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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**

**Written enquiry from Hon CHU Hoi-dick**

We refer to your letter dated 15 March 2018, enclosing a written enquiry from Hon CHU Hoi-dick dated 13 March 2018 in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). We observe that some of the questions are not directly related to the Bill, and may not be relevant to the scope of discussion of the Bills Committee. That being said, we will address all of the questions raised by Hon CHU Hoi-dick in this written reply to facilitate future discussions on appropriate platforms as necessary.

**(1) Supplementary Service Concession Agreement (“SSCA”), Operating Agreement (“OA”), application of laws in places outside the Mainland Port Area and the need for amending local legislation**

Matters in relation to the SSCA of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”)

(Parts 1(1) to (2) of Hon CHU Hoi-dick’s written enquiry)

At the meeting of the Executive Council on 12 September 2017, the Council advised and the Chief Executive ordered that the land or interests or other rights in respect of land for the operation of the Hong Kong Section of the XRL should be vested in and the movable assets of the XRL be assigned to the Kowloon-Canton Railway Corporation (“KCRC”) at nominal value, and the KCRC would in turn incorporate the Hong Kong Section of the XRL into its Service Concession Agreement (“SCA”) signed with the MTR Corporation Limited (“MTRCL”) in 2007. The KCRC shall then discuss and draw up the SSCA with the MTRCL according to the SCA for granting a service concession to operate the Hong Kong Section of the XRL to the MTRCL.

The arrangements of the SCA cover, amongst others, the period and payment of service concession, as well as the requirements for the MTRCL to provide services according to prescribed standards and surrender the assets upon the end of the service concession. For the key terms in the SCA, they have been listed out in detail in the Circular issued to independent shareholders by the MTRCL during the Rail Merger in 2007.

As mentioned above, the MTRCL and the KCRC will commence discussion on the SSCA for the Hong Kong Section of the XRL, and announce the outcome of the discussion at an appropriate time. The discussion on the SSCA and its terms does not involve any Mainland parties.

Matters in relation to the OA entered into between the Government and the MTRCL in accordance with the Mass Transit Railway Ordinance  
(Parts 1(3) to (4) of Hon CHU Hoi-dick's written enquiry)

The Government has put in place a well-established regulatory regime for ensuring the safety and reliability of mass transit railway service. The Mass Transit Railway Ordinance (Cap. 556) stipulates that the MTRCL shall maintain a proper and efficient service at all times in accordance with this Ordinance and the OA entered into between the Government and the MTRCL. The OA sets performance targets in respect of MTRCL's train frequencies and station facilities, including train service delivery, journeys on time, escalator reliability and lift reliability etc.

As for the Hong Kong Section of the XRL, the Government will sign a Supplemental Operating Agreement ("SOA") to stipulate the service standards of the MTRCL's operation of the XRL, and announce the outcome of the review at an appropriate time. Similarly, the discussion on the SOA and its terms does not involve any Mainland parties.

Application of laws in places outside the Mainland Port Area  
(Parts 1(6) and (8) to (13) of Hon CHU Hoi-dick's written enquiry)

Under the co-location arrangement, the Hong Kong Port Area and non-port areas of the West Kowloon Station are under the jurisdiction of the Hong Kong Special Administrative Region ("HKSAR"). As such, laws of Hong Kong, including the Mass Transit Railway Ordinance and the Mass Transit Railway By-laws (Cap. 556B) shall remain applicable in these places.

The Bill aims to enact provisions for the purpose of the application of Mainland laws and Hong Kong laws in the Mainland Port Area, and for the purpose of the delineation of jurisdiction (including jurisdiction of the courts) over the Mainland Port Area. Other places in

the West Kowloon Station which are not part of the Mainland Port Area do not fall within the coverage of the Bill, and Hong Kong law including the Mass Transit Railway Ordinance and the Mass Transit Railway By-laws will continue to apply to such places. Therefore, it is not necessary for the Bill to deal with matters of such places.

In other words, places in the West Kowloon Station which are not part of the Mainland Port Area still fall under the definition of “railway premises” in the Mass Transit Railway Ordinance and the Mass Transit Railway By-laws, and thus no legislative amendment is required. We also consider it unnecessary to propose amendments to other legislation in Hong Kong.

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 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”).

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 HKSAR Government 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, please refer to Parts 3 and 4 of the letter to the LegCo Secretariat issued by this Bureau dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)) and Parts 2 to 4 and 6 of the letter to the LegCo Secretariat issued by this Bureau dated 9 March 2018 (LC Paper No. CB(4)720/17-18(01)).

