Working Paper Series

THE AIR CARGO INDUSTRY AND TRANSHIPMENT IN HONG KONG

Challenges, Opportunities and Global Competitiveness

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About the Working Paper

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Executive Summary

Hong Kong International Airport (HKIA) is the world’s busiest international cargo airport. It is uniquely positioned in the Greater Pearl River Delta region, oft-described as the manufacturing centre of the world. With the continuing development of airports throughout mainland China, however, Hong Kong faces significant competition: as a consequence its government must maintain attractive policies and well-established airport infrastructure.

Air cargo growth worldwide will be driven by Asia over the next two decades. The result will be increased demand for Hong Kong’s air cargo facilities and a flurry of airport infrastructure projects elsewhere in Asia.

Incentives

As a free trade port with a favourable tax regime, Hong Kong is an attractive jurisdiction for all types of businesses. It has a number of Double Taxation Agreements affecting the aviation sector, though less than other comparable countries.

CEPA operates as a significant incentive, especially for transport and logistics services. The continued liberalisation of trade in services and promotion of investment will enhance competitiveness but some targeted policies are necessary.

Challenges

Concerns abound among industry representatives relating to the expansion of HKIA. Taking account of the growth in air cargo in the Mainland and throughout Asia, the current 2030 Master Plan presents a rather limited (and potentially short-term) focus. Notwithstanding the overall expansion plans, the development of a new cargo facility will improve the airport’s cargo-handling capacity and therefore enhance its longevity.

Environmental issues are real but suffer from a lack of precise statistics. Security matters are similarly complex given the uncertainty in international and foreign domestic regulation. Ongoing research will assist industry in clarifying the position.

Transhipment and the Import and Export Ordinance

The Import and Export Ordinance contains a number of peculiarities; and industry representatives have expressed dissatisfaction with some practical consequences of the legislation. Import and export declarations, used primarily for statistical purposes, appear to add unnecessary costs in certain situations. The definition of transhipment cargo is also vexed and whether it ultimately assists freight forwarders in reducing paperwork and/or costs is controversial.

Industry professionals must be alert to the strict licensing requirements for certain commodities. They must also ascertain whether the Transhipment Cargo Exemption Scheme is applicable. Future comparative analysis may assist legislators in identifying areas for improvement.
1. Introduction

Hong Kong International Airport (HKIA), a major international hub, is the world’s busiest international cargo airport and is responsible for more than a third of Hong Kong’s external trade. It saw a record year for passenger and cargo activity in 2010 and a new cargo terminal is on track to open in 2013, boosting annual cargo handling capacity by 2.6 million tons. With Cathay Pacific now the world’s largest international air cargo carrier, HKIA appears well-placed to take advantage of China’s booming export market.

The importance of HKIA and the air cargo industry to Hong Kong’s prosperity was highlighted in the 2011/12 Budget Speech:

Further reinforcing Hong Kong’s position as an international and regional transport hub is vital to our economic development ... In 2010, the passenger volume and cargo tonnage of the Hong Kong International Airport reached an all-time high of over 50 million and 4 million respectively. We will continue to invest in transport infrastructure projects and optimise our highly efficient multimodal transport services, with a view to promoting the development of air, sea and land transport and logistics.

Much of the strong growth in air cargo in Hong Kong is due to the booming Pearl River Delta (PRD) region. At least up until the mid-2000s, demand for air cargo services in Shenzhen and the PRD was met mainly by Hong Kong’s airport. With the rapid growth in China’s foreign trade, infrastructural improvements at Mainland airports and a general liberalization of policies, HKIA faces significant challenges across its border. Moreover, other Asian hub airports vie for the same business further highlighting the need for Hong Kong to maintain attractive policies and excellent airport infrastructure.

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1 Cathay Pacific was founded in Hong Kong in 1946. The airline is based and registered in Hong Kong and offers both freight and passenger services to over 110 destinations. Cathay Pacific also operates a cargo-specific arm known as Cathay Pacific Cargo. It operates freighter aircraft to 37 destinations around the world. Cathay Pacific is also the major shareholder in AHK Air Hong Kong Limited, an all-cargo carrier that offers scheduled services in the Asia region, and is a shareholder in Hong Kong Dragon Airlines Limited. For more information see <http://www.cathaypacific.com/> and <http://www.cathaypacificcargo.com/>.

2 Speech by Financial Secretary, John C Tsang on 2nd reading of the Appropriation Bill 2011 at the Legislative Council (13 April 2011) para 83. The 2010 record passenger and cargo activity was said to be due to the rebound following the global financial crisis: Andrzej Jeziorski, ‘Hong Kong Airport hails record year’ (March 2011) Asian Aviation 44.


4 Anming Zhang et al, Air Cargo in Mainland China and Hong Kong (Ashgate, 2004) 16.

This Working Paper analyses the policies and regulatory framework which underpin Hong Kong’s air cargo industry. It seeks to identify the challenges and opportunities faced by the sector as well as highlight possible areas for change. In doing so, the paper will elucidate the incentives targeted at the air cargo industry. Particular note is made of Hong Kong’s *Import and Export Ordinance*, which appears to present some difficulties for freight forwarders.

### 2. Aviation Law in Hong Kong

The maintenance of Hong Kong as a preeminent centre for international aviation is enshrined in chapter V, section 4 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR), which came into effect on 1 July 1997. Article 128 provides:

> The Government of the Hong Kong Special Administrative Region shall provide conditions and take measures for the maintenance of the status of Hong Kong as a centre of international and regional aviation.

The previous system of civil aircraft management in place under the British colonial rule continues but registration and nationality marks are in conformity with the rules laid down by the Central People’s (Mainland) Government. The HKSAR retains responsibility for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region (FIR) of the HKSAR, and the discharge of air navigation requirements in accordance with the International Civil Aviation Organisation.

The Central People’s Government takes a more active role in the provision of air services between the SAR and the Mainland. For example, air service agreements providing air services that contain a stop at the HKSAR are concluded by the Central People’s Government. When concluding any agreements, the Central People’s Government is required to take account of the special conditions and economic interests of the HKSAR the consult the government of the Region. The HKSAR Government is provided some authority from the Central Government to renew or amend air service agreements and arrangements previously in force, negotiate and conclude new agreements for airlines incorporated in the HKSAR, and negotiate and conclude provisional arrangements with foreign states or regions with which no air service agreements have been concluded. Furthermore, the HKSAR Government is empowered to issue licenses to airlines incorporated in and with the principal place of business in the Region, and issue permits to foreign airlines for services other than those to, from or through the Mainland.

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6 Basic Law of the Hong Kong Special Administrative Region (“Basic Law”), art 129.
7 Basic Law, art 130.
8 Basic Law, art 131.
9 Basic Law, art 132.
10 Basic Law, arts 133-4.
11 Basic Law, arts 134(2) and (4). It is to be noted that art 6 of the *Chicago Convention* provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization. China confirmed its intention to recognize the
The International Air Services Transit Agreement has not been ratified by China but applies to Hong Kong as a carry-over from British rule. It enables contracting States to agree to certain freedoms of the air including the privilege to fly across a territory without landing and the privilege to land for non-traffic purposes.\textsuperscript{12}

2.1 Ordinances

Article 8 of the Basic Law provides that laws such as ordinances and subordinate legislation in force prior to the 1997 handover shall be maintained. There are four main ordinances applicable to the aviation industry in Hong Kong:

- \textit{Civil Aviation Ordinance} (cap 448);
- \textit{Airport Authority Ordinance} (cap 483);
- \textit{Aviation Security Ordinance} (cap 494); and
- \textit{Carriage by Air Ordinance} (cap 500).

The \textit{Import and Export Ordinance} (cap 60) is also relevant to the air cargo sector.

