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Paper for the House Committee meeting on 20 November 2020

**Report of the Subcommittee on
Three Pieces of Subsidiary Legislation Relating to
the Commissioning of Heung Yuen Wai Boundary Control Point**

Purpose

This paper reports on the deliberations of the Subcommittee on Three Pieces of Subsidiary Legislation Relating to the Commissioning of Heung Yuen Wai Boundary Control Point ("the Subcommittee").

Background

2. Located in northeastern New Territories, the Heung Yuen Wai ("HYW") Boundary Control Point ("BCP") will be the fifth vehicular BCP between Hong Kong and Shenzhen.¹ This new BCP will allow free and direct access by people and vehicles. Travellers may have free access, either by vehicles or on foot, to HYW BCP. To cater for the commissioning of HYW BCP, the Administration has taken forward the relevant legislative work including the enactment of technical subsidiary legislation relating to the operations of HYW BCP.

**Closed Area (Heung Yuen Wai Boundary Control Point) Order (Commencement) Notice
Import and Export (Electronic Cargo Information) (Amendment) Regulation 2018 (Commencement) Notice**

3. The Closed Area (Heung Yuen Wai Boundary Control Point) Order (Commencement) Notice (L.N. 155 of 2020) and the Import and Export (Electronic Cargo Information) (Amendment) Regulation 2018 (Commencement) Notice (L.N. 157 of 2020) are made by the Secretary for Security and the

¹ The other four BCPs include the Lok Ma Chau BCP, Man Kam To BCP, Sha Tau Kok BCP and the Clearance Area of Shenzhen Bay Port Hong Kong Port Area.

Secretary for Commerce and Economic Development respectively to appoint 26 August 2020 as the day on which the following come into operation:

- (a) the Closed Area (Heung Yuen Wai Boundary Control Point) Order (Cap. 245N) (L.N. 159 of 2018), which declares certain zones located at HYW BCP as a closed area under section 36(1) of the Public Order Ordinance (Cap. 245) ("Closed Area") so that no person shall enter or leave the Closed Area without a permit issued under section 37 of Cap. 245 or the general permission granted under section 38A of Cap. 245; and
- (b) the Import and Export (Electronic Cargo Information) (Amendment) Regulation 2018 (L.N. 158 of 2018), under which the Commissioner of Customs and Excise ("C of C&E") may designate an area within HYW BCP as a customs clearance point² for the purpose of the operation of the Road Cargo System ("ROCARS")³ pursuant to section 13 of the Import and Export (Electronic Cargo Information) Regulation (Cap. 60L).

Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Amendment of Schedule 1) Notice 2020

4. The Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Amendment of Schedule 1) Notice 2020 (L.N. 156 of 2020) is made by C of C&E under section 33(1) of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629)⁴ to add HYW BCP to Schedule 1 to Cap. 629 as a specified control point⁵ so that the declaration requirement under section 4 of

² Before L.N. 157 of 2020 came into operation on 26 August 2020, the five locations of customs clearance points to which ROCARS applied included: (a) Lok Ma Chau BCP, (b) Man Kam To BCP, (c) Sha Tau Kok BCP, (d) the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area, and (e) Hong Kong-Zhuhai-Macao Bridge Hong Kong Port.

³ ROCARS is an electronic cargo information system for customs clearance of road cargoes.

⁴ Cap. 629 establishes a declaration and disclosure system to detect the cross-boundary movement of large quantities of physical CBNI into or out of Hong Kong.

⁵ Before L.N. 156 of 2020 came into operation on 26 August 2020, there were 15 specified control points specified in Schedule 1 to Cap. 629, including (a) Lo Wu Control Point, (b) Hung Hom Station, (c) Man Kam To BCP, (d) Sha Tau Kok BCP, (e) Hong Kong-Macao Ferry Terminal, (f) China Ferry Terminal, (g) Lok Ma Chau BCP, (h) Hong Kong International Airport, (i) Tuen Mun Ferry Terminal, (j) Shenzhen Bay Port Hong Kong Port Area, (k) Lok Ma Chau Spur Line Control Point, (l) Kai Tak Cruise Terminal, (m) Ocean Terminal, (n) West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (other than the West Kowloon Station Mainland Port Area), and (o) Hong Kong-Zhuhai-Macao Bridge Hong Kong Port.

Cap. 629 applies to persons arriving at HYW BCP. L.N. 156 of 2020 came into operation on 26 August 2020.

