

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

**List of follow-up actions arising from the discussion
at the meeting on 23 February 2018**

Government response

- (a) **A written response to “Statement of the Hong Kong Bar Association on the decision of the NPCSC of 27 December 2017 on the Co-operation Agreement between the Mainland and the HKSAR 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” issued on 28 December 2017**

On 29 December 2017, the Government of the Hong Kong Special Administrative Region (“HKSAR”) made an overall response to the different views expressed in the community on co-location arrangement, including the Statement of the Hong Kong Bar Association (please refer to **Annex**). The Government of the HKSAR hereby makes further response as follows –

The Basic Law, as the constitutional document of the HKSAR, establishes the fundamental systems and principles of the HKSAR. As constitutional law, the Basic law has sufficient flexibility to accommodate new things and new environments. Therefore, when considering whether the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”) should be passed, same as the passage of other laws by the Legislative Council (“LegCo”), a more appropriate approach should be to first consider the policy intent, and then conduct discussion on the provisions of the Bill with reference to the Articles 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”) reached between the HKSAR and the Mainland after consultation, and let the LegCo exercise its legislative power.

In fact, as the Government of the HKSAR has emphasised repeatedly, under the principle of “one country, two systems”, the HKSAR enjoys a high degree of autonomy. Pursuant to the Basic Law, the HKSAR has its own immigration controls system. The Government of the HKSAR can also formulate appropriate policies and environment for encouraging investments as well as promoting the economy and people’s livelihood etc. The implementation of co-location arrangement through negotiation, co-ordination and the signing of the Co-operation Arrangement by the HKSAR and relevant Mainland authorities is a clear demonstration of the exercise of a high degree of autonomy by the HKSAR in accordance with law. Meanwhile, the Co-operation Arrangement can only be smoothly implemented in Hong Kong in accordance with law after the Bill has been deliberated and passed by the LegCo of the HKSAR.

As regards the detailed reasons why the co-location arrangement and the Bill do not contravene the Basic Law, including Articles 18, 19 and 22(2) thereof, please refer to Parts 3 and 4 of the letter to the LegCo Secretariat issued by the Government of the HKSAR dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)).

The Law Society of Hong Kong also issued a statement on co-location arrangement on 18 January 2018. The Government of the HKSAR made a corresponding response to this statement on the same day. In addition, the opening remarks made by the Secretary for Justice at the Bills Committee meeting on 12 February 2018 explained the basis of the decision of the Standing Committee of the National People’s Congress. Please also refer to Part 1 of the letter to the LegCo Secretariat issued by the Government of the HKSAR dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)).

- (b) Relevant cases in other common law jurisdictions applicable in demonstrating that the proposed establishment of the Mainland Port Area and the proposed application of the laws of the Mainland within the Mainland Port Area under the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill would satisfy the proportionality test**

The proposed establishment of the Mainland Port Area and the proposed application of the laws of the Mainland therein under the Bill is an arrangement under the principle of “one country, two systems”.

We are not aware of any applicable cases in other common law jurisdictions, which have adjudicated on the question of whether the proposed establishment of the Mainland Port Area and the proposed application of the laws of the Mainland therein under the Bill would satisfy the proportionality test.

In the implementation of similar co-location arrangements in both common law and civil law jurisdictions, there are examples of adjusting applicable laws and jurisdictions by way of legislation.

- (c) Floor plan(s) of the West Kowloon Station of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, in particular that of the Mainland Port Area detailing the uses of different parts therein before the site visit scheduled for 27 February 2018**

The Government of the HKSAR has already provided the floor plans of B2, B3 and B4 levels of the West Kowloon Station (LC Paper No. CB(4)659/17-18(01)), detailing the uses of different parts therein, to the LegCo Secretariat on 26 February 2018 for Members’ reference.

**Department of Justice
Transport and Housing Bureau
7 March 2018**

**Response of the HKSAR Government on Co-location Arrangement
(29 December 2017)**

Different views have been expressed in recent days by individuals and groups in society about the Decision adopted by the Standing Committee (“NPCSC”) of the National People’s Congress (“NPC”) on December 27 on the implementation of co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“Decision”), and the Explanations on the draft Decision provided by Director of the Hong Kong and Macao Affairs Office of the State Council, Zhang Xiaoming (“Explanations”). Among those views include the statement issued by the Hong Kong Bar Association as well as views expressed by individual members of society in the media. In response to media enquiry on those views, the HKSAR Government provides the following consolidated response:

First, the HKSAR Government fully respects the rule of law. At the same time, it respects the Constitution of the People’s Republic of China (“PRC”), the basic policy of “one country, two systems” as well as the Basic Law of the HKSAR. The HKSAR Government reiterates that in the course of the consultations on co-location arrangement, both sides have always agreed that the co-location arrangement must be consistent with “one country, two systems” and must not contravene the Basic Law. HKSAR Government officials have also stated in the past that “one country, two systems” will not be harmed or the Basic Law contravened just for the sake of promoting convenience or enhancing economic benefits and efficiency. It is precisely for this reason that the two sides have over the past period of time repeatedly studied different co-location arrangement options as well as the legal issues involved, including the different views in society on relevant provisions of the Basic Law such as Articles 7, 18, 19, 20 and 22. Therefore, there is absolutely no question of the Constitution, the Basic Law or “one country, two systems” being

disregarded or disrespected just because the subject matter concerns “a good thing”.

