

INFORMATION NOTE

The Hong Kong Garrison of the Chinese People's Liberation Army

1. Background

1.1 The Government introduced the *Adaptation of Laws (Military References) Bill 2010* ("Bill") into the Legislative Council on 14 July 2010. The *Bill* aims to adapt certain military-related references in the laws of Hong Kong in order to bring these references into conformity with the *Basic Law* and the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

1.2 To facilitate the scrutiny work of the Bills Committee on Adaptation of Laws (Military References) Bill 2010, the Research Division has compiled some background information on the Hong Kong Garrison of the Chinese People's Liberation Army ("Hong Kong Garrison") including its overview and relationship with the Hong Kong Special Administrative Region ("HKSAR") Government, obligations and rights of and jurisdiction over members of the Garrison and land used by the Garrison in Hong Kong.

2. Overview of the Hong Kong Garrison

Formation of the Hong Kong Garrison

2.1 In October 1990, the Central Government started preliminary work for preparing the Chinese People's Liberation Army ("PLA") to be stationed in Hong Kong after the adoption of the *Basic Law* of the Hong Kong Special Administrative Region by the National People's Congress on 4 April 1990.

2.2 On 25 October 1994, the Central Military Commission ("CMC") officially announced the formation of the Hong Kong Garrison in Shenzhen. The State Council and CMC jointly declared that the Garrison was fully operational in the Shenzhen military base on 28 January 1996.

2.3 The principal law governing the operation of the Hong Kong Garrison, *Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ("Garrison Law")*¹, was passed by the National People's Congress and came into force in Hong Kong on 1 July 1997.

2.4 Under the agreement of the Sino-British Joint Liaison Group, a total of 196 advance personnel of the Hong Kong Garrison came to Hong Kong between April and May 1997 in three phases to make practical preparation for the transfer of defence responsibility for the territory, and 500 advance troops of the Garrison entered Hong Kong on 30 June 1997. A 4 000-strong troop of the Garrison composed of the ground force, the navy and the air force arrived at Hong Kong on 1 July 1997, the establishment day of the HKSAR.

Responsibilities of the Hong Kong Garrison

2.5 According to Article 14 of the *Basic Law*, the Central Government shall be responsible for the defence of Hong Kong. It has established the Hong Kong Garrison "*for defence, and to maintain the sovereignty, unity and territorial integrity of the State and the security of Hong Kong*"². Accordingly, under Article 5 of the *Garrison Law*, the Garrison performs the following functions and responsibilities: preparing against and resisting aggression, and safeguarding the security of Hong Kong, carrying out defence duties, controlling military facilities, and handling foreign-related military affairs³.

¹ Article 18 of the *Basic Law* stipulates that, "*National laws shall not be applied in Hong Kong except for those listed in Annex III to this law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.*" The *Garrison Law* is the national law listed in Annex III to the *Basic Law* on 1 July 1997 and is applied in Hong Kong by the *Promulgation of National Laws (No.2) 1997*.

² See Article 1 of the *Garrison Law*.

³ For example, the Hong Kong Garrison provides assistance for events such as the visits of foreign warships and military attachés to the territory.

Basic facts on the Hong Kong Garrison

2.6 With its headquarters at the Chinese People's Liberation Army Forces Hong Kong Building in Central (known as the Prince of Wales Building before the reunification), the Hong Kong Garrison is currently under the leadership of the commander, Lieutenant General Zhang Shibo (張仕波中將) and the political commissar⁴, Lieutenant General Wang Zengbo (王增鉢中將). As to its accountability, the Garrison is accountable to CMC for its performance and activities⁵.

2.7 The military expenditure for the Hong Kong Garrison shall be borne by the Central Government⁶. In practice, all materials consumed by the Garrison are supplied by its logistics bases in Guangdong.⁷

2.8 Under Article 3 of the *Garrison Law*, the number of personnel of the Hong Kong Garrison shall be determined according to the need for the defence of Hong Kong. While there are no official published figures for the size of the Garrison, some estimates put the figures at around 8 000⁸ to 10 000⁹.

