

**For discussion
on 17 March 2009**

Legislative Council Panel on Commerce and Industry

**Proposed Subsidiary Legislation for implementing the
Road Cargo System**

PURPOSE

This paper presents the proposed subsidiary legislation for implementing the Road Cargo System (“ROCARS”), an electronic system designed to facilitate customs clearance of road cargoes.

BACKGROUND

2. In January 2007, we consulted Members on our proposal to introduce an electronic advance cargo information system for customs clearance of road cargoes (ref: LC Paper No. (CB)(1)694/06-07(04)). Members supported implementation of the system.

3. In May 2007, the Import and Export (Amendment) Ordinance 2007 (the “Amendment Ordinance”) was enacted, enabling the making of regulations necessary for implementing the system, now called ROCARS.

4. In October 2007, we obtained the Panel’s support for funding the ROCARS-related infrastructure (ref: LC Paper No. (CB)(1)32/07-08(04)). Following the voting of funds by the Finance Committee in November 2007 (ref: FCR(2007-08)35), the Customs and Excise Department (“C&ED”) invited tenders in March 2008 for developing the information technology (“IT”) system and related services for ROCARS. The successful tenderers were awarded the contracts in January 2009. We expect to roll out the system in early 2010.

KEY FEATURES AND BENEFITS OF THE SYSTEM

5. To facilitate engagement with the industry on matters related to the operation of the new system, C&ED established in February 2007

user consultation groups with shippers¹ and truckers². Key stakeholders are represented on these groups.

6. The agreed workflow, largely following the format that we had presented to the Panel before, is as follows :

- (a) a **shipper** or a **freight forwarder** acting as a shipper (or an agent of either party) provides a pre-defined set of cargo information to C&ED through ROCARS at least 30 minutes before the cargo consignment enters or exits Hong Kong by truck;
- (b) as an acknowledgment, **ROCARS** returns a reference number for the cargo consignment to the shipper who would then pass it on to the relevant trucker;
- (c) 30 minutes (or less if so allowed by C&ED³) before his truck arrives at a land boundary control point (“LBCP”), the **trucker** does the ‘bundling’ work by providing to C&ED, through ROCARS, the following information –
 - (i) the reference number of the cargo consignment; and
 - (ii) his vehicle’s registration number; and
- (d) **C&ED** performs risk profiling on the cargo before a truck arrives at an LBCP and determines in advance whether the cargo needs to be inspected.

7. The above arrangements will enable Customs officers to conduct risk profiling on cargo consignment in advance, for determining whether a truck needs to be inspected. All cross-boundary trucks, except those

¹ Members of C&ED’s user consultation group with **shippers** include five Chambers of Commerce (namely, the Hong Kong General Chamber of Commerce; the Chinese General Chamber of Commerce; the Chinese Manufacturers’ Association of Hong Kong; the Federation of Hong Kong Industries; and the Indian Chamber of Commerce), the Hong Kong Shippers’ Council, the Hong Kong Association of Freight Forwarding and Logistics, the Hong Kong Logistics Association, and four express couriers.

² Members of C&ED’s user consultation group with **truckers** include 14 associations of cross-boundary truck drivers, including the Hong Kong Guangdong Transportation Association, the Container Truck Drivers Union, the Hong Kong (Cross Border) Transportation Drivers’ Association, the Lok Ma Chau China - Hong Kong Freight Association and so on.

³ Please see paragraph 10(b)(ii) below.

selected for inspection, will enjoy seamless customs clearance at the land boundary.

8. Implementation of the system will also give C&ED added room to facilitate the passage of transshipment cargoes which involve inter-modal transfer (e.g. from land to air). For instance, land-to-air transshipment cargoes may only be subject to customs inspection at either the LBCP or the airport, instead of having to be inspected at both control points.

9. The importance of smooth cross-boundary traffic at all times is well recognized. ROCARS will have resilience equipment and an off-site disaster recovery system to ensure its high serviceability in operation. To cater for the unlikely event of a total system failure, contingency plans will be put in place to ensure that the current manual mode of customs clearance could be switched on as soon as possible.

