

政府總部
香港下亞厘畢道



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GOVERNMENT SECRETARIAT

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30 May 2007

Clerk to Subcommittee
on Subsidiary Legislation Relating to the
Shenzhen Bay Port Hong Kong Port Area
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr Raymond LAM)

Dear Mr LAM,

**Subcommittee on Subsidiary Legislation Relating to the
Shenzhen Bay Port Hong Kong Port Area**

To facilitate Members' discussion at the next meeting on 5 June 2007, we provide below our response to issues raised by Members at the meeting on 22 May 2007.

**Shenzhen Bay Port Hong Kong Port Area (Permission to Enter)
Notice**

Emergency situation where evacuation may be required

A Member inquired if the condition as laid down in item 5 of the Schedule to the Notice (i.e. "The person shall not leave the immediate vicinity of the vehicle") will be too rigid to cater for emergency situation where evacuation may be required.

The purpose of this condition is to prevent any persons from leaving the “immediate vicinity of” their vehicles whilst in the Closed Area and idling in the Closed Area, thereby adversely affecting the order of the Closed Area. “Immediate vicinity” is a matter of fact and degree, rather than exact measurement. Literally speaking, “immediate vicinity” of a vehicle means somewhere quite close to it, however, the term allows room for reasonable judgment by the law enforcement agencies, including necessary evacuation in times of emergencies or accidents.

As with the enforcement of all other laws, the Police exercise suitable discretion and pay due regard to the circumstances of the case, in particular the need for reasonableness. Further, the Police are under a duty to prevent injury to life in emergencies. Where special circumstances apply, e.g. in times of emergency, the Police will exercise their discretion not to prosecute for the technical breach of the law.

Situation where a person wanted to return to the Mainland immediately after entering the Hong Kong side

A Member asked whether and how the needs of persons who wanted to return to the Mainland side immediately after entering the Hong Kong side via the Passenger Terminal Building could be catered for. The Administration was asked to consider the need for providing for this in the Notice.

The Notice seeks to cater for situations where a **general permission** for entering the Shenzhen Bay Port Hong Kong Port Area (HKPA) Closed Area is needed. This general permission obviates the need for bona fide cross-boundary passengers and others such as bus drivers ferrying these passengers to apply for a closed area permit under section 37(2) of the Public Order Ordinance (POO) to enter and leave the HKPA. By its nature, the general permission seeks to cover situations involving the **normal intended use** of the HKPA. For others who have a genuine need to enter or leave the HKPA, for example, technical personnel for maintaining the computer systems therein, they may apply for a closed area permit under section 37(2) of the POO. The same arrangements have worked well in other land border crossing points.

As with the enforcement of all other laws, the Police exercise suitable discretion and pay due regard to the circumstances of the case, in particular the need for reasonableness. Where special circumstances apply and where there is a genuine need for a person who has entered a border control point to turn back urgently, e.g., when he has just sustained an injury requiring his immediate return for emergency medical attention, the Police will exercise their discretion and not prosecute him for the technical breach of the law. Obviously it would not be possible to list all the exceptional and unforeseen circumstances exhaustively in the law. We are also wary of inadvertently creating a possible loophole that could be exploited by those who want to turn back for ulterior motives such as smuggling.

We have therefore concluded that it is not necessary to amend the Notice.

Immigration (Places of Detention) (Amendment: Shenzhen Bay Port Hong Kong Port Area) Order 2007 and Immigration Service (Designated Places) (Amendment: Shenzhen Bay Port Hong Kong Port Area)) Order 2007

The detention quarters at the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area set aside for use by the Immigration Department will be used for detaining persons under the Immigration Ordinance and the Immigration Service Ordinance. Under the said Ordinances, the Immigration Department may detain persons in any of the designated detention places, regardless of the location of arrest. The choice of detention places will depend on factors such as operational needs and the utilization of the relevant facilities.

Yours sincerely,



(Miss Ada CHAN)
for Secretary for Security