

立法會
Legislative Council

LC Paper No. CB(4)681/19-20
(These minutes have been seen
by the Administration)

Ref : CB4/BC/2/17

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

**Minutes of the fourth meeting
held on Friday, 16 March 2018, at 8:30 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 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 Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, 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

Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
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
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent : Hon James TO Kun-sun
Hon Starry LEE Wai-king, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon MA Fung-kwok, SBS, JP
Hon CHAN Han-pan, JP
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HUI Chi-fung

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 Dominic LAI Kai-sang
Deputy Law Officer (Civil Law)(Advisory)

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

Mr Lawrence PENG Si-yun
Senior Assistant Law Draftsman

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)731/17-18(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**).

2. At 10:30 am, the Chairman extended the meeting for 15 minutes beyond the appointed ending time to allow sufficient time for discussion.

Follow-up actions to be taken by the Administration

3. The Bills Committee requested the Administration to provide information on whether the Hong Kong Bar Association had previously provided submissions to any Bills Committee stating that the bill under scrutiny, if passed, would contravene the Basic Law.

(Post-meeting note: the Administration's written response was issued to members vide LC Paper No. CB(4)850/17-18(01) on 3 April 2018.)

II. Any other business

Date of next meeting

4. Members noted that the next meeting would be held on 17 March 2018 from 10:00 am to 8:00 pm to receive public views on the Bill.
5. There being no other business, the meeting ended at 10:44 am.