SUBSIDIARY LEGISLATION

10. The draft provisions are at **Annex**. The key features are highlighted below :

- (a) ***transitional period*** : as foreshadowed in our previous submissions to LegCo, we propose prescribing a transitional period of 18 months before mandating ROCARS submissions. This should give sufficient time for the industry to adjust their mode of operation, train up their staff and/or prepare their IT system, as necessary.

We will provide for the transitional period by stipulating in the proposed subsidiary legislation that the provisions therein would commence 18 months after the Amendment Ordinance comes into effect. We intend to appoint a date in early 2010, which is the system roll-out date, as the commencement date for the Amendment Ordinance. As such, the subsidiary legislation will take effect 18 months afterwards, i.e. in mid-2011;

- (b) ***obligations of various parties*** : these include the responsibility of a shipper to lodge cargo information through ROCARS, and of a trucker to carry out the bundling work, as set out in paragraph 6 above. Failure to discharge such obligations will render the relevant party liable to penalties. Where an offence of failure to

lodge information is committed in relation to any prohibited article and the offender knows that a prohibited article is involved, the offence will be punishable by imprisonment. We will provide for appropriate defences in the proposed subsidiary legislation.

We have taken on board comments of the industry on the following subject matters –

- (i) responsibility of each party : truckers have earlier commented that they should not be required to submit cargo information to ROCARS as they have no first-hand knowledge about the content of the cargo concerned. We have taken care to delineate clearly the responsibilities of shippers and truckers in the proposed subsidiary legislation;
 - (ii) cut-off time for ROCARS submissions : truckers were once required to make ROCARS submissions at least **30 minutes** before the cargo-carrying truck passes through an LBCP, down from **two hours** under an earlier proposal. This notwithstanding, a few members of the logistics industry remained concerned that their “just-in-time” mode of freight operations might be adversely affected. After careful deliberations and further consultation with the industry, we would offer more flexibility, i.e. C&ED would signal the trucker that he may pass through an LBCP in less than 30 minutes if, at the time the bundling work is done, C&ED has already completed the risk profiling; and
 - (iii) penalties : truckers consider that our originally proposed penalties, pitched at level 2 (currently \$5,000), for two minor offences (namely, (i) failure to observe the 30-minute lead time requirement, and (ii) failure to make an indication of an unladen vehicle) are on the high side. Having re-considered the matter, we agree to reduce the penalties to level 1 (currently \$2,000); and
- (c) **exemptions** – the Commissioner of Customs and Excise will be empowered to grant exemptions from all or part of the ROCARS requirements by way of a notice published in the Gazette, or under exceptional circumstances where compliance with those requirements is not practicable.

CONSULTATION WITH STAKEHOLDERS

11. We have consulted C&ED's user groups with shippers and truckers on the proposed subsidiary legislation and obtained their agreement. The Hong Kong Logistics Development Council has also indicated support.

WAY FORWARD

12. Subject to any views that Members may have, we aim to table the proposed subsidiary legislation before LegCo for negative vetting within the 2008-09 legislative session.

13. In the run-up to the launching of the system in early 2010, C&ED will continue to liaise closely with industry stakeholders on detailed operational matters.

14. To increase awareness and encourage early migration to ROCARS, C&ED will (i) arrange publicity programmes; (ii) organize large-scale briefing seminars and training courses (with sessions for hands-on practice) for users; and (iii) send an outreach team to encourage and help industry players, particularly those with high-volume cross-boundary road cargo movement, to use ROCARS.

ADVICE SOUGHT

15. Members will be invited to endorse the main provisions of the proposed subsidiary legislation for implementing ROCARS.

Commerce and Economic Development Bureau
March 2009

**Proposed Subsidiary Legislation for
implementing the Road Cargo System
(titled the Import and Export
(Electronic Cargo Information) Regulation)**

1. Commencement

This Regulation comes into operation 18 months after the day appointed for the commencement of the Import and Export (Amendment) Ordinance 2007 (8 of 2007).