5. Under section 4 of Cap. 629, a person who arrives at a specified control point (i.e. places specified in Schedule 1 to Cap. 629) from a place outside Hong Kong ("traveller") and who is in possession of a large quantity of currency and bearer negotiable instruments ("CBNIs") in excess of the maximum value of HK\$120,000 as specified in Schedule 4 to Cap. 629 must make a declaration for CBNIs in a form specified by C of C&E. Any traveller who fails to make the declaration or makes a false declaration commits an offence and is liable on conviction to a fine of HK\$500,000 and to imprisonment for two years under section 4(8) of Cap. 629.

6. According to the Legislative Council ("LegCo") Brief, the amendment to Schedule 1 to Cap. 629 is technical in nature and aims to facilitate travellers arriving at specified control points (including HYW BCP) to make written declarations of CBNIs in accordance with Cap. 629.

The Subcommittee

7. At the House Committee meeting on 16 October 2020, Members agreed to form a subcommittee to study L.N. 155 of 2020 to L.N. 157 of 2020 ("the three Notices"). The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has held one meeting with the Administration to scrutinize the three Notices.

8. To allow more time for the Subcommittee to study the three Notices and consider the report to be submitted to the House Committee, the Subcommittee agreed that a motion should be moved at the Council meeting of 4 November 2020 to extend the scrutiny period of the three Notices to the Council meeting of 2 December 2020. The motion was passed.

Deliberations of the Subcommittee

9. During the course of scrutiny, members of the Subcommittee have not raised objection to the three Notices which are technical subsidiary legislation relating to the operations of HYW BCP. The major deliberations of the Subcommittee are set out in the ensuing paragraphs.

Enforcement of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance

10. Noting that Cap. 629 has been in force since 16 July 2018 to require travellers arriving at specified control points to make written declarations of CBNIs in accordance with Cap. 629, Mr James TO has enquired about the number of non-compliant cases detected by the Customs and Excise Department ("C&ED") since Cap. 629 came into operation; the value of CBNIs involved; and the penalty imposed on non-compliant cases.

11. The Administration has advised that under Cap. 629, any traveller who breaches the declaration/disclosure requirements for the first time may make a payment of HK\$2,000 to discharge the legal liability, provided that the traveller has not previously been convicted of any money laundering or terrorist financing offences and whose CBNIs are not reasonably suspected to be crime proceeds or terrorist property. All other cases (including first-time offenders relating to cargo consignments) are subject to criminal proceedings, and the maximum penalty is a fine of HK\$500,000 and imprisonment for two years.

12. The Subcommittee notes that during the first three months since the commencement of Cap. 629 on 16 July 2018, C&ED issued written warnings as far as appropriate to persons who were found in breach of the declaration/disclosure requirements for the first time. A total of 23 warning letters (including 20 cases relating to travellers and three cases relating to cargo consignments) were issued during this three-month period. After that, 203 non-compliant cases were detected (including 191 cases relating to travellers and 12 cases relating to cargo consignments) for the period from 16 October 2018 to 30 September 2020. About 80% of non-compliant traveller cases involved CBNIs with a value below HK\$500,000, while for cargo consignments, 80% of cases with a value below HK\$5 million. As regards penalty, out of the total of 203 non-compliant cases detected, 190 cases from travellers discharged their liability according to Cap. 629 by making a payment of HK\$2,000. The remaining 13 cases (including one traveller case and 12 cases relating to cargo consignments) were dealt with through criminal prosecution. The penalties imposed for cases with court proceedings completed range from HK\$3,000 to HK\$16,000.

Closed Area at Heung Yuen Wai Boundary Control Point

13. Noting that there is a pedestrian subway connecting the Passenger Terminal Building ("PTB") and Lin Ma Hang Road, and that there are residential settlements in the vicinity of HYW BCP, Mr WU Chi-wai has enquired whether HYW BCP has been suitably fenced off to prevent anyone (especially those who live in the nearby areas) from entering into the Closed Area by accident. To facilitate Subcommittee members' understanding of the

operation of HYW BCP, Mr James TO has requested the Administration to consider arranging a site visit to HYW BCP for the Subcommittee to learn more about the BCP's overall layout, building designs, road designs, customs, immigration and quarantine arrangement and traffic arrangement.

14. The Administration has advised that similar to all other BCPs, HYW BCP has been fenced off to prohibit unauthorized entry to the Closed Area. As clarified by the Administration, the pedestrian subway in question is in fact connected to the public transport interchange ("PTI") which is not part of the Closed Area. In response to Mr James TO's request for a site visit to HYW BCP, the Administration has advised that the Security Bureau ("SB") is planning to invite members of the Panel on Security for a site visit, and invite Subcommittee members and other Members to join. SB will inform the Panel on Security of the details of the site visit in due course.

