

**For discussion**

**Customs, Immigration and Quarantine Arrangements  
of the Hong Kong Section  
of the Guangzhou-Shenzhen-Hong Kong Express Rail Link**

**Purpose**

The Chief Executive in Council endorsed at its meeting on 25 July 2017 the implementation of Hong Kong and Mainland customs, immigration and quarantine (CIQ) procedures (hereinafter referred as clearance procedures) at the West Kowloon Station (WKS) of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) (hereinafter referred as the co-location arrangement). This note serves to explain the necessity of the co-location arrangement, as well as the contents of the proposed arrangements.

**Advantages of high-speed rail**

2. High-speed rail is a significant achievement in the development of modern transportation technologies. The first-ever commercial high-speed rail link in the world came into service in Japan in 1964. Since then, an increasing number of high-speed rail links have been constructed around the world. To date, high-speed rail services are operated in places such as the Mainland, Taiwan, Japan, Korea, France, Germany and Russia etc. Countries which are planning the construction of new high-speed rail links include the United States, the United Kingdom, Singapore, Malaysia and Indonesia. High-speed rail has

undoubtedly become an important modern mode of long-distance mass transport, as well as a new trend of intercity travel.

3. Although there is no common international standard for the hourly speed of high-speed rail, it is generally defined as train services operating at 200 kilometres per hour (km/h) or above, and at some sections the trains may even operate up to 350 km/h. This more than doubles the maximum speed of about 80 km/h and 135 km/h respectively for trains on the existing Tseung Kwan O Line and the Airport Express.

4. Unlike airports, high-speed rail stations are generally located closer to city centres, with some even located therein. Passengers of high-speed rail do not need to arrive at the station one or two hours earlier as when travelling by plane, and generally do not need to check in their baggage as in air travel. Therefore, considering the time between departing for the airport and arriving at the city centre of the destination, it is usually more convenient to travel to cities within medium or short distances by high-speed rail than by air (such as cities within the reach of four-hour travelling time by high-speed rail). Moreover, rail services are relatively less affected by weather conditions; and since high-speed rail links usually have dedicated tracks for the exclusive use by high-speed trains, they are also less susceptible to delays caused by busy traffic on runways as in the case of flight services.

5. Not only can high-speed rail effectively save travelling time because of its speediness, it also has a substantial carrying capacity and can greatly shorten the travelling time between cities to create a “24-hour living circle”. Citizens along the railway alignment can travel to and from different cities within a day conveniently, which in turn fosters a new mode of living. High-speed rail can promote tourism and social exchanges, as well as expand the room for developing commercial and

professional services, thereby raising the overall productivity of society. In addition, high-speed rail is a green transport mode. It is the ideal choice for travellers who care about the environment as its carbon emissions are only about 15% and 25% of those from aircraft and buses respectively.

### **Development of high-speed rail in Mainland**

6. Owing to the aforesaid merits, high-speed rail has been developing rapidly throughout the world, and the development in the Mainland in this area has been particularly remarkable. Following the attainment of a speed of 200 km/h by the Guangzhou-Shenzhen intercity railway in 1998, the Mainland started to plan and invest in the construction of high-speed rail links on a massive scale. In 2008, the National Development and Reform Commission approved the “Medium and Long-term Railway Network Plan (revised in 2008)” to build a high-speed rail network consisting of eight lines based on the “Four Verticals and Four Horizontals” layout. The whole network (including the existing railway lines to be upgraded and modified) would be 12 000 km long by 2020.

7. As at end-2016, the high-speed rail network on the Mainland has already surpassed 20 000 km in length, which is far longer than the total length planned in 2008 and ranks first globally in terms of total length. Although the investment cost for high-speed rail is relatively high, the economic and social benefits it brings cannot be underestimated. In particular, high-speed rail has unprecedentedly increased the mobility of the large population on the Mainland, carrying over 1.44 billion passengers in 2016 alone. In addition to fostering the development of the traditional economic zones, high-speed rail has boosted the overall development of the country.

8. In July 2016, the State Council further approved the “Medium and Long-term Railway Network Plan” and proposed the construction of high-speed rail main lines based on the “Eight Verticals and Eight Horizontals” layout (see **Graphic 1**). The new projects will adopt in principle the standard of 250 km/h or above (the speed can be lowered as appropriate in areas with complex and difficult terrain, geological and climate conditions). For railway lines running through densely populated towns, economically advanced areas and mega-cities, the standard of 350 km/h for trains may be adopted; for regional rail links, the standard of 250 km/h or below will be adopted in principle; for intercity railway lines, the standard of 200 km/h or below will be adopted in principle<sup>1</sup>. The target is to increase the total length of the high-speed rail network on the Mainland to 30 000 km in 2020, covering more than 80% of the major cities; and to 38 000 km by 2025, basically realising by 2030 visions including “enhancing internal and external connectivity”, “enabling multiple inter-regional access”, “connecting provincial capitals by high-speed rail”, “enhancing accessibility of prefecture-level cities” and “providing basic high-speed rail network coverage to county areas”.

## **The XRL**

9. As a regional transport hub, Hong Kong’s long-term development potential will be enhanced if connected to the national high-speed rail network. Back in 2001, the Government of the Hong Kong Special Administrative Region (HKSARG) has initiated discussions with the Mainland government on the idea of establishing a high-speed rail link which connects Guangzhou, Shenzhen and Hong Kong. The XRL (see **Graphic 2**) is about 140 km in length, linking up

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<sup>1</sup> The specifications for the Hong Kong Section of the XRL are in line with those for the high-speed rail in the Mainland. The Hong Kong Section is a tunnel of 26 km in length. It is designed to operate trains at 200 km/h, similar to tunnel sections in Mainland cities.

Hong Kong, Shenzhen, Dongguan and Guangzhou. With the XRL, the travelling time between Guangdong and Hong Kong will be shortened from roughly two hours via the existing Intercity Through Train service to around 48 minutes in future. The 26-km **Hong Kong Section** will connect Hong Kong to the national high-speed rail network, including the **Beijing-Guangzhou Passenger Line** (which was commissioned in December 2012) running through Guangzhou, Changsha, Wuhan, Zhengzhou and Beijing and the **Hangzhou-Fuzhou-Shenzhen Passenger Line** (which was commissioned in December 2013) running through coastal cities such as Shantou, Xiamen, Fuzhou and Hangzhou, thereby greatly shortening the time required to travel from Hong Kong to major Mainland cities by rail. Through interchanging with the Pearl River Delta (PRD) Rapid Transit System, in which Guangzhou and Shenzhen are serving as the hubs, the XRL will also provide speedy rail services between Hong Kong and major PRD cities.