The \textit{Civil Aviation Ordinance} provides the power necessary to give effect to the \textit{Chicago Convention} and to regulate air navigation. The Chief Executive in Council is granted a range of powers relating to civil aviation including licensing, registration, air navigation, and restrictions on the use of airfields.\textsuperscript{13} The Ordinance also provides power to regulate the investigation of accidents\textsuperscript{14} and power to regulate customs requirements at certain airfields.\textsuperscript{15} Section 8 concerns liability in respect of trespass, nuisance or surface damage in certain circumstances. Section 11 provides for extraterritorial reach of the Ordinance and regulations made under it.

The \textit{Airport Authority Ordinance}’s Long Title states its purpose:

\begin{quote}
An Ordinance to reconstitute the Provisional Airport Authority and to provide that from the commencement hereof it shall be known in the English language as the Airport Authority and in the Chinese language as “機場管理局”, to enable it to provide, operate, develop and maintain an airport for civil aviation in the vicinity of Chek Lap Kok and otherwise to define its functions, to make provision for the safe, secure and efficient operation of such airport and for connected purposes.
\end{quote}

The Ordinance sets out the constitution of the Airport Authority: it consists of a Chairman, the Board, a chief executive officer and other officers and staff.\textsuperscript{16} The Airport Authority is to be run on a commercial basis; that is, it.\textsuperscript{17}

\textsuperscript{12} \textit{International Air Services Transit Agreement}, opened for signature 7 December 1944, 84 UNTS 390 (entered into force 30 January 1945), art 1.
\textsuperscript{13} Section 2A.
\textsuperscript{14} Section 3.
\textsuperscript{15} Section 6.
\textsuperscript{16} As to the latter see s 15(2).
\textsuperscript{17} Section 6(1).
shall conduct its business according to prudent commercial principles and shall, as far as practicable, ensure that, taking one year with another, its revenue is at least sufficient to meet its expenditure.

This goal must bear in mind safety, security, the economy and operational efficiency and the ‘safe and efficient movement of aircraft, air passengers and air cargo’. Other sections in the Ordinance set out the Authority’s general powers, power to make regulations, finances, and airport charges and by-laws.

Aviation security is dealt with under the Aviation Security Ordinance, which defines “act of violence” (against an aircraft) as:

any act done in Hong Kong which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault, or an offence under section 17, 19, 20, 21, 22, 23, 28 or 29 of the Offences against the Person Ordinance (Cap 212) or under section 53 or 54 of the Crimes Ordinance (Cap 200)

The definition includes an act done outside Hong Kong which would otherwise constitute an offence if committed in Hong Kong.

As far as offences on board aircraft are concerned, for the Ordinance to apply to a “Hong Kong-controlled aircraft” it must be registered in Hong Kong, chartered by demise to a person qualified to be the owner of an aircraft registered in Hong Kong and resides in or has his principal place of business in Hong Kong, or such a person operates or is entitled as owner to any legal or beneficial interested in the unregistered aircraft.

The Ordinance incorporates provisions outlining the powers of a commander of an aircraft, details offences against the safety of an aircraft, acts compromising safety at an airfield, and extraterritoriality. Part VI outlines the Aviation Security Authority and the Aviation Security Committee. The Security Authority has responsibility for an Aviation Security Programme which is to “provide for the protection and safeguarding of aircraft including passengers and crew operating in and through Hong Kong”. Section 29 empowers the Authority to issue a “security direction” which may, among other things, require certain measures to be taken at a particular time or as a certain threat level is reached, require a minimum number of people be employed to implement certain measures and specify any equipment to be used. The Committee’s functions are to advise the Security Authority on any matter relevant to the programme, other matters referred to it and other functions the Chief Executive may from time to time direct.

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18 Section 6(2).
19 Section 7.
20 Section 18.
21 Part IV.
22 Part V.
23 Section 2.
24 Section 4.
25 Part III.
26 Part IV.
27 Section 21.
28 Section 27.
29 Section 26.
Part VIII of the Ordinance outlines the powers of the Authority in relation to preventing acts of violence. The measures include implementing restricted areas, searching aerodromes, requiring certain works to be undertaken and procedures for handling passengers. Additionally, the Ordinance incorporates the definition of piracy from the United Nations Convention on the Law of the Sea. \(^{30}\)

Finally, the *Carriage by Air Ordinance* gives effect to certain international Conventions and supplements the Conventions. The Conventions are: the *Warsaw Convention*, \(^{31}\) the *Montreal Convention* \(^{32}\) and the *Guadalajara Convention* \(^{33}\) – essentially a supplement to the *Warsaw Convention* which addresses indirect carriage of cargo. In sch 3 the Ordinance adapts and modifies the *Montreal Convention*. Section 13 provides that the modified convention will apply to carriage which is not international carriage (defined in sch 4) or carriage of mail or postal packages.

### 3. The Air Cargo Industry

Air cargo traffic worldwide is expected to triple by 2030. \(^{34}\) The growth in the sector is due to a myriad of factors, not the least of which is China’s continued economic success and booming international trade. \(^{35}\) Globally, product life spans are decreasing and the predominance of online businesses necessitates the fast and economical delivery of goods. \(^{36}\) While both the shipping and air cargo sectors suffered major setbacks during the years 2008-2009, the outlook is largely positive. Zhang et al trace the history of air cargo growth in mainland China and note that future growth will be as much a factor of economic success as policy evolution. \(^{37}\)

Asia will lead the growth in air cargo over the next two decades. China’s dominance in manufacturing – especially in industries such as computing, telecommunications and apparel – is set to contribute substantially to demand for air cargo in the region.

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\(^{31}\) *Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention)*, opened for signature 12 October 1929, 137 LNTS 11 (entered into force 29 October 1934).


\(^{33}\) *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air performed by a person other than the Contracting Carrier*, opened for signature 18 September 1961 (entered into force 1 May 1964).

\(^{34}\) ‘World Air Cargo Forecast 2010-2011’ (The Boeing Company Report, Boeing World Air Cargo Forecast Team, 2010) 2.

\(^{35}\) Boeing notes that ‘Air cargo is essential to global sourcing, manufacturing, assembling, and distribution of goods, which together account for much of the growth in air cargo traffic. Other factors affecting growth rates include available capacity, cargo yields, jet fuel prices, relative currency strengths, environmental regulations, and national industrial incentives.’: Ibid 11.

\(^{36}\) See generally Zhang et al, above n 4, 2.

\(^{37}\) Ibid ch 3.
‘Intra-Asia will grow faster than any other international world market, averaging 7.9% growth per year.’

Although mainland China has driven the region’s growth in air cargo over the past two decades or more, Hong Kong has remained a critical hub. Indeed Zhang et al, in 2004, described it as ‘[a]rguably…the most important air cargo hub at present.’ The authors added:

though not part of mainland proper, Hong Kong’s aviation industry and airport is as much a part of China’s aviation industry and route network as Hong Kong itself is a part of China’s trade and economic network.

Whether that is still the case is unclear: substantial infrastructure improvements on the Mainland may reduce the reliance on Hong Kong as a hub. China plans to increase the number of airports to 244 by 2020, including a second airport for the capital, Beijing (there were 147 civil airports in 2008). In the nearer-term, Boeing reports that work will focus on strengthening the construction of major hub airports to improve services and competitiveness; expanding and improving current strategic airports that are experiencing capacity shortages to mitigate the effect of lagging airport infrastructure construction; and developing new airports to improve the overall network.

On the other hand Boeing, through an analysis of ‘pairs of trading economies’ in the intra-Asia market, intimates that ‘Hong Kong’s involvement in half the top 10 markets emphasizes its role as an intermediary for the mainland.’

