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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).

Manda CHAN

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.