

立法會
Legislative Council

LC Paper No. CB(4)680/19-20
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Ref : CB4/BC/2/17

**Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link
(Co-location) Bill**

**Minutes of the third meeting
held on Tuesday, 13 March 2018, at 8:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)
Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen

Dr Hon Elizabeth QUAT, BBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon SHIU Ka-chun
Hon Kenneth LAU Ip-keung, BBS, MH, JP

Public officers attending : Item I

Transport and Housing Bureau

Mr Frank CHAN Fan, JP
Secretary for Transport and Housing

Ms Rebecca PUN Ting-ting, JP
Deputy Secretary for Transport and Housing
(Transport) 1

Mr Andy LAM Siu-hong
Principal Assistant Secretary for Transport and Housing
(Transport) 3

Mr Ronald CHENG Long-fung
Assistant Secretary for Transport and Housing
(Transport) 3C

Department of Justice

Ms Teresa CHENG, GBS, SC, JP
Secretary for Justice

Mr Wesley WONG Wai-chung, SC, JP
Solicitor General

Mr Llewellyn MUI Kei-fat
Deputy Solicitor General (Constitutional Affairs) (Acting)

Mr Lawrence PENG Si-yun
Senior Assistant Law Draftsman

Mr Winson KOO Kwong-yan
Assistant Law Officer (Civil Law)(Advisory)

Mr Henry CHAN Ngai-him
Senior Government Counsel

Security Bureau

Mr John LEE Ka-chiu, SBS, PDSM, PMSM, JP
Secretary for Security

Ms Maggie WONG Siu-chu, JP
Deputy Secretary for Security 3

Mr Parson LAM Chun-wah
Principal Assistant Secretary for Security D

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Senior Assistant Legal Adviser 1

Miss Joyce CHAN
Assistant Legal Adviser 1

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Mandy LAM
Legislative Assistant (4)2

I. Meeting with the Administration

[LC Paper Nos. CB(4)597/17-18(01), CB(4)631/17-18(01), CB(4)659/17-18(01), CB(4)670/17-18(01), CB(4)720/17-18(01), CB(4)710/17-18(01) - (02), CB(4)681/17-18(01), CB(4)724/17-18(01), CB(4)685/17-18(01), CB(4)673/17-18(01), CB(4)710/17-18(03), File Ref.: THB(T)CR 9/1/16/581/99, CB(3)312/17-18, LS31/17-18 and CB(4)587/17-18(01)]

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

2. The Bills Committee requested the Administration to consider a member's suggestion of forwarding the submission dated 12 March 2018 from the Hong Kong Bar Association in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill to the Central Authorities.

(Post-meeting note: the Administration's written response was issued to members vide LC Paper No. CB(4)769/17-18(02) on 21 March 2018.)

II. Any other business

Date of next meeting

3. Members noted that the next meeting would be held on 16 March 2018 at 8:30 am.
4. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 4
Legislative Council Secretariat
8 June 2020

**Proceedings of the third meeting of the
Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link
(Co-location) Bill
held on Tuesday, 13 March 2018, at 8:45 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Meeting with the Administration			
000946-001031	Chairman	Opening remarks.	
001032-001654	Chairman Ms Tanya CHAN	Ms CHAN's enquiry and the Chairman's response regarding the attendance of the three Principal Officials concerned in the forthcoming meetings and the schedule of meetings of the Bills Committee.	
001655-003006	Chairman Administration	The Administration's response to members' concern raised in their respective letters, and briefing on its reply to the list of follow-up actions arising from the discussion at the meeting on 23 February 2018 [LC Paper No. CB(4)710/17-18(02)] and the letter dated 28 February 2018 from Senior Assistant Legal Adviser 1 ("SALA1") [LC Paper No. CB(4)720/17-18(01)].	
003006-003143	Chairman Ms Tanya CHAN SALA1	SALA1's response to the Administration's reply with respect to his letter dated 28 February 2018 to the Administration.	
003144-003717	Chairman Mr Kenneth LEUNG Administration	Mr LEUNG's enquiry and the Administration's response about whether there was overlap in the delineation of applicable laws and jurisdiction between the Mainland Port Area ("MPA") and the Hong Kong Clearance Area at the West Kowloon Station ("WKS") either two-dimensionally or three-dimensionally.	
003718-004223	Chairman Mr Holden CHOW Administration	Mr CHOW's enquiry and the Administration's response regarding clause 8 of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bill") which sought to provide an interpretation aid for future documents of private nature.	
004224-004758	Chairman Ms YUNG Hoi-yan	Ms YUNG's enquiry and the Administration's response regarding:	