10. The Hong Kong Section of the XRL will start from the WKS, entering Mainland via Huanggang, and run through Futian Station, Shenzhen North Station and Humen Station before reaching Guangzhou South Station. Its construction works were about 95% complete as at end-June this year. Train testing and trial runs, as well as preparation for the operation stage, are underway. Our target is to commission services in the third quarter of 2018.

11. Direct trains to the following Mainland cities will be available upon commissioning of the Hong Kong Section of the XRL –

<b>Short-haul services (XRL) (assuming no intermediate stops)</b>	
<i>Destination</i>	<i>Estimated travelling time</i>
Futian	14 minutes
Shenzhen North	23 minutes

Humen	33 minutes
Guangzhou South	48 minutes
<b>Long-haul services (estimated travelling time based on current fastest travelling time of Mainland high-speed rail on weekdays)</b>	
<i>Destination</i>	<i>Estimated travelling time</i>
Shantou (Chaoshan Station)	around 2 hours 15 minutes
Changsha	around 3 hours
Xiamen	around 4 hours
Wuhan	around 4 hours 30 minutes
Nanchang	around 4 hours 30 minutes
Fuzhou	around 5 hours 15 minutes
Zhengzhou	around 6 hours 15 minutes
Hangzhou	around 6 hours 45 minutes
Shanghai	around 7 hours 45 minutes
Beijing	around 8 hours 45 minutes

12. Passengers can also reach other Mainland cities, such as Guilin, Kunming, Xian, Nanjing and Chengdu by interchanging (the main short-haul interchange stations are Guangzhou South and Shenzhen North). After the commissioning of the Hong Kong Section of the XRL, we will continue to explore with the Mainland authorities additional direct train services to more Mainland cities.

### **Benefits to be brought by the Hong Kong Section of the XRL**

13. The Hong Kong Section of the XRL will bring enormous economic benefits to Hong Kong. The direct benefits mainly include the cost savings due to time savings of passengers, the cost savings in the operation of other public transport modes and the cost savings due to reduction in traffic accidents. According to a conservative estimate, over a 50-year operation period, the Hong Kong Section of the XRL can

save passengers about 39 million hours of travelling time per year on average.

14. Since the whole alignment of the Hong Kong Section of the XRL is underground, its impact on the environment and the local community is minimised. High-speed rail is environmentally friendly when compared with other means of cross-boundary transport. In the case of Hong Kong, if 100 000 XRL passengers per day had originally opted for cross-boundary coaches, choosing XRL as the alternative would save about 4 700 tonnes of carbon dioxide emissions annually.

15. It is more difficult to quantify the indirect benefits, but since Hong Kong has close economic ties with many Mainland cities or regions, enhancing Hong Kong's connectivity with the Mainland will boost exchanges between Hong Kong and major Mainland cities and foster the development of complementary advantages. The pillar industries of Hong Kong, such as financial services, trading and professional services, stand to benefit in particular.

16. Offering speedy and comfortable services, the XRL will help open up new tourism markets, boost the number of tourists to and from Hong Kong, and further foster the development of tourism between Hong Kong and the Mainland. Local and overseas tourists may take the XRL from Hong Kong to different Mainland cities, giving rise to various types of new tourism products, such as high-speed rail "multi-destination trips", "air-rail inter-modal" service packages and new tourist destinations etc. These would attract more overseas tourists to make Hong Kong as their starting point or destination of rail journeys. Being adjacent to the West Kowloon Cultural District (WKCD), the WKS of the XRL can create synergy with this world-class integrated arts and cultural district. Upon gradual completion of the facilities at the WKCD, including the Xiqu

Centre, the M+ Museum for visual culture and the Hong Kong Palace Museum etc., more tourists who are fond of world-class cultural and arts performances and exhibitions are expected to come to Hong Kong using the XRL. This can help promote Hong Kong's status as an events capital.

17. The Hong Kong Section of the XRL can create jobs directly not only in railway operation and maintenance, but also in areas of retail, catering and station management at the WKS. Employment opportunities will also be indirectly created in sectors supporting the XRL operation. Furthermore, the vibrancy of and opportunities for other industries will be indirectly enhanced as a result of increased economic activities promoted by the XRL through improved connectivity with the Mainland.

18. To sum up, the Hong Kong Section of the XRL can shorten the distances between Hong Kong and Mainland cities in a more environmentally friendly way, thereby fostering closer societal exchanges and strengthening economic ties between Hong Kong and the Mainland, extending Hong Kong's reach into the Mainland hinterland, and enabling collaboration and development of various trades and industries of both sides, thereby strengthening Hong Kong's strategic status as a transport hub in the region.

### **Clearance procedures for the Hong Kong Section of the XRL**

19. As a cross-boundary railway, efficient and time-saving clearance procedures are absolutely essential to realising the full potential of the XRL in terms of speed and convenience. Since the planning stage of the Hong Kong Section of the XRL, the HKSARG has been studying the



co-location arrangement as the preferred way forward for the XRL clearance procedures.

20. Co-location arrangement means conducting clearance procedures of two different jurisdictions successively in one place. This contrasts with a traditional separate-location arrangement similar to that adopted for the current Hong Kong-Guangzhou Intercity Through Trains, under which clearance procedures are conducted at the places of departure and arrival in two different jurisdictions respectively. Under a co-location arrangement, passengers can complete clearance procedures of both Hong Kong and the Mainland at the WKS in one go. Passengers departing from Hong Kong can go to all cities on the national high-speed rail network without having to undergo clearance procedures again on the Mainland. Passengers coming to Hong Kong can board trains at any station of their choice on the national high-speed rail network, and go through Mainland departure clearance and Hong Kong arrival clearance at the WKS. They will not be constrained by whether a particular Mainland city has clearance facilities.

21. If a co-location arrangement is not implemented and a separate-location arrangement is implemented as with the intercity through train service between Hong Kong and Guangzhou, XRL passengers may only board or alight at the handful of Mainland stations equipped with clearance facilities. This will hamper the efficiency and flexibility offered by the XRL. In other words, using a separate-location arrangement for the XRL will greatly undermine its benefits and make it just like another intercity express rail without the advantage of easier access to cities throughout the country. In addition to saving time and enjoying the speed and convenience of the XRL services, a co-location arrangement is critical to fully unleashing the transport, social and economic benefits of the XRL project.

