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Secretary General  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Ms Sophie LAU)

Dear Ms Lau,

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

**Joint letter from Hon Tanya CHAN, Hon Alvin YEUNG,  
Hon Dennis KWOK, Hon KWOK Ka-ki and Hon Jeremy TAM  
regarding Article 18 of the Basic Law**

We refer to your letter dated 15 March 2018, which encloses a joint letter from Hon Tanya CHAN, Hon Alvin YEUNG, Hon Dennis KWOK, Hon KWOK Ka-ki and Hon Jeremy TAM of the same date asking for extrinsic materials on the intent of Article 18 of the Basic Law (“BL 18”). Our reply is as follows.

The principles regarding the interpretation of the Basic Law laid down by the Court of Final Appeal as well as the relevant case law have been discussed in detail in Part 2 of our written response dated 9 March

2018 (LC Paper No. CB(4)720/17-18(01)) and will not be repeated here. The salient points are summarised as follows:

1. The courts must avoid a literal, technical, narrow or rigid approach. Instead, they must consider the purpose and context of the provision concerned.
2. Overall speaking, the purpose of the Basic Law is to establish the Hong Kong Special Administrative Region (“HKSAR”) being an inalienable part of the People’s Republic of China with a high degree of autonomy in accordance with the principle of “one country, two systems”. Same as other constitutional documents, the Basic Law distributes and delimits powers.
3. When interpreting a particular provision of the Basic Law, the courts would consider internal aids as well as extrinsic materials which throw light on the context and purpose of that provision.
4. Internal aids include provisions in the Basic Law other than the provision in question and the Preamble.
5. Extrinsic materials include (but are not limited to) the Joint Declaration, the Explanations on the Basic Law (draft) given to the National People’s Congress for deliberation before the adoption of the Basic Law, materials brought into existence prior to or contemporaneous with the enactment of the Basic Law, as well as the state of domestic legislation at that time.

BL 18 is stipulated in Chapter II of the Basic Law. Chapter II provides the most immediate context to the meaning of BL 18 and must be taken into account.

Chapter II of the Basic Law explains the relationship between the Central Authorities and the HKSAR, especially the powers which the State confers on the HKSAR and the powers which the State preserves for the Central Authorities.

It can be seen that the intent of BL 18 is to restrict the general application of national laws to all persons within the HKSAR so that the high degree of autonomy and the legal system of the HKSAR would not be undermined.

Given the above, we consider that BL 18 seeks to restrict the following situation:

1. As far as territorial scope is concerned, Mainland laws are applicable in the entire HKSAR.
2. As regards who would be subject to the laws, Mainland laws are imposed on all persons in Hong Kong.
3. Concerning the enforcement agencies, Mainland laws are enforced by Hong Kong authorities in the entire HKSAR.

For the following reasons, establishing the Mainland Port Area (“MPA”) at the West Kowloon Station and applying Mainland laws there in accordance with 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”) would not give rise to the situation sought to be restricted by BL 18 as mentioned above:

1. The MPA is established for a specific purpose to meet a real policy need (namely, conducting Mainland clearance

procedures on high-speed rail passengers) pursuant to the Co-operation Arrangement and does not extend to the entire HKSAR.

2. Mainland laws are mainly applicable to high-speed rail passengers in the MPA but not all persons in Hong Kong.
3. Mainland laws are enforced by Mainland authorities in the MPA but not Hong Kong authorities.
4. The entire arrangement does not undermine the immigration system of Hong Kong.
5. Importantly, citizens could make their own choice as to whether to use the high-speed rail and enter the MPA. The arrangement does not force the application of Mainland laws on any person. This is no different from them having chosen to enter another jurisdiction (e.g. Luohu and Futian Ports etc.) and subjecting themselves to the applicable laws therein.

The HKSAR Government therefore considers that applying Mainland laws in the MPA in accordance with the Co-operation Arrangement does not engage BL 18.



( Ronald CHENG )

for Secretary for Transport and Housing

c.c. Secretary for Justice  
Secretary for Security