3.1 Air Cargo in Hong Kong

Hong Kong’s pre-eminent position in world air cargo handled is largely due to the success of its airport facilities. HKIA, also known as Chek Lap Kok Airport, opened in 1998. Built on a 1248 hectare manmade island in the vicinity of Chek Lap Kok Island, it remains one of the largest civil engineering projects in history. In 2009 the airport handled approximately 46.1 million passengers and 3.35 million tonnes of cargo. There are 59 terminal stands, 38 remote stands and 34 cargo stands.

Four main cargo operators are based at HKIA:

- Hong Kong Air Cargo Terminals Ltd;
- Asia Airfreight Terminal Company Ltd;
- DHL’s Central Asia Hub; and
- Hong Kong Post’s Air Mail Centre.

Cathay Pacific will operate the new cargo terminal which has an expected completion date of 2013.

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38 ‘World Air Cargo Forecast 2010-2011’, above n 34, 17.
39 Zhang et al, above n 4, 2-3.
40 At this point it is necessary to note that there is a substantial difference between competing seaports and competing airports. This Working Paper will later seek to distil some of the key points later; but at this stage it is necessary simply to appreciate that the selection of a hub airport does not involve the same selection criteria as one might apply to the adoption of a hub seaport.
41 ‘World Air Cargo Forecast 2010-2011’, above n 34, 74.
42 ‘World Air Cargo Forecast 2010-2011’, above n 34, 58.
Hong Kong Air Cargo Terminals Ltd (HACTL) consolidates air cargo for over 90 airlines and 1000 freight forwarders. The company operates from “SuperTerminal 1” at HKIA which has a “practical handling capacity” of 3.5 million tons per annum. Asia Airfreight Terminal (AAT) is another major player in the Hong Kong air cargo market. Its terminal, which is spread over four levels, has an annual handling capacity of 1.5 million tons making it the second largest handler of air cargo in Hong Kong.

The new Cathay Pacific Cargo Terminal has a design capacity of 2.6 million tons per annum. The tender to invest in, design, construct and operate the terminal under a 20-year agreement was awarded to Cathay Pacific Services Ltd in March 2008. A HK$1.4 billion “mechanical handling system” will make the facility one of the largest and most advanced in the world. The project has been frequently cited as an example of Hong Kong’s commitment to entrenching the city’s position as a world leading air cargo hub.

4. Incentives

There are numerous factors which impact upon the competitiveness of a region as an air cargo hub. Gardiner, Ison and Humphreys review the literature and distil a number of key features affecting airport choice:

- Location: airports located closer to shippers have cost and time advantages;
- Airport infrastructure such as runway capacity, terminal setup and transport connections;
- Airport charges;
- Customs rules and charges;
-Congestion and lack of slot availability;
- Choice and quality of freight forwarders;
- Environmental restrictions such as noise limits and night curfews; and
- Regulatory restrictions.

While the commercial and policy environment is undoubtedly critical, as Kasarda and Green point out, any qualitative-based research in this area must take account of the quantitative limitations:

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43 HACTL has a wholly owned subsidiary, Hong Kong Air Cargo Industry Services Ltd.
46 There is some debate over whether this is an important consideration. The article notes that Hong Kong’s airport charges (at the time it was written) were among the highest in the world.
The International Air Cargo Association (TIACA), The International Civil Aviation Organization (ICAO), the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD), among other major international aviation associations and trade forums, routinely stress the critical importance of aviation liberalization, customs reform and lower corruption for economic development. To date, however, there is scant comparative statistical analysis documenting the impact of these factors.

Air cargo carriers regularly reassess the attractiveness of the hub port chosen. This means that policymakers must balance the need for certainty in regulations with the desire for sufficient flexibility to adapt to change and react appropriately to competition.

4.1 Tax and Trade

Hong Kong is a free trade port meaning it imposes no trade barriers. It has a favourable regulatory environment for businesses including a low tax rate on corporate profits (16.5 per cent), no capital gains tax, no interest tax, no sales tax, no value-added tax, no withholding tax on service fees or interest payments, and its source-based income tax regime means that income generated outside Hong Kong is not taxable.

Hong Kong has not entered into as many Double Taxation Relief Agreements (DTAs) as other jurisdictions; it has or is presently negotiating 22 comprehensive DTAs. Twenty-nine other DTAs specifically relate to airline income and a further two relate to shipping and airline income.

The Inland Revenue Ordinance has specific provisions for the assessment of profits of resident and non-resident aircraft owners. Section 23C concerns “resident” aircraft owners and Section 23D deals with non-resident aircraft owners. The requirement to come within the former section is that the person must carry on a business as an owner of aircraft and the business must be normally controlled or managed in Hong Kong; or the person must be a company incorporated in Hong Kong.

If the person satisfies the residency requirement in Section 23C, the assessable profits will be calculated by reference to the ratio of the company’s worldwide aircraft profits to the total worldwide income from aircraft operations. That ratio is then used to determine the assessable profits of the Hong Kong business, that is, with respect to the “relevant sums”. The relevant sums are the sums derived from, attributable to or in respect of:

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49 The issue of import and export, including a brief discussion of licensing, is dealt with in a subsequent section of this paper.
50 By comparison, Singapore has 64 extensive DTAs and a further seven limited agreements; China has entered into 95 DTAs.
51 For more information refer to the Inland Revenue Department of the HKSAR <http://www.ird.gov.hk/eng/tax/dta1.htm>.
52 Cap 112. The taxation provisions discussed here do not target the air cargo industry directly but apply to aircraft owners operating in Hong Kong.
53 Section 23C(5).
• The carriage by air of passengers or goods, or both passengers and goods, but not goods or passengers in transit;
• Charter hire other than charter hire attributable to a permanent establishment maintained outside Hong Kong and charter between Hong Kong and Macau (one half of the sums from such an operation are attributable to the relevant sums).

Other provisions deal with charter-parties by demise.

4.2 Closer Economic Partnership Agreement (CEPA)

The Closer Economic Partnership Agreement (CEPA) is an agreement between the Mainland and Hong Kong designed to improve trade and business integration. Article 1 of the main text provides that the strengthening of trade and investment cooperation between the two sides will be achieved by:

1. progressively reducing or eliminating tariff and non-tariff barriers on substantially all the trade in goods between the two sides;
2. progressively achieving liberalization of trade in services through reduction or elimination of substantially all discriminatory measures;
3. promoting trade and investment facilitation.

Both Hong Kong and mainland China are required to ‘progressively reduce or eliminate existing restrictive measures against services and service suppliers of the other side’ (art 11). A number of supplements have been signed extending the liberalization of trade.

The first supplement to CEPA, signed 27 October 2004 (CEPA II), provided that the ‘Mainland shall liberalize and relax the market access conditions for services and service suppliers of Hong Kong in the areas of…airport services…’ Annex 3 sets out the specific commitments:

1. To allow Hong Kong service suppliers to provide, in the form of cross-border supply, contractual joint venture, equity joint venture or wholly-owned operations, contract management services for small and medium airports. The period of validity of the contract should not exceed 20 years.
2. To allow Hong Kong service suppliers to provide, in the form of cross-border supply, consumption abroad, contractual joint venture, equity joint venture or wholly-owned operations, airport management training and consultation services.
3. To allow Hong Kong service suppliers to provide, in the form of equity joint venture or wholly-owned operations, the following seven types of air transport ground services in the Mainland: agency services; loading and unloading control, communication, and departure control system; unit load devices management; passenger and baggage services; cargo and mail services; ramp services; and aircraft services.

