

# **LEGISLATIVE COUNCIL BRIEF**

## **SHENZHEN BAY PORT HONG KONG PORT AREA BILL**

### **INTRODUCTION**

A At the meeting of the Executive Council on 6 February 2007, the Council ADVISED and the Chief Executive ORDERED that the Shenzhen Bay Port Hong Kong Port Area Bill, at Annex A, be introduced into the Legislative Council.

### **JUSTIFICATIONS**

B 2. Our consensus with the Mainland is to implement the co-location arrangement at the Shenzhen Bay Port ("SBP"), which is a new control point to be set up at Shekou in Shenzhen. 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 (or known as the Hong Kong-Shenzhen Western Corridor). A location plan of the SBP is at Annex B. Both the Hong Kong and Shenzhen sides are working towards commissioning the SBP in mid-2007.

C 3. A Hong Kong Port Area ("HKPA") will be set up in the SBP. The Standing Committee of the National People's Congress ("NPCSC") decided on 31 October 2006 that HKSAR is authorized to exercise jurisdiction over the HKPA at the SBP ("SBP HKPA") according to the laws of HKSAR from the day on which the SBP commences operation, and HKSAR is to administer the SBP HKPA as a closed area. The NPCSC's Decision is copied at Annex C.

D 4. On 30 December 2006, the State Council issued an Official Reply to stipulate the area and the land use period of the SBP HKPA. The area of the SBP HKPA includes the Hong Kong Clearance Area and the bridge surface of the Shenzhen section of the Shenzhen Bay Bridge. The land use period of the SBP HKPA shall commence on the day on which the SBP commences operation and shall expire on 30 June 2047. It may be terminated earlier or renewed after its expiry. The State Council's Official Reply is copied at Annex D.

5. Local legislation will be required to –
- (a) declare an area in the SBP in the Mainland as the SBP HKPA;
  - (b) apply the laws of Hong Kong in the SBP HKPA and provide for the court's jurisdiction in this connection;
  - (c) extend the territorial limits of certain pre-existing rights and obligations to include the SBP HKPA; and
  - (d) assist in the construction of future documents and court orders.

### **Other ancillary issues**

6. We also need to sort out certain matters in relation to the implementation of the co-location arrangement at the SBP, including –
- (a) to agree with the Shenzhen side the operational arrangements relating to the co-location arrangement, including the framework of cooperation and implementation details affecting the operation of both sides; our right to use the land and the conditions for our use of the Shenzhen section of the Shenzhen Bay Bridge inside the SBP HKPA; and the operation, maintenance and repair of the Shenzhen section of the Shenzhen Bay Bridge; and
  - (b) to discuss with the Shenzhen side the land development and usage costs for the SBP HKPA payable by the Hong Kong side.

These matters will be taken forward in parallel with the enactment of the Bill.

## **THE BILL**

7. The main provisions of the Bill are set out below.

### **Preamble**

8. The **Preamble** sets out the background to the Bill, i.e. the NPCSC's Decision and the State Council's Official Reply.

### ***Part 1 of the Bill – Preliminary (Clauses 1 and 2)***

9. **Part 1 of the Bill** (clauses 1 and 2) provides for preliminary matters such as commencement of the provisions of the Bill and interpretative provisions to be used in interpreting the Bill.

### **Commencement (Clause 1)**

10. **Clause 1(2) and (3)** provides for the provisions of the Bill after its enactment to commence on different dates. Clauses 1 and 15 shall come into operation on the day on which this Ordinance (as enacted) is published in the Gazette to enable exercise of statutory powers in relation to the HKPA 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 SBP commences operation, being the day on which the HKPA comes into being.

### ***Part 2 of the Bill – HKPA and application of laws of Hong Kong (Clauses 3 to 7)***

11. **Part 2 of the Bill** (clauses 3 to 7) contains provisions relating to the declaration of the HKPA and the application of laws of Hong Kong in the HKPA.

12. Once the HKPA commences operation, all laws of Hong Kong will apply in the HKPA by virtue of section 5 of the Bill as if it were part of Hong Kong save for those laws that have been excepted. In essence, the jurisdiction of Hong Kong is extended without changing the physical boundary of Hong Kong (which has already been determined and specified by virtue of the Order of the State Council of the People's Republic of China No. 221 promulgated on 1 July 1997, will not be changed).

### **Declaration of HKPA (Clause 3)**

13. **Clause 3** declares the area delineated by the Particularized Description in Schedule 1 to the Bill as the SBP HKPA. The Particularized Description covers the facilities and buildings within the HKPA that are above and below the ground, on and above the bridge surface or within the bridge deck; and any air space (above and below the ground or surrounding the bridge) and subterranean soil reasonably necessary for the operation, repair and maintenance of the facilities and buildings.

### **HKPA as closed area (Clause 4)**

14. According to the NPCSC's Decision, Hong Kong is to administer the HKPA as a closed area. We will administer the HKPA as a closed area according to the laws of Hong Kong, as in the case of land boundary control points in Hong Kong. **Clause 4** provides that for the purposes of the Public Order Ordinance (Cap. 245) and any other enactment that applies to a closed area (as defined in section 2(1) of that Ordinance), the HKPA is a closed area so defined.

### **Application of laws of Hong Kong in the HKPA (Clause 5)**

15. **Clause 5(1)** provides for the application of the laws of Hong Kong in the HKPA except to such extent as otherwise provided by any enactment enacted or made on or after the HKPA commences operation. **Clause 5(4)** provides that for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong.

16. The Chief Executive 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) in its application in the HKPA or to exclude any enactment (other than the Bill as enacted or any of its provisions) from the laws of Hong Kong that apply in the HKPA. The intention is to allow flexibility to deal with unforeseen circumstances. As we do not have any experience in implementing the co-location arrangement, we believe it prudent to include clause 5(2) in the Bill. Modifications or exclusions will only be made in respect of those laws whose application to the HKPA will cause grave difficulties in enforcement or implementation. **Clause 5(3)** provides that the subsidiary legislation made under clause 5(2) is subject to the approval of the Legislative Council.

### **Land in HKPA be regarded as Government land (Clause 6)**

17. **Clause 6** provides that land within the HKPA is regarded, for the purpose of applying the laws of Hong Kong in the HKPA, as Government land lying within Hong Kong, and any right or interest in the 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.

### **Jurisdiction of courts (Clause 7)**

18. **Clause 7** deals with the jurisdiction and power of the courts (as defined in clause 2(1)) –

- (a) clause 7(1) provides that a court has jurisdiction over any cause or matter, civil or criminal, that arises from applying the laws of Hong Kong in the HKPA;
- (b) clause 7(2) expressly provides that a court may make an order that adjudicates on, confers or imposes a right or obligation that has a territorial limit confined to, or including, the HKPA.

***Part 3 of the Bill – Pre-existing rights and obligations (Clauses 8 to 10)***

19. **Part 3 of the Bill** (clauses 8 to 10) extends the territorial limits of certain pre-existing rights and obligations to include the SBP HKPA.

20. When implementing the co-location arrangement, one of the key issues is whether the territorial limits of rights and obligations that pre-exist before the HKPA comes into being should include the HKPA. For example, 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.

21. Statutory extension of the territorial limits of pre-existing rights and obligations that are confined to Hong Kong to include the HKPA could amount to an interference with the rights or obligations of the parties concerned. This may infringe Articles 6 and 105 of the Basic Law. (The two articles are at Annex E.) On the other hand, if all the pre-existing rights and obligations are left intact, it may give rise to inconvenience or even injustice. A balance has to be struck.

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22. Therefore, the Bill will 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 HKPA. Pre-existing rights or obligations arising from documents of a private nature (e.g. wills and contracts) will not be affected. It will be up to the parties concerned to vary the documents to cover the HKPA as they see fit.

**Pre-existing rights and obligations not affected unless section 9 or 10 applies (Clause 8)**

23. **Clause 8** clarifies that clause 5(4) cannot lend support to the contention that the territorial limit of a pre-existing right or obligation is extended to include the HKPA. Section 9 or 10 may however apply to extend the territorial limit of a pre-existing right or obligation.

**Territorial limit of certain pre-existing rights and obligations be extended (Clause 9)**

24. **Clause 9** deals with certain pre-existing rights or obligations arising from the exercise or performance of statutory powers or duties. 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 HKPA. Hence, a pre-existing warrant of arrest can be enforced in the HKPA; a qualified doctor or other recognized professionals will be qualified to practise in the HKPA; and a driving licence issued by the Transport Department will cover the HKPA. **Clause 9(3)** empowers the Chief Executive in Council to amend Schedule 2, but a right or obligation to be included in that Schedule by virtue of such an amendment must satisfy the condition set out in **clause 9(4)** as read with **Schedule 3**.