## **(2) Matters in relation to the right to use of the Mainland Port Area**

### Arrangements on the right to use

(Parts 2(1)(i) to (iv) and (2) of Hon CHU Hoi-dick's written enquiry)

The LegCo Finance Committee approved the funding application for the construction works of the Hong Kong Section of the XRL in January 2010 and the additional funding application in March 2016, which covered the costs for the construction of boundary control facilities of both places with a budget of around \$3.477 billion. No land development cost was involved. As at 31 December 2017, the cumulative expenditure of the awarded contracts for the construction of the West Kowloon Station has been around \$27.3 billion.

Pursuant to the Co-operation Arrangement, the Mainland Port Area comprises the designated areas on B2 and B3 levels, the platform areas on B4 level as well as the relevant connecting passageways at the West Kowloon Station, and includes the Mainland Clearance Area and back office, the waiting hall for departing passengers, station platforms and the connecting passageways and escalators. The construction floor area of the Mainland Port Area is around one-fourth of the total construction floor area of the West Kowloon Station.

Venues within the area of the Mainland Port Area 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 would be provided for by an agreement to be signed by both sides. The HKSAR Government is now conducting discussions with the Mainland on the issue and will report to the public at an appropriate juncture. Since matters such as the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area do not affect the delineation of applicable laws and jurisdiction in respect of the Mainland Port Area, the discussions between the HKSAR Government and the Mainland on such matters will have no bearing on LegCo's scrutiny of the Bill.

Details of venues within the Mainland Port Area

(Parts 1(5) and 2(1)(v) of Hon CHU Hoi-dick's written enquiry)

KX2290, RDS/XRL-STT/1, RDS/XRL-STT/2 and RDS/XRL-STT/3 mentioned in Hon CHU Hoi-dick's written enquiry are the numbers of the Short Term Tenancies granted by the Lands Department. Short Term Tenancy No. KX2290 concerns the use of land for the purpose of establishing a seawater cooling system for a mall adjacent to the West Kowloon Station, and is irrelevant to the Hong Kong Section of the XRL project; the other three are Short Term Tenancies granted to the MTRCL for the construction of the Hong Kong Section of the XRL and relevant roads in the vicinity.

As mentioned above, at the meeting of the Executive Council on 12 September 2017, the Council advised and the Chief Executive ordered that the land or interests or other rights in respect of land for the operation of the Hong Kong Section of the XRL should be vested in and the movable assets of the XRL be assigned to the KCRC at nominal value. The HKSAR Government will vest the relevant land to the KCRC in accordance with section 7A(1) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372), and charge a nominal premium at the

prevailing standard rate, i.e. \$1,000. The KCRC will be required to pay the HKSAR Government an annual rent equivalent to 3% of the rateable value of the land for the operation of the XRL vested in the KCRC assessed from time to time for the tenure of the land vested in it. The HKSAR Government and the KCRC has commenced discussions on how to implement the above matters, and will announce the outcome of the discussion at an appropriate time.

Mentioning the right to use in the Preamble

(Part 2(3) of Hon CHU Hoi-dick's written enquiry)

As opposed to the case for the West Kowloon Station, by the time the HKSAR Government introduced the Shenzhen Bay Port Hong Kong Port Area Bill into the LegCo on 6 February 2007, the State Council had decided in the Official Reply of the State Council Concerning the Area of the Hong Kong Port Area at the Shenzhen Bay Port over which the Hong Kong Special Administrative Region is Authorized to Exercise Jurisdiction and the Land Use Period dated 30 December 2006 that the land use right of the Hong Kong Port Area at the Shenzhen Bay Port was to be acquired by way of a lease under a lease contract for State-owned land signed between the HKSAR Government and the People's Government of the Shenzhen Municipality of Guangdong Province; that the land use period should commence on the day on which the Shenzhen Bay Port commences operation and should expire on 30 June 2047; and that with the State Council's approval of a submission made after the parties' mutual consultation and submitted in accordance with the relevant procedures, the land use right might be terminated earlier or the lease might be renewed after its expiry. Therefore, the above matters were mentioned in the Preamble of the Shenzhen Bay Port Hong Kong Port Area Bill to set out the background leading to the bill.