On the contrary, on the basis of respecting the Constitution, the Basic Law and “one country, two systems”, the SAR and the Mainland have adopted the “Three-step Process” in taking forward the co-location arrangement. Step One of the “Three-step Process” reflects the enjoyment of a high degree of autonomy by the SAR and reflects the fact that neither the SAR nor the Mainland can implement co-location arrangement on its own. Step Two, apart from respecting the PRC Constitution and the constitutional status of the NPCSC, can also ensure that the co-location arrangement is ultimately consistent with the Basic Law. Step Three, through the local legislative process, fully reflects the autonomy of the SAR in handling co-location arrangement.

Second, views have been expressed that the Decision made by the NPCSC does not explain the legal basis or is lacking in it. However, both the Decision itself and the Explanations of Director Zhang Xiaoming have explained the legal basis of the Decision. Chairman of the HKSAR Basic Law Committee under the NPCSC, Li Fei, further explained the legal basis of the Decision at the press conference held after the adoption of the Decision. Legal experts often have different views on the same issue, so it is naturally understandable that different persons may have different views about the legal reasoning behind the Decision, but this does not mean the Decision has no legal basis.

Third, co-location arrangement involves enabling Mainland personnel to conduct procedures for exit and entry on high-speed rail passengers at the West Kowloon Station Mainland Port Area. Some have queried whether such arrangement would contravene Article 18 of the Basic Law. Although Article 18 of the Basic Law stipulates that national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law, the Explanations and Chairman Li Fei have explained the two main reasons why the co-location arrangement does not contravene Article 18 of the Basic Law:

(1) What Article 18 of the Basic Law prescribes is the extension and application of national laws in the entire HKSAR. In short, the area of application of the relevant national laws stipulated in Article 18 of the Basic Law is the entire HKSAR; they are implemented by the HKSAR itself and they are applicable to all persons in the HKSAR. However, the situation of co-location arrangement is clearly different from that prescribed under Article 18 of the Basic Law. When implementing co-location arrangement, the area of application of the national laws is only confined to the Mainland Port Area at the West Kowloon Station. The national laws are implemented by the relevant Mainland authorities and they are mainly applicable to high-speed rail passengers present in the Mainland Port Area.

(2) The Co-operation Arrangement expressly provides that, for the purposes of the application of the laws of the Mainland and the delineation of jurisdiction, the West Kowloon Station Mainland Port Area will be regarded as “being situated in the Mainland”. Therefore, as a matter of law, Article 18 of the Basic Law no longer applies. Similar provision has been used for the co-location model at the Shenzhen Bay Port Hong Kong Port Area, and “deeming provisions” of a similar nature can also be found in other legal contexts from time to time. Moreover, since the NPCSC has approved the Co-operation Arrangement, this also provides legal basis for the above provision.

There are also views in society that the present Decision amounts to an announcement that the Co-operation Arrangement complies with the Constitution and the Basic Law “just because the NPCSC says so”, and there are even views that this amounts to the “rule of man”. The HKSAR Government and members of society understand that under every system, there will be (and must be) an organ of highest and ultimate authority. Under “one country, two systems”, the HKSAR enjoys a high degree of autonomy in accordance with the Basic Law, but it must also respect the PRC Constitution as well as the status and powers of the NPCSC under the constitutional order of the State.

The NPC is the highest organ of state power, whereas the NPCSC is the NPC's permanent body. The entire process leading to the adoption of the present Decision by the NPCSC, which involves the SAR signing the Co-operation Arrangement with the Mainland, followed by submission by the State Council to the NPCSC for examination, and then, following deliberations in group meetings, the adoption of the Decision by the NPCSC by voting, is fully consistent with the constitutional process of the State. In other words, the present Decision is a decision made entirely pursuant to the PRC Constitution and related procedures. It has legal effect and is not a mere executive decision as suggested by some. Nor is it a case of "just because someone says so", not to mention a case of "rule of man" or a retrograde step in the implementation of the Basic Law. Moreover, in the course of the local legislative process under the Third Step, Legislative Council Members and different sectors of society will have the opportunity to discuss the relevant issues, and it is ultimately up to Legislative Council Members to decide whether to enact the local legislation thereby implementing co-location arrangement.

Finally, co-location arrangement is a matter that must be dealt with in light of the developments in the communication and transportation systems. For the high-speed rail passengers who use the procedures for exit and entry under co-location arrangement, the procedures and their rights are basically the same as those under the traditional "separate location" arrangement. The main difference is that co-location arrangement is more convenient and efficient. It is hoped that members of society can understand co-location arrangement and related matters in an objective, pragmatic and all-rounded manner.