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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 9 April 2018, enclosing a written enquiry from Hon CHU Hoi-dick dated 6 April 2018 in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). Our reply is as follows.

**(1) Legal basis for deliberating and passing the Bill by the Legislative Council (“LegCo”)**

(Parts 1(A), (B) and (D) and Parts 2(D) to (F) of Hon CHU Hoi-dick’s written enquiry)

As stated in paragraph 2.1.10 of Drafting Legislation in Hong Kong – A Guide to Styles and Practices, “Preambles are rarely used in Hong Kong Ordinances these days. A preamble is appropriate if an explanation of certain facts is necessary to provide a context in which to understand the legislation.”

To provide for the factual background of the Bill, its Preamble refers to the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region (“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 (“Co-operation Arrangement”) as well as the Decision of the Standing Committee of the National People’s Congress (“NPCSC”) on Approving 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 (“Decision”).

The legal basis for deliberating and passing the Bill by the LegCo has been discussed in detail in Parts 1(6) and (8) to (13) of the reply to Hon CHU Hoi-dick issued by this Bureau dated 4 April 2018 (LC Paper No. CB(4)865/17-18(01)) and will not be repeated here. The salient points are as follows:

1. Same as the passage of other laws, in considering whether the Bill should be passed, the LegCo should first consider the policy intent, then examine the provisions of the Bill

with reference to the Articles of the Co-operation Arrangement, and exercise its legislative power.

2. According to the Basic Law, the HKSAR has its own immigration controls system. The HKSAR Government can also formulate appropriate policies and provide suitable environment to encourage investments, promote economy and improve people's livelihood etc. Implementation of the co-location arrangement through the signing of the Co-operation Arrangement by the HKSAR and the relevant Mainland authorities is a clear demonstration of the exercise of a high degree of autonomy by the HKSAR in accordance with law.
3. At the same time, 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.

As regards whether the LegCo has the competence to pass the deeming provision in the Bill which deems the Mainland Port Area ("MPA") as an area lying outside Hong Kong but lying within the Mainland in respect of non-reserved matters, please refer to Part (b) of the reply issued to the LegCo Secretariat by the HKSAR Government dated 6 April 2018 (LC Paper No. CB(4)882/17-18(01)). In gist, whether the LegCo has such competence depends on whether the provision concerned contravenes the Basic Law including Article 18 ("BL 18"). As stated in the reply to Hon Tanya CHAN, Hon Alvin YEUNG, Hon Dennis KWOK, Hon KWOK Ka-ki and Hon Jeremy TAM issued by this Bureau dated 22 March 2018 (LC Paper No. CB(4)803/17-18(01)), after considering the context and purpose of BL 18, the HKSAR Government believes that establishing the MPA at the West Kowloon Station and applying

Mainland laws in the MPA in accordance with the Co-operation Arrangement does not engage BL 18.

According to Article 73(1) of the Basic Law, the LegCo of the HKSAR may enact, amend and repeal laws in accordance with the provisions of the Basic Law and legal procedures.

**(2) Legal justifications showing that the Bill is consistent with the Basic Law**

(Part 1(C) of Hon CHU Hoi-dick's written enquiry)

The Decision approves the Co-operation Arrangement and confirms that it is consistent with the Constitution of the People's Republic of China ("PRC Constitution") and the Basic Law. This is consistent with the view taken by the HKSAR Government. As regards the detailed reasons why the Bill does not contravene the Basic Law, please refer to Parts 3 and 4 of the reply issued to the LegCo Secretariat by this Bureau dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)), Parts 2 to 4 and 6 of the reply issued to the LegCo Secretariat dated 9 March 2018 (LC Paper No. CB(4)720/17-18(01)), and Part (b) of the reply issued to the LegCo Secretariat dated 4 April 2018 (LC Paper No. CB(4)870/17-18(01)).

**(3) Legal effect of the Decision and its scope of application**

(Parts 2(A) to (C) of Hon CHU Hoi-dick's written enquiry)

The NPCSC is the standing committee of the highest organ of state power. The Decision was made by the NPCSC in accordance with the laws of the People's Republic of China (including the PRC Constitution). Hong Kong society should respect the constitutional status and authority of the NPCSC as well as the decision made by it. At the same time, the Decision clearly states that "The Hong Kong Special Administrative Region should enact legislation to ensure the

implementation of the Co-operation Arrangement.” This is consistent with the view taken by the HKSAR Government.

As stated in Part (c) of the reply issued to the LegCo Secretariat by the HKSAR Government dated 6 April 2018 (LC Paper No. CB(4)882/17-18(01)), extrinsic materials which throw light on the provisions in the Basic Law 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. The Basic Law is a constitutional document made in accordance with the PRC Constitution, setting out the fundamental principles for the systems and policies practised in the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, as well as the relevant policies. At the same time, the Basic Law is a living instrument enabling the LegCo to enact suitable laws to meet changing needs and circumstances<sup>1</sup>.

Yours sincerely,



( Ronald CHENG )

for Secretary for Transport and Housing

c.c. Secretary for Justice  
Secretary for Security

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<sup>1</sup> *Ng Ka Ling v Director of Immigration*, FACV 14/1998 (29 January 1999), paras 73-74, reported in (1999) 2 HKCFAR 4.