Permission to enter the Closed Area

15. The Subcommittee notes that the Commissioner of Police made in 2018 the Heung Yuen Wai Boundary Control Point Closed Area (Permission to Enter) Notice⁶ ("the HYW BCP Notice") under section 38A of Cap. 245 to grant general permission to cross-boundary drivers, passengers and travellers for entering or leaving the Closed Area at HYW BCP. Such permission aims at providing facilitation to the abovementioned persons such that they can enter or leave the Closed Area without the need for a closed area permit. Separately, persons with genuine need, including those who live or work within the closed area, etc., may apply for a closed area permit.

16. In response to the enquiry from Mr LEUNG Yiu-chung, the Administration has advised that the enforcement agencies take into account all relevant facts and circumstances of each case in deciding whether a person is a genuine traveller eligible for the general permission under the HYW BCP Notice to enter or leave the Closed Area at HYW BCP.

Traffic arrangements at the Heung Yuen Wai Boundary Control Point

Cargo clearance area

17. Mr CHAN Hak-kan has referred to the concerns raised by the transport and logistics trades on inadequate weaving length at some of the bends in the areas of HYW BCP after their site visit to HYW BCP arranged by the Administration, and enquired about the Administration's follow-up actions.

⁶ The HYW BCP Notice came into operation on the day on which the Closed Area (Heung Yuen Wai Boundary Control Point) Order came into operation, i.e. 26 August 2020.

18. The Administration has advised that the public transport operators are generally content with the layout of PTI whereas the logistics trade is concerned about inadequate weaving length for long vehicles at one of the road bends within the cargo clearance area. The Administration has explained that the road access within the cargo clearance area is in fact in compliance with the applicable road design requirements. Yet, having regard to the trade's concerns on the particular road bend in the area, the Administration has carried out corresponding improvement work. The general responses received from the trade about the improvement work were positive.

19. The Chairman has also enquired whether the nine clearance kiosks for goods vehicles and the two vehicular bridges crossing Shenzhen River at HYW BCP can meet the traffic demand during clearance peak hours.

20. The Administration has advised that due to the site constraints, the distance between the clearance kiosks for goods vehicles and the vehicular bridges crossing Shenzhen River in HYW BCP is relatively shorter than that in other BCPs. The vehicle holding areas in HYW BCP are also comparatively smaller than that in other BCPs. Notwithstanding the above, HYW BCP has been operating smoothly since its commissioning, and the Police will closely monitor the areas and help maintain a smooth traffic flow.

Public car parks

21. Noting that there are public car parks available in PTB, the Chairman and Mr James TO have enquired about the parking fee levels and a comparison of the parking fee levels of other public car parks in the vicinity. Mr TO has further enquired about the target customers of the public car parks in HYW BCP and how the prescribed parking fee levels could encourage such target customers to use the public car parks.

22. The Administration has advised that the operation of the public car parks in HYW BCP has been outsourced to an operator to be run on commercial principles. Under the tenancy requirements, the parking fees are to be proposed by the operator by reference to the fees in the market and have to be approved by the Government Property Agency.

23. The public car parks of HYW BCP will have parking spaces for private car, motorcycle and van-type light goods vehicle. A pre-booking system will be available to facilitate users of the car parks. There will also be various types of parking arrangements, including hourly, daily and night parking to meet the different needs of users. The currently approved parking fees of the various types of vehicles in the public car parks of HYW BCP and those in the vicinity are set out in **Appendix II**.

24. The Administration has also advised that HYW BCP, designed and constructed according to the idea of "direct access by passengers and vehicles", provides public car parks mainly for use by people to HYW BCP. To encourage motorists to get familiarized with and make use of the car parks of HYW BCP and the pre-booking arrangement, concession rates will be available for pre-booked parking space as well as in the first three months of commissioning of the car parks. Besides, as the parking fees are set with reference to the fees in the market and the car parks are to be operated on commercial principles, the operator should have every incentive to attract motorists to use the car parks.

Public transport arrangement

25. Mr CHAN Hak-kan has enquired about the public transport arrangements upon the commissioning of the passenger clearance services at HYW BCP.

26. The Administration has advised that the Transport Department has finalized the local public transport arrangements for HYW BCP to serve travellers to and from different districts in Hong Kong. Upon commissioning of the passenger clearance services, commuters may make use of the local public transport services, including three new franchised bus routes, one short-working green minibus route, taxis and non-franchised buses, to travel to and from PTI at HYW BCP. Apart from public transport, travellers may also access HYW BCP by private cars and make use of the public car park or the pick-up/drop-off area in PTB.