54 The main text and six annexes were signed on 29 June 2003 and 29 September 2003 respectively. The WTO was notified of CEPA on 27 December 2003. Note that CEPA was signed in the Chinese language only. A number of supplements to the main text have been signed.
Supplement IV, signed 29 June 2007, provided that ‘the Mainland shall further relax the market access conditions in 28 areas’ including air transport. The specific commitments entail relaxed requirements for the documentation in applications for the setting up of air transport sales agencies as wholly-owned enterprises or joint ventures. Companies may apply directly to the China Air Transport Association (CATA) instead of the ‘substantial initial vetting by local representative offices of the [CATA]’.

Further liberalization in services was implemented in Supplement V, signed 29 July 2008. The air transport services category excludes cargo handling and relates to the use of guarantees provided by Mainland banks. Supplement VI, signed 9 May 2009, contains similar provisions.

Supplement VII, signed 27 May 2010, applies to air transport services such as airport operation services (excluding cargo handling) and allows air transport sales agencies set up by Hong Kong service suppliers in the Mainland in the form of wholly-owned enterprises, equity joint ventures or contractual joint ventures to operate air transport sales agency services in domestic routes in the Mainland. Additionally, it permits Hong Kong service suppliers to operate aircraft repair and maintenance services in the Mainland in the form of wholly-owned or majority owned enterprises.

According to the Hong Kong Trade and Development Council, many achievements are visible within the Pearl River Delta region, for example, increased cooperation between businesses.55 In a 2007 report by the Legislative Council Panel on Commerce and Industry, the impact of CEPA on the Hong Kong economy was reviewed. The service industries reporting the most significant benefits included banking services, accounting, auditing and bookkeeping services and legal services.56 The cumulative capital investment was estimated to have increased 380 per cent over two years: ‘[t]he distribution services, and the freight transport and logistics services contributed the bulk of actual and planned additional investment in 2004 to 2007 and beyond.’57 Additionally, of the Hong Kong Service Supplier applications approved, the most common applicants were from transport and logistics services, distribution services, advertising and constructions services. Overall the report identified some areas for improvement but concluded that58

CEPA has helped strengthened Hong Kong’s service provider and conduit roles for the effective channelling of “quality” capital and management know-how into the Mainland … CEPA is and will continue to be a mutually beneficial arrangement in

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55 Hong Kong Trade and Development Council <http://www.hktdc.com>. See further Michael Enright and Edith Scott, ‘The Greater Pearl River Delta’ (Report commissioned by Invest Hong Kong, 5th ed, 2007) 12-13; Edward Leung, Chief Economist, Hong Kong Trade and Development Council, ‘CEPA: Cross-boundary Business Opportunities’ (Presentation to Advantage Austria, 18 September 2009); ‘Breaking into Shenzhen Logistics Market under CEPA’, Hong Kong Trade and Development Council (1 May 2004) <http://info.hktdc.com/alert/cba-e0405p1.htm> as at 1 April 2011. A study on CEPA’s effect upon Taiwan’s economy highlighted the benefits to Hong Kong and, conversely, the disadvantages faced by other countries such as Taiwan: Lin Chu-chia, ‘Development of the China-Hong Kong CEPA and Its Impact on Taiwan’ (2005) Taiwan Development Perspectives 57.


57 Para 10.

58 Attachment II, p 1.
fostering cooperation and in clinching an even stronger Mainland-Hong Kong partnership that enhances the mutual competitiveness of both places in the region and in the global market.

4.3 Expansion of Hong Kong International Airport (HKIA)

The aviation industry contributed 4.6 per cent of Hong Kong’s GDP in 2008; a value of HK$78 billion. With the dynamic growth in air cargo throughout Asia, many airports in the region are implementing large-scale expansion plans. This is the impetus for Hong Kong to launch a new development program to cement its world-leading position. The HKIA’s Master Plan 2030, commissioned as a result of the realisation that ‘as HKIA approaches its maximum runway capacity, the growth of our air connectivity will slowly grind to a halt unless we continue to invest and expand our handling capacity’, identifies a number of major competitor airports’ expansion objectives:59

- Beijing; three runways, is planning a second international airport;
- Guangzhou Baiyan; two runways, is increasing the number to five;
- Shanghai Pudong; three runways, is increasing to five;
- Shenzhen Bao’an; one runway, is presently constructing a second and will eventually increase to three;
- Bangkok Suvarnabhumi; two runways, will have three by 2016; and
- Seoul Incheon; three runways, will have five by 2020.

Evidently, from the outset, the report focuses heavily on runway expansion. The Master Plan proposes two alternative options: first, retaining the current two-runway configuration and investing in a “midfield” development project which would increase passenger and cargo-handling capacity; and, secondly, constructing a third runway with new passenger concourses and midfield development. The first option will enable HKIA to cope with air traffic demand to approximately 2020 (based on present projections). The latter option will provide HKIA with the ability to ‘truly handle unconstrained demand up to 2030’ 60

Industry representatives in Hong Kong have expressed concern that the policies are narrow in focus: the most forward-looking option will only handle demand to 2030. Some representatives have advocated for further options to be considered; for example, a plan for a third and fourth runway. In view of the airport development occurring and planned in the Pearl River Delta region, the 2030 plan arguably appears to have a relatively short-term view. Moreover, regardless of the option adopted, the cost will be tremendous. The 2030 Master Plan admits:61

The above analysis is predicated on the base case financial projections of AAHK [Airport Authority Hong Kong] and Master Plan 2030 construction costs. It shows that we cannot finance either of the options through our internal cashflows and external prudent borrowing capacity. While we may be able to reduce the shortfall by

59 Hong Kong International Airport, ‘Our Airport Our Future: Hong Kong International Airport Master Plan 2030’ (Report, 2011) 7.
60 Page 32.
61 Page 50.
reviewing our existing revenue framework with a view to increasing our revenue, the magnitude of such additional revenue sources would unlikely be material within this time frame.

Notwithstanding the above concerns, increased capacity at Chek Lap Kok is welcomed, especially by freight forwarders – according to representatives of the air cargo industry, present lack of capacity is a major problem. In 2008, HKIA handled 90 per cent of the Greater Pearl River Delta region’s international cargo throughput. It is vital that Hong Kong retains a leading presence in this market; but it can only do so if HKIA’s cargo facilities are expanded. The development of the new Cathay Pacific Cargo Terminal will go some way to meeting demand in the near-term.

5. Challenges

5.1 Environmental Issues

Air and noise pollution is a significant concern in Hong Kong – regulations governing air pollution date as far back as the 1930s. As the International Civil Aviation Organisation (ICAO) has noted, the new HKIA is located away from populous areas (in contrast to the Kai Tak Airport which was virtually in the middle of Kowloon City).

Historically, many of the existing large hub airports have evolved from smaller airfields so that their positioning and the proximity of urban/residential areas have been difficult to manage. For example, in Hong Kong, the old Kai Tak Airport, which had an extremely challenging approach over densely populated areas, has been replaced by an entirely new facility. The new Hong Kong International Airport has been deliberately built away from main centres of population so that aircraft do not have to take-off and land over densely populated urban areas and the new night-time approaches are over water rather than over centres of population. This has a benefit from both a noise and local emissions perspective; although in the particular case of Hong Kong, the Advisory Council for the Environment did not find a connection between the relocation of the airport and local air quality…

The 2004 report (referred to in the above extract) concluded that ‘[i]n Hong Kong, the emissions from aircraft at and near the airport traffic have no observable impact on local air quality.’ Notwithstanding that conclusion, the anticipated growth in air passenger and cargo numbers will present future challenges.