**Territorial limit of certain rights and obligations conferred or imposed by pre-existing court orders be extended (Clause 10)**

25. Court orders may be made under the inherent jurisdiction of the courts, rather than statutory powers or duties. Hence, we need to have separate provisions (i.e. **clause 10**) to deal with certain pre-existing rights and obligations arising from court orders. Such rights and obligations are set out in **Part 2 of Schedule 4** to the Bill (e.g. prohibition orders, warrants for the arrest of a person, court orders admitting a person as a barrister or as a solicitor, certain detention orders, certain injunction orders, etc.). If such a right or obligation has a territorial limit confined to or including Hong Kong, then, pursuant to **clause 10(1)**, its territorial limit is extended to include the HKPA. **Clause 10(3)** empowers the Chief Executive in Council to amend Schedule 4.

***Part 4 of the Bill – Limitations on operation of section 5(4) in relation to future rights and obligations and construction aid in relation to future documents and court orders (Clauses 11 to 13)***

26. **Part 4 of the Bill** assists in the construction of future documents and court orders.

27. As regards future documents and court orders made on or after the HKPA has come into being, we propose to make provisions to assist in the construction of references to Hong Kong in such documents and court orders, for the sake of certainty and clarity.

**Limitations on operation of section 5(4) in relation to future rights and obligations (Clause 11)**

28. **Clause 11** limits the operation of clause 5(4) in relation to future rights and obligations. Clause 5(4) provides that for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong. Clause 11 clarifies that if a future right permits a person to do an act in Hong Kong only, then, no person is entitled to contend on the basis of clause 5(4) that the right also permits the person to do the act in the HKPA as well. Likewise, if a future obligation requires a person to do an act in Hong Kong only,

then, no person is entitled to contend on the basis of clause 5(4) that the obligation also requires the person to do the act in the HKPA as well.

### **References to Hong Kong in future documents (Clause 12)**

29. **Clause 12** assists in the construction of the references to Hong Kong in future documents (apart from legislation). If a reference to Hong Kong appears in a future document to describe the territorial limit of a right or obligation (other than a pre-existing right or obligation), then, in the absence of any contrary intention, the territorial limit is to be construed as including the HKPA.

30. Hence, if, after the HKPA comes into being, a Government department or private company issues a permit expressed to be covering Hong Kong, then, by virtue of clause 12, the territorial limit of the rights and obligations arising from the permit is to be construed as including the HKPA in the absence of any contrary intention. However, if, when issuing the permit, the Government department or private company specifies that the permit shall not cover the HKPA, clause 12 will not apply and the permit will not cover the HKPA.

### **References to Hong Kong in future court orders (Clause 13)**

31. **Clause 13** contains provisions that assist in the construction of the references to Hong Kong in future court orders. If a reference to Hong Kong appears in a future court order to describe the territorial limit of a right or obligation that is conferred or imposed by the court order, then, in the absence of any contrary intention appearing from the court order, the territorial limit is to be construed as including the HKPA.

### ***Part 5 of the Bill – Miscellaneous (Clauses 14 and 15)***

32. **Part 5 of the Bill** (clauses 14 and 15) contains miscellaneous provisions.

### **Retrospective effect of certain orders (Clause 14)**

33. **Clause 14** makes it possible for certain subsidiary legislation made under the Bill after its enactment to take effect retrospectively. The subsidiary legislation includes an order made under –

- (a) clause 5(2) (modification or exclusion in relation to the laws of Hong Kong that apply in the HKPA);
- (b) clause 9(3) (amendment to Schedule 2); and
- (c) clause 10(3) (amendment to Schedule 4).

34. No concrete situation has been identified that would require subsidiary legislation to take effect retrospectively under clause 14. However, as we do not have any experience in the co-location arrangement, we believe it prudent to include provisions in the Bill to make it possible for certain subsidiary legislation to take effect retrospectively.

**Exercise of statutory powers in relation to the HKPA before its commissioning (Clause 15)**

35. An enactment that is applied in the HKPA by virtue of clause 5 takes effect in relation to the HKPA on the day on which clause 5 comes into operation (i.e. the day on which the HKPA comes into being). Under **clause 15(1)**, a power to do anything under the enactment may be exercised in relation to the HKPA before the said day. In effect, clause 15(1) enables such powers to be exercised in preparation for the commissioning of the HKPA before the HKPA comes into being. **Clause 15(2)** provides that while such powers may be exercised before the HKPA comes into being, such an exercise of power is not effective before the HKPA comes into being.

36. In preparation for the commissioning of the HKPA, we plan to exercise certain statutory powers after the Bill is enacted but before the HKPA comes into being. Subsidiary legislation which we plan to make before the commissioning of the HKPA includes designation of certain roads in the HKPA as permitted operating areas for New Territories taxis under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E); and designation of certain places in the HKPA as detention places under the Immigration Ordinance (Cap. 115) and the Immigration Service Ordinance (Cap. 331). We also plan to exercise other statutory powers before the commissioning of the HKPA, including designation of speed limits of roads in the HKPA under the Road Traffic Ordinance (Cap. 374); and designation of roads in the HKPA as closed roads and certain roads in the HKPA as prohibited zones and restricted zones as well as granting of certain exemptions and permits under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) and the Road Traffic (Traffic Control) Regulations (Cap. 374G). The relevant subsidiary legislation or documents can only come into effect on or after the day on which the HKPA comes into being. Separately, we will also seek to designate the related local road in the vicinity of the Hong Kong section of the Shenzhen Bay Bridge as a closed area under the Public Order Ordinance (Cap. 245) on the same day the HKPA comes into being.

***Part 6 of the Bill – Consequential and related amendments (Clauses 16 and 17)***

37. **Part 6 of the Bill** (clauses 16 and 17) contains consequential



and related amendments.

38. **Clause 16** amends section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to add the new definition of "Shenzhen Bay Port Hong Kong Port Area".

39. **Clause 17** adds a new section 28A to the Interpretation and General Clauses Ordinance (Cap. 1) to provide that where an Ordinance that applies in Hong Kong and in the HKPA confers power on a person to make subsidiary legislation, the power shall be construed as including a power to declare that the subsidiary legislation does not apply in the HKPA as well as a power to make different provisions with reference to Hong Kong and the HKPA respectively.

## **LEGISLATIVE TIMETABLE**

40. The legislative timetable is –

Publication in the Gazette	6 February 2007 (Tue)
First Reading and commencement of Second Reading debate	7 February 2007 (Wed)
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

41. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. The purpose of the Bill is to extend the application of existing laws of Hong Kong to the HKPA. It will bind the Government by necessary implication.

42. The legislative proposal has economic, financial, civil service, environmental and sustainability implications as set out at Annex F.

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## **PUBLIC CONSULTATION**

43. We consulted the Hong Kong Bar Association and the Law Society of Hong Kong in January 2006 on our proposed approach to deal with territorial limits of rights and obligations in the light of the setting up of the proposed HKPA. Preliminary feedback is that they do not object to our proposed approach. The Hong Kong Bar Association raised concerns about the manner in which the requisite Central Authorities' authorization was to be made. We informed the Hong Kong Bar Association in November 2006 of NPCSC's Decision.

44. Further, we consulted the Hong Kong Federation of Insurers (“the Federation”) in January 2006 on the impact of the co-location arrangement on insurance policies. It appeared to the Federation that it was quite unlikely that the co-location arrangement per se would trigger a premium increase across the board. The Federation will take a definitive view on the exact arrangements to extend the territorial limits of certain insurance policies to cover the HKPA upon receipt of the Bill.

45. We briefed the Legislative Council Panel on Security on the legislative proposals of the Bill on 7 March 2006. Some Panel Members raised concerns about the need to empower the Chief Executive in Council to modify or exclude any legislation in its application to any HKPA (clause 5(2) refers), and suggested that, if the exception was to be made by subsidiary legislation, the making of such subsidiary legislation should be subject to positive vetting by the Legislative Council. In response, we pointed out that as the co-location arrangement was unprecedented, we needed a mechanism to cater for unforeseen situations. Having considered Members’ views, clause 5(3) now provides that an order under clause 5(2) is subject to the approval of the Legislative Council. Some Members also asked whether and how the territorial limits of insurance policies would be extended to cover the HKPAs in due course. In response, we reported the progress of our consultations with the insurance industry.