27. In response to Mr James TO's enquiry on the quota system for cross-boundary private cars using HYW BCP, the Administration has advised that Guangdong-Hong Kong cross-boundary private cars under regular quota can enter or leave the Mainland using only the designated BCPs. The Hong Kong and Guangdong Governments have agreed to issue 2 200 new quota for HYW BCP, comprising 2 000 and 200 quota for Hong Kong and Mainland cross-boundary private cars respectively.

Traffic impact on local roads

28. Mr CHAN Hak-kan has conveyed the views and concerns of a number of Executive Committee members of a Rural Committee that upon commissioning of HYW BCP, the volume of goods vehicle traffic using the local roads in the vicinity may increase rapidly, thus posing dangers to other road users. As such, Mr CHAN has enquired about the impact of such traffic demand on local roads and has enquired about the current average daily vehicular traffic using HYW BCP as well as the respective numbers of those arriving/departing HYW BCP through (a) HYW Highway; and (b) other local roads in the vicinity which

includes but not limited to Lin Ma Hang Road.

29. The Administration has advised that HYW Highway provides a direct vehicular access for HYW BCP to and from Sheung Shui, Fanling, Tai Po and the urban areas. As vehicles no longer have to pass through local road network in the North District, no additional traffic loading will be induced to local roads. Since the commissioning of HYW Highway, around 20% to 30% traffic previously using Sha Tau Kok Road have shifted to use HYW Highway for access to the Fanling Highway.

30. The Administration has further advised that upon commissioning of cargo clearance facilities of HYW BCP in August 2020, the average daily cross-boundary goods vehicles using HYW BCP is about 450 (both directions). This number is comparable to the increase in average daily traffic flow at the relevant section of HYW Highway from about 3 300 (both directions) to 3 750 (both directions). This reflects that most cross-boundary vehicles have made use of HYW Highway to commute to and from HYW BCP. The Administration has observed that the traffic in Ping Che and Ta Kwu Ling areas is generally smooth before and after commissioning of HYW BCP.

31. Moreover, the section of Lin Ma Hang Road between Ping Che Road and HYW Highway near HYW BCP has been realigned to cope with the development of the new control point and widened to a single two-lane carriageway in 2016. Besides, in order to cope with the anticipated traffic growth due to the opening of the Frontier Closed Area and its associated development, the section of Lin Ma Hang Road between Ping Yuen River and Ping Che Road will be widened from a single-lane to a single two-lane carriageway. Construction work has commenced in February 2020 and is tentatively scheduled for completion in the fourth quarter of 2023.

32. Mr James TO has suggested that in order to minimize the traffic impact on local roads, the Administration should promote the use of HYW Highway to and from HYW BCP by way of sending driving guides to (a) those who have made online reservations for the car parking spaces at HYW BCP; and (b) Guangdong-Hong Kong cross-boundary private car owners holding valid Closed Road Permits for using HYW BCP.

33. The Administration has advised that driving guides are available on the website of Transport Department. The cross-boundary freight trade has also been briefed on the road networks to and from HYW BCP and the customs clearance route during their site visit to HYW BCP prior to its commissioning so as to familiarize the trade with the road conditions thereat. Together with the provision of clear signage along HYW Highway, it is expected that most of the drivers will access HYW BCP via the elevated highway.

Planning principle of "East-in-East-out, West-in-West-out"

34. Mr WU Chi-wai has recalled that the Administration had said that HYW BCP would help re-distribute the cross-boundary traffic among the crossings in the eastern part of the territories. As such, Mr WU has urged the Administration to set clear policy direction for phasing out Sha Tau Kok BCP and to draw up the relevant implementation criteria so that the sites currently designated as Frontier Closed Area surrounding Sha Tau Kok BCP can be released for new town development.

35. The Administration has advised that it will continue to closely monitor the passenger and vehicular flows of all BCPs and review from time to time the needs and merits of rationalizing and consolidating the functions of existing BCPs. The Administration will also take into account other relevant planning considerations before drawing any conclusion.

36. Noting that the commissioning of HYW BCP, by connecting to the Shenzhen Eastern Corridor, will shorten the distance between Hong Kong and the eastern part of Guangdong and Fujian, Mr WU Chi-wai has requested the Administration to provide information on the transport facilities and infrastructures which are required to be constructed/upgraded in the Mainland so as to tie in with the planning principle of "East-in-East-out, West-in-West-out", and the relevant works progress. He has also enquired about the Administration's latest forecast on vehicle traffic across HYW BCP subsequent to the implementation of the policy of "emptying the cage for new birds" in Guangdong and the continuous transformation and upgrading of the industries in the Pearl River Delta Region.

