

**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 13 April 2018**

Government response

(a) The Administration was requested to provide a written account of the Administration's response to members' suggestions concerning the following matters:

(i) definitions for the phrases "laws of Hong Kong" and "laws of the Mainland" in the Bill

The phrases "laws of Hong Kong" and "laws of the Mainland" appear in –

- (a) Clauses 3(1)(a) and (b) of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("Bill"), which implement Articles 3, 4 and 7 of 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"); and
- (b) Clause 6(1) of the Bill, which implements Article 4 of the Co-operation Arrangement.

For the phrase "laws of Hong Kong", the definition of "law" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) may be referred to. That definition defines "law" as "any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong".

For the phrase “laws of the Mainland”, the meaning of “Mainland” is defined in Clause 2 of the Bill. The phrase “laws of the Mainland” should be given its ordinary meaning, which refers to the whole body of laws of the Mainland.

(ii) a definition for the phrase “Mainland Authorities Stationed at the Mainland Port Area”, which is mentioned in Schedule 1 to the Bill by way of reference to Article 6 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 in the form of a Note

Clauses 3(1)(a) and (b) of the Bill define “reserved matter” and “non-reserved matter” by reference to Articles 3 and 7, and to Article 4, of the Co-operation Arrangement respectively. To assist readers, those Articles of the Co-operation Arrangement are reproduced in the Chinese text of Schedule 1 to the Bill, and an English translation of those Articles is set out in the English text of that Schedule.

As explained in the letter dated 22 February 2018 from the Government in response to the Legal Service Division of the Legislative Council (“LegCo”) Secretariat (LC Paper No. CB(4)631/17-18(01)), the term “Mainland Authorities Stationed at the Mainland Port Area” is used in Article 7 of the Co-operation Arrangement and defined in Article 6 of the Co-operation Arrangement. To assist readers in reading Article 7 of the Co-operation Arrangement as reproduced in Schedule 1 (as well as its English translation), a note is added to provide a piece of factual information on how the term is defined in the Co-operation Arrangement. The note is thus an aid to readers in reading Article 7 of the Co-operation

Arrangement with the benefit of an existing definition that has already been provided in the Co-operation Arrangement.

(b) The proposed scope of the laws of the Mainland to be applicable in