## **PUBLICITY**

46. A Legislative Council Brief and a press release will be issued on 6 February 2007. A spokesman will be made available to answer media enquiries.

## **ENQUIRY**

47. Enquiries may be directed to Mr Alan K M CHU, Principal Assistant Secretary for Security at 2810 2506.

**Security Bureau**

**6 February 2007**

**SBCR 3/2098/02 Pt.32**

## **SHENZHEN BAY PORT HONG KONG PORT AREA BILL: ANNEXES**

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- Annex B - Location plan of the Shenzhen Bay Port
- Annex C - Decision of the Standing Committee of the National People's Congress
- Annex D - Official Reply of the State Council
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- Annex F - Financial and Civil Service, Economic, Environmental and Sustainability Implications

**SHENZHEN BAY PORT HONG KONG PORT AREA BILL**

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A BILL

To

Declare an area in the Shenzhen Bay Port in the Mainland as the Shenzhen Bay Port Hong Kong Port Area; to apply the laws of Hong Kong in the Shenzhen Bay Port Hong Kong Port Area and to provide for the court's jurisdiction in this connection; to extend the territorial limit of certain rights and obligations to include the Shenzhen Bay Port Hong Kong Port Area; to assist in the construction of certain documents made subsequent to the declaration of the Shenzhen Bay Port Hong Kong Port Area; and to provide for related purposes.

**Preamble**

WHEREAS -

- (1) at the 24th Meeting of the Standing Committee of the Tenth National People's Congress, it was considered necessary to set up a Hong Kong Port Area at the Shenzhen Bay Port especially for customs clearance and inspection of people, vehicles and goods in order to alleviate the mounting pressure on land control points arising from increasing interactions between the Mainland and the Hong Kong Special Administrative Region ("HKSAR"), to accommodate the objective demand for transport and for facilitation of customs clearance between Shenzhen and HKSAR, to promote the interflow of people and economic and trade activities between the Mainland and HKSAR and to advance joint economic development of the 2 places;
- (2) on the basis of the consideration mentioned in paragraph (1), the Standing Committee of the Tenth National People's Congress at its 24th Meeting decided on 31 October 2006 as follows -
  - (a) HKSAR is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port

- according to the laws of HKSAR from the day on which the Shenzhen Bay Port commences operation, and HKSAR is to administer the Hong Kong Port Area at the Shenzhen Bay Port as a closed area;
- (b) the area of the Hong Kong Port Area at the Shenzhen Bay Port will be stipulated by the State Council; and
  - (c) the land use period of the Hong Kong Port Area at the Shenzhen Bay Port will be determined by the State Council according to the provisions of the relevant laws; and
- (3) 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 (Letter No. 132 [2006] of the State Council), 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 HKSAR by way of a lease under a lease contract for State-owned land signed between 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:

NOW, THEREFORE, it is enacted by the Legislative Council as follows -



PART 1  
PRELIMINARY

**1. Short title and commencement**

(1) This Ordinance may be cited as the Shenzhen Bay Port Hong Kong Port Area Ordinance.

(2) This Ordinance, other than this section and section 15, shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

(3) This section and section 15 shall come into operation on the day on which this Ordinance is published in the Gazette.

**2. Interpretation**

(1) In this Ordinance -  
"area" (地域) includes air space and subterranean soil;  
"court" (法院) means a court or tribunal of the Judiciary of Hong Kong specified in Part 1 of Schedule 4;

"court order" (法院命令) includes a judgment, order, direction or other decision made by a court;

"future" (日後的) -

(a) in relation to a right or obligation, means acquired, accrued or incurred on or after the Relevant Date;

(b) in relation to a court order or a document, means made on or after the Relevant Date;

"Hong Kong Port Area" (港方口岸區) means the Shenzhen Bay Port Hong Kong Port Area declared by section 3;

"laws of Hong Kong" (香港法律) 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;

"Particularized Description" (具體描述) means the description set out

in Schedule 1, which comprises -

- (a) the description of the area of the Clearance Area set out in Part 1 of that Schedule; and
- (b) the description of the area of the Shenzhen section of the Shenzhen Bay Bridge set out in Part 2 of that Schedule;

"pre-existing" (已有的) -

- (a) in relation to a right or obligation, means acquired, accrued or incurred before the Relevant Date;
- (b) in relation to a court order, means made before the Relevant Date;

"public authority" (公共主管當局) includes any tribunal, board, commission, committee or similar body that is established by or under an enactment, other than a court;

"public officer" (公職人員) 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 (including the Chief Executive in Council);

"regulatory body" (規管團體) means a person that regulates standards of competence or service within a profession, trade or business;

"Relevant Date" (有關日期) means the date on which both sections 3 and 5 come into operation;

"right or obligation" (權利或義務) means a power, right, privilege, obligation or liability;

"statutory" (法定), in relation to a power or duty, means conferred or imposed by an enactment;

"territorial limit" (地域界限), in relation to a right or obligation, means the geographical area within which the right or obligation may be exercised or performed.

(2) A reference in this Ordinance to "Hong Kong" means a

reference to Hong Kong (as a whole and not only a part of Hong Kong) howsoever described and includes a reference to the Hong Kong Special Administrative Region.

## PART 2

### HONG KONG PORT AREA AND APPLICATION OF LAWS OF HONG KONG

#### **3. Declaration of Hong Kong Port Area**

The area delineated by the Particularized Description is declared as the Shenzhen Bay Port Hong Kong Port Area.

#### **4. Hong Kong Port Area be closed area**

For the purposes of the Public Order Ordinance (Cap. 245) and any other enactment that applies to a closed area (as defined in section 2(1) of that Ordinance), the Hong Kong Port Area is a closed area so defined.

#### **5. Application of laws of Hong Kong in Hong Kong Port Area**

(1) Except in so far as otherwise provided by an enactment enacted, or (in the case of subsidiary legislation) made, on or after the Relevant Date, the laws of Hong Kong apply in the Hong Kong Port Area.

(2) Without prejudice to subsection (1), the Chief Executive in Council may, by order published in the Gazette -

(a) modify any enactment (other than this Ordinance or any of its provisions) in its application in the Hong Kong Port Area; or

(b) exclude any enactment (other than this Ordinance or any of its provisions) from the laws of Hong Kong that apply in the Hong Kong Port Area.

(3) An order under subsection (2) is subject to the approval of the Legislative Council.

(4) 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.

(5) If an enactment applies -

(a) only to a specific area in Hong Kong; or

(b) by reference to different areas in Hong Kong,

then, for the purpose of determining whether the Hong Kong Port Area is included in such an area, the Hong Kong Port Area is regarded as an area known by its name that lies within the New Territories and outside New Kowloon.

(6) For the avoidance of doubt and without prejudice to section 2, it is declared that "laws of Hong Kong" in this section includes (but is not limited to) the Basic Law and the national laws applicable in the Hong Kong Special Administrative Region specified in Article 18 of the Basic Law.

#### **6. Land in Hong Kong Port Area be regarded as Government land**

(1) 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.

(2) Any right or interest in any such land disposed of by virtue of a dealing on or subsequent to the Relevant Date is regarded as a right or interest derived directly or indirectly (as the case may be) from the Government.

#### **7. Jurisdiction of courts**

(1) A court has jurisdiction to hear and determine any cause or matter, civil or criminal, arising from the operation of this Ordinance in like manner as it has jurisdiction as regards the operation of the laws of Hong Kong in Hong Kong.

(2) Without prejudice to the generality of subsection (1),

a court has the power to make a court order that adjudicates on, confers or imposes a right or obligation the territorial limit of which is confined to, or includes, the Hong Kong Port Area.

### PART 3

#### PRE-EXISTING RIGHTS AND OBLIGATIONS

#### **8. Pre-existing rights and obligations not affected unless section 9 or 10 applies**

(1) In any proceedings (whether civil, criminal or otherwise), no person is entitled to contend that section 5(4) has the effect of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area.

(2) Subsection (1) does not derogate from the operation of sections 9 and 10.

#### **9. Territorial limit of certain pre-existing rights and obligations be extended**

(1) If a pre-existing right or obligation has a territorial limit (whether express or not) confined to, or including, Hong Kong, and the right or obligation -

- (a) is of a description included in Schedule 2; and
- (b) subsists, or has its legal effect suspended, as at the Relevant Date,

then, the territorial limit of the right or obligation is extended to include the Hong Kong Port Area in accordance with subsection (2).