As for the XRL, the Preamble of the Bill is intended to set out the background of the implementation of the co-location arrangement for the XRL through the "Three-step Process". As such, it mentions the

Co-operation Arrangement signed by the HKSAR and the Mainland on 18 November 2017 (i.e. Step One of the “Three-step Process”) and the Decision of the Standing Committee of the National People’s Congress (“NPCSC”) approving the Co-operation Arrangement on 27 December 2017 (i.e. Step Two of the “Three-step Process”). It is necessary for the HKSAR Government to enact a piece of local legislation, namely the Bill being scrutinised by the LegCo, in accordance with the NPCSC’s Decision and the approved Co-operation Arrangement.

We must emphasise that the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area to be implemented by the Bill originates from the NPCSC’s Decision and the approved Co-operation Arrangement, and has no direct relationship to the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area. It is thus unnecessary to include provisions on the right to use of the venues within the Mainland Port Area in the Preamble of the Bill. As mentioned above, matters such as the acquisition of the right to use, duration and fees would be provided for by an agreement to be signed by both sides. The HKSAR Government will report to the public at an appropriate time.

### **(3) Matters in relation to the Co-operation Arrangement**

Nature of agreements signed between Hong Kong and the Mainland  
(Parts 3(1) to (2) of Hon CHU Hoi-dick’s written enquiry)

Agreements signed between Hong Kong and the Mainland do not by themselves form part of the laws of Hong Kong. Whether or not any provision of a particular agreement can only be implemented smoothly in Hong Kong by way of local legislation would depend on the actual circumstances.



Governor of Guangdong Province as the Mainland's signatory of the Co-operation Arrangement

(Part 3(3) of Hon CHU Hoi-dick's written enquiry)

As shown in the Co-operation Arrangement, in implementing the co-location arrangement, the HKSAR Government needs to conduct co-ordination with various Mainland Authorities Stationed at the Mainland Port Area, namely immigration inspection authority, customs authority, inspection and quarantine authority, integrated port administration authority and railway police authority, and thus maintain regular communications with the relevant parties of the Guangdong Province. Upon discussion with the Mainland, the Governor of Guangdong Province was delegated as the Mainland representative to sign the Co-operation Arrangement with the Chief Executive of the HKSAR.

Relationship between the Co-operation Arrangement and the Bill

(Parts 3(4) to (5) of Hon CHU Hoi-dick's written enquiry)

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.

Articles 1 and 2 of the Co-operation Arrangement concern the establishment of the Mainland Port Area inside Hong Kong and the delineation of the Mainland Port Area. These provisions are implemented in Hong Kong by way of Clauses 4 and 5 of the Bill.

As regards Articles 3, 4 and 7 of the Co-operation Arrangement, they concern the delineation of Hong Kong and Mainland laws applicable in the Mainland Port Area and the delineation of matters over which Hong Kong and Mainland exercise jurisdiction over the Mainland Port Area. These provisions are implemented in Hong Kong by way of Clauses 3 and 6 of the Bill. In particular, Clause 3 of the Bill defines reserved matters and non-reserved matters in accordance with Articles 3,

4 and 7 of the Co-operation Arrangement. Setting out the text of Articles 3, 4 and 7 of the Co-operation Arrangement in Schedule 1 to the Bill would help inform the public of their content.

Other provisions of the Co-operation Arrangement either concern matters relating to the Mainland only or can be implemented in Hong Kong by way of existing legislation or administrative arrangements. It is not necessary to implement these provisions by way of the Bill for the purpose of their operation in Hong Kong.

According to Article 73(1) of the Basic Law, the LegCo may propose amendments to the provisions of the Bill in accordance with the provisions of the Basic Law and legal procedures. However, all such amendments must be relevant to the subject matter of the Bill.

#### **(4) Real-name ticket purchase**

##### Adoption of real-name ticket purchase for high-speed rail

(Parts 1(7) and 4(1) of Hon CHU Hoi-dick's written enquiry)

To prevent vendors from conducting ticket scalping for high-speed rail service, passengers are required to purchase tickets with their real names in the Mainland at present. High-speed rail passengers must provide authentic and valid personal identification information in various procedures, such as purchasing tickets, collecting tickets, using tickets to board a train, altering tickets in different scenarios, seeking refunds, reporting loss and applying for replacement tickets etc. Railway operators will then print on the rail tickets passengers' numbers (certain digits of the numbers will be hidden) and names listed on their personal identification documents, and perform checks before the passengers board on a train in accordance with the assigned seat numbers shown on the tickets.

As a contractual arrangement, the Conditions of Issue of Tickets for high-speed rail will specify that passengers are required to purchase

tickets with valid personal identification documents and subject to the checking of high-speed rail operators. As such, it is not necessary to adopt real-name ticket purchase by way of amending the Mass Transit Railway By-laws. Relevant checking will be completed before passengers enter the West Kowloon Station Mainland Port Area.

