists, or part of which consists, of a prohibited article;
- (b) the person knows that the cargo, or part of the cargo, consists of a prohibited article; and
- (c) the person fails to lodge the information as required by subsection (1).

(6) It is a defence to a charge under subsection (4) or (5) if the defendant proves that the defendant has a reasonable excuse for failing to lodge the information as required by subsection (1).

(7) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 1.

8. If customs cargo reference number relates to cargo of different description

(1) If any cargo for which a customs cargo reference number has been lodged under section 7(1) (“the relevant cargo”) is not of the same description as the cargo in relation to which the customs cargo reference number has been assigned under section 5, the person importing or exporting the relevant cargo commits an offence and is liable on conviction to a fine at level 3.

(2) If –

- (a) any cargo for which a customs cargo reference number has been lodged under section 7(1) (“the relevant cargo”) is not of the same description as the cargo in relation to which the customs cargo reference number has been assigned under section 5;
- (b) the relevant cargo, or part of the relevant cargo, consists of a prohibited article; and

- (c) the person importing or exporting the relevant cargo knows that the cargo, or part of that cargo, consists of a prohibited article,

the person importing or exporting the relevant cargo commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

(3) It is a defence to a charge under subsection (1) or (2) if the defendant proves that the defendant did not know and could not with reasonable diligence have known that the relevant cargo was not of the same description as the cargo in relation to which the customs cargo reference number has been assigned under section 5.

(4) Subsections (1) and (2) do not apply to a person who is in charge of a prescribed vehicle and who is not otherwise responsible for importing or exporting the relevant cargo.

9. Compliance with instruction given at customs clearance point

(1) If an instruction described in subsection (2) is conveyed by a visual display unit installed at a customs clearance point to the person in charge of a prescribed vehicle which is about to proceed through the customs clearance point, subject to any direction given by a member of the Customs and Excise Service in uniform, the person must comply with the instruction.

(2) The instruction referred to in subsection (1) instructs the person in charge of a prescribed vehicle –

- (a) to cause the prescribed vehicle to stop at the customs clearance point; or
- (b) to cause the prescribed vehicle to proceed to a place specified in the instruction for inspection of the prescribed vehicle by a member of the Customs and Excise Service.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

10. Indication of unladen prescribed vehicle

(1) If a prescribed vehicle that is about to enter into or leave Hong Kong is not carrying any cargo, the person in charge of the prescribed vehicle must make an indication in accordance with subsection (2) to the effect that the prescribed vehicle is not carrying any cargo.

(2) The indication must be made at a customs clearance point by means of a device provided by the Commissioner for the making of the indication.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

11. Burden of proof of reasonable excuse under sections 6(2), 7(7) and 10(3)

In proceedings for an offence under section 6(2), 7(7) or 10(3), the defendant is to be taken to have established that the defendant had a reasonable excuse for the contravention in question if –

- (a) sufficient evidence is adduced to raise an issue that the defendant had such a reasonable excuse; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

12. Designation of Road Cargo System

(1) The Commissioner may designate an information system to be known as the Road Cargo System.

(2) The Commissioner must, as soon as practicable after designating the Road Cargo System under subsection (1), publish the details of the designation in such manner as the Commissioner considers appropriate.

(3) If information is sent to the Road Cargo System under section 4(2) or 7(2), the information is to be regarded as having been lodged with the Commissioner at the time the information is accepted by the Road Cargo System.

13. Designation of customs clearance point

(1) The Commissioner may designate an area within a place set out in Schedule 2 as a customs clearance point.

(2) The Commissioner must display in a prominent position in an area designated as a customs clearance point a sign indicating that the area is a customs clearance point.

14. Exemption

(1) The Commissioner may, by notice published in the Gazette, exempt any class or description of person or vehicle from the application of all or any of the provisions of this Regulation.

(2) An exemption under subsection (1) –

(a) may be expressed to apply generally, or for such purpose or by reference to such circumstances as are specified in the notice; and

(b) may be granted subject to such conditions as the Commissioner considers appropriate.

(3) The Commissioner may exempt any class or description of person or vehicle from the application of all or any of the provisions of this Regulation if the Commissioner is satisfied that there exist exceptional circumstances that make it impracticable for any person or vehicle of that class or description to comply with those provisions.

(4) The Commissioner must, as soon as practicable after granting an exemption under subsection (3), publish notice of the exemption in such manner as the Commissioner considers appropriate.

SCHEDULE 1

[ss. 4 & 6]

CARGO INFORMATION

PART 1

INFORMATION IN RELATION TO CARGO IN PACKAGES

1. Description of packages.
2. Number of packages.
3. Description of articles contained in each package.
4. Name of consignor of each package.
5. Address of consignor of each package.
6. Name of consignee of each package.
7. Address of consignee of each package.
8. Expected date of bringing cargo into Hong Kong (if applicable).
9. Expected date of taking cargo out of Hong Kong (if applicable).

PART 2

INFORMATION IN RELATION TO CARGO IN BULK

1. Gross weight or gross volume of cargo.
2. Quantity of cargo (if applicable).
3. Description of cargo.
4. Name of consignor of cargo.
5. Address of consignor of cargo.
6. Name of consignee of cargo.
7. Address of consignee of cargo.
8. Expected date of bringing cargo into Hong Kong (if applicable).
9. Expected date of taking cargo out of Hong Kong (if applicable).

