

**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 March 2018**

**Government response**

**(a) The reasons for the Secretary for Justice and the Secretary for Security not attending the meeting held on 23 March 2018, and whether the two Principal Officials concerned would attend other forthcoming meetings of the Bills Committee**

The Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”) is introduced by the Transport and Housing Bureau. Pursuant to the usual arrangement for processing bills, the relevant bureau will send senior officials to attend the bills committee meetings in order to assist committee members in scrutinising the bill. Having considered the keen interest expressed by Members of the Legislative Council (“LegCo”) in the major principles of the co-location arrangement and the Bill from the legal, security, operational and other perspectives, the Secretary for Justice and the Secretary for Security specifically attended the first four meetings of the Bills Committee on the Bill (i.e. the meetings held on 12 February, 23 February, 13 March and 16 March 2018) in order to address Members’ queries on various aspects from a macro-policy perspective.

Similar to other bills committees, having discussed the principles of the Bill, the Bills Committee has entered into the stage of clause-by-clause examination, which involves more technical discussions. As the Principal Official responsible for the Bill, the Secretary for Transport and Housing will continue to attend the remaining meetings with relevant colleagues from the Department of Justice and the Security Bureau to facilitate the Bills Committee to conduct more detailed scrutiny of the Bill.

The Secretary for Justice and the Secretary for Security will continue to keep in view the scrutiny of the Bill. The Government will arrange for the attendance of officials representing the Government at the meetings having regard to the internal division of responsibilities, the work schedules and the actual circumstances.

**(b) A written account of the Solicitor General’s response to Hon James TO’s enquiry regarding the Administration’s view on the interpretation of Article 18 of the Basic Law, and the Administration’s position on the applicability of Article 18 of the Basic Law in the context of the proposed co-location arrangement**

At the meeting, Hon James TO queried whether the Government’s position that applying Mainland laws in the Mainland Port Area (“MPA”) does not engage Article 18 of the Basic Law (“BL 18”) is based on the following grounds:

1. The MPA at the West Kowloon Station is only leased to the Mainland authorities for their use.
2. Mainland laws in the MPA are only applicable to specific individuals.

The Solicitor General clearly pointed out at the meeting that the first point mentioned above is not the legal basis for applying Mainland laws in the MPA. Applying Mainland laws in the MPA would require enactment of a deeming provision in the Bill by the LegCo which deems the MPA as an area lying outside Hong Kong but lying within the Mainland in respect of non-reserved matters.

As regards whether the LegCo has the competence under the Basic Law to enact the deeming provision in the Bill, this would depend on whether that provision contravenes the Basic Law, including BL 18. Accordingly, we must consider the first and foremost question of whether applying Mainland laws in the MPA would engage BL 18.

As we have repeatedly emphasised, whether BL 18 is applicable would depend on its intent and purpose. As far as application of Mainland laws in the MPA is concerned, we must consider the territorial scope of the application of such laws in Hong Kong, to whom such laws would apply, and the agencies enforcing such laws, instead of how many persons would be subject to such laws (i.e. the second point mentioned by Hon James TO).

We must also consider the purpose of the Bill as a whole, namely to establish an MPA inside Hong Kong, to deem the MPA as an area lying outside Hong Kong but lying within the Mainland by way of local legislation, and to apply Mainland laws in the MPA, in exercise of Hong Kong's high degree of autonomy under the Basic Law regarding implementation of immigration controls and without affecting its administrative boundary.

**(c) A response to Dr Hon Fernando CHEUNG's enquiry on the Administration's interpretation of Article 18 of the Basic Law, in particular, detailed information on the internal aids and extrinsic materials (including pre-enactment and/or post-enactment materials) that may support its view on the interpretation of Article 18 of the Basic Law and its conclusion that Article 18 is not engaged in the context of the proposed co-location arrangement under the Bill**

Detailed discussions on the internal aids and extrinsic materials throwing light on BL 18 have been set out in our written response of 22 March 2018 (LC Paper No. CB(4)803/17-18(01)) and will not be repeated here.

In gist, internal aids include provisions in the Basic Law other than the provision in question and the Preamble. 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 Hong Kong Special Administrative Region (“HKSAR”), especially the powers which the State confers on the HKSAR and the powers which the State preserves for the Central Authorities.

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 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. The main point is that citizens could make their own choices whether or not to use the high-speed rail and enter the MPA. The arrangement does not force the application of Mainland laws on any person. The situation of passengers entering the MPA is as if they have chosen to enter another jurisdiction (e.g. Luohu and Futian Ports etc.) and subject themselves to the applicable laws therein.

We therefore consider that applying Mainland laws in the MPA in accordance with the Co-operation Arrangement does not engage BL 18.

As regards extrinsic materials which throw light on the provisions in the Basic Law, they are generally confined to materials brought into existence prior to or contemporaneous with the enactment of the Basic Law, such as 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, as well as the state of domestic legislation at that time.

Co-location is undoubtedly a new matter as far as Hong Kong is concerned. Although its detailed arrangement could not be anticipated before or at the time of the enactment of the Basic Law, as we have repeatedly emphasised, we must treat the Basic Law as a constitutional document when construing its provisions. According to the Court of Final Appeal in *Ng Ka Ling v Director of Immigration*, “[a]s is usual for

constitutional instruments, it uses ample and general language. It is a living instrument intended to meet changing needs and circumstances. It is generally accepted that in the interpretation of a constitution such as the Basic Law a purposive approach is to be applied.”<sup>1</sup>

**Transport and Housing Bureau**  
**Department of Justice**  
**Security Bureau**  
**6 April 2018**

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<sup>1</sup> FACV 14/1998 (29 January 1999), paras 73-74, reported in (1999) 2 HKCFAR 4.