22. As the huge potential of the XRL can only be maximised with the implementation of the co-location arrangement at the WKS, the then Chief Executive announced in his 2007-08 Policy Address that the feasibility of implementing the co-location arrangement would be actively studied. During the planning stage of the XRL project, the HKSARG had reserved space at the WKS for the facilities required for implementing the co-location arrangement. When the HKSARG formally made the funding application at the Finance Committee of the Legislative Council (LegCo) for the construction of the Hong Kong Section of the XRL in 2009-10, it was already indicated that the Government would study the implementation of the co-location arrangement.

23. There are examples of similar co-location arrangements overseas (such as that between the United Kingdom and France, or that between the United States and Canada). Hong Kong and the Mainland have also had such an arrangement at the Shenzhen Bay Port since 2007. It has been operating smoothly and has been well received by travellers. An overview of the arrangement at the Shenzhen Bay Port is as follows –

- (1) Shenzhen Bay Port is located within the territory of the Mainland and comprises the “Shenzhen Port Area” and the “Hong Kong Port Area” (HKPA). Officers of both sides exercise jurisdiction and carry out CIQ inspection in accordance with their respective laws<sup>2</sup>;

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<sup>2</sup> According to the Decision of the Standing Committee of the 10<sup>th</sup> National People’s Congress in 2006, the Standing Committee of the National People’s Congress authorises the HKSAR to exercise jurisdiction over the “Hong Kong Port Area” at the Shenzhen Bay Port according to the laws of the HKSAR from the day on which the Shenzhen Bay Port commences operation.

- (2) Although the port area of Hong Kong is geographically located within the Mainland, for the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong; the laws of the Hong Kong Special Administrative Region (HKSAR) are applicable<sup>3</sup>; Hong Kong personnel exercise authority in the HKPA, and conduct procedures including CIQ inspection etc. without any overlapping with the jurisdiction of the Mainland; and
- (3) According to the Official Reply of the State Council in 2006, the land use right of the HKPA at the Shenzhen Bay Port was acquired by way of a lease signed between Hong Kong and Shenzhen. Hong Kong has to pay an annual rental.

24. Similar co-location arrangements implemented overseas mainly involves an agreement between two sovereign states. The parties seek approval from their own parliaments or implement the agreement by legislation.

25. According to the principle of “one country, two systems”, the HKSAR is authorised to exercise executive, legislative and judicial power. On matters of mutual interests or benefits, Hong Kong and the Mainland can reach arrangements through consultation. The aforesaid co-location arrangement at the Shenzhen Bay Port is one of the best examples.

26. The HKSARG secured funding in January 2010 for the commencement of the construction works for the Hong Kong Section of

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<sup>3</sup> Pursuant to the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591), the HKPA is regarded as an area lying within Hong Kong, Hong Kong laws in their entirety and jurisdiction of Hong Kong courts are applicable in the HKPA.

the XRL, and in-depth discussions and studies on the clearance procedures of the XRL with the relevant central authorities commenced in the same year. To realise the maximum benefits of the XRL, both sides have agreed that the mutual goal is to implement a co-location arrangement at the WKS.

### **Proposal for co-location arrangement**

27. Over the past few years, the HKSARG and the relevant central authorities have explored various ideas of the clearance procedures for the XRL (see Annex). Both sides agree that the proposal for implementing the co-location arrangement at the WKS must be in compliance with the Basic Law, being operationally feasible and will not lead to problems from the public security angle of the HKSAR.

28. In order to implement the co-location arrangement at the WKS, Mainland personnel would need to conduct clearance procedures for passengers in accordance with Mainland laws. On the other hand, the Basic Law contains provisions on the laws which can be applied in the HKSAR. Relevant articles of the Basic Law include –

#### **Article 2**

*The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.*

#### **Article 8**

*The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate*

*legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.*

### **Article 11**

*In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.*

*No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.*

### **Article 18**

*The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.*

*National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.*

*The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after*

*consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law...*

#### **Article 20**

*The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.*

#### **Article 22**

*No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.*

*If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government.*

*All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly*

*under the Central Government, and the personnel of these offices shall abide by the laws of the Region...*

29. Even though the two cases are not entirely identical, one of the issues which has to be addressed in implementing the co-location arrangement at the WKS is similar to how the case of the Shenzhen Bay Port was handled in the past. The issue then was how to allow HKSARG personnel to conduct clearance procedures for passengers in the HKPA of the Shenzhen Bay Port, which was within the boundary of the Mainland. The present issue, which needs to be resolved, is how to allow Mainland personnel to conduct clearance procedures for XRL passengers in the “Mainland Port Area” (MPA) of the WKS in accordance with Mainland laws without contravening the Basic Law.

30. Upon detailed study with reference to the case of the Shenzhen Bay Port, the HKSARG and the relevant central authorities recommended adopting a “Three-step Process” in implementing the co-location arrangement at the WKS of the XRL. The three steps may be summarised as follows –

- (1) **Step One:** The Mainland and the HKSAR are to reach a Co-operation Arrangement in relation to the implementation of the co-location arrangement;
- (2) **Step Two:** The Standing Committee of the National People’s Congress (NPCSC) approves and endorses the Co-operation Arrangement by making a Decision; and
- (3) **Step Three:** Both sides implement the arrangement pursuant to their respective procedures. Local legislation will be necessary for the case of Hong Kong.

## **Step One: Co-operation Agreement**

31. The first of the “Three-step Process” is that the HKSAR and the Mainland are to reach a Co-operation Arrangement in implementing the co-location arrangement at the WKS. The contents of the Co-operation Arrangement include the establishment of port areas, the area and jurisdiction of the MPA, immigration control on travellers, liaison and coordination mechanism and emergency handling mechanism, consultation on and resolution of disputes, as well as the arrangement for amending the Co-operation Arrangement and its effective date. The consensus reached by the both sides on the aforementioned matters are summarised in paragraphs 32 to 52 below.

### Establishment of port areas

32. First and foremost, the HKSAR and the Mainland agree to set up a control point in the WKS of Hong Kong under the framework of the Co-operation Arrangement. Both sides would exercise CIQ control such as immigration checks, customs control and quarantine measures in accordance with their respective laws on travellers between the Mainland and the HKSAR, as well as their belongings and luggage.

33. The WKS control point would be established with a HKPA and the MPA. The HKPA would be established and by the HKSAR and be subject to its jurisdiction in accordance with HKSAR laws, whereas the MPA would be established by the Mainland and be subject to its jurisdiction in accordance with the Co-operation Agreement and relevant Mainland laws.



### Delineation of the MPA

34. The WKS consists of five levels, including the Concourse Level (Ground Floor), the Ticket Hall (B1 Level), the Arrival Level (B2 Level), the Departure Level (B3 Level) and the Platform Level (B4 Level).