Time Marker	Speaker(s)	Subject(s)	Action required
	Administration	<p>(a) justifications for ruling out the option that only Mainland laws relevant to customs, immigration and quarantine procedures would be applied in the MPA; and</p> <p>(b) examples of implementation of similar co-location arrangements in other jurisdictions that required "adjustment of applicable laws and jurisdictions by legislation" as mentioned in the Administration's reply [LC Paper No. CB(4)710/17-18(02)].</p>	
004759-005126	Chairman Ms Tanya CHAN	Discussion on time management of the meeting.	
005127-005647	Chairman Mr YIU Si-wing Administration	<p>Mr YIU stated his objection to the disclosure of floor plans of the WKS which, in his view, might give rise to potential security risks.</p> <p>Mr YIU's concern about the security measures to be implemented at WKS and the Administration's response.</p>	
005648-010031	Chairman Mr CHU Hoi-dick	Discussion on time management of the meeting.	
010032-010454	Chairman Mr CHAN Chun-ying Administration	<p>In reply to Mr CHAN's enquiry, the Administration remarked that it was rare for the authorities of large cities to make public the floor plans of a major transport infrastructure.</p> <p>Mr CHAN's enquiry and the Administration's response regarding the management measures to be deployed at WKS to ensure doors and passageways connecting the MPA and the Hong Kong Clearance Area ("the two port areas") were properly used.</p>	
010455-010942	Chairman Dr Fernando CHEUNG Administration	<p>Dr CHEUNG requested the Administration to provide detailed information on the internal aids and extrinsic materials that might support the Administration's view on the interpretation of Article 18 of the Basic Law ("BL 18") and its conclusion that BL 18 was not engaged in the context of the proposed co-location arrangement under the Bill.</p> <p>The Administration's reply as set out in LC Paper No. CB(4)803/17-18(01) and part (1) of LC Paper No. CB(4)914/17-18(03).</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
010943-011501	Chairman Mr LUK Chung-hung Administration	<p>Noting that matters relating to employment-related obligations, rights and benefits, protection and insurance of the staff members of the Hong Kong operator of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") and service provider(s) were categorized as "reserved matters" under the Bill, Mr LUK enquired about the employment-related legislation to be applied in the MPA. The Administration's response.</p> <p>Referring to Mr LUK's further enquiry, the Administration advised that as the long-haul trains would be operated by the Mainland operator, the crew members and train captains servicing those trains would be employed by the Mainland operator.</p>	
011502-011922	Chairman Mr WU Chi-wai Administration	<p>Mr WU's enquiry on whether the signing of the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement ("Co-operation Arrangement") and its subsequent approval by the Standing Committee of the National People's Congress ("NPCSC") through a decision ("Decision") was the only way to apply national laws in a designated area of Hong Kong for a specific purpose without engaging BL 18, and the Administration's response.</p>	
011923-012443	Chairman Mr Dennis KWOK Administration	<p>Mr KWOK opined that the Legislative Council ("LegCo") had no authority to pass the Bill that would contravene the Basic Law ("BL"). Pointing out that BL 18 provided for an absolute prohibition on the application of Mainland laws in the Hong Kong Special Administrative Region ("HKSAR"), Mr KWOK considered that it was not right for the Administration to suggest that Mainland laws could be applied in the MPA so long as the proposed application would satisfy the proportionality test. The Administration reiterated its view on the interpretation of BL 18.</p> <p>Mr KWOK's view and the Administration's response in respect of the submission dated 12 March 2018 from the Hong Kong Bar Association ("HKBA").</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
012444-012946	Chairman Mr Kenneth LEUNG Administration	Mr LEUNG's enquiry and the Administration's response regarding: (a) the delineation of jurisdiction over the MPA and the Hong Kong Clearance Area; and (b) in respect of Article 7(2) of the Co-operation Arrangement as set out in Schedule 1 to the Bill, the application of Hong Kong laws in the MPA in relation to civil and/or criminal claims arising from defects in the construction works of the MPA against relevant parties.	
012947-013452	Chairman Ms Tanya CHAN Administration	Ms CHAN's query on whether the Bill would contravene Article 22(3) of BL and questions on the Administration's written reply dated 9 March 2018 given in part (6) of LC Paper No. CB(4)720/17-18(01). The Administration's response.	
013453-013926	Chairman Dr Elizabeth QUAT Administration	Dr QUAT considered the request raised by Ms Tanya CHAN concerning the provision of floor plans of the WKS as well as questions raised by certain members inappropriate and unreasonable. The Administration's response. Dr QUAT's further view on the time management of meetings. On Mr Kenneth LEUNG's earlier concern relating to the vertical limit of the MPA, the Administration advised that relevant information was available in Annex 1 to Plan No. 1 in the proposed Schedule 2 to the Bill.	
013927-014531	Chairman Mr HUI Chi-fung Administration	Mr HUI's enquiry and the Administration's response regarding the legal basis and relevant extrinsic materials as well as specific provisions in Chapter II of BL that the Administration was relying on in support of its interpretation of BL 18.	
014532-015310	Chairman Mr Jeremy TAM Administration	Mr TAM's concern and the Administration's response about the security arrangements at the Shek Kong Stabling Sidings ("SSS"), in particular immigration and customs clearance for trains travelling between the WKS and the SSS, including the train crew.	