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62 Page 18.
63 See, eg, Public Health (Sanitation) Ordinance (1935) read a first and second time in the Hong Kong Legislative Council on 24 January 1935. The Clean Air Ordinance (1960) replaced the Air Navigation (Abatement of Smoke Nuisances) Ordinance (1955) which was restricted to the protection of aircraft using Kai Tak Airport. It was largely a nuisance-based restriction: see the discussion in the Hansard of the Hong Kong Legislative Council, 20 May 1959, p 146.
Hong Kong has a set of Air Quality Objectives (first established in 1987) to control air pollution in the territory. The Objectives are presently under review following a study by the Environmental Protection Department which delivered its final report in July 2009. That report proposed a number of Control Measures including some relevant to the air cargo sector:

- Electrification of aviation ground support equipment (noted to be a ‘low cost-effective strategy’),
- Tightening aviation emission standards (noted that the ‘air quality benefits accruing to Hong Kong of such a strategy are very low’).

Evidently, neither proposal seems likely to be implemented. It is important to recognise that, as the 2009 report notes, ‘most air pollution due to aviation is produced during landing and take-off (including climb-out, final approach and taxiing modes). Any critical evaluation of aircraft emissions must take account of the limitations and regulations imposed on aircraft in Hong Kong. For example, noise abatement procedures may help to reduce emissions in some cases but may result in an increase in other situations. The Hong Kong noise abatement procedures include the implementation of continuous descent approaches which are likely to produce less emissions than conventional approaches. In addition, the accurate measurement of pollution in Hong Kong (as a result of local air traffic) is difficult due to its proximity to Shenzhen – one of the most densely populated cities in China – and the Greater Pearl River Delta region generally.

5.2 Security Issues

Risks associated with air cargo security include explosive devices placed in cargo to be loaded on aircraft, shipment of undeclared or undetected hazardous materials, cargo crime such as theft and smuggling, and hijacking and sabotage. Terrorism is an ever-present danger in the aviation industry.

Specifically as a result of the attacks of 11 September 2001, the United States enacted the *Aviation and Transportation Security Act* which, in relation to cargo carried aboard passenger aircraft, provides:^

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66 The Objectives are dealt with in the *Air Pollution Control Ordinance* (cap 311) pt II.
68 Proposal (7).
69 Proposal (26).
71 See the Civil Aviation Department of Hong Kong, Aerodrome Information Publication (AIP) Hong Kong (18 November 2010) AD 2.21.
72 Michael Enright, Edith Scott and Ka-mun Chang, *Regional Powerhouse: The Greater Pearl River Delta and the Rise of China* (John Wiley & Sons (Asia), 2005) 229-31. It has been reported that the Pearl River Delta is the source of 80 per cent of the region’s air pollution.
IN GENERAL.—The Under Secretary of Transportation for Security shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

For all-cargo aircraft, the Act states: 

CARGO DEADLINE.—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable after the date of enactment of the Aviation and Transportation Security Act.

The Act signalled a new era in air cargo transportation: significant security improvements would need to be made to all facilities shipping cargo to the United States. Regulations have been implemented by the Transportation Security Administration (TSA).

The Congressional Research Service has identified a major problem for shippers, freight forwarders and carriers:

A significant challenge regarding cargo inspection is the feasibility of implementing inspection procedures that offer adequate assurances for security without unduly affecting cargo shipment schedules and processes.

The Hong Kong Centre for Maritime and Transportation Law is continuing to investigate the impact of international air cargo security requirements on Hong Kong’s freight forwarders and the air cargo industry in general. In a recent letter to the Hong Kong Secretary for Transport and Housing and the Acting Secretary for Commerce and Economic Development, the Hong Kong Association of Freight Forwarding and Logistics and the Chartered Institute of Logistics and Transport expressed concern that the US proposal to introduce “100% screening” for air cargo from the end of 2011 would have ‘severe impacts on the air cargo operation in Hong Kong’. The letter (dated 16 April 2011) outlines industry concerns as to the viability of small and medium enterprises forced to comply with stringent cargo-screening procedures.

A Bill related to air cargo security introduced to the 111th US Congress in November 2010 never became law. It would have required the security screening of all cargo shipped in domestic or foreign all-cargo aircraft. For passenger aircraft inbound to the US, regulations are already in place requiring an aircraft operator to carry out the requirements of its own security program.

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75 Aviation and Transportation Security Act, Pub L No 107-71, § 110(f), 2001, 115 STAT 597
76 See title 49 of the Code of Federal Regulations, ch Xii, sub-ch C.
77 Elias, above n 73, CRS-16. The author later adds: ‘Regarding the costs for screening cargo, the potential for additional fees imposed on air cargo is a particular concern for air cargo industry stakeholders.’
79 See Civil Aviation Security 49 CFR § 1544.205(f). For cargo loaded on an aircraft inside the US since 3 August 2010, 100 per cent of the cargo must be screened prior to transport on a passenger.
Hong Kong has operated a Regulated Agent Regime (RAR) since 2000 in order to comply with its international security obligations and the requirements of the Aviation Security Ordinance. A cargo handler, freight forwarder or consignor of air cargo may apply to register as a regulated agent under the Hong Kong Aviation Security Programme.\(^{80}\) The programme works on the principle that cargo shall only be handled by and transferred to regulated agents and “known consignors” (or an air operator). It also details minimum documentation requirements and has an extensive “Handling Procedures for Regulated Agent Regime (RAR)” guideline.\(^{81}\) Unknown cargo is not permitted to be carried by air unless it has been searched physically, screened by x-ray or trace detection equipment, or subjected to a simulation chamber. If those procedures are unable to be carried out, an alternative procedure calls for the unknown cargo to be held for a minimum time period.

The security programme is subject to pt VII of the Aviation Security Ordinance.\(^{82}\) That part, entitled Aviation Security Programme and the Authority’s Power to Give Direction, allows a security programme to apply to:\(^{83}\)

- a particular aerodrome;
- an aircraft operator;
- the occupier of any land forming part of an aerodrome; or
- a person who carries on a business which involves handling of any article intended to be carried into an aerodrome for any purposes; or which involves provision of service by personnel who have access to a restricted area; or which, in the opinion of the Authority, otherwise impinges on the security of an aerodrome.

The Authority may require any of the above persons to ‘submit a security programme which applies in relation to him, in accordance with the requirement in the notice’.\(^{84}\)

### 6. Transhipment under the Import and Export Ordinance

Imports and exports in Hong Kong are dealt with under the Import and Export Ordinance\(^{85}\) and various regulations made under that Ordinance.

#### 6.1 The Ordinance

The purpose of the Ordinance is outlined in the Long Title:

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80 For more information refer to the Civil Aviation Department of Hong Kong <http://www.cad.gov.hk/english/about_rar.html>.
82 (Cap 494).
83 Section 27(2).
84 Section 27(3)(b).
85 Import and Export Ordinance (Hong Kong) cap 60.
To provide for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, the handling and carriage of articles within Hong Kong which have been imported into Hong Kong or which may be exported from Hong Kong, and any matter incidental to or connected with the foregoing.

The Ordinance sets out a number of important definitions many of which may be used in interpreting the subsidiary legislation.\(^{86}\)

Section 2AA sets out the approval process for part of the Airport Area as a “cargo transhipment area”. The Commissioner of Customs and Excise may, after consulting with the Airport Authority, declare part of the Airport Area to be a cargo transhipment area. This must be done in accordance with s 37 of the Airport Authority Ordinance (cap 483). That section essentially provides that the area may be delineated by a map.

The Ordinance then proceeds to deal with:

- Administrative Decisions and Appeals (Part II): for example, appeals against a decision by the Director to cancel, revoke or suspend a licence issued under the ordinance;
- Production notification of certain textiles for export (Part IIA);
- Prohibited articles (Part III): for example, exporters and importers of strategic commodities\(^{87}\) require a licence and certain prohibited articles may only be imported or exported in accordance with licence conditions;
- Unmanifested cargo and smuggling (Part IV);
- Powers of investigation (Part V);
- Forfeiture (Part VI);
- Regulations (Part VII); and
- Miscellaneous (Part VIII): for example, evidentiary provisions, onus of proof in court proceedings, etc.