(2) An extension of the territorial limit to include the Hong Kong Port Area under subsection (1) takes effect -

- (a) subject to paragraph (b), from the Relevant Date; or
- (b) (if the description is included in Schedule 2 by an amendment that takes effect after the Relevant Date) from the date when the amendment takes effect.

(3) The Chief Executive in Council may, by order published in the Gazette, amend Schedule 2.

(4) A description included in Schedule 2 by virtue of an amendment under subsection (3) must be of a right or obligation that arises by the exercise or performance of a statutory power or duty described in Schedule 3.

(5) If -

- (a) the territorial limit of a right or obligation is extended under this section; and
- (b) as at the date when the extension takes effect -
  - (i) the legal effect of the right or obligation is suspended;
  - (ii) the right or obligation is subject to any condition,

then, on and from that date, the suspension or condition (as may be applicable) has effect in relation to the right or obligation with its territorial limit so extended.

(6) This section does not apply to a right or obligation conferred or imposed by a court order.

**10. Territorial limit of certain rights and obligations conferred or imposed by pre-existing court orders be extended**

(1) If a right or obligation conferred or imposed by a pre-existing court order has a territorial limit (whether express or not) confined to, or including, Hong Kong, and the court order -

- (a) is of a description included in Part 2 of Schedule 4; and
- (b) subsists, or has its legal effect suspended, as at the Relevant Date,

then, the territorial limit of the right or obligation is extended to include the Hong Kong Port Area in accordance with subsection (2).

(2) An extension of the territorial limit to include the Hong

Kong Port Area under subsection (1) takes effect -

- (a) subject to paragraph (b), from the Relevant Date;  
or
- (b) (if the description is included in Part 2 of Schedule 4 by an amendment that takes effect after the Relevant Date) from the date when the amendment takes effect.

(3) The Chief Executive in Council may, by order published in the Gazette, amend Schedule 4.

(4) If -

- (a) the territorial limit of a right or obligation conferred or imposed by a pre-existing court order is extended under this section; and
- (b) as at the date when the extension takes effect -
  - (i) the legal effect of the right or obligation is suspended;
  - (ii) the right or obligation is subject to any condition,

then, on and from that date, the suspension or condition (as may be applicable) has effect in relation to the right or obligation with its territorial limit so extended.

#### PART 4

##### FUTURE RIGHTS, OBLIGATIONS, DOCUMENTS AND COURT ORDERS

#### **11. Limitations on operation of section 5(4) in relation to future rights and obligations**

(1) If a future right or obligation -

- (a) permits, or requires, a person to do an act in Hong Kong, and the permission or requirement does not encompass the Hong Kong Port Area; or
- (b) permits, or requires, a person not to do an act in Hong Kong, and the permission or requirement does not encompass the Hong Kong Port Area,

then, in any proceedings (whether civil, criminal or otherwise), no person is entitled to contend that section 5(4) has the effect of extending the territorial limit of the right or obligation to include the Hong Kong Port Area.

(2) For the avoidance of doubt, if a person -

(a) is permitted, or is required, to do an act in Hong Kong and in the Hong Kong Port Area; or

(b) is permitted, or is required, not to do an act in Hong Kong and not to do it in the Hong Kong Port Area,

and the terms of the permission or requirement (as may be applicable) show a difference between -

(c) the legal consequences arising from the performance, or non-performance, of such an act in Hong Kong; and

(d) the legal consequences arising from the performance, or non-performance, of such an act in the Hong Kong Port Area,

then, for the purposes of subsection (1), the permission, or requirement, is treated as comprising 2 separate rights or obligations on the basis of the difference.

## **12. References to Hong Kong in future documents**

(1) If a future document contains a reference to Hong Kong to describe the territorial limit of a right or obligation (other than a pre-existing right or obligation), then, unless the contrary intention appears, the territorial limit of the right or obligation is to be construed as including the Hong Kong Port Area.

(2) It is declared that the definition assigned by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to the expression "document" does not include, for the purposes of this section, any enactment, and for the avoidance of doubt, it is declared that any enactment must be construed in accordance with section 5.

(3) This section does not apply to a court order.



### **13. References to Hong Kong in future court orders**

If a future court order contains a reference to Hong Kong to describe the territorial limit of a right or obligation conferred or imposed by the court order, then, unless the contrary intention appears from the court order, the territorial limit of the right or obligation is to be construed as including the Hong Kong Port Area.

## **PART 5 MISCELLANEOUS**

### **14. Retrospective effect of certain orders**

Without prejudice to section 28(3) of the Interpretation and General Clauses Ordinance (Cap. 1) -

- (a) a modification or exclusion under section 5(2) may take effect on a date that is -
  - (i) earlier than the date on which the order making the modification or exclusion is published in the Gazette; but
  - (ii) not earlier than the Relevant Date;
- (b) an amendment to Schedule 2 under section 9(3) or an amendment to Schedule 4 under section 10(3) may take effect on a date that is -
  - (i) earlier than the date on which the order making the amendment is published in the Gazette; but
  - (ii) not earlier than the Relevant Date.

### **15. Exercise of statutory powers between publication of this Ordinance and Relevant Date**

(1) Notwithstanding that the Relevant Date falls on a day after the day of publication of this Ordinance in the Gazette, a power

to do anything under an enactment that will apply in the Hong Kong Port Area by virtue of section 5 (as read with section 4) may be exercised in relation to the Hong Kong Port Area at any time after the publication.

(2) An exercise of a power under subsection (1) is not effective until the Relevant Date.

## PART 6

### CONSEQUENTIAL AND RELATED AMENDMENTS

#### **Interpretation and General Clauses Ordinance**

##### **16. Interpretation of words and expressions**

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding -

" "Shenzhen Bay Port Hong Kong Port Area" (深圳灣口岸港方口岸區) means the Shenzhen Bay Port Hong Kong Port Area declared by section 3 of the Shenzhen Bay Port Hong Kong Port Area Ordinance ( of 2007);".

##### **17. Section added**

The following is added -

##### **"28A. Construction of power to make subsidiary legislation**

Where an Ordinance that applies in Hong Kong and in the Shenzhen Bay Port Hong Kong Port Area confers power on a person to make subsidiary legislation, the power shall be construed as including -

- (a) a power to declare that the subsidiary legislation does not apply in the Shenzhen Bay Port Hong Kong Port Area; and
- (b) a power to make different provisions with reference to Hong Kong and the Shenzhen Bay Port

Hong Kong Port Area respectively.".

SCHEDULE 1

[s. 2]

SHENZHEN BAY PORT HONG KONG PORT AREA

PART 1

AREA OF CLEARANCE AREA

Section I. Setting out coordinates of Clearance Area

coordinates reference No.	X coordinate	Y coordinate	remarks
1	15172.500	103655.000	
2	14829.000	103655.000	
3	14829.000	103635.000	
4	13787.489	103635.000	
5	13704.935	103513.075	
6	13704.935	103017.000	
7	14164.800	103017.000	
8	14164.800	103235.660	
9	14235.569	103427.917	Starting point of circular curve
10	14239.958	103436.862	Mid-point of circular curve, radius = 48.25 m
11	14246.091	103444.715	End point of circular curve
12	14246.091	103591.249	Starting point of circular curve
13	14290.205	103593.687	Mid-point of circular curve, radius = 1200.25 m

14	14334.379	103594.500	End point of circular curve
15	14745.300	103594.500	Starting point of circular curve
16	14798.342	103580.722	Mid-point of circular curve, radius = 109 m
17	14837.975	103542.873	End point and starting point of circular curve
18	14864.926	103505.153	Mid-point of circular curve, radius = 351 m
19	14896.614	103471.314	End point of circular curve
20	14998.347	103376.131	Starting point of circular curve
21	15052.372	103341.950	Mid-point of circular curve, radius = 171 m
22	15115.175	103330.000	End point of circular curve
23	15172.500	103330.000	

- Notes: 1. Coordinates System is based on Shenzhen Independent Coordinates System.
2. The Clearance Area is 41.5654 hectares in size.