37. The Administration has advised that under the strategy of "East-in-East-out, West-in-West-out", cross-boundary goods vehicles (save for fresh food trucks) will only use the Liantang/ HYW BCP in the east and the Shenzhen Bay Port in the west. To cater for the operational needs of cross-boundary goods vehicle industry, the Shenzhen Municipal Government has agreed to improve the supporting facilities at the Shenzhen Bay by providing back-end and ancillary facilities in support of cross-boundary goods vehicles' operations, and a cross-boundary goods vehicle holding area with a size of 10 000 square metres in the close vicinity of the Shenzhen Bay. On the request of the cross-boundary goods vehicle industry, the Shenzhen Municipal Government will also provide a workplace adjacent to the Liantang Port for use by cross-boundary goods vehicle drivers and customs declarers. The Administration will keep close contact with the relevant Shenzhen authorities in this regard and will convey the trade's views for their consideration of implementing facilitation measures as necessary.

38. Besides, to cope with the implementation of "East-in-East-out, West-in-West-out" strategy, the Hong Kong and Shenzhen governments have planned to extend the operating hours of the Shenzhen Bay Port to 24-hour by phases in 2020. However, relevant arrangement was postponed due to the coronavirus disease-2019 epidemic. Subject to the development of the epidemic in the two places, Hong Kong and Shenzhen will implement the 24-hour operation of the Shenzhen Bay Port as early as practicable. For Liantang/ HYW BCP, the two governments will closely monitor the usage of and demand for the new control point after full commissioning, and consider the timetable for implementing 24-hour operation.

Recommendation

39. The Subcommittee has completed the scrutiny of the three Notices. Both the Subcommittee and the Administration will not propose amendments to the three Notices.

Advice sought

40. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Three Pieces of Subsidiary Legislation Relating to the
Commissioning of Heung Yuen Wai Boundary Control Point**

Membership List*

Chairman	(Vacant)
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon CHAN Hak-kan, BBS, JP Hon Frankie YICK Chi-ming, SBS, JP Hon LAU Kwok-fan, MH
	(Total : 4 members)
Clerk	Mr Desmond LAM
Legal Adviser	Miss Rachel DAI

* Changes in membership are shown in **Annex**.

Annex to Appendix I

**Subcommittee on Three Pieces of Subsidiary Legislation Relating to the
Commissioning of Heung Yuen Wai Boundary Control Point**

Changes in membership

Member	Relevant date
Hon KWONG Chun-yu (Chairman)	Up to 12 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020

**Parking fee levels of
the public car parks in Heung Yuen Wai Boundary Control Point
and other public car parks**

Table I - Parking fees of public car parks in HYW BCP

		Non-pre-booked parking fee		Pre-booked parking fee	
		1 st – 3 rd month	from 4 th month onwards	1 st – 3 rd month	from 4 th month onwards
(i) Private car	Hourly rate	HK\$10	HK\$13	HK\$9	HK\$12
	Daily rate (24 hours)	HK\$80	HK\$100	HK\$70	HK\$95
	Night park (18:00 – 08:00)	HK\$60		HK\$55	
(ii) Motorcycle	Hourly rate	HK\$6		HK\$5	
	Daily rate (24 hours)	HK\$45		HK\$35	
	Night park (18:00 – 08:00)	HK\$30		HK\$25	
(iii) Van-type Light Goods Vehicle	Hourly rate	HK\$10	HK\$13	HK\$9	HK\$12

Source: the Government Property Agency

Table II - Parking fees of public car parks in the vicinity of HYW BCP

(i) Private car

<i>Location</i>	<i>Hourly rate</i>	<i>Daily rate</i>	<i>Night park</i>
Sheung Shui	HK\$12 – HK\$23	N.A.	HK\$50 – HK\$80
Lok Ma Chau	HK\$8 – HK\$15	HK\$80 – HK\$150	N.A.

(ii) Motorcycle

<i>Location</i>	<i>Hourly rate</i>	<i>Daily rate</i>	<i>Night park</i>
Pak Shek Kok	HK\$13	N.A.	N.A.

(iii) Van-type Light Goods Vehicle

<i>Location</i>	<i>Hourly rate</i>	<i>Daily rate</i>	<i>Night park</i>
Sheung Shui	HK\$10 – HK\$22	N.A.	N.A.
Lok Ma Chau	HK\$8 – HK\$11	N.A.	N.A.

Source: the Government Property Agency