2.9 Under Article 2 of the *Garrison Law*, the Hong Kong Garrison is made up of elements of the ground force, the navy and the air force of the PLA. The stationing and makeup of the three service branches of the Garrison is summarized as follows:

- (a) the ground force of the Garrison stations in barracks scattered over the territory. Members of the 41st and 42nd Group Armies from the Guangzhou Military Region form the backbone of the ground force of the Garrison;
- (b) the navy branch is located at the naval base on Stonecutters Island. Members from the South Sea Fleet form the backbone of the naval force of the Garrison; and

⁴ Same as other military units in the Mainland, the Hong Kong Garrison is headed by both a military commander and a political commissar.

⁵ The *Constitution* of the People's Republic of China provides that CMC directs the armed forces of the country. The Chairman of CMC assumes overall responsibility for the work of CMC and is accountable to the National People's Congress and its Standing Committee. CMC is currently chaired by Hu Jintao (胡錦濤) who is also the President of the People's Republic of China.

⁶ See Article 14 of the *Basic Law* and Article 4 of the *Garrison Law*.

⁷ See 廉正明 (1996) and Wisers Information Limited (2011).

⁸ See Bureau of East Asian Pacific Affairs, Department of State (1998).

⁹ See Tai Kung Po (2004).

- (c) the air force branch is composed of a helicopter regiment located at Shek Kong Air Base.

2.10 Article 3 of the *Garrison Law* requires the Hong Kong Garrison to practise a system of rotation of its members. In practice, the troop conducts annual rotation in November every year with the size of forces remaining unchanged in both personnel and weaponry in each of the rotation. The first rotation was conducted in 1998 and 12 rotations have been made since then.

2.11 To foster its integration into the local community, the Hong Kong Garrison has organized activities such as parade¹⁰, barrack open day, student exchange programmes, exhibitions of weapons, martial arts performances and synchronized drills. The Garrison also participates in annual tree-planting and blood donation campaigns organized by local community groups.

3. Relationship between the Hong Kong Garrison and the HKSAR Government

3.1 The Hong Kong Garrison and the HKSAR Government each has its own independent organization structure, and they are not subordinate to each other. In accordance with Article 14 of the *Basic Law* and Article 9 of the *Garrison Law*, the Garrison shall not interfere in the local affairs of Hong Kong. Nevertheless, the Garrison can perform the following duties in Hong Kong under the initiatives of the HKSAR Government or the Central Government:

- (a) the HKSAR Government may, when necessary, ask the Central Government for assistance from the Garrison in the maintenance of public order and in disaster relief¹¹; and

¹⁰ For example, the Hong Kong Garrison held its first parade at Shek Kong Camp to celebrate the 77th Anniversary of the Founding of the PLA on 1 August 2004.

¹¹ Article 14 of the *Garrison Law* sets out the following procedure for enlisting assistance of the Hong Kong Garrison: "Where the request of the Government of the Hong Kong Special Administrative Region is approved by the Central People's Government, the Hong Kong Garrison shall call out troops in accordance with the order of the Central Military Commission to carry out tasks of assistance in the maintenance of public order or in disaster relief, and upon completion of the tasks, the troops shall return to their barracks immediately. The troops of the Hong Kong Garrison who are called out to assist in the maintenance of public order or in disaster relief, shall, under the arrangement of the Government of the Hong Kong Special Administrative Region, be directed by the Commander of the Hong Kong Garrison or the officer authorized by him."

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- (b) the Garrison shall perform its duties in accordance with the provisions of the national laws that the Central Government decides to apply in Hong Kong in the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within Hong Kong which endangers national unity or security and is beyond the control of the HKSAR Government, decides that Hong Kong is in a state of emergency.