Section II. Vertical and horizontal limit of  
Clearance Area

- (a) Vertically, the upper limit is set at an elevation of +60 m (National Vertical Datum 1985) and the lower limit is set at an elevation of -60 m (National Vertical Datum 1985), except for the link roads for passenger vehicles. As far as the link roads for passenger vehicles (the setting out coordinates being the coordinates of coordinates reference Nos. 12 to 15 in Section I of this Part, and X coordinate = 14745.300, Y coordinate = 103635.000 and X coordinate = 14246.091, Y coordinate = 103635.000) are concerned, vertically, the upper limit is set at an elevation of +60 m (National Vertical Datum 1985) and the lower limit is set at an elevation of -10 m (National Vertical Datum 1985).
- (b) Horizontally, the boundary of the Clearance Area is set at the edge lines of the Clearance Area as defined by the setting out coordinates listed in Section I of this Part.

## PART 2

AREA OF SHENZHEN SECTION OF SHENZHEN BAY BRIDGE<sup>#</sup>

<sup>#</sup> The Shenzhen section of the Shenzhen Bay Bridge comprises ramp A, ramp B, ramp C, ramp D, ramp E (the ramps are collectively called "ramps A - E") and the bridge.

Section I. Setting out coordinates of bridge surface  
of Shenzhen section of Shenzhen Bay Bridge

## Setting out coordinates of ramp A

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
A1	13725.5845	103543.5725				Intersection with Red Line at Point 1
A2	13715.1943	103528.2270				Intersection with Red Line at Point 2
A3	13714.8996	103561.5008	13701.6906	103552.4718	R—160.000 L—96.753	Mid-point of circular curve
A4	13680.3748	103598.5028	13670.4534	103585.9503		End point of circular curve
A5	13628.3217	103628.1131	13622.1361	103613.3571	A—135.000 L—113.906	Mid-point of transition curve
A6	13574.7609	103646.8098	13569.9557	103631.5484	R—1500.000 L—187.483	Starting point of circular curve
A7	13514.1286	103667.2778	13508.6703	103652.1845		Mid-point of circular curve
A8	13454.4295	103690.3266	13448.3290	103675.4811		Merging point of ramp A

## Setting out coordinates of ramp B

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
B1	13728.0207	103547.1705				Intersection with Red Line at Point 1
B2	13735.3053	103557.9294				Intersection with Red Line at Point 2
B3	13600.5721	103577.3648	13604.9604	103585.7951	A—100.000 L—75.625	Starting point of ramp B
B4	13634.9659	103561.5416	13638.5982	103570.3195		Mid-point of transition curve
B5	13671.8810	103549.5897	13673.9028	103558.8721	R—160.000 L—81.047	Starting point of circular curve
B6	13713.3351	103545.9403	13712.9663	103555.4331		Mid-point of circular curve

## Setting out coordinates of ramp C

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
C1	13765.1448	103602.0000				Intersection with Red Line at Point 1
C2	13758.7125	103592.5000				Intersection with Red Line at Point 2
C3	13728.6083	103602.0000	13728.6083	103592.5000	A—170.000	Starting point of transition curve
C4	13692.6826	103602.1819	13692.5194	103592.6833	L—72.250	Mid-point of transition curve
C5	13656.7814	103603.7875	13656.0214	103594.3179	R—400.000 L—98.097	Starting point of circular curve
C6	13608.8226	103610.5795	13606.9167	103601.2726		Mid-point of circular curve
C7	13562.0546	103623.1862	13559.0246	103614.1823		End point of circular curve
C8	13530.4933	103635.1855	13526.8276	103626.4213	A—180.000 L—68.040	Mid-point of transition curve



C9	13499.6337	103648.8624	13495.6546	103640.2358	R—2500.000 L—53.458	Starting point of circular curve
C10	13473.4995	103661.1094	13469.4185	103652.5306		Mid-point of circular curve
C11	13447.5089	103673.6582	13443.3290	103665.1272		End point of ramp C

## Setting out coordinates of ramp D

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks
	X	Y	X	Y	
D1	13272.0320	103728.0355	13279.4428	103742.2722	Starting point of ramp D
D2	13356.3972	103684.1196	13363.8080	103698.3563	
D3	13485.7955	103616.7620	13496.9011	103638.0966	
D4	13592.2377	103561.3540	13604.9604	103585.7951	
D5			13599.6484	103575.5904	
D6	13704.9351	103502.6899			Intersection with Red Line at Point 1
D7	13704.9351	103513.0748			Corner point of Red Line
D8	13708.7946	103518.7750			Intersection with Red Line at Point 2

## Setting out coordinates of ramp E

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks
	X	Y	X	Y	
E1	13289.8549	103762.2745	13282.4440	103748.0378	Starting point of ramp E
E2	13399.9956	103713.9716	13388.8863	103692.6298	
E3	13452.9504	103690.9344	13441.8885	103665.8335	
E4	13454.4295	103690.3266	13443.3290	103665.1272	End point of ramp E

## Setting out coordinates of the bridge

coordinates reference No.	left side when viewed in direction from Shenzhen towards Hong Kong		right side when viewed in direction from Shenzhen towards Hong Kong		remarks	
	X	Y	X	Y		
1	13289.8549	103762.2745	13272.0320	103728.0355		Starting point of the bridge
2	13062.1908	103880.7845	13044.3678	103846.5456	R—4000.000 L—1084.173	Starting point of circular curve
3	12984.6664	103922.2340	12976.9429	103908.1645		Starting point of non-
4	12973.8151	103902.4666	12966.0916	103888.3970		navigational channel bridge
5	12601.9866	104161.4909	12592.7203	104148.3860		Mid-point of circular curve
6	12588.9675	104143.0788	12579.7012	104129.9739		
7	12252.1895	104439.5474	12241.5128	104427.5637		Endpoint of non-navigational channel bridge
8	12237.1889	104422.7105	12226.5121	104410.7267		
9	12249.8684	104441.6170				Boundary line between Hong Kong and Guangdong
10	12239.6169	104429.2539				
11	12235.4652	104424.2470				
12	12225.2138	104411.8839				
13	12183.9276	104501.8003	12172.9756	104490.0676		End point of circular curve
14	12168.5402	104485.3160	12157.5883	104473.5833		

- Notes:
1. Coordinates System is based on Shenzhen Independent Coordinates System.
  2. L is the arc length, R is the radius, A is the parameter of the curve; units are in metres.
  3. Red Line is the boundary line of the Clearance Area as defined by the setting out coordinates listed in Section I of Part 1.

Section II. Vertical and horizontal limit of Shenzhen section  
of Shenzhen Bay Bridge

- (a) Ramps A - E: Vertically, the upper limit is set at an elevation of +60 m (National Vertical Datum 1985) and the lower limit is the bottom parallel edge lines of the bridge box girders.
- (b) The bridge: Vertically, the upper limit is set at an elevation of +160 m (National Vertical Datum 1985) and the lower limit is the bottom parallel edge lines of the bridge box girders.
- (c) Horizontally, the boundary of the Shenzhen section of the Shenzhen Bay Bridge is set at 3 m from the outermost left and right edge lines of the Shenzhen section of the Shenzhen Bay Bridge as defined by the setting out coordinates listed in Section I of this Part, and includes the gap between the 2 bridge box girders of the non-navigational channel bridge.

SCHEDULE 2

[ss. 9 & 14]

RIGHTS AND OBLIGATIONS DESCRIBED FOR PURPOSES  
OF SECTION 9 OF THIS ORDINANCE

1. A pre-existing right or obligation that has arisen by virtue of -

- (a) a deportation order made under the Immigration Ordinance (Cap. 115), including an order that is treated as if it were so made pursuant to section 13 of Schedule 2 to that Ordinance;
- (b) a removal order made under the Immigration Ordinance (Cap. 115);
- (c) a direction made under regulation 27A of the Prevention of the Spread of Infectious Diseases Regulations (Cap. 141 sub. leg. B) prohibiting a person from leaving Hong Kong without the permission in writing of a health officer;

- (d) a licence, permit, approval, certification, registration, enrolment, authorization or any other authority (howsoever described) or exemption (howsoever described) issued or given by the exercise or performance of a statutory power or duty described in Schedule 3, including (but not limited to) a warrant or order that authorizes the arrest (howsoever described) of a person made or issued under an enactment.

SCHEDULE 3

[s. 9 & Sch. 2]

STATUTORY POWERS AND DUTIES FOR PURPOSES  
OF SECTION 9 OF THIS ORDINANCE

1. A statutory power or duty conferred or imposed on -
  - (a) a public officer, public body or public authority;  
or
  - (b) a person authorized or appointed by a public officer, public body or public authority under an enactment.
  