#### Personal data management of XRL Operator

(Part 4(2) of Hon CHU Hoi-dick's written enquiry)

Taking into account the operation details of the XRL ticketing system, the MTRCL has evaluated the privacy impact by the implementation of real-name ticket purchase and submitted a Privacy Impact Assessment Report to the Privacy Commissioner for Personal Data for scrutiny. In any case, the MTRCL will ensure that the personal data will be encrypted. Relevant data will be transmitted and stored in an encrypted manner, and deleted within a specified period of time in accordance with the relevant statutory requirements.

#### **(5) Intercity Through Train**

##### Establishing a “cross-boundary restricted area” in the West Kowloon Station

(Parts 5(1) and (6) of Hon CHU Hoi-dick's written enquiry)

As for why a “cross-boundary restricted area”, instead of a closed area, will be established in the West Kowloon Station in future, we must understand that the West Kowloon Station is more than a control point. It is a station to be managed by the operator of the Hong Kong Section of the XRL, a situation akin to that of the Hung Hom Intercity Through Train Station. The Hong Kong Port Area will be declared and managed as a “cross-boundary restricted area” under the Mass Transit Railway By-laws. This arrangement is the same as that adopted for the Hung Hom Intercity Through Train Station.

Under the Mass Transit Railway By-laws, no person shall enter

or remain in a “cross-boundary restricted area” except for specified train passengers and persons with valid permits etc. Hence, management as a “cross-boundary restricted area” by demarcation of “cross-boundary restricted area” under the Mass Transit Railway By-laws is no different from administration as a closed area by demarcation of closed area under the Public Order Ordinance (Cap. 245), in that both can achieve the purpose of effectively prohibiting entry by non-cross-boundary passengers and unauthorized persons, and are conducive to maintaining the law and order in the restricted area. A merit for managing a railway station as a “cross-boundary restricted area” under the Mass Transit Railway By-laws is its convenience to the daily operation management of the railway operator. For instance, it is more convenient for the railway operator to issue permits direct to eligible persons (including staff members of the railway operator and other workers at the railway station) for entry into the “cross-boundary restricted area” for work. If a closed area is to be demarcated under the Public Order Ordinance, it will be necessary to apply to the Hong Kong Police Force for such permits each and every time.

As mentioned above, the Hong Kong Port Area will be under the jurisdiction of the HKSAR and thus the Mass Transit Railway By-laws will remain applicable in the mentioned place. Declaring the Hong Kong Port Area as a “cross-boundary restricted area” under the Mass Transit Railway By-laws does not require any amendment to the Mass Transit Railway By-laws, and does not need to be packaged with the Bill for scrutiny.

#### Operation of the Intercity Through Train at Hung Hom

(Parts 5(2) to (5) of Hon CHU Hoi-dick’s written enquiry)

At present, the MTRCL’s revenue from its transport operations includes that of the Intercity Through Trains. The cross-boundary area of the “cross-boundary restricted area” at the Hung Hom Station is managed by various departments of the HKSAR Government including Immigration Department and Hong Kong Customs and Excise

Department, while the passenger waiting area is managed by the MTRCL. As regards to the request in the written enquiry on providing an electronic copy of the plan showing the “cross-boundary restricted area” at the Hung Hom Station, there is a specific arrangement under the Mass Transit Railway By-laws. The concerned plan shall be kept in the head office of the MTRCL, and a copy shall be available for public inspection at the Station Manager’s office at the Hung Hom Station. Public can inspect the plan at the Hung Hom Station if necessary, but the plan shall not be taken or copied.

China Travel Service (Hong Kong) Limited is one of the appointed ticket agents of the MTRCL for Intercity Through Trains. The website mentioned by Hon CHU Hoi-dick is a general guideline provided by the travel agency to the passengers of Intercity Through Trains, and is not part of Hong Kong law. The conditions of travel for through trains are executed by MTRCL staff in accordance with the Conditions of Travel of Intercity Through Trains (Guangdong Line) and the Conditions of Travel of Intercity Through Trains (Beijing/Shanghai Line). The relevant Conditions have been uploaded to the MTRCL’s website for Intercity Through Trains. Details can be browsed at <https://www.it3.mtr.com.hk/b2c/frmLuggage.asp?strLang=Eng>.

Yours sincerely,



( Ronald CHENG )

for Secretary for Transport and Housing

c.c. Secretary for Justice  
Secretary for Security