Part VII (Regulations) empowers the Chief Executive in Council to make regulations for a wide range of purposes.\(^{88}\) Some Regulations, for example those dealing with the imposition of a levy, fee, pecuniary penalty, deposit for licence or forfeiture of monies must first be approved by a resolution of the Legislative Council.\(^{89}\) Under s 32 the Legislative Council may also, by resolution:

... provide for the imposition of a levy upon any person required under this Ordinance to furnish information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business or other activities outside Hong Kong and to provide for the method of determination of the levy and the mode and time of payment thereof.

\(^{86}\) The definition of “Ordinance” in the Interpretation and General Clauses Ordinance (Hong Kong) cap 1 includes ‘any subsidiary legislation made under any … Ordinance’. Referring back to the Import and Export Ordinance definitions, the section (s 2) begins by stating ‘In this Ordinance, unless the context otherwise requires…’ Therefore, it is suggested that the definitions in the Ordinance are applicable to the relevant Regulations.

\(^{87}\) Outlined in the Import and Export (Strategic Commodities) Regulations (Hong Kong) cap 60G, sch 1.

\(^{88}\) Section 31.

\(^{89}\) Section 31(4).
The Regulations are described as General (cap 60A), Fees (cap 60B), Manifests Notice (cap 60C), Prescribed Articles (cap 60D), Registration (cap 60E), Removal of Articles (cap 60F), Strategic Commodities (cap 60G), Certificates of Origin (cap 60H), Carriage of Articles (cap 60I), Radiation (Prohibition) (cap 60K) and Electronic Cargo Information (cap 60L).

6.1.1 Strategic Commodities

Transhippers need to be aware of the prohibition of imports and exports of certain articles. The definitions of import and export are uncontroversial. “Export” means “to take, or cause to be taken, out of Hong Kong any article” and “Import” means “to bring, or cause to be brought, into Hong Kong any article”.  

The import and export of strategic commodities must be in accordance with a licence. Strategic commodities are outlined in the schedule to the Regulations and include munitions, chemicals, military equipment such as weapons, armour, etc., uranium, certain software, and so on; the list is extensive. Heavy penalties may be imposed for a breach of the requirements.

The provisions do not apply to an article in transit nor air transhipment cargo. Regulation 2A relevantly states:

(1) If the Director is satisfied that a person is engaged in the business of dealing in air transhipment cargo he may exempt in writing, with respect to the transhipment of any article specified in that exemption that is air transhipment cargo, that person from the licensing requirements under section 6A(2) of the Ordinance and regulation 2(1).

A failure to comply with that regulation may result in a fine, imprisonment and/or a suspension or revocation of any exemption granted.

6.1.2 Prohibited Articles

Section 6C prohibits the import of articles specified in the Import and Export (General) Regulations except in accordance with a licence granted to the importer under s 3. Section 6D prohibits export of those articles except under and in accordance with a licence.

The Ordinance incorporates a second layer of control which places responsibility on a carrier to ensure that an exporter has a valid licence before accepting any article for

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90 A person outside Hong Kong may still import an article by causing it to be imported: Lay Eng Teo v Superintendent of Tai Lam Centre for Women & Anor [2001] HKCU 1134.
91 See s 6A of the Ordinance and the Import and Export (Strategic Commodities) Regulations (Hong Kong) cap 60G, s 2.
92 Defined as an article which (a) is brought in to Hong Kong solely for the purpose of taking it out of Hong Kong; and (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.
93 Defined as transhipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.
94 See cap 60A, sch 1.
Similarly, for imports, the carrier of the article must retain possession of it until a valid import licence is produced to him. It is a defence under both provisions for the carrier to demonstrate that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

6.1.3 Transhipment Cargo Exemption Scheme

The Hong Kong Trade and Industry Department operates a Transhipment Cargo Exemption Scheme (TCES). Subject to certain conditions, shipping companies, airlines and freight forwarders may be exempted from licensing requirements under the Import and Export Ordinance and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (cap 296A) in respect of certain types of transhipment cargo. At the time of writing, the types of cargo included are certain pharmaceutical products and medicines, rice, frozen or chilled meat and poultry, Chinese herbal medicines and proprietary Chinese medicines and rough diamonds.

The conditions applicable depend upon whether or not the registrant handles rough diamonds. If the registrant does not, the following conditions apply:

1. The transhipment cargo must be stored separately and apart from any other merchandise in premises registered under the Transhipment Cargo Exemption Scheme with the Trade and Industry Department (TID) and either owned or rented by the person registered under the Scheme (the registrant).
2. The physical custody of the transhipment cargo remains with the registrant at all times while the transhipment cargo is in Hong Kong and that no further processing or substitution of the transhipment cargo takes place in Hong Kong.
3. Up-to-date books and records shall be maintained by the registrant showing the following information in respect of all transhipment cargo handled by or on behalf of that person:
   (a) a description of the cargo;
   (b) the quantity of the cargo;
   (c) the name and address of the owner of the cargo and the name and address of any agent or other representative of the owner and of any notifying party;
   (d) the original port of loading of the cargo;
   (e) the port of destination of the cargo;
   (f) the date of arrival of the cargo in Hong Kong;
   (g) the date of departure of the cargo from Hong Kong;
   (h) the names of the inbound and outbound carriers of the cargo;
   (i) the serial numbers of the voyage, flight or vehicle on which the cargo is imported into and exported from Hong Kong;
   (j) the master and house bill of lading or air waybill numbers in respect of the cargo; and

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95 Section 10.
96 Section 7. The Commissioner may give directions for the movement of the article.
(k) the place of origin of the cargo and a description of any marks or labels on the cargo.

4. A registrant shall allow authorised officers of the Customs and Excise Department (C&ED) to inspect his godown premises, transhipment cargo, and books and records relating to the transhipment cargo whenever required.

5. The registrant shall ensure that transhipments under the Scheme are only released to and accepted from other shipping companies, airlines or freight forwarders registered under the Scheme.

6. Exemption is not transferable. For a change of the proprietor in a registered proprietorship or any of the partners in a registered partnership, a new Application for New Registration has to be submitted. Besides, the registrant shall immediately inform the Director-General of Trade and Industry (DGTI) in writing of any change in the registration particulars declared in the application for new registration or application for amendment of registration particulars under the Scheme.

7. The DGTI may vary, revise or abolish the Scheme as it applies to any type of transhipment cargo at any time he deems appropriate and registration granted under the Scheme will be deemed to be cancelled in respect of that type of transhipment cargo.

8. The registrant shall comply with any other conditions of exemption which the DGTI may impose from time to time and promulgate in relevant circulars or letters for the purposes of safeguarding the integrity of or implementing the Scheme.

9. A breach of any of the conditions of exemption by a registrant may render the exemption granted to him liable to be revoked or suspended by the DGTI, irrespective of whether legal and/or other administrative actions are taken against him.

Further conditions apply specifically to (1) shipping companies and airlines and (2) freight forwarders.98

6.2 Import and Export Declarations

Pursuant to the Import and Export (Registration) Regulations99 importers and exporters are required to lodge declarations. However, transhipment cargo and transit cargo (amongst other things) are exempt from this requirement under reg 3.

“Transit cargo” is defined as ‘any article that is destined for a place outside Hong Kong and is passing through Hong Kong on the same ship or aircraft without transhipment’. These particular regulations are silent on the definition of “transhipment cargo”; the definition was removed in 2000.100 It is defined in the Ordinance as:101

any imported article that –

(a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and

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98 It is not necessary to detail the specific rules here. Refer to <http://www.tid.gov.hk/english/import_export/ices/ices_participationothers.html> as at 13 August 2011.
99 Cap 60E.
100 See Air Cargo Transhipment (Facilitation) Ordinance (No. 29 of 2000) sch 1.
101 Section 2. The definition was added by the Air Cargo Transhipment (Facilitation) Ordinance (No. 29 of 2000).
(b) is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either returned to the same vessel, aircraft or vehicle or transferred to another vessel, aircraft or vehicle before being exported, whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.