3.2 The *Garrison Law* also contains the following provisions to stipulate the relationship between the Hong Kong Garrison and the HKSAR Government:

- (a) the HKSAR Government shall support the Garrison in its performance of defence functions and responsibilities and guarantee the lawful rights and interests of the Garrison and its members (Article 10 of the *Garrison Law*);
- (b) the HKSAR Government shall consult the Garrison when formulating any policy or drafting any legislation which concerns the Garrison (Article 10 of the *Garrison Law*);
- (c) the Garrison and the HKSAR Government shall establish necessary liaison to deal with matters concerning the Garrison through consultation (Article 15 of the *Garrison Law*);
- (d) the military judicial organs may, through consultation, maintain juridical relations with the courts and the relevant law-enforcing organs of Hong Kong, and they may render assistance to each other (Article 28 of the *Garrison Law*);
- (e) the Garrison and the HKSAR Government shall jointly protect the military facilities within Hong Kong (Article 12 of the *Garrison Law*);
- (f) the HKSAR Government shall assist the Garrison in maintaining the security of the military restricted zones (Article 12 of the *Garrison Law*); and

- (g) the Garrison shall notify in advance the HKSAR Government any military activities it is to conduct such as training exercises and manoeuvres which may affect the public interests of Hong Kong (Article 11 of the *Garrison Law*)¹².

4. Obligations and rights of and jurisdiction over members of the Hong Kong Garrison

Obligations and rights of members of the Hong Kong Garrison

4.1 Members of the Hong Kong Garrison shall abide by the national laws and Hong Kong laws, observe obligations under the *Garrison Law* as well as follow orders and directives of the PLA. According to Article 19 of the *Garrison Law*, any member of the Garrison who contravenes any national laws or Hong Kong laws shall be investigated for legal responsibilities according to law and those who breach military disciplines shall be subject to disciplinary sanction.

4.2 In addition to the rights and immunities prescribed by the laws in force in Hong Kong¹³, the Hong Kong Garrison and its members are entitled to the following rights under the *Garrison Law*:

- (a) no weapon and equipment, such as aircraft, vessels, materials, members or vehicles of the Garrison that bear a certificate or a document of certification issued by the Garrison showing that the bearer is on official duty, shall be inspected, searched, seized or detained by any law-enforcing officer of Hong Kong (Article 7 of the *Garrison Law*);

¹² For example, the gazette is published in advance to notify the public of the firing exercises of the Hong Kong Garrison. The Garrison also informs the HKSAR Government and the public of any sailing mission and flying training.

¹³ Section 2A(2)(c) of the *Interpretation and General Clauses Ordinance* stipulates that provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom shall, subject to the provisions of the *Basic Law* and the *Garrison Law*, continue to have effect and apply to the military forces stationed in Hong Kong by the Central Government.

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- (b) members of the Garrison may, in accordance with the laws in force in Hong Kong, take measures to stop any act which obstructs their performance of official duties (Article 8 of the *Garrison Law*);
 - (c) guards of the military restricted zones shall have the rights to stop according to law any unauthorized entry into the military restricted zones or any act which damages or endangers any military facilities (Article 12 of the *Garrison Law*); and
 - (d) members of the Garrison may exercise the powers conferred by Hong Kong laws in the course of rendering assistance in the maintenance of public order or in disaster relief (Article 14 of the *Garrison Law*).

Jurisdiction over members of the Hong Kong Garrison

4.3 Under Article 19 of the *Basic Law*, the courts of Hong Kong shall have jurisdiction over all cases in Hong Kong but have no jurisdiction over acts of state such as defence¹⁴. They shall also issue judgments or orders concerning arrangement of the property of the Hong Kong Garrison but shall not enforce judgments or orders on any weapon, equipment, materials or other property of the Garrison.

4.4 Different arrangements are provided under Chapter V of the *Garrison Law* regarding the jurisdiction of Hong Kong courts and law enforcement agents over criminal offences and civil cases involving the Hong Kong Garrison. Under Article 20 of the *Garrison Law*, criminal offences committed by members of the Garrison shall be under the jurisdiction of military judicial organs. Nevertheless, acts committed by members of the Garrison, when not performing their official duties, in violation of the personal right or property right of Hong Kong residents or persons not of the Garrison and other offences committed in violation of the Hong Kong laws, which constitute crimes shall be subject to jurisdiction of the courts and the relevant law-enforcing organs of Hong Kong.

