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12 April 2018

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
dated 6 April 2018**

We refer to your letter dated 9 April 2018, enclosing a joint letter from Hon Tanya CHAN, Hon Alvin YEUNG, Hon Dennis KWOK, Hon KWOK Ka-ki and Hon Jeremy TAM dated 6 April 2018 (“Joint Letter”) in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). Our reply is as follows.

(1) Article 18 of the Basic Law (“BL 18”) (Part 1 of the Joint Letter)

For the principles regarding the interpretation of the Basic Law laid down by the Court of Final Appeal, the relevant case law and the Government’s understanding of BL 18, please refer to Part 2 of our reply to the Legislative Council (“LegCo”) Secretariat dated 9 March 2018 (LC Paper No. CB(4)720/17-18(01)), our reply to Hon Tanya CHAN, Hon Alvin YEUNG, Hon Dennis KWOK, Hon KWOK Ka-ki and Hon Jeremy TAM dated 22 March 2018 (LC Paper No. CB(4)803/17-18(01)), and Part (b) of our reply to the LegCo Secretariat dated 4 April 2018 (LC Paper No. CB(4)870/17-18(01)).

(2) Jurisdiction of Hong Kong courts (Part 2(i) of the Joint Letter)

Clause 6(1) of the Bill provides: “Except for reserved matters, the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland for the purposes of – (a) the application of the laws of the Mainland, and of the laws of Hong Kong, in the Mainland Port Area; and (b) the delineation of jurisdiction (including jurisdiction of the courts) over the Mainland Port Area.”

In our view, even though the Bill has restricted the jurisdiction of Hong Kong courts, such restriction does not contravene Article 19(2) of the Basic Law (“BL 19(2)”) given that it is imposed by an ordinance enacted by the LegCo and meets the “proportionality test”¹.

¹ For the detailed reasons why the restriction imposed by the Bill on the jurisdiction of Hong Kong courts would meet the “proportionality test”, please refer to Part 4 of the reply issued to the LegCo Secretariat by this Bureau dated 9 March 2018 (LC Paper No. CB(4)720/17-18(01)).

(3) “Proportionality test” (Part 2(ii) of the Joint Letter)

If the court considers that a particular provision in the Basic Law confers powers or guarantees rights and freedoms which may be restricted by the executive authorities or the legislature, it would apply the “proportionality test” to determine whether the restriction concerned contravenes the Basic Law.

(4) BL 19(2) (Part 2(iii) of the Joint Letter)

Although the Bill and the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) deal with different matters, they both restrict jurisdiction of the courts by means of an enactment. As regards the relevant case law, so far there has not been any litigation or court judgment relating to BL 19(2).

Yours sincerely,



(Ronald CHENG)

for Secretary for Transport and Housing

c.c. Secretary for Justice
Secretary for Security