Time Marker	Speaker(s)	Subject(s)	Action required
015311-015729	Chairman Ms Claudia MO Administration	Ms MO's enquiry and the Administration's response on the mechanism for law enforcement officers of the Mainland and the HKSAR to render assistance to travellers within the jurisdiction of the other.	
015730-020302	Chairman Mr CHAN Chi-chuen Administration	Mr CHAN shared HKBA's view that under Article 11 of BL, LegCo had no authority to pass the Bill if it contravened BL. Mr CHAN's concern and the Administration's response on the principles for the application of the proportionality test. The Administration reiterated its view that BL 18 was not engaged in the context of the proposed co-location arrangement.	
020303-020806	Chairman Mr Alvin YEUNG Administration	Mr YEUNG's question as to whether the Administration would introduce a "sunset clause" to the Bill, similar to section 14 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591). The Administration's response. In response to Mr YEUNG's further enquiry relating to the leasing arrangement of the MPA, the Administration advised that it had been discussing with the relevant Mainland authorities in relation to the right to use the MPA as well as the duration and the fee involved, and would revert to LegCo once consensus had been reached by both sides.	
020807-021229	Chairman Dr Fernando CHEUNG Administration	Dr CHEUNG followed up on Mr Alvin YEUNG's question as to why the Bill did not specify an expiry date similar to section 14 of Cap. 591, and the Administration's response.	
021230-021852	Chairman Mr WU Chi-wai Administration	Mr WU's enquiry and the Administration's response on the relationship between the Decision and the explanations on the Draft Decision provided by Director Zhang Xiaoming of the Hong Kong and Macao Office of the State Council ("Explanations"), and whether the interpretation of BL 18 contained in the Explanations was equivalent to an interpretation of the provision(s) of BL made by NPCSC in accordance with Article 158 of BL.	
021853-023411	-	Fifteen minutes' break	
023412-024144	Chairman Mr James TO	Mr TO's suggestion of forwarding the submission of the HKBA dated 12 March 2018 in respect of the Bill	Admin