35. The MPA would comprise the areas (and the relevant 3-dimensional space thereof) from the point where passengers departing Hong Kong have gone through the departure clearance on the Hong Kong side and entered into the area for arrival clearance on the Mainland side, as well as the areas from the point where arriving passengers set foot on the WKS after alighting from a southbound train to the point where they have completed the departure clearance on the Mainland side. This would include the designated areas on B2 and B3 levels, platforms on B4 level, as well as connecting passageways, namely the Mainland Clearance Area, the back office of the Mainland authorities, the waiting hall for departure passengers, station platforms and the connecting passageways/escalators linking these areas, with the reserved areas such as the additional platforms (see **Graphic 3**). The construction floor area of the MPA is estimated to be around 105 000 m<sup>2</sup>, which is around one-fourth of the total construction floor area of the WKS.

36. In addition, train compartments in operation on the Hong Kong Section of the XRL (whether in motion, stationary or during embarkation or disembarkation) would be regarded as part of the MPA.

37. Save for the areas and space included as part of the MPA as mentioned in preceding paragraphs, all other railway operation areas and facilities of the Hong Kong Section of the XRL (including Shek Kong Stabling Sidings, railway tracks and tunnels) would not be part of the MPA.

38. To provide a clear delineation of the MPA, the HKSARG and the relevant central authorities will finalise the detailed coordinates of the MPA and have them set out in detail similar to the case of implementing the co-location arrangement at the Shenzhen Bay Port.

39. Venues and space within the area of the MPA will be made available by the HKSAR to the Mainland side for use and for exercising jurisdiction in accordance with the Co-operation Arrangement. Matters such as the acquisition of the right to use, duration and fees (including the maintenance fees of relevant structures and related facilities in the MPA) would be provided for by an agreement to be signed by both sides.

40. The Co-operation Arrangement will also indicate that the establishment of the MPA would not affect the construction, performance of construction work, service concession, operation and monitoring of the Hong Kong Section of the XRL, and would not affect the rights and obligations regarding the assets (including relevant land as well as movable and non-movable assets on these lands) and facilities in relation to the operation of the Hong Kong Section of the XRL. The HKSAR would still exercise jurisdiction in respect of such matters in accordance with HKSAR laws and the Co-operation Arrangement.

#### Governing law and jurisdiction

41. There are different views as to the extent to which Mainland laws should apply in the WKS. On the one hand, some take the view that the arrangement at the Shenzhen Bay Port should be used as the model, and the whole body of Mainland law should apply in the MPA. The reason is that such an approach would ensure clarity in implementation, avoid overlapping jurisdiction, and also avoid the

exploitation of legal lacunas to perpetrate acts that are prejudicial to the interests of Hong Kong or the state.

42. On the other hand, there are views that only those Mainland laws relating to clearance procedures (and not the entire body of Mainland law), should apply and be enforced in the MPA. However, the greatest problem with this suggestion is that it is impossible to draw a clear distinction between those laws which are relevant to clearance procedures and those laws which would not be applied in the course of clearance procedures.

43. A further consideration is that the WKS is more than a control point. It is a station to be managed by a railway operator in Hong Kong. If application of the laws and legal jurisdiction of the HKSAR therein were completely excluded, it would create further legal disputes and commercial operation issues. Examples include whether matters related to land interests, railway operation and safety etc. should be handled in accordance with Mainland laws; whether subsequent modifications and maintenance of the MPA need to comply with statutory standards in the Mainland; whether the HKSAR employees working in the MPA need to comply with Mainland employment laws (e.g. to enrol in labour insurance programmes of the Mainland) etc. These and related issues may bring considerable inconvenience to the daily operation of the XRL and different users in the MPA. Having considered the above, both sides consider that while the general position is that Mainland laws should apply in the MPA, certain specified matters should continue to be governed by HKSAR laws and be subject to the jurisdictions of the HKSAR courts.

44. Both sides therefore propose that, from the day on which the WKS control point commences operation, the Mainland will exercise

jurisdiction over the MPA in accordance with the Cooperation Arrangement and Mainland laws, except for those matters specified in the Co-operation Arrangement over which the HKSAR exercises jurisdiction. Based on the current understanding, the HKSAR will exercise jurisdiction on the following matters in the MPA in accordance with HKSAR laws –

- (a) the performance of duties and functions or related matters by designated personnel, i.e. holders of valid permit issued by the HKSARG or the operator of the Hong Kong Section of the XRL who enter into the MPA or pass through the MPA to other places inside the WKS to perform relevant duties. Except for such matters which are subject to the laws of the HKSAR in accordance with the Co-operation Arrangement, these personnel should comply with Mainland laws and be subject to the supervision of the Mainland authorities in the MPA;
- (b) matters relating to the standards of and liabilities concerning the construction, performance of construction work, insurance and design, repair and maintenance, and fire safety of buildings and relevant facilities (other than the facilities and equipment which are designated solely for the use by the Mainland authorities stationed at the MPA );
- (c) matters relating to the establishment, operation, insurance and taxation of the operator of the Hong Kong Section of the XRL and service providers, as well as their HKSAR employees' employment-related rights and insurance;
- (d) matters relating to the regulation and monitoring of the operational safety of the railway system of the Hong Kong

Section of the XRL;

- (e) unless otherwise agreed by the parties, matters governed by contracts made between the operator of the Hong Kong Section of the XRL and the passengers, as well as other legal relationships of a civil nature between the operator of the Hong Kong Section of the XRL and the passengers, or between the passengers, inside the MPA; and
- (f) matters under the responsibility of the operator of the Hong Kong Section of the XRL as provided for in the XRL Operating Co-operation Agreement made between the operator of the Hong Kong Section of the XRL and the operator of the Mainland Section of the XRL.

45. Mainland laws apply to matters in the MPA that are subject to the jurisdiction of the Mainland, and the courts of the Mainland will exercise jurisdiction over such matters. Conversely, the laws of the HKSAR apply to matters in the MPA that are subject to the jurisdiction of the HKSAR, and the HKSAR courts will exercise jurisdiction over such matters.

46. In addition, Mainland personnel can only perform duties in the MPA in accordance with the Co-operation Arrangement and Mainland laws, and must stay within the MPA when performing duties. They cannot enter the territory of the HKSAR to perform duties, and have no law enforcement powers in the territory of the HKSAR. In other words, Mainland personnel can only perform duties in a specific area (i.e. the MPA) and with respect to specific persons (i.e. persons who have entered into the MPA, and their personal belongings and luggage). They cannot exercise powers outside the MPA.

