

## **Proposed Military Site on Central Harbourfront**

### **Legal Analysis of 1994 Agreement Regarding Military Sites**

On 15<sup>th</sup> February 2013, the Town Planning Board gazetted a rezoning proposal (“the Proposal”) to change the zoning of a site of 0.3 ha (30,000 square feet) with the dimensions of 150 metres by 20 metres at a vital part of the Central Harbourfront Promenade opposite the PLA Barracks (“the Site”) from “O” for use as Public Open Space to “Military Use” for the Peoples’ Liberation Army (“the PLA”). This Legal Analysis examines the right of the PLA to the Site and the duty of the HKSAR Government (“the Government”) pursuant to an Agreement signed between the UK and China on 11<sup>th</sup> November 1994 and registered with the United Nations on 25<sup>th</sup> October 1995.

1. The Ministry of Foreign Affairs of the Peoples’ Republic of China formally stated in the Agreement that: “in order to meet the needs of the military forces stationed in the Hong Kong Special Administrative Region for defence purposes”, 14 military sites listed in Annex I thereto were to be handed over to the PLA.
2. The list of 14 military sites did not include the Site.
3. It was agreed that the 14 military sites handed over for military use shall be used exclusively for defence purpose and shall not be made available to others for purposes other than defence. If a site is no longer needed for defence purposes, it would be handed back to the Government.
4. It was also agreed that 25 formerly military sites listed in Annex II which were no longer needed by the PLA shall be handed over to the Government for disposal.

### **Annex III of the Agreement**

5. Annex III set out 5 items. It provided that the buildings, fixed facilities listed as Items 1-4 would be reprovisioned for use by the PLA.
6. Item 1 of Annex III provided for the relocation of the former Tamar naval base to Stone Cutters Island which was also mentioned in Item 9 of Annex I.
7. It is to be noted that each of the first four items in Annex III specifically set out the areas and dimensions to be reprovisioned for the PLA but not Item 5 which only provided that “the Hong Kong Government will leave free 150 metres of the eventual permanent waterfront.....”. There was no mention in Item 5 of any need for the site for defence purposes nor any obligation to hand over any area of land to the PLA.

### **Special Case: ‘Waterfront to be left free’**

8. Item 5 of Annexure III was a special item. It contained the heading:- “Waterfront to be left free at the Central and Wanchai Reclamation, Hong Kong Island, for the construction of a military dock”.
9. The intention is clear. The Government must not completely develop the Central Harbourfront as to make it impossible for the construction of a dock to berth military vessels. 150 metres of this part of the seafront must be left free for this purpose.

10. It is interesting to note that the undertaking was only one dimensional, just a stretch of the waterfront 150 metres long. Therefore the rezoning Proposal that the Site would be '150 metres by 20 metres' and 0.3 hectares (30,000 sq. ft.) in area is a pure invention.
11. The Proposed rezoning also allows a structure to be erected on the Site which according to the Government's admission can be two storeyed and can have a gross floor area of 60,000 sq. ft. Nothing in the Agreement justifies such a building being erected.
12. The only obligation is to leave free 150 metres of the waterfront for the normal construction of a dock. This involves providing wooden fenders and bollards at the waterfront. These have already been constructed on the Site for the PLA.

#### **Not Needed For Defence Purposes**

13. Unlike all the other sites, nowhere in the Agreement was it suggested that this Site was needed for defence purposes or that this Site had to be handed over to the PLA for its exclusive use.
14. Excluding this Site from the list of 14 sites in Annexure I shows the clear intention that it was not needed for defence purposes and that it did not have to be handed over to the PLA for its exclusive use.
15. There is no suggestion even now that the Site is needed for defence purposes.

### **No Land Rights – Only Negative Undertaking**

16. Item 5 only required the Government to carry out the undertaking listed out therein.
17. The Item 5 undertaking was in the nature of a negative undertaking, namely, that the Hong Kong Government will not make it impossible for a military dock to be constructed at that waterfront location after 1997.
18. The undertaking did not require the Government to do anything positive:- either to build the dock or to hand over the site to the PLA for its exclusive use.
19. Therefore Item 5 did not confer upon the PLA any land rights or any right to the ownership of land.
20. It only concerned berthing rights over the sea and seafront. The only right relating to the land was the provision of the necessary dock facilities normally required for the berthing of large vessels.
21. In other words, the Agreement did not confer any positive right to the PLA but merely prescribed a negative obligation that the Government must not make it impossible to berth military vessels at that Site.
22. It was in the nature of an undertaking by the Government not to do something rather than to confer upon the PLA any positive legal right. It merely imposes an obligation on the Hong Kong Government and did not go any further than that.

**Conclusions**

- A. The PLA is entitled to construct a dock for berthing military vessels on the Central Harbourfront. For this purpose, 150 metres in length of the Central Harbourfront must be kept free.
  
- B. The dock is not needed for defence purposes and the PLA is not entitled to ownership or exclusive use and occupation of the Site.
  
- C. The present zoning of 'O' for public open space, pursuant to which the site is under the control of the Government, will be able to give effect to the requirements of the PLA in accordance with the Agreement.
  
- D. The proposed rezoning of the site to 'OU(3)' for military use cannot be justified by the Agreement and is contrary to the terms thereof.

Dated this 21<sup>st</sup> day of May 2013.



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