Council Business Division 4
Legislative Council Secretariat
8 June 2020

**Proceedings of the fourth meeting of the
Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link
(Co-location) Bill
held on Friday, 16 March 2018, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Meeting with the Administration			
001317-001526	Chairman	Opening remarks.	
001527-001710	Administration	Briefing by the Administration [LC Paper No. CB(4)731/17-18(01)].	
001711-003154	Chairman Dr Fernando CHEUNG Ms Tanya CHAN Administration	Dr CHEUNG's enquiry and the Administration's response about the legal basis of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bill"), and the Administration's 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. Ms CHAN's question and the Chairman's response on the time management of the meeting.	
003155-004552	Chairman Mr LEUNG Yiu-chung Administration	Mr LEUNG's view that the proposed co-location arrangement under the Bill would contravene the principle of "one country, two systems" and undermine the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region ("HKSAR"), and the Administration's response.	
004553-005400	Chairman Dr Priscilla LEUNG Administration	Dr LEUNG's view on the interpretation of the Basic Law ("BL"), in particular BL 18. Dr LEUNG's concern and the Administration's response about the co-operation between Hong Kong and Mainland in handling cross-boundary crimes committed at the West Kowloon Station ("WKS").	
005401-010113	Chairman Mr LEUNG Yiu-chung Administration	Mr LEUNG was concerned that the Bill would contravene BL 22(3) and whether the Administration would adopt similar arrangements to apply Mainland laws to any other particular parts of the HKSAR in the future under the pretext that such arrangements would	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>bring benefits to Hong Kong people. The Administration's response. [details set out in part (6) of LC Paper No. CB(4)720/17-18(01)]</p> <p>The Administration added that in the light of BL 7, which stipulated that the land and natural resources within HKSAR were State property, there was no question of ceding Hong Kong land under the proposed co-location arrangement.</p>	
010114-010950	Chairman Mr CHAN Chi-chuen Administration	<p>Mr CHAN's request for the Administration to provide information on whether the Hong Kong Bar Association had previously provided submissions to any Bills Committee stating that the bill under scrutiny, if passed, would contravene BL.</p> <p>Mr CHAN expressed his dissatisfaction that the Administration was trying to put the blame on the Legislative Council ("LegCo") in the event that the Bill could not be passed before the target commissioning date of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") in September 2018, and the XRL could not commence operation. The Administration's response.</p> <p>Mr CHAN's enquiry on the principles relating to the application of the proportionality test. The Administration's response as set out in part (4) of LC Paper No. CB(4)720/17-18(01).</p>	Admin
010951-011040	Ms Tanya CHAN Chairman	Discussion on time management of the meeting.	
011041-011527	Chairman Mr YIU Si-wing Administration	Mr YIU's concern and the Administration's response about the mechanism relevant to the handling of cross-boundary crimes committed at the WKS.	
011528-012016	Chairman Dr Priscilla LEUNG Administration	<p>Dr LEUNG's view that the Decision of the Standing Committee of the National People's Congress on Approving 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 ("Decision") had provided a sound legal basis for implementing the co-location arrangement at the WKS.</p> <p>Dr LEUNG's enquiry and the Administration's</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		response regarding the handling of cross-boundary crimes committed at other land boundary control points, e.g. Shenzhen Bay Port.	
012017-012452	Chairman Mr Dennis KWOK Administration	<p>Mr KWOK asked whether all provisions in BL, including BL 1, would be subject to the proportionality test.</p> <p>The Administration advised that matters relating to BL 18 and the application of proportionality test should be considered separately. The Administration reiterated its stance that application of Mainland laws in the Mainland Port Area ("MPA") in accordance with the Co-operation Arrangement would not engage BL 18.</p>	
012453-012945	Chairman Mr Alvin YEUNG Administration	<p>Mr YEUNG followed up on Mr Dennis KWOK's enquiry as to whether all provisions in BL, including BL 1, would be subject to the proportionality test. The Administration's response.</p> <p>Mr YEUNG expressed concern over the issue of legal certainty of the Bill, based on the hypothetical situation where subsequent amendments to the Co-operation Arrangement were made in respect of the definitions of "reserved matter" and "non-reserved matter".</p> <p>The Administration's response.</p>	
012946-013435	Chairman Mr Jeremy TAM Administration	<p>Mr TAM's question and the Administration's explanation on the principles and considerations for the application of the proportionality test.</p> <p>Mr TAM's concern and the Administration's response regarding the employment-related obligations, rights and benefits, protection and insurance of the train captains of the Hong Kong operator of the XRL.</p>	
013436-013945	Chairman Mr KWONG Chun-yu Administration	<p>Mr KWONG's enquiry and the Administration's response regarding the Hong Kong Bar Association's view that the Bill would contravene BL 11 and that Members of LegCo should not deliberate on the Bill.</p> <p>Mr KWONG's question and the Administration's response regarding the Six-Monthly Report on Hong Kong published by the British Government, which referred to the co-location arrangement to be implemented at the WKS.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
013946-014432	Chairman Dr CHENG Chung-tai Administration	<p>In response to Dr CHENG's enquiry, the Administration advised that pursuant to Article 7(2) of the Co-operation Arrangement which had been reproduced in the proposed Schedule 1 to the Bill, the HKSAR would exercise jurisdiction (including jurisdiction of the courts) over matters relating to the standards of the construction of buildings and structures and related facilities, including fire safety, in accordance with the laws of the HKSAR.</p> <p>Dr CHENG's further enquiry about the source of authority to determine whether a matter fell within the definition of "reserved matter" or "non-reserved matter" proposed under clause 3(1) of the Bill. The Administration's response.</p>	
014433-015111	Chairman Mr WU Chi-wai Administration	<p>Mr WU was concerned that the Administration's position that BL 18 was not engaged in the context of the proposed co-location arrangement under the Bill was only mentioned in the Explanations on the Draft Decision on Approving 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, provided by Director Zhang Xiaoming of the Hong Kong and Macao Affairs Office of the State Council ("Explanations"), but not the Decision. The Administration's response.</p> <p>Mr WU also enquired whether the interpretation of BL 18 contained in the Explanations amounted to an interpretation of the provision(s) of BL made by the Standing Committee of the National People's Congress in accordance with BL 158. The Administration's response.</p>	
015112-015136	Chairman Administration	The Chairman's suggestion of providing the judgment recently handed down in connection with an election petition, which explained the relationship between an interpretation and relevant explanations made under Mainland laws, for members' reference.	
015137-015509	Chairman Mr Kenneth LEUNG Administration	Mr LEUNG's concern on the possible loopholes relating to tax matters for future documents signed or meetings convened inside the MPA. The Administration's response.	

Time Marker	Speaker(s)	Subject(s)	Action required
015510-015925	Chairman Mr CHU Hoi-dick Administration	Mr CHU reiterated his 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. Mr CHU's enquiry and the Administration's response about whether the Mass Transit Railway Ordinance (Cap. 556) or the Mass Transit Railway By-laws (Cap. 556B) had to be amended to facilitate the adoption of passenger real-name ticketing policy.	
015926-020613	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 the mechanism to be adopted in dealing with illegal activities or contrabands found on a passenger train leaving the WKS for the SSS. The Chairman extended the meeting for 15 minutes.	
Any other business			
020613-020752	Chairman	Date of next meeting and the meeting arrangements for the forthcoming public hearing sessions.	
020753-021807	Chairman Ms Tanya CHAN Clerk Ms Claudia MO Mr CHAN Chi-chuen Mr Dennis KWOK Mr CHU Hoi-dick Dr KWOK ka-ki	The seating arrangement for the members and deputations attending the public hearing session to be held on 17 March 2018. Discussion on procedural matters.	
021808-021812	Chairman	Closing remarks.	