Time Marker	Speaker(s)	Subject(s)	Action required
	Administration	to the Central Authorities. The Administration's response.	
024145-024550	Chairman Mr Kenneth LEUNG Administration	Mr LEUNG's concern about the absence of provisions in the Bill to provide for a competent authority to resolve disputes in relation to the delineation of jurisdiction (including jurisdiction of the courts) over the MPA, and the Administration's response.	
024551-025154	-	At the request of Mr Kenneth LEUNG, the Chairman directed the Clerk to ring the quorum bell to summon members to the meeting.	
025155-025739	Chairman Mr Andrew WAN Administration	Mr WAN's enquiry and the Administration's response on the following issues: (a) the hypothetical scenario where a passenger accessed the train tracks from the platform or a passenger train; and (b) the Administration's position on the applicability of BL 18 in the context of the proposed co-location arrangement.	
025740-030428	Chairman Dr KWOK Ka-ki Administration	Dr KWOK's view that the Bill would contravene BL. He expressed that the Administration should first seek the court's adjudication on whether the Bill was in compliance with BL before introducing it to LegCo, and that an act of the executive, i.e. the signing of the Co-operation Arrangement, should not be allowed to override BL. The Administration's explanation.	
030429-030957	Chairman Mr Andrew WAN Administration	Mr WAN's enquiry and the Administration's response regarding the possible impact on the commissioning of the Hong Kong Section of the XRL in case the court granted leave to judicial review applications concerning the proposed co-location arrangement. Mr WAN sought explanations on why arrangements relating to co-location of boundary control facilities adopted by other places/countries was not applicable in Hong Kong, and why allowing Mainland officials to enforce only those laws relating to clearance procedures in the MPA was not feasible. The Administration's response.	

Time Marker	Speaker(s)	Subject(s)	Action required
030958-031616	Chairman Ms Tanya CHAN Administration	Ms CHAN's concern and the Administration's response regarding the number and location of doors including emergency exits at the WKS, and the security measures to be adopted at the WKS in respect of the management of doors and passageways connecting the two port areas.	
031617-032405	Chairman Ms Claudia MO Administration	Ms MO's view that the Bill would contravene BL. Ms MO's concern and the Administration's response as to whether the Administration would designate a particular part of the HKSAR as an area lying outside Hong Kong again in future for achieving specific purposes.	
032406-033201	Chairman Dr Fernando CHEUNG Administration	Dr CHEUNG reiterated his request for detailed information on the internal aids and extrinsic materials in support of the Administration's conclusion that BL 18 was not engaged in the context of the proposed co-location arrangement. The Administration's response.	
033202-033716	Chairman Dr CHIANG Lai-wan Administration	Dr CHIANG's enquiry about the immigration arrangement for a baby born inside the MPA having regard to the residency status of the parents. The Administration's response.	
033717-034438	Chairman Mr CHU Hoi-dick Administration	Mr CHU's request for conducting another site visit to the WKS so that members could inspect the boundaries of the WKS MPA as set out in the Bill. The Administration's response.	
034439-035126	Chairman Mr Andrew WAN Administration	Mr WAN expressed his dissatisfaction over the Administration's explanation regarding its view on the interpretation of BL 18 and the legal basis of the Bill. The Administration's response.	
035127-035448	Chairman Mr CHAN Chun-ying Administration	Mr CHAN enquired whether the differences between the statutory requirements in the Mainland and in Hong Kong was the reason that no time limit on Mainland's right to use the MPA was stipulated in the Bill. The Administration's response.	
Any other business			
035449-	Chairman	Date of next meeting.	

Time Marker	Speaker(s)	Subject(s)	Action required
040250	Clerk Ms Tanya CHAN Administration Mr CHU Hoi-dick Ms Claudia MO Mr Jeremy TAM	Discussion on the meeting arrangement for the two public hearings to be held on 17 March and 7 April 2018.	
040250- 040251	Chairman	Closing remarks.	

Council Business Division 4
Legislative Council Secretariat
8 June 2020