2. A statutory power or duty conferred or imposed on a regulatory body or an officer of it for that body or officer (as the case may be) to -
  - (a) admit (howsoever described) any person to a profession, trade or business; or
  - (b) permit any person to engage in (howsoever described) a profession, trade or business.

SCHEDULE 4

[ss. 2, 10 & 14]

COURTS AND COURT ORDERS

PART 1

COURTS

Court of Final Appeal

Court of Appeal

Court of First Instance

District Court

Magistrates' Court

Lands Tribunal

Labour Tribunal

Small Claims Tribunal

Obscene Articles Tribunal

Coroner's Court

PART 2

COURT ORDERS DESCRIBED FOR PURPOSES OF  
SECTION 10 OF THIS ORDINANCE

1. A court order in the form of -

- (a) an order or direction to the effect that a person shall not leave or be removed from Hong Kong;
- (b) a warrant or order that authorizes the arrest (howsoever described) of a person;
- (c) a notice issued under section 17A(1) of the Prevention of Bribery Ordinance (Cap. 201);
- (d) a detention order authorizing the seizure or detention of any plants, animals, goods, articles, or other things on or after their importation into Hong Kong;



- (e) an injunction prohibiting the importation into or exportation from Hong Kong of any plants, animals, goods, articles, or other things.

2. A court order admitting a person as a barrister or as a solicitor, or appointing a person as a notary public, under the Legal Practitioners Ordinance (Cap. 159).

### **Explanatory Memorandum**

The object of this Bill is to declare an area in the Shenzhen Bay Port in the Mainland as the Shenzhen Bay Port Hong Kong Port Area and to apply the laws of Hong Kong in the declared area as provided in the Bill.

2. The preamble sets out the background to the Bill.

3. Clause 1(2) and (3) provides for the provisions of the Bill after its enactment to commence on different dates.

4. Clause 2 sets out the interpretative provisions to be used in interpreting the Bill.

5. Clause 3 declares an area in the Shenzhen Bay Port in the Mainland as the Shenzhen Bay Port Hong Kong Port Area ("HKPA"). The date on which the declaration comes into operation is the Relevant Date (see the definition of "Relevant Date" in clause 2(1)).

6. Clause 4 provides that for the purposes of the Public Order Ordinance (Cap. 245) and any other enactment that applies to a closed area (as defined in section 2(1) of that Ordinance), the HKPA is a closed area so defined.

7. (a) Clause 5(1) provides for the application of the laws of Hong Kong in the HKPA except to such extent as otherwise provided by any enactment enacted or made on or after the Relevant Date.

(b) The Chief Executive 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) in its application in the HKPA

or to exclude any enactment (other than the Bill as enacted or any of its provisions) from the laws of Hong Kong that apply in the HKPA.

- (c) Clause 5(3) provides that the subsidiary legislation made under clause 5(2) is subject to the approval of the Legislative Council.
- (d) Clause 5(4) provides that for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong.
- (e) Amongst the laws of Hong Kong, there are some enactments that apply only to a specific area, or that apply by reference to different areas. Clause 5(5) deals with the applicability of those enactments to the HKPA.

8. Clause 6 provides that land within the HKPA is regarded as Government land lying within Hong Kong, and a right or interest in the 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.

9. Clause 7 deals with the jurisdiction and power of courts (as defined in clause 2(1)) -

- (a) clause 7(1) provides that a court has jurisdiction over any cause or matter, civil or criminal, that arises from applying the laws of Hong Kong in the HKPA;
- (b) clause 7(2) expressly provides that a court may make an order that adjudicates on, confers or imposes a right or obligation that has a territorial limit confined to, or including, the HKPA.

10. Clause 8 clarifies that clause 5(4) cannot lend support to the contention that the territorial limit of a pre-existing (i.e. acquired, accrued or incurred before the Relevant Date) right or obligation is extended to include the HKPA.

11. Clause 9 deals with certain pre-existing rights or obligations,

other than a right or obligation conferred or imposed by a court order as defined in clause 2(1) -

- (a) such rights or obligations are those that fall within a description included in Schedule 2. 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 HKPA;
- (b) the extension of the territorial limit ("territorial extension") takes effect from the Relevant Date or on a later date, to be decided in accordance with clause 9(2);
- (c) clause 9(3) empowers the Chief Executive in Council to amend Schedule 2, but a description to be included in that Schedule by virtue of such an amendment must satisfy the condition set out in clause 9(4) as read with Schedule 3;
- (d) clause 9(5) deals with such rights or obligations that are suspended, or subject to any condition, as at the territorial extension.

12. Clause 10 relates to court orders, and it deals with certain rights or obligations that are conferred or imposed by pre-existing court orders (i.e. court orders made before the Relevant Date) -

- (a) such rights or obligations are those that are conferred or imposed by a pre-existing court order of a description included in Part 2 of Schedule 4. If such a right or obligation has a territorial limit confined to, or including, Hong Kong, then, pursuant to clause 10(1), its territorial limit is extended to include the HKPA;
- (b) the territorial extension takes effect from the Relevant Date or on a later date, to be decided in accordance with clause 10(2);
- (c) clause 10(3) empowers the Chief Executive in Council

to amend Schedule 4;

- (d) clause 10(4) deals with such rights or obligations that are suspended, or subject to any condition, as at the territorial extension.

13. Clause 11 concerns the operation of clause 5(4) in relation to future (i.e. acquired, accrued or incurred on or after the Relevant Date) rights and obligations. It clarifies that clause 5(4) cannot lend support to the contention that the territorial limit of a future right or obligation that is described in clause 11(1) is extended to include the HKPA.

14. The construction aid in clause 12(1) assists in the construction of the references to Hong Kong in future (i.e. made on or after the Relevant Date) documents (apart from legislation). If such a reference appears in a future document to describe the territorial limit of a right or obligation (other than a pre-existing right or obligation), then, in the absence of any contrary intention, the territorial limit is to be construed as including the HKPA.

15. Clause 13 contains provisions that assist in the construction of the references to Hong Kong in future (i.e. made on or after the Relevant Date) court orders. If such a reference appears in a future court order to describe the territorial limit of a right or obligation that is conferred or imposed by the court order, then, in the absence of a contrary intention appearing from the court order, the territorial limit is to be construed as including the HKPA.

16. Clause 14 makes it possible for certain subsidiary legislation made under the Bill after its enactment to take effect retrospectively. The subsidiary legislation includes an order made under -