47. For the purpose of exercising jurisdiction over the MPA by the Mainland, with respect to the application of laws and delineation of jurisdiction, the MPA will be regarded as outside the territorial boundary of the HKSAR. This approach is in principle no different from that adopted in respect of the HKPA in the Shenzhen Bay Port context. Although the HKPA is physically within the Mainland boundary, section 5(2) of the Shenzhen Bay Port Hong Kong Part Area Ordinance (Cap. 591) provides, “*For the purpose of applying the laws of Hong Kong in the HKPA, the HKPA is regarded as an area lying within Hong Kong*”. In addition, section 6(1) provides, “*Notwithstanding that the land use right of the HKPA is acquired by way of a lease ..., land within the HKPA is regarded, for the purpose of applying the laws of Hong Kong in the HKPA, as part and parcel of the Government land lying within Hong Kong*”.

48. Since the MPA is legally regarded as outside the territorial boundary of the HKSAR, the stipulations of Article 8, 18 and Article 22 of the Basic Law mentioned above do not apply, and therefore the co-location arrangement would not be in contravention of the Basic Law.

#### Immigration control on travellers

49. After purchasing the tickets at the Ticket Hall on B1 level, northbound passengers will proceed to the HKPA on B3 level direct for Hong Kong departure clearance. Upon leaving the HKPA, they are regarded in law to have departed Hong Kong. The MPA therefore starts from the clearance area where Mainland personnel perform their duties on B3 level all along the way to the waiting area for departure passengers, platforms on B4 level and train compartments. In other words,

passengers would have entered Mainland jurisdiction when they undergo Mainland arrival clearance.

50. For southbound journeys from the Mainland to Hong Kong, passengers would proceed from the platforms on B4 level to B2 level. Upon completing Mainland departure clearance, having left the MPA and entered the HKPA thereafter, they would formally enter the jurisdiction of the HKSAR (see **Graphic 4**).

51. In short, passengers bound for Hong Kong are regarded as being present in the Mainland before they leave the MPA, and will be subject to departure clearance by Mainland personnel. If there are contraventions of the law, relevant legal measures will be taken by the Mainland authorities in the light of the actual circumstances and in accordance with the law. Similarly, passengers bound for the Mainland will, upon entering the MPA, be regarded as being in the Mainland, and will have to undergo arrival clearance by Mainland personnel. If permitted under Mainland law, they will be allowed entry into the Mainland in accordance with the law. If not permitted under Mainland law, then relevant legal measures will be taken by the Mainland authorities in the light of the actual circumstances and in accordance with the law.

#### Other matters

52. To ensure the effective and efficient operation of the MPA at the WKS, both sides will set up a liaison and coordination mechanism as well as an emergency handling mechanism to enhance communication. In addition, the Co-operation Arrangement would include consultation and resolution of disputes, the arrangement for amending the Co-operation Arrangement and its effective date.

## **Step 2: Decision by the NPCSC**

53. The HKSARG will continue to work with the relevant central authorities to take forward the subsequent tasks in implementing the co-location arrangement for the XRL, including jointly seeking a decision from the NPCSC approving and endorsing the Co-operation Arrangement after public discussions in Hong Kong and discussions at the LegCo. Apart from approving the proposal set out in the Co-operation Arrangement, the NPCSC would approve relevant Mainland authorities to implement the co-location arrangement in Hong Kong, as well as authorise the HKSAR to implement matters in relation to the co-location arrangement in accordance with Article 20 of the Basic Law.

## **Step 3: Local legislation**

54. As in the case of the Shenzhen Bay Port, after the NPCSC makes a decision to approve the Co-operation Arrangement, the HKSAR will introduce a legislative proposal to the LegCo and will aim to complete the domestic legislative exercise in the legislative session of 2017-18, with a view to providing the basis for the commissioning of the XRL in the third quarter of 2018 as intended.

## **Conclusion**

55. The Hong Kong Section of the XRL is an important strategic infrastructure project for the future of Hong Kong, and the implementation of the co-location arrangement at the WKS is instrumental in unleashing its full transport, social and economic benefits. We hope that the XRL can save travelling time in intercity trips, as well as provide more room for career development and living for Hong Kong people, thereby creating new opportunities for Hong Kong including our



next generations. The “Three-step Process” discussed above is consistent with the Basic Law and the principle of “one country, two systems” policy, as well as being operationally sound and effective. The HKSARG believes that it is currently the most suitable, practical and effective arrangement to implement the co-location arrangement, and hopes the community supports the arrangement.

**Department of Justice**  
**Transport and Housing Bureau**  
**Security Bureau**  
**July 2017**

## **Major ideas on clearance procedures for the XRL explored previously**

Ideas discussed and studied by the HKSAR and relevant central authorities include the following –

### **(1) Amending the Basic Law**

2. This idea is to amend the relevant provisions of the Basic Law, authorising the State Council to establish, abolish or amend a MPA at the request of the HKSARG. The relevant provisions would also stipulate that Mainland laws would apply to the MPA and that Mainland courts would exercise jurisdiction.

3. According to Article 159 of the Basic Law, the NPCSC, the State Council and the HKSAR<sup>1</sup> may propose bills for amendment to the Basic Law in order to establish a MPA in the WKS which applies Mainland laws. However, the Basic Law is not only a national law, but is also the constitutional document of the HKSAR with a solemn status to which amendments should not be made lightly. Having studied the matter in detail, the HKSARG and the relevant central authorities propose to use the “Three-step Process”, an approach other than amending the Basic Law and which appropriately implements the co-location arrangement of the XRL.

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<sup>1</sup> Pursuant to Article 159(2) of the Basic Law, amendment bills from the HKSAR shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the LegCo of the Region, and the Chief Executive of the Region.

## **(2) Annex III to Basic Law**

4. Another idea that has been subject to relatively more discussions in the community is to list those laws relevant to Mainland clearance procedures in Annex III in accordance with Article 18 of the Basic Law and then to implement the same in the HKSAR. Having conducted detailed analysis, the HKSAR and the relevant central authorities agree not to adopt this idea.

5. First, apart from the fact that clearance procedures would involve many legal provisions, as mentioned above, it is difficult to clearly define which Mainland laws should or should not be categorised as laws relating to clearance procedures. Therefore, it is basically not possible to decide which Mainland laws should be added to Annex III.

6. Second, Article 18 of the Basic Law provides that only three categories of national laws may be added to Annex III, i.e. those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law. In law, there exist very different views as to whether Mainland laws in relation to the implementation of the co-location arrangement are within the scope of the above three categories of national law; it is therefore likely to cause controversies and is not conducive to the smooth implementation of the co-location arrangement. Viewed objectively, there is a reasonable difference in opinions on this legal question.