¹⁴ Article 26 of the *Garrison Law* also provides that acts of State, such as actions for defence taken by the Hong Kong Garrison, shall not be subject to the jurisdiction of the courts of Hong Kong.

4.5 Under Article 21 of the *Garrison Law*, any member of the Hong Kong Garrison, who is lawfully arrested as a suspected offender by a law-enforcing officer of Hong Kong, shall be handed over to the Garrison for custody. Article 22 of the *Garrison Law* provides that any member of the Garrison sentenced by a court of Hong Kong to criminal punishment which deprives him or her of or restrict his or her personal freedom shall be delivered for sentence enforcement according to the Hong Kong laws except when it is determined otherwise by a relevant law-enforcing organ of Hong Kong and military judicial organ for the place of sentence enforcement through consultation.

4.6 Article 23 of the *Garrison Law* provides that cases of tort arising from acts committed by members of the Hong Kong Garrison when performing their official duties shall be subject to the jurisdiction of the Supreme People's Court and cases arising from acts committed by members of the Hong Kong Garrison when not performing their official duties shall be subject to the jurisdiction of the courts of Hong Kong. Article 24 of the *Garrison Law* regulates the contractual disputes arising within Hong Kong between any organ or unit of the Garrison and any Hong Kong resident or other person not of the Garrison. The parties concerned may institute legal proceedings in a court of Hong Kong.

5. Land used by the Hong Kong Garrison

Military bases used by the Hong Kong Garrison

5.1 The Central Government and the Government of the United Kingdom signed the *Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Arrangements for the Future Use of the Military Sites in Hong Kong* ("*Notes*") in November 1994. The *Notes* set out the following arrangements relating to lands to be used by the Hong Kong Garrison after 1997:

- (a) the handover of 14 military sites with a total area of 2 751 hectares, without compensation, by the Government of the United Kingdom to the Central Government for use exclusively for defence purposes by the Garrison as from 1 July 1997¹⁵;

¹⁵ See Appendix I for details of these 14 military sites.

- (b) the handover of 25 military sites with a total area of 139 hectares, which were no longer required for defence purposes, without compensation, to the Hong Kong Government for disposal in order to accommodate the needs of Hong Kong for social and economic development; and
- (c) the reprovisioning of five military buildings and fixed facilities¹⁶ due to the return of the 25 military sites for the disposal of the Hong Kong Government¹⁷.

5.2 In addition to the military sites in Hong Kong, the Hong Kong Garrison has logistics bases and training camps in Guangdong which provide daily necessities and spare parts of aircraft, vessels and vehicles as well as offer military training for the troops respectively.

Provisions governing the use of land by the Hong Kong Garrison

5.3 When using the military bases, the Hong Kong Garrison shall comply with the relevant legal provisions in Hong Kong. The *Notes* provide that the Garrison shall abide by the relevant stipulations of Hong Kong laws on the development and use of land and on urban construction and planning while ensuring the effective discharge of its defence responsibilities. In addition, the military sites handed over to the Garrison shall be used exclusively for defence purposes. The right to use the military sites shall not be transferred and the sites shall not be made available to others for purposes other than defence.

¹⁶ On 8 July 1994, the Finance Committee of the Legislative Council approved a grant of HK\$3.97 billion to reprovision military facilities to be used by the Hong Kong Garrison after the reunification.

¹⁷ See Appendix II for details of these five military buildings and facilities.

5.4 Under Article 12 of the *Garrison Law*, the Hong Kong Garrison shall delimit military restricted zones in conjunction with the HKSAR Government¹⁸ and protect the natural resources, historical relics and monuments, and other non-military rights and interests within the military restricted zones in accordance with Hong Kong laws¹⁹.