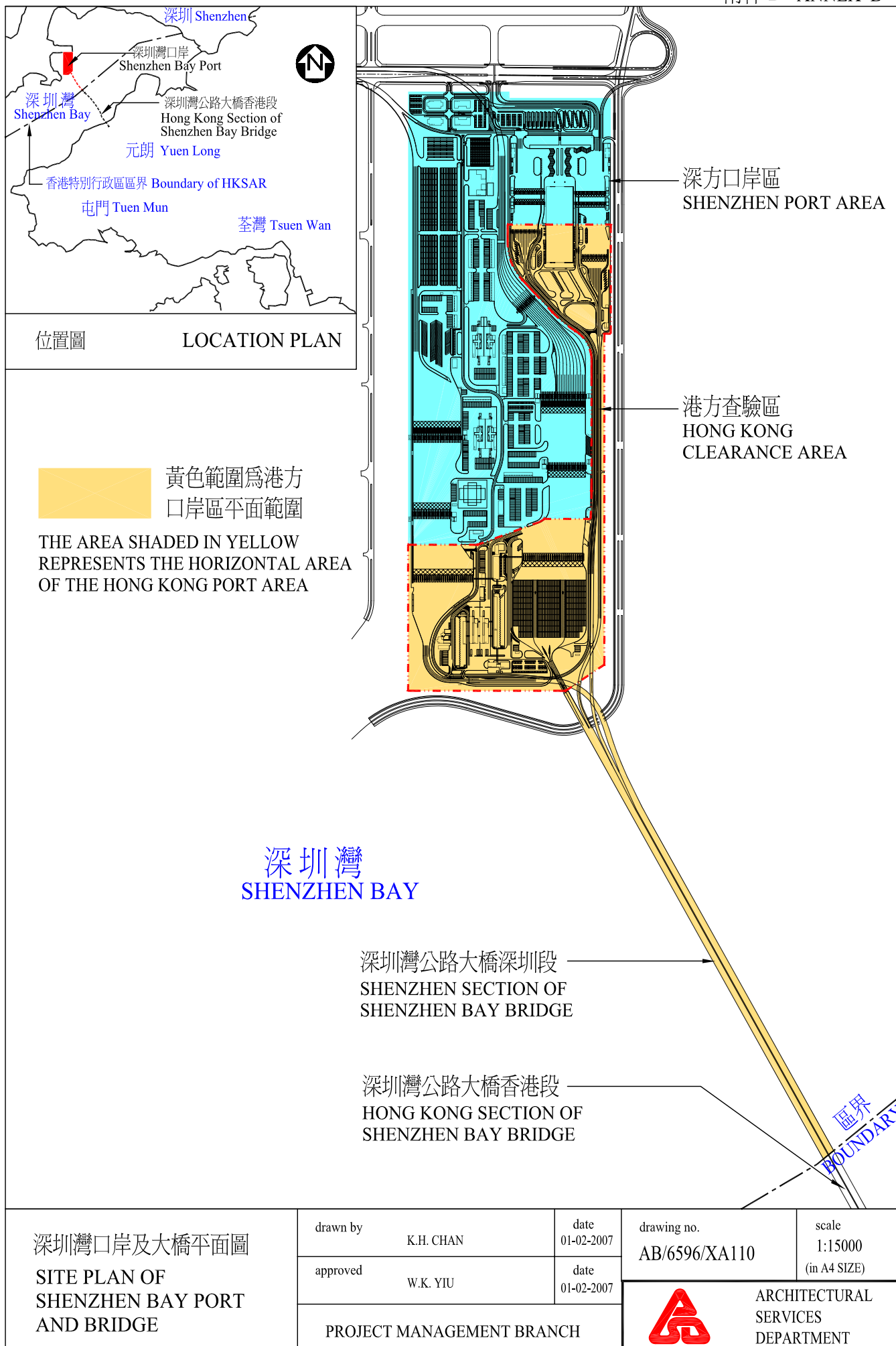
- (a) clause 5(2) (modification or exclusion in relation to the laws of Hong Kong that apply in the HKPA);
- (b) clause 9(3) (amendment to Schedule 2);
- (c) clause 10(3) (amendment to Schedule 4).

17. An enactment that is applied in the HKPA by virtue of clause 5 takes effect in relation to the HKPA on the day on which clause 5 (as read with clause 4) after its enactment comes into operation,

which actually will fall on the Relevant Date. Under clause 15(1), a power to do anything under the enactment may be exercised in relation to the HKPA before the said day. In effect, clause 15(1) enables such powers to be exercised in preparation for the commissioning of the HKPA before the Relevant Date. Clause 15(2) provides that while such powers may be exercised before the said day, such an exercise of power is not effective before then (i.e. the Relevant Date).

18. Clause 16 amends section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to add the new definition of "Shenzhen Bay Port Hong Kong Port Area".

19. Clause 17 adds a new section 28A to the Interpretation and General Clauses Ordinance (Cap. 1) to provide that where an Ordinance that applies in Hong Kong and in the HKPA confers power on a person to make subsidiary legislation, the power shall be construed as including a power to declare that the subsidiary legislation does not apply in the HKPA as well as a power to make different provisions with reference to Hong Kong and the HKPA respectively.



**DECISION OF THE STANDING COMMITTEE OF THE NATIONAL  
PEOPLE'S CONGRESS ON AUTHORIZING THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION TO EXERCISE  
JURISDICTION OVER THE HONG KONG PORT  
AREA AT THE SHENZHEN BAY PORT**

(Adopted at the Twenty Fourth Meeting of the Standing Committee of the  
Tenth National People's Congress on 31 October 2006)

The Standing Committee of the Tenth National People's Congress examined at its Twenty Third Meeting the State Council's Request for Examination of the Motion regarding Authorizing the Hong Kong Special Administrative Region to Exercise Jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port, and examined at its Twenty Fourth Meeting the Draft Decision on Authorizing the Hong Kong Special Administrative Region to Exercise Jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port. The Meeting is of the view that it is necessary to set up a Hong Kong Port Area at the Shenzhen Bay Port expressly for customs clearance and inspection of people, vehicles and goods in order to alleviate the mounting pressure on land control points arising from increasing interactions between the Mainland and the Hong Kong Special Administrative Region, to accommodate the objective demand for transport and for facilitation of customs clearance between Shenzhen and the Hong Kong Special Administrative Region, to promote the interflow of people and economic and trade activities between the Mainland and the Hong Kong Special Administrative Region and to advance joint economic development of the two places. The Standing Committee of the National People's Congress decides as follows:

1. The Hong Kong Special Administrative Region is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of the Hong Kong Special Administrative Region from the day on which the Shenzhen Bay Port commences operation.

The Hong Kong Special Administrative Region is to administer the Hong Kong Port Area at the Shenzhen Bay Port as a closed area.

2. The area of the Hong Kong Port Area at the Shenzhen Bay Port will be stipulated by the State Council.

3. The land use period of the Hong Kong Port Area at the Shenzhen Bay Port will be determined by the State Council according to the provisions of the relevant laws.



**State Council of The People's Republic of China**

Letter No. 132 [2006] of the State Council

**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**

The People's Government of Guangdong Province, the Government of the Hong Kong Special Administrative Region,

In accordance with the "Decision of the Standing Committee of the National People's Congress on Authorizing the Hong Kong Special Administrative Region to Exercise Jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port" adopted at the 24<sup>th</sup> Meeting of the 10<sup>th</sup> National People's Congress on 31 October 2006 and the provisions of the relevant laws; and according to the request for instructions of the People's Government of the Shenzhen Municipality of Guangdong Province and the request of the Government of the Hong Kong Special Administrative Region, the State Council is now giving the following reply 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:

1. The area of the Hong Kong Port Area at the Shenzhen Bay Port comprises the Hong Kong Clearance Area and the bridge surface of the connecting Shenzhen section of the Shenzhen Bay Bridge. The Hong Kong Clearance Area is 41.565 hectares in size (based on the setting out co-ordinates as detailed at Annex I).

The bridge surface of the Shenzhen section of the Shenzhen Bay Bridge refers to the section between the South-east boundary line of the Hong Kong Clearance Area and the boundary line between Hong Kong Special Administrative Region and the Guangdong Province (based on the setting out co-ordinates as detailed at Annex II).

2. The land use right of the Hong Kong Port Area at the Shenzhen Bay Port is to be acquired by way of a lease under a lease contract for State-owned land signed between the Government of the Hong Kong Special Administrative Region and the People's Government of the Shenzhen Municipality of Guangdong Province. The land use period shall commence on the day on which the Shenzhen Bay Port commences operation and shall expire on 30 June 2047.

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.

Annex I: Setting out coordinates of the Clearance Area of the Hong Kong Port Area at the Shenzhen Bay Port

Annex II: Setting out coordinates of the bridge surface of the Shenzhen section of the Shenzhen Bay Bridge

## Section I. Setting out coordinates of Clearance Area

coordinates reference No.	X coordinate	Y coordinate	remarks
1	15172.500	103655.000	
2	14829.000	103655.000	
3	14829.000	103635.000	
4	13787.489	103635.000	
5	13704.935	103513.075	
6	13704.935	103017.000	
7	14164.800	103017.000	
8	14164.800	103235.660	
9	14235.569	103427.917	Starting point of circular curve
10	14239.958	103436.862	Mid-point of circular curve, radius = 48.25 m
11	14246.091	103444.715	End point of circular curve
12	14246.091	103591.249	Starting point of circular curve
13	14290.205	103593.687	Mid-point of circular curve, radius = 1200.25 m
14	14334.379	103594.500	End point of circular curve
15	14745.300	103594.500	Starting point of circular curve

16	14798.342	103580.722	Mid-point of circular curve, radius = 109 m
17	14837.975	103542.873	End point and starting point of circular curve
18	14864.926	103505.153	Mid-point of circular curve, radius = 351 m
19	14896.614	103471.314	End point of circular curve
20	14998.347	103376.131	Starting point of circular curve
21	15052.372	103341.950	Mid-point of circular curve, radius = 171 m
22	15115.175	103330.000	End point of circular curve
23	15172.500	103330.000	

Notes: Coordinates System is based on Shenzhen Independent Coordinates System.