7. Third, Article 18 of the Basic Law has two additional features. From the angle of the subject of enforcement of a national law, Article 18 contemplates that the relevant national laws would be enforced by the HKSARG. However, in implementing the co-location arrangement, it is the Mainland personnel who would conduct clearance procedures for

passengers in accordance with Mainland laws. In addition, as far as the boundary of enforcement is concerned, Article 18 contemplates that the relevant national laws would be applied throughout the entire territory of the HKSAR and not only at a specific location (e.g. at the MPA in the WKS).

### **(3) Enacting a national law**

8. Under this idea, the NPCSC would authorise the HKSAR to establish a MPA in the WKS in accordance with Article 20 of the Basic Law, and would enact a national law in relation to the implementation of the co-location arrangement in the HKSAR, which would empower Mainland law enforcement officers to enforce the relevant laws of the Mainland for conducting clearance procedures in the MPA. This national law would then be included in Annex III in accordance with Article 18 of the Basic Law in order to take effect in the HKSAR.

9. To implement this idea, this tailor-made national law would need to fulfill the requirements to be included in Annex III of the Basic Law before it can take effect in the HKSAR. Detailed study of the Mainland laws relating to clearance procedures would be required in order to include specific provisions of the national law, such that the national law would meet the operational needs while complying with the stipulations of the Basic Law.

10. Based on this idea, Mainland personnel would be able to exercise various powers in the MPA as authorised by this national law, such as checking travel documents, conducting searches on travellers and their luggage etc. Detailed consideration must be given when deciding on the scope of powers to be granted to Mainland officers in the MPA in view of law enforcement needs.

11. However, in practice it would not be possible to decide beforehand which Mainland laws would be necessary for conducting Mainland clearance procedures.

12. Moreover, another crucial issue is whether laws in relation to CIQ matters, by nature, would fall within the scope of Article 18(3) of the Basic Law as those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law, thereby being qualified to be included in Annex III of the Basic Law. As discussed above, in law, there exist very different views on this issue and thus may give rise to a great legal controversy and would not be conducive to the smooth implementation of the co-location arrangement.

#### **(4) Co-location arrangement in separate stations for northbound and southbound trips**

13. Making reference to the border control arrangements for Eurostar between the United Kingdom and France, the HKSARG once contemplated whether a control point might be established in the WKS and a Mainland high-speed rail station respectively, such that the co-location arrangement might be put in place for northbound and southbound trips respectively. Mainland officers would conduct “pre-clearance” for northbound travellers going to the Mainland at the WKS, whereas Hong Kong officers would conduct “pre-clearance” for southbound travellers going to Hong Kong at a control point on the Mainland.

14. From the perspective of Hong Kong, the purpose of the southbound boundary control is to restrict travellers and luggage not

fulfilling the entry requirements of Hong Kong from entering into Hong Kong. From the perspective of the Mainland, the northbound clearance procedures would serve the purpose of restricting travellers who do not fulfill Mainland entry and customs requirements from entering into the Mainland; whereas the southbound clearance procedures would be to restrict travellers who do not fulfill the departure and customs requirements from leaving the Mainland.

15. The HKSARG and the relevant central authorities had contemplated whether it would be feasible to conduct the southbound co-location arrangement in Shenzhen North Station or Futian Station. Specifically, the Mainland law enforcement agencies would set up a departure control point in Shenzhen North Station or Futian Station, where all XRL passengers heading to Hong Kong would need to alight from the train to undergo Mainland departure clearance. At the same time, Hong Kong law enforcement agencies would establish a HKPA to conduct entry clearance procedures of the HKSAR for XRL passengers, such that they would not need to undergo any procedures after arrival at the WKS.

16. However, as both Shenzhen North Station and Futian Station are already in operation, modifying the stations to accommodate the relevant clearance facilities would impact on the planning of railway service in Shenzhen, as well as venue design and station operation. The major shortcoming of this idea is that all southbound passengers would be required to alight midway at a Mainland high-speed rail station with clearance facilities for undergoing Mainland clearance procedures, and then embark the trains again before continuing their journeys to the WKS. This would obviously cause certain inconvenience to the passengers and lengthen the travelling time, reducing the effectiveness of the XRL in ensuring high-speed accessibility to destinations, and greatly undermining

its attractiveness. For the above reasons, the idea of co-location arrangement in separate stations for northbound and southbound trips was shelved.

#### **(5) “On-board clearance”**

17. The HKSARG and the relevant central authorities had also considered the proposal of “on-board clearance” (under which Mainland personnel would conduct clearance procedures for passengers when the trains are travelling in the Mainland). However, this is found not feasible as clearance procedures are not limited to observing and questioning passengers; it might also involve checking of passengers’ belongings when necessary. The limited space in train compartments would not be able to meet these operational needs, and there would also be constraints in terms of the manpower and facilities involved.

18. Further, the journey time between the WKS and the first station in the Mainland (Futian Station) is only around 14 minutes, and that between the HKSAR/Shenzhen boundary and Futian Station would be even shorter, at about three minutes. The current XRL trains acquired by the HKSARG through the MTRCL for short-haul service provide 579 seats each. In the circumstances, it would not be operationally feasible to complete clearance procedures for all passengers on the train within such a short period of time.

#### **(6) Separate-location arrangement**

19. The traditional separate-location arrangement, adopted in the existing Intercity Through Train service between Hong Kong and Guangzhou, allows passengers to undergo clearance procedures of Hong

Kong and the Mainland at the point of embarkation and disembarkation respectively.

20. The HKSAR Government and the relevant central authorities had considered the option of separate-location arrangement. However, the biggest problem of the separate-location arrangement is that passengers are limited to disembarking at Mainland stations equipped with control points only. As a matter of fact, not all Mainland high-speed rail stations accessible to Hong Kong could or would provide CIQ facilities: the establishment of control points would involve significant costs with considerable spatial requirements and provision of human resources at the stations. It would neither be practicable nor economical to set up control points in multiple Mainland high-speed rail stations specifically for northbound/southbound passengers departing from/travelling to the WKS.

21. Should control point(s) be established only in one or a few Mainland high-speed rail station(s) near Hong Kong with higher patronage, such station(s) will become “hub station(s)” at which passengers must alight midway for conducting Mainland clearance procedures before continuing their journeys. This would cause great inconvenience to passengers. In such circumstances, the Hong Kong Section of the XRL could no longer offer convenient access to different cities across the country, but merely become an intercity rail shuttle between Hong Kong and “hub station(s)” in the Mainland.