Critical for transhippers is that the article must be consigned ‘on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong’ despite the fact that it is ‘imported’ and then ‘exported’.102

A through bill of lading is a bill of lading ‘invoking a series of contracts to carry goods to a final destination by two or more successive ocean carriers’.103 An air waybill104 is virtually the same only the carriage will be by air and involves transshipment by one or several air carriers. On the air waybill, the airport of department and the airport of destination must be listed as places outside Hong Kong. Presumably it does not matter if the cargo is to be routed via Hong Kong.

The master air waybill (MAWB) is the document relevant under the Import and Export (Registration) Regulations. Appendix 1 contains a flowchart depicting the interaction between a house air waybill (HAWB) and MAWB. A MAWB is typically issued by the actual carrier (the owner/operator of the aircraft) to the forwarder. A HAWB is normally issued by a freight forwarder – the contracting carrier who consolidates the various cargoes – to each individual shipper and acts as a receipt for cargo. The MAWB will therefore name the freight forwarder as the shipper; and the HAWB may act as a multimodal transport document.

### 6.2.1 Import Declarations

Regulation 4 requires every person who imports105 any article other than an exempt article to lodge with the Commissioner an accurate and complete import declaration relating to such article using services provided by a specified body, in accordance with the requirements that the Commissioner may specify. It is to be lodged within 14 days of the date of importation. Penalties apply for knowingly or recklessly lodging inaccurate declarations and failing to lodge declarations.

Although reference must be made to the regulations to determine the exempt categories of goods, the Notice on Lodgement of Import/Export Declaration issued by the Hong Kong Census and Statistics Department (Trade Statistics Branch) provides examples of the most commonly classified as exempted articles.106

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102 “Through” bills of lading are discussed further below.
104 An air waybill (AWB) is a contract between the shipper and airline that states the terms and conditions of transportation. See IATA <http://www.iata.org/whatisiata/cargo/standards/pages/airwaybill.aspx>.
105 Recall the definition above: to bring, or cause to be brought, into Hong Kong any article (see s 2 of the Ordinance).
- Any article valued at less than $1,000, which is a sample of any product OR any article which is marked clearly as a sample of any product and is to be distributed free of charge;
- Transhipment cargo consigned on a through bill of lading or a through air waybill;
- Any article which is marked clearly as advertising material and is supplied free of charge;
- Personal baggage including any article imported or exported otherwise than for trade or business;
- Any article which is imported or exported solely for the purpose of exhibition and which is to be exported or imported after exhibition;
- Gifts of a personal nature where no payment is or is to be made by the consignee thereof;
- Any article which is imported or exported solely for the purpose of being used in a sports competition and which is to be exported or imported after the competition.

The 2009 APEC Customs Guide – Hong Kong, China instructs that the declarations should be lodged electronically through the Government Electronic Trading Services (GETS) System via either the Direct Electronic Declaration Service or the Paper-to-electronic Conversion Service offered by specified agents.

### 6.2.2 Export Declarations

Similarly, regulation 5 requires every person who exports or re-exports any article other than an exempted article to lodge an accurate and complete export declaration with the Commissioner, using services provided by a specific body in accordance with any specified requirements. It is to be lodged within 14 days after the export of the article. Penalties apply for knowingly or recklessly lodging inaccurate declarations and failing to lodge declarations.

### 6.2.3 Charges Payable on the Lodgement of Declarations

Charges apply to articles specified in Appendix 1 of the Imports and Exports Classification List. This is an extensive list issued by the Commissioner and amended from time to time.

Regulation 8 requires every person who lodges an import or export declaration to pay a fee as prescribed in that regulation:

- (a) in respect of an import declaration relating to an article or articles specified in Appendix I of the Imports and Exports Classification List, a charge of 50 cents, irrespective of the value of the article or the aggregate value of the articles specified in the declaration;
- (b) in respect of any other import declaration -
  - i. where the value of the article or the aggregate value of the articles specified in the declaration does not exceed $46000, a charge of 50 cents;
  - ii. where the value of the article or the aggregate value of the articles specified in the declaration exceeds $46000, a charge calculated at the rate of 50 cents for the first 46000 dollars’ value and 25 cents for each

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107 Recall the definition above: to take, or cause to be taken, out of Hong Kong any article (see s 2 of the Ordinance).
additional 1000 dollars’ value or part thereof and rounded up to the nearest 10 cents;
(c) in respect of any export declaration for articles for which the origin country code refers to the Hong Kong Special Administrative Region -
   i. where the value of the article or the aggregate value of the articles specified in the declaration does not exceed $46000, a charge of 50 cents;
   ii. where the value of the article or the aggregate value of the articles specified in the declaration exceeds $46000, a charge calculated at the rate of 50 cents for the first 46000 dollars’ value and 25 cents for each additional 1000 dollars’ value or part thereof and rounded up to the nearest 10 cents; and
(d) in respect of any export declaration for articles other than those referred to in subparagraph (c) -
   i. where the value of the article or the aggregate value of the articles specified in the declaration does not exceed $46000, a charge of 50 cents;
   ii. where the value of the article or the aggregate value of the articles specified in the declaration exceeds $46000, a charge calculated at the rate of 50 cents for the first 46000 dollars’ value and 25 cents for each additional 1000 dollars’ value or part thereof and rounded up to the nearest 10 cents.

Until the full amount of the charge is paid the declaration is deemed not to have been lodged. Regulation 10 deals with the assessment of extra charges in certain circumstances, penalties and appeals.

6.2.4 Transhipment Cargo

It is important to understand the precise extent of the meaning of transhipment cargo. First, it is to be noted that since 26 May 2000 a separate definition of “air transhipment cargo” has been incorporated into the Ordinance. The definition came into operation on 26 May 2000 by virtue of the Air Cargo Transhipment (Facilitation) Ordinance 2000. The purpose of that Ordinance is to:

…facilitate the transhipment of cargo entering and leaving Hong Kong by air, by amending certain Ordinances to modify restrictions or controls imposed under those Ordinances on the transhipment of such cargo, and for incidental purposes.

Relevantly (as noted above) the Air Cargo Transhipment (Facilitation) Ordinance 2000 removed from the Registration and General Regulations the definition of “transhipment”. It added a definition of “transhipment cargo” to the Import and Export Ordinance. Air transhipment cargo is not considered separately from transhipment cargo generally in the Import and Export (Registration) Regulations. A further relaxation of restrictions and controls on transhipment or transit of certain cargo was implemented in 2003 by the Import and Export (Facilitation) Ordinance 2003.

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108 Regulation 8(2B).
109 No. 29 of 2000. It received Assent on 25 May 2000. “Air transhipment cargo” means “transhipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transhipment area of Hong Kong International Airport”.
110 No. 33 of 2003.
Critical for the definition of “transhipment cargo” is that it is a two-pronged test.\(^{111}\) Also, within the definition is an implied assumption that the article is imported: ‘means any imported article that…’.\(^{112}\) The requirements are as follows:

1. The article must be consigned (either on a through bill of lading or through air waybill) from a place outside Hong Kong to another place outside Hong Kong; and:

2. The article is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either (before being exported):
   a. returned to the same vessel, vehicle or aircraft; or
   b. transferred to another vessel, aircraft or vehicle whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be landed to Hong Kong after its importation and stored, pending exportation.