SCHEDULE 2

[s. 13]

LOCATION OF CUSTOMS CLEARANCE POINT

1. Lok Ma Chau Boundary Control Point.
2. Man Kam To Boundary Control Point.
3. Sha Tau Kok Boundary Control Point.
4. The Clearance Area of the Shenzhen Bay Port Hong Kong Port Area, being the area set out in Part 1 of Schedule 1 to the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).

Clerk to the Executive Council

COUNCIL CHAMBER

6 October 2009

Explanatory Note

The object of this Regulation is to provide for a system under which certain information relating to any cargo to be imported into or exported from Hong Kong by a motor vehicle in respect of which the Regulation applies (“prescribed vehicle”) must be lodged with the Commissioner of Customs and Excise (“the Commissioner”). Under the Regulation, the information must be lodged by electronic means before the cargo is imported or exported.

2. Section 3 provides for the classes of motor vehicles in respect of which the Regulation applies.

3. Section 4 provides for the requirement to lodge with the Commissioner by electronic means certain information relating to cargo to be imported or exported by a prescribed vehicle. Offences are created for the contravention of that requirement. If the contravention involves any prohibited article, it is punishable by a heavier penalty.

4. Section 5 provides that the Commissioner must assign a customs cargo reference number to any cargo in relation to which information is lodged as required by section 4(1) and issue the number to the person who lodged the information.

5. Section 6 imposes a duty on a person who has been issued with a customs cargo reference number in relation to any cargo to inform the person who is expected to be in charge of the prescribed vehicle in or on which the cargo is expected to be carried into or out of Hong Kong.

6. Section 7 provides that if a prescribed vehicle carries any cargo into or out of Hong Kong, the person in charge of the prescribed vehicle must lodge the customs cargo reference number of the cargo and the registration mark of the prescribed vehicle with the Commissioner before the cargo is carried into or out of Hong Kong. Offences are created for the contravention of that requirement. If the contravention involves any prohibited article, it is punishable by a heavier penalty.

7. Section 8 deals with the case where any cargo for which a customs cargo reference number has been lodged under section 7(1) (“the relevant cargo”) is not of the same description as the cargo in relation to which the customs cargo reference number has been assigned under section 5. A person importing or exporting the relevant cargo commits an offence and if the offence involves any prohibited article, it is punishable by a heavier penalty.

8. Section 9 provides that if a visual display unit installed at a customs clearance point conveys to the person in charge of a prescribed vehicle which is about to proceed through the customs clearance point an instruction described in

that section, the person must comply with the instruction. That section also provides that non-compliance with such an instruction is an offence.

9. Section 10 provides that the person in charge of a prescribed vehicle entering into or leaving Hong Kong without carrying any cargo must indicate that fact at a customs clearance point.

10. Section 11 provides for the burden of proof of a reasonable excuse referred to in certain offence creating provisions.

11. Section 12 provides that the Commissioner may designate an information system as the Road Cargo System. That section also provides that the information required to be lodged with the Commissioner by electronic means under the Regulation is to be regarded as having been so lodged when the Road Cargo System accepts the information.

12. Section 13 empowers the Commissioner to designate an area within a place set out in Schedule 2 as a customs clearance point.

13. Section 14 empowers the Commissioner to grant exemptions from the Regulation or part of the Regulation by notice published in the Gazette, or under exceptional circumstances where the compliance with the Regulation or part of the Regulation is impracticable.

14. Schedule 1 sets out the information required to be lodged with the Commissioner under section 4(1).

15. Schedule 2 sets out the places where customs clearance points are located.

Implications of the Proposal

Economic Implications

The Road Cargo System (ROCARS) will enable the industry to enjoy seamless customs clearance at land boundary control points (LBCPs), without significant cost on their operation. The system will also enable the Customs and Excise Department (C&ED) to consider providing one-stop customs clearance for inter-modal transshipment cargo, which would very likely enhance Hong Kong's competitiveness in the transshipment cargo market. It will also help maintain Hong Kong's position as an international trading centre by enabling us to meet the emerging global customs standards and contribute to international initiatives aimed at securing and facilitating cargo flow.

Sustainability Implications

2. ROCARS will provide a platform for future inter-modal customs clearance facilitation which, if put in place, will enhance the efficiency of transshipment of cargoes and hence generate economic benefits. In general, the proposal is in line with the sustainability guiding principle of improving mobility by facilitating the movement of goods.

Financial and Civil Service Implications

3. In November 2007, the LegCo Finance Committee approved a new one-off commitment of \$177.839 million for implementing ROCARS. On the recurrent side, it is envisaged that the system will entail an annual expenditure of up to \$88.775 million in 2015-16 after full implementation in 2011-2012. If additional resources (including any civil service posts) are considered necessary for the implementation of the system, C&ED will seek the resources through established procedures. On the other hand, there will be recurrent savings up to \$94.685 million in 2015-16 arising from deletion of 134 posts and cost avoidance of new posts that would otherwise be required for manning customs kiosks at LBCPs. The proposed making of the Regulation itself has no financial and civil service implications.