22. The separate-location arrangement would also increase the complexity in railway operation. Should the arrangement be implemented, it would be necessary to implement closed-off management measures both on the trains and platforms of Mainland stations by separating northbound or southbound passengers from those who only



travel along the Mainland Section. Otherwise, northbound or southbound passengers might incur criminal liabilities for illegal entry into or departure from the Mainland without having undergone Mainland clearance procedures.

23. If outbound trains from Hong Kong could not take passengers to Mainland high-speed rail stations which do not have CIQ facilities, the separate-location arrangement would limit the number of Mainland cities to which Hong Kong could provide direct access. As a consequence, the patronage of relevant railway lines would be lowered given that passengers' choice has been constrained. This would drastically reduce the benefits of the XRL. The implementation of the separate-location arrangement is clearly undesirable in terms of passenger experience, transport benefits and financial performance of the railway. Therefore, both the HKSAR Government and the relevant central authorities disagree with the separate-location arrangement.

**Graphic 1: “Eight Verticals and Eight Horizontals” National High-speed Rail Map**

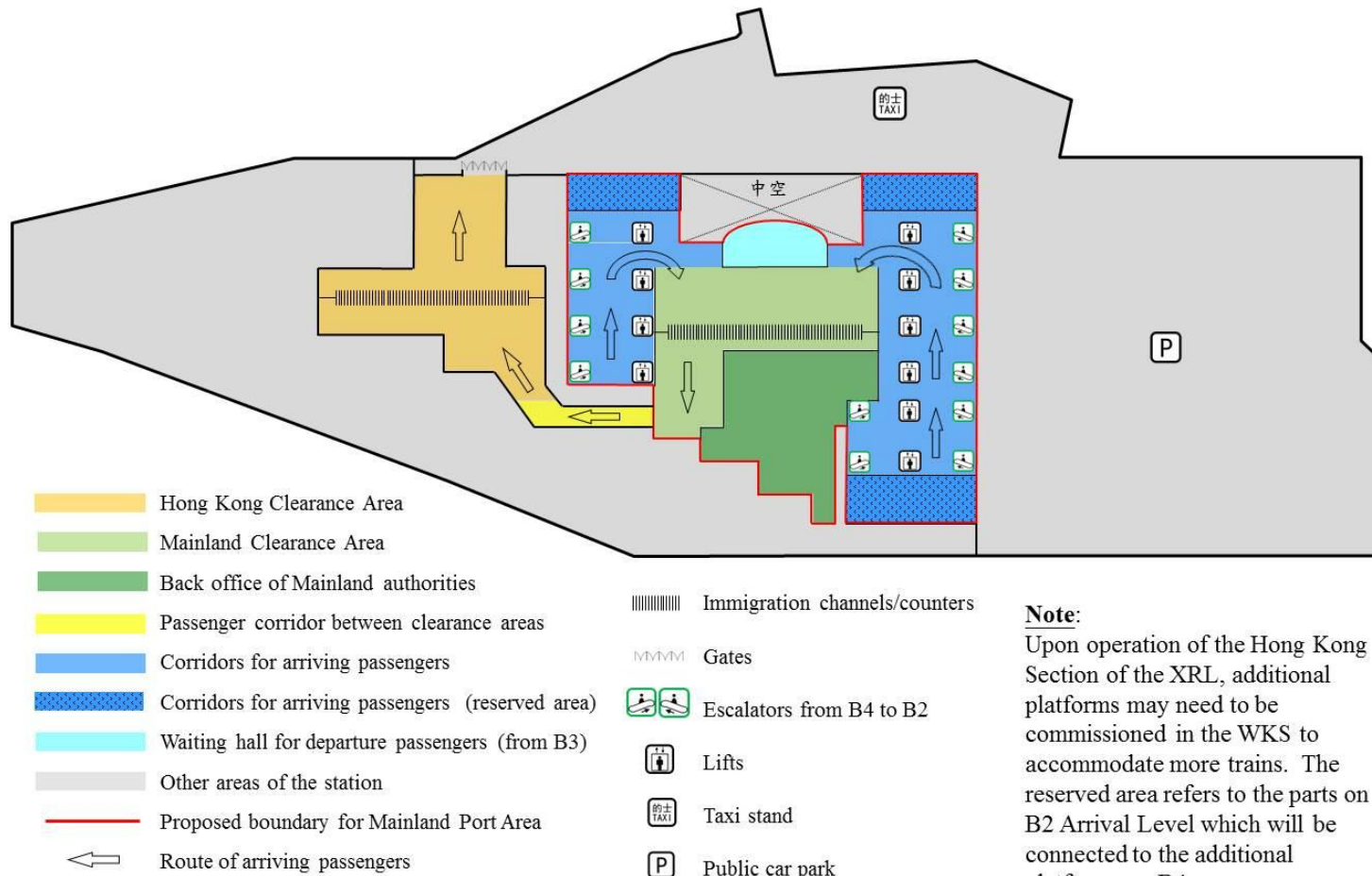


**Graphic 2: Alignment of the XRL**

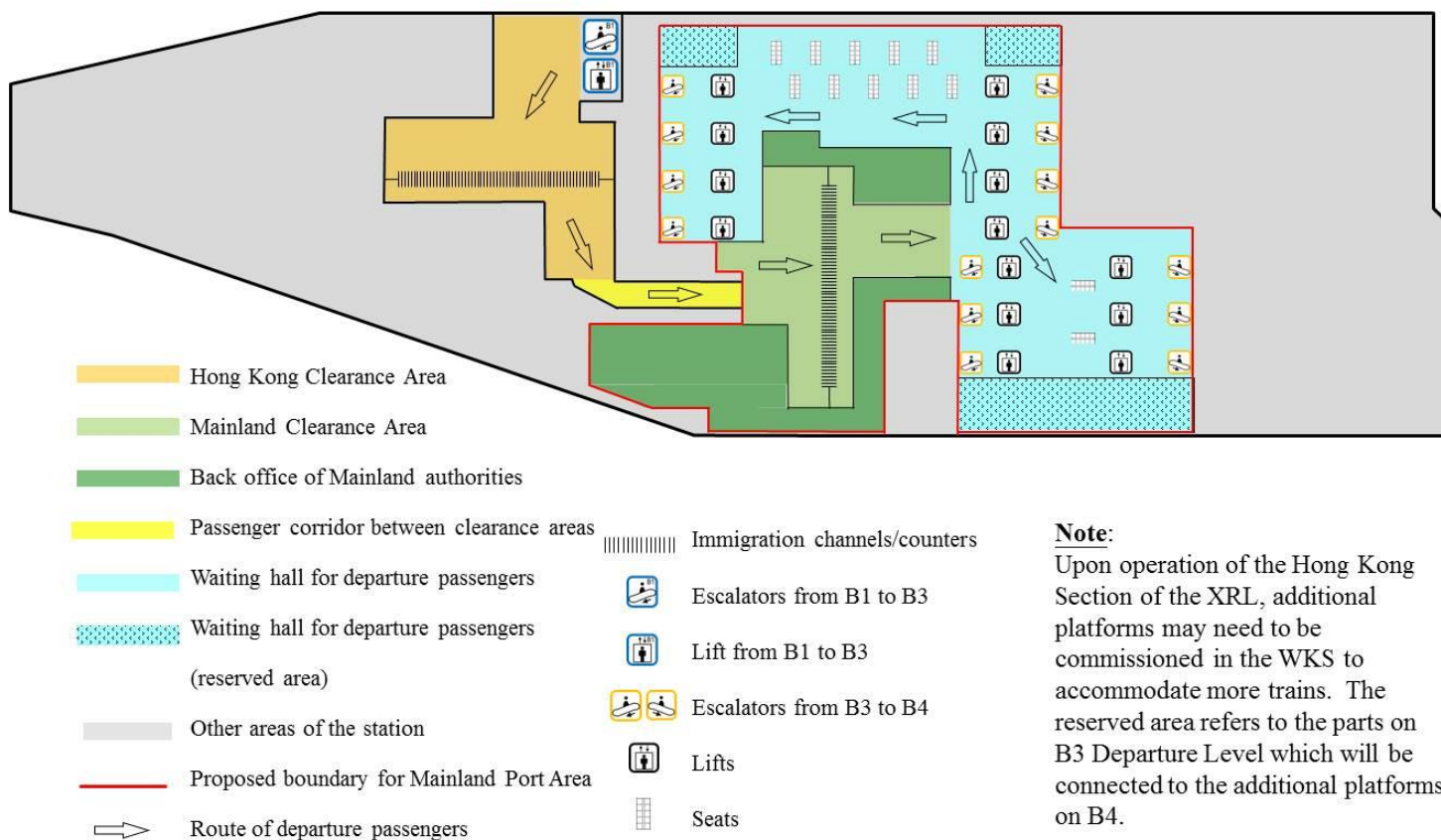


**Graphic 3: Floorplan of the WKS**

## **Schematic Diagram of B2 Arrival Level in the WKS**

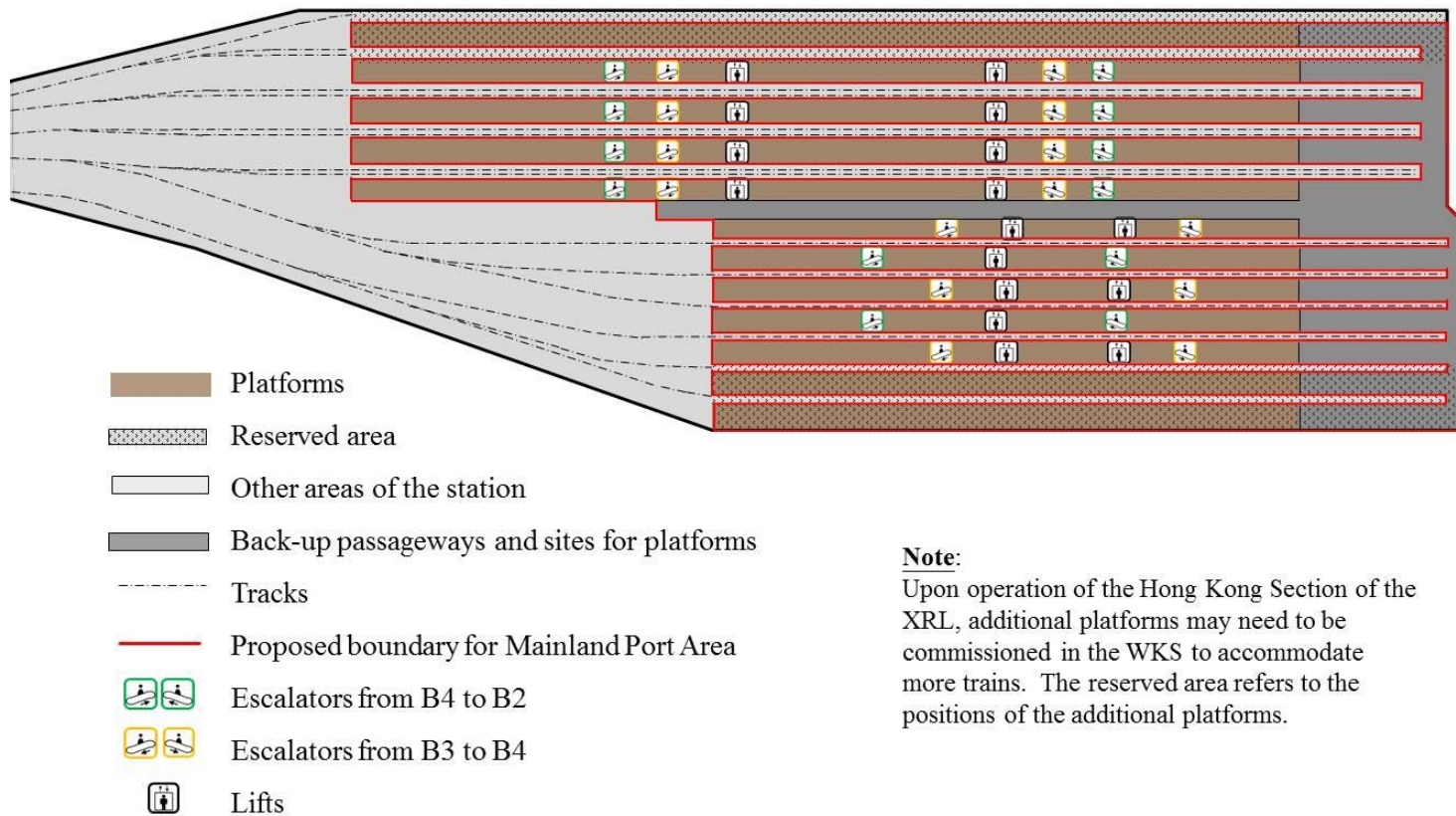


## Schematic Diagram of B3 Departure Level in the WKS





## Schematic Diagram of B4 Platform Level in the WKS



### Note:

Upon operation of the Hong Kong Section of the XRL, additional platforms may need to be commissioned in the WKS to accommodate more trains. The reserved area refers to the positions of the additional platforms.

**Graphic 4: Passenger Flow in the WKS**