2. Interpretation

In this Regulation, unless the context otherwise requires –

“customs clearance point” (海關清關站) means a customs clearance point designated under section 10;

“customs cargo reference number” (海關貨物編號) means, in relation to any cargo imported or exported, or intended to be imported or exported, in or on a prescribed vehicle, means the customs cargo reference number assigned to the cargo under section 5;

“information system” (資訊系統) means a system which –

- (a) processes information;
- (b) records information;
- (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
- (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);

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

“Road Cargo System” (道路貨物資料系統) means an information system designated under section 9;

“undeclared cargo” (未報關貨物) means any cargo in relation to which any information required to be lodged under section 4 has not been lodged in accordance with that section.

3. Application

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

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

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

4. Lodgement of cargo information before import or export

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

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

(3) The information must be lodged not earlier than 14 days before –

- (a) in the case of an import of cargo, the expected date of bringing the cargo into Hong Kong; or
- (b) in the case of an export of cargo, the expected date of taking the cargo out of Hong Kong.

(4) A person who, without reasonable excuse, imports or exports any undeclared cargo in or on a prescribed vehicle commits an offence and is liable on conviction to a fine at level 3.

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

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

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

5. Commissioner to assign and issue customs cargo reference number

If information is lodged with the Commissioner in accordance with section 4(1) and (3), the Commissioner must –

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

6. Provision of customs cargo reference number to carrier

(1) If –

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

the first-mentioned person must, as soon as practicable after receipt of the customs cargo reference number, furnish the carrier with the number and inform the carrier that it is the customs cargo reference number of the cargo.

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

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

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

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

(2) The information must be lodged by sending it to the Road Cargo System –

- (a) by telephone; or
- (b) by an information system, and in the form of an electronic record.

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

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

- (a) the prescribed vehicle carries any cargo into or out of Hong Kong; and
- (b) the person, without reasonable excuse, has not lodged the information as required by subsection (1).

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

- (a) the prescribed vehicle carries into or out of Hong Kong any cargo that consists, or part of which consists, of a prohibited article;
- (b) the person knows that the cargo, or part of the cargo, consists of a prohibited article; and
- (c) the person, without reasonable excuse, has not lodged the information as required by subsection (1).

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

8. Indication of unladen vehicle

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

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

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

9. Designation of information system

(1) The Commissioner may designate an information system for the purposes of this Regulation to be known as the Road Cargo System.

(2) Details of the designation of an information system under subsection (1) must be published in such manner as the Commissioner considers appropriate.

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

10. Designation of customs clearance point

(1) The Commissioner may designate an area within a place set out in Schedule 2 as a customs clearance point for the purposes of this Regulation.

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

11. Exemption

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

(2) An exemption under subsection (1) –

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

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

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

(4) Notice of an exemption granted under subsection (3) must be published in such manner as the Commissioner considers appropriate.

12. Requirement, etc. given by member of Customs and Excise Service, etc.

Any requirement, direction or demand given or made by a member of the Customs and Excise Service in the exercise or performance of a power or duty under the Ordinance for the purposes of this Regulation may be communicated to any person through a visual display unit installed by the Government at a customs clearance point.

SCHEDULE 1

[s. 4]

CARGO INFORMATION

PART 1

INFORMATION IN RELATION TO CARGO IN PACKAGES

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

PART 2

INFORMATION IN RELATION TO CARGO IN BULK

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

SCHEDULE 2

[s. 10]

LOCATION OF CUSTOMS CLEARANCE POINT

1. Lok Ma Chau Boundary Control Point.
2. Man Kam To Boundary Control Point.
3. Sha Tau Kok Boundary Control Point.

4. The Clearance Area of the Shenzhen Bay Port Hong Kong Port Area, being the area set out in Part 1 of Schedule 1 to the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).