The first limb of the test prevents any article which is consigned to Hong Kong from being considered transhipment cargo. This is despite the fact that, from a practical perspective, the article may only be arriving in Hong Kong for the purpose of transhipment, for example, by a freight forwarder. While the first limb is related to documentation, the second limb appears to be a practical requirement to ensure that consigned cargo is in fact being transhipped. It does not appear to allow any value-add service to be performed to the article: after importation it is allowed to be ‘stored, pending exportation’.

### 6.3 Use of the Statistics

The data produced as a result of the import and export declarations is collated by the Census and Statistics Department (CSD) and is disseminated via a number of publications produced by the Department. Relevantly, the CSD produces monthly reports of import and export/re-export trade statistics\(^ {113}\) called the Hong Kong Merchandise Trade Statistics. According to the explanatory notes accompanying the statistics, it is ‘compiled based on information contained in import/export declarations’.\(^ {114}\)

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\(^{111}\) *Import and Export Ordinance* (Hong Kong) cap 60, s 2.

\(^{112}\) Emphasis added.


\(^{114}\) ‘Hong Kong Merchandise Trade Statistics: Imports’, Census and Statistics Department of the HKSAR (May 2011) 1; and ‘Hong Kong Merchandise Trade Statistics: Domestic Exports and Re-exports’, Census and Statistics Department of the HKSAR (May 2011) 1. It must be noted that the statistics are subject to a certain degree of manipulation, especially when considered alongside China’s imports and exports (the fact that Hong Kong is a Special Administrative Region complicates matters): see Zhang et al, above n 4, 18.
6.4 Industry Perspective

As far as the industry is concerned, if there is no value-adding taking place, the documenting of imports and exports (with its associated fees) is nonsensical. Moreover, transferring shipments between terminals may mean a terminal fee is imposed twice. For small and medium sized freight forwarding enterprises, this is potentially a significant cost.

7. Concluding Comments

There is no doubt that the future of air cargo growth will emanate from Asia. Hong Kong is uniquely placed to take advantage of China’s booming trade; its airport was named the world’s busiest cargo hub in 2010. There is evidently a governmental interest in maintaining HKIA’s competitive international position – policies which continue to attract cargo business and promote HKIA as the preeminent hub airport will help to solidify the status quo. Significant challenges abound in the Pearl River Delta region, however. Airports in mainland China (especially in the Greater Pearl River Delta, Beijing and Shanghai regions) are expanding and other world-leading Asian hubs such as Incheon (Seoul), Tokyo and Singapore are competing for business.

HKIA has significant capacity for air cargo, including room for moderate growth. But the surge in Mainland trade – in which Hong Kong and its airport acts as intermediary – has meant that substantial improvements are needed if Hong Kong is to maintain its dominant position. The new Cathay Pacific Cargo Terminal will assist in handling near-term growth in air cargo. In the longer term, expansion of HKIA is inevitable.

The Master Plan setting out HKIA’s options to 2030 has been criticised for its narrow focus. The plan only includes two options: essentially either a new (third) runway or midfield development. It is important to put in perspective airport development in the wider Pearl River Delta region. Guangzhou Baiyan is planning expansion to five runways while Shenzhen Bao’an, which presently has only one runway, will build an additional two. This highlights the growth anticipated by Mainland policy-makers. It is unclear why Hong Kong’s planners have not entertained (at least publicly) the possibility of a fourth runway; or for that matter, longer-term plans for a fifth. The Master Plan acknowledges the difficulty that will be faced in financing either of the options canvassed.

Although air pollution remains a concern for the air cargo industry, the difficulty in attributing the cause of pollution to certain economic sectors means the introduction

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116 See, eg, Zhang et al, above n 4, 20. It must be noted that the Mainland’s dependence on Hong Kong is lessening: Zhang et al at p 80.

117 Hong Kong’s 2030 Master Plan notes the expansion plans of Mainland airports: Hong Kong International Airport, ‘Our Airport Our Future: Hong Kong International Airport Master Plan 2030’ (Report, 2011) 6-7.
of specific policies must be done cautiously. The maritime sector in Hong Kong is considering various possible options to curtail increases in greenhouse gas emissions. Ultimately there appears to be little evidence to support major policy initiatives at present.

Compliance with international security obligations, including foreign domestic security requirements, has the potential to significantly increase costs. The costs are not unique to Hong Kong but the freight industry reports that they may be difficult to pass on to customers. At present it is unclear precisely what all-cargo aircraft requirements will be introduced in the United States. Further analysis will be necessary when legislation is passed, if at all.

Hong Kong’s competitive advantage is consolidation. Therefore transhipment and the associated laws are critical to the Hong Kong air cargo industry. This paper has reviewed in detail the provisions of the Import and Export Ordinance. Important points for transhippers and their relevant advisors to note are the Transhipment Cargo Exemption Scheme, licensing requirements and import and export declarations. It is also critical that the definition of “transhipment cargo” is understood. The Transhipment Cargo Exemption Scheme applies to certain categories of transhipment cargo. The benefit for air carriers and freight forwarders is that a licence will not be required provided the conditions are satisfied. Otherwise transhippers must be aware of any licence requirements for dealing with certain goods. Failure to do so can attract significant criminal penalties.

Of most concern to the air cargo industry is the requirement to lodge an import and export declaration, and the associated costs. The strict rules appear to catch transhippers that only remove the cargo from HKIA for the purpose of storage and loading on board a different aircraft. The rules also mean that transhippers must ensure a single air waybill is used and that it is a “through” waybill.118 The fees associated with the import and export declarations concern industry groups: it is seen as a significant disadvantage when using Hong Kong as a hub.

Hong Kong’s air cargo industry is no doubt confronted by some obstacles. On the other hand, it is evident that HKIA is a world-class airport with attractive cargo handling facilities and some room for short-term expansion. Its dominant position in terms of air cargo throughput certainly supports the view that HKIA, coupled with appropriate policies and a sensible future expansion plan, will continue to be an international hub port of choice. With intra-Asia growth expected to dominate world air cargo growth, maintaining a stronghold on the air cargo market is critical for the government of Hong Kong. As mainland China’s airports grow in capacity and quality of services and facilities, the real test for Hong Kong is yet to materialise. Therefore, it is vital that proactive and positive amendments to policy and legislation are effected over the next decade to support Hong Kong’s air cargo sector.

118 Our interviews with industry representatives revealed a problem where a freight forwarder receives cargo on behalf of a customer and after storing it has to “cut” (draw up) another air waybill. Hong Kong law treats this as import and export and it will attract the necessary fees for the declaration requirements.
8. Future Research

The Hong Kong Centre for Maritime and Transportation Law recognises there is a need for greater in-depth research into the air cargo sector from a legal perspective. Some areas of future research work include:

1. International cargo security requirements: focusing on recent developments and the consequences for Hong Kong.

2. Comparative analysis of other jurisdictions’ import and export laws and control mechanisms (for example, Singapore).

3. Climate change and environmental policy consequences for the air cargo sector.

4. Options to enhance Hong Kong’s competitiveness as the preeminent international air cargo hub.

The Hong Kong Centre for Maritime and Transportation Law will continue to work with the industry to ascertain further concerns.
**Appendix 1 – Air Waybill Flowchart**

*Refer to part 6.2 of this Working Paper.*

**Physical Movement of Cargo**

- Shipper Company A Ltd
- Freight Forwarder
- Consolidation of cargo by FF in Hong Kong
- Freight Forwarder
- Receiver Company B Ltd

**House AWB**

- Shipper Company A Ltd
- Freight Forwarder
- Freight Forwarder
- Receiver Company B Ltd

**Master AWB**

- *Note: the MAWB is issued by the carrier*
- Freight Forwarder
- Consolidation FF Hong Kong
- Carrier

AWB = Air waybill