Section I. Setting out coordinates of bridge surface  
of Shenzhen section of Shenzhen Bay Bridge

**Setting out coordinates of ramp A**

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
A1	13725.5845	103543.5725				Intersection with Red Line at Point 1
A2	13715.1943	103528.2270				Intersection with Red Line at Point 2
A3	13714.8996	103561.5008	13701.6906	103552.4718	R-160.000 L-96.753	Mid-point of circular curve
A4	13680.3748	103598.5028	13670.4534	103585.9503		End point of circular curve
A5	13628.3217	103628.1131	13622.1361	103613.3571	A-135.000 L-113.906	Mid-point of transition curve
A6	13574.7609	103646.8098	13569.9557	103631.5484	R-1500.000 L-187.483	Starting point of circular curve
A7	13514.1286	103667.2778	13508.6703	103652.1845		Mid-point of circular curve
A8	13454.4295	103690.3266	13448.3290	103675.4811		Merging point of ramp A

## Setting out coordinates of ramp B

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
B1	13728.0207	103547.1705				Intersection with Red Line at Point 1
B2	13735.3053	103557.9294				Intersection with Red Line at Point 2
B3	13600.5721	103577.3648	13604.9604	103585.7951	A-100.000 L-75.625	Starting point of ramp B
B4	13634.9659	103561.5416	13638.5982	103570.3195		Mid-point of transition curve
B5	13671.8810	103549.5897	13673.9028	103558.8721	R-160.000 L-81.047	Starting point of circular curve
B6	13713.3351	103545.9403	13712.9663	103555.4331		Mid-point of circular curve

### Setting out coordinates of ramp C

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks	
	X	Y	X	Y		
C1	13765.1448	103602.0000				Intersection with Red Line at Point 1
C2	13758.7125	103592.5000				Intersection with Red Line at Point 2
C3	13728.6083	103602.0000	13728.6083	103592.5000	A—170.000 L—72.250	Starting point of transition curve
C4	13692.6826	103602.1819	13692.5194	103592.6833		Mid-point of transition curve
C5	13656.7814	103603.7875	13656.0214	103594.3179	R—400.000 L—98.097	Starting point of circular curve
C6	13608.8226	103610.5795	13606.9167	103601.2726		Mid-point of circular curve
C7	13562.0546	103623.1862	13559.0246	103614.1823		End point of circular curve
C8	13530.4933	103635.1855	13526.8276	103626.4213	A—180.000 L—68.040	Mid-point of transition curve
C9	13499.6337	103648.8624	13495.6546	103640.2358	R—2500.000 L—53.458	Starting point of circular curve
C10	13473.4995	103661.1094	13469.4185	103652.5306		Mid-point of circular curve
C11	13447.5089	103673.6582	13443.3290	103665.1272		End point of ramp C of Lane Change Over

Setting out coordinates of ramp D

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks
	X	Y	X	Y	
D1	13272.0320	103728.0355	13279.4428	103742.2722	Starting point of ramp D
D2	13356.3972	103684.1196	13363.8080	103698.3563	
D3	13485.7955	103616.7620	13496.9011	103638.0966	
D4	13592.2377	103561.3540	13604.9604	103585.7951	
D5			13599.6484	103575.5904	
D6	13704.9351	103502.6899			Intersection with Red Line at Point 1
D7	13704.9351	103513.0748			Corner point of Red Line
D8	13708.7946	103518.7750			Intersection with Red Line at Point 2



### Setting out coordinates of ramp E

coordinates reference No.	left edge line (in direction of traffic flow)		right edge line (in direction of traffic flow)		remarks
	X	Y	X	Y	
E1	13289.8549	103762.2745	13282.4440	103748.0378	Starting point of ramp E
E2	13399.9956	103713.9716	13388.8863	103692.6298	
E3	13452.9504	103690.9344	13441.8885	103665.8335	
E4	13454.4295	103690.3266	13443.3290	103665.1272	End point of ramp E

### Setting out coordinates of the bridge

coordinates reference No.	left side when viewed in direction from Shenzhen towards Hong Kong		right side when viewed in direction from Shenzhen towards Hong Kong		remarks	
	X	Y	X	Y		
1	13289.8549	103762.2745	13272.0320	103728.0355		Starting point of the bridge
2	13062.1908	103880.7845	13044.3678	103846.5456	R-4000.000 L-1084.173	Starting point of circular curve
3	12984.6664	103922.2340	12976.9429	103908.1645		Starting point of non-navigational channel bridge
4	12973.8151	103902.4666	12966.0916	103888.3970		Mid-point of circular curve
5	12601.9866	104161.4909	12592.7203	104148.3860		End point of non-navigational channel bridge
6	12588.9675	104143.0788	12579.7012	104129.9739		Boundary line between Hong Kong and Guangdong
7	12252.1895	104439.5474	12241.5128	104427.5637		End point of circular curve
8	12237.1889	104422.7105	12226.5121	104410.7267		
9	12249.8684	104441.6170				
10	12239.6169	104429.2539				
11	12235.4652	104424.2470				
12	12225.2138	104411.8839				
13	12183.9276	104501.8003	12172.9756	104490.0676		
14	12168.5402	104485.3160	12157.5883	104473.5833		

Notes:

1. Coordinates System is based on Shenzhen Independent Coordinates System.
2.  $L$  is the arc length,  $R$  is the radius,  $A$  is the parameter of the curve; units are in metres.
3. Red Line is the boundary line of the Hong Kong Port Area within the Shenzhen Bay Port.

**Articles 6 and 105 of the Basic Law**

**Article 6**

The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.

**Article 105**

The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

The ownership of enterprises and the investments from outside the Region shall be protected by law.

**Shenzhen Bay Port Hong Kong Port Area Bill  
Financial and Civil Service, Economic,  
Environmental and Sustainability Implications**

**Financial and Civil Service Implications**

The Bill will enable the setting up of a new Hong Kong control point in the Hong Kong Port Area at the Shenzhen Bay Port ("SBP HKPA") in the Mainland under the co-location arrangement. The Finance Committee of the Legislative Council ("FC") approved in July 2003 a capital commitment of \$2,173.5 million for the design and construction of the boundary crossing facilities for the new control point and in April 2004 a non-recurrent commitment of \$176.6 million for the installation of computer systems for the Immigration Department. We estimate that the total annual recurrent expenditure arising from the operation of these facilities will be about \$456.4 million, involving about 1 020 staff. The additional manpower required by the departments concerned for the project has been taken into account by the Civil Service Bureau in the calculation of the relevant establishment targets for the financial years 2006-07 and 2007-08.

2. Apart from the above, the financial implications of the new control point also include the land development and usage costs for the SBP HKPA. As reported to the FC on the above occasions, Hong Kong and Mainland have already agreed on the principle that each side would bear the development and usage costs for the land used by that side. The Administration will in due course submit an application to the FC for funding to meet these costs after they have been ascertained with the relevant Mainland authorities.

3. We are putting in place arrangements to facilitate the deployment of our staff to work in the SBP HKPA to be set up outside Hong Kong. In respect of the newly recruited staff concerned, we have included a clause in their terms of employment to enable us to direct them to work in the SBP HKPA. In respect of pre-existing staff, we intend to seek separate agreements from the staff concerned for their deployment to the SBP HKPA.

## **Economic Implications**

4. The Bill will enable the setting up of a new Hong Kong control point at the SBP HKPA in the Mainland under the co-location arrangement. It will facilitate the flow of people and cargoes across the boundary, and enhance the status of Hong Kong as a regional business, trade and logistics hub. It will also resolve the problem of lack of usable land on the Hong Kong side for accommodating new boundary crossing facilities to cater for the Shenzhen Bay Bridge.

5. To avoid possible interference with the rights and obligations of the parties concerned which are safeguarded under Articles 6 and 105 of the Basic Law, the Bill will not automatically extend the territorial limits of pre-existing rights or obligations arising from documents of a private nature (e.g. wills, insurance policies and contracts) to cover the SBP HKPA. Parties concerned may vary their documents to cover the SBP HKPA as they consider appropriate. The cost implications arising from such variations are yet to be assessed, although they are unlikely to be very substantial.

## **Sustainability Implications**

6. Accommodation of our boundary crossing facilities on the Mainland side will help ensure the adequate provision of such facilities to meet the envisaged rapid growth in people and cargo flows across the boundary. It will also help preserve the landscape value of Hong Kong. These benefits will be conducive to the sustainable development of Hong Kong.

## **Environmental Implications**

7. All environmental laws of Hong Kong will apply to the SBP HKPA.