5.5 Under Article 13 of the *Garrison Law*, when the Central Government considers that any military sites used by the Hong Kong Garrison are no longer needed for defence purpose, it can approve the return of these sites without compensation to the HKSAR Government for disposal. If the HKSAR Government requires for public use any part of the military sites used by the Garrison, it shall seek the approval of the Central Government. The HKSAR Government shall in return provide land and military facilities for the Garrison at such sites agreed to by the Central Government, and shall bear all the expenses and costs entailed.

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17 January 2011
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¹⁸ The locations and boundaries of the military restricted zones shall be declared by the HKSAR Government.

¹⁹ Under the *Notes*, major non-military interests in the military sites handed over to the Hong Kong Garrison include rights of way, reserves, permitted burial areas, government installations and registered sites of special scientific interest. The *Notes* provide that, "if such non-military interests, together with other government installations, installations of utility companies, and ancestral graves constitute rights and obligations valid under the laws previously in force in Hong Kong, or lawful traditional rights and interests of the indigenous inhabitants of the New Territories, they shall, provided that they do not contravene the provisions of the Basic Law, continue to be valid, and be recognized and protected as from 1 July 1997."

Appendix I

**Military sites handed over to
the Hong Kong Garrison for defence purpose⁽¹⁾**

Location	Site	Area (hectare)
Hong Kong Island	1. The western part of the Prince of Wales Barracks, Central	2.8
	2. Stanley Barracks, Stanley Peninsula	122.3
	3. Head Quarter House, Barker Road, The Peak	0.5
	4. Queen's Lines, Admiralty	1.4
	5. Bonham Towers military quarters, Mid-Levels	0.1
Kowloon	6. Gun Club Hill Barracks, 127 Austin Road, Tsim Sha Tsui ⁽²⁾	11.0
	7. Osborn Barracks, Kowloon Tong	10.0
	8. Senior Officer's Residence, 1A Cornwall Street, Kowloon Tong	0.1
	9. Stonecutters Island ⁽³⁾	75.7
New Territories	10. Shek Kong Camp and Shek Kong Village, Yuen Long	159.0
	11. Cassino Lines and Tam Mi Camp, Yuen Long	57.0
	12. Gallipoli Lines and San Wai/Tai Ling Firing Range, Fanling	47.5
	13. Castle Peak Firing Range, Tuen Mun and Yuen Long	2 263.0
	14. Naval Coastal Watching Station, Tai O, Lantau Island	0.3
Total		2 750.7

Notes: (1) See *Treaty Series No. 44 (1995): Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Arrangements for the Future Use of the Military Sites in Hong Kong and the Future of the Defence Estate.*

(2) From 1 July 1997, the United Services Recreation Club has continued to enjoy the use of all its facilities on the same terms as before. Its membership remains open to civilians. The Commander of the Hong Kong Garrison or his representative assumes the responsibilities for the direction and control of the Club.

(3) The civil explosives on the Island are relocated elsewhere while the existing military explosives depot is retained.

Appendix II

Reprovisioning of military buildings and fixed facilities for the Hong Kong Garrison⁽¹⁾

Location	Site
Hong Kong Island	1. 150 metres of the eventual permanent waterfront to be left free at the Central and Wanchai Reclamation at a place close to the Prince of Wales Barracks for the construction of a military dock ⁽²⁾
Kowloon	2. Naval base on the south shore of Stonecutters Island to replace the former Tamar naval base, Central
	3. Military hospital at Gun Club Barracks to replace the British Military Hospital, King's Park
New Territories	4. Military storage facilities at Shek Kong Camp to replace the Blackdown Barracks, San Po Kong
	5. Military Joint Movements Unit at Chek Lap Kok Airport to replace the Military Joint Movements Unit site, Kai Tak Airport

Notes: (1) See *Treaty Series No. 44 (1995): Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Arrangements for the Future Use of the Military Sites in Hong Kong and the Future of the Defence Estate.*

(2) Military buildings and fixed facilities have been reprovisioned for the Hong Kong Garrison as from 1 July 1997 except for the proposed military dock at the waterfront at the Central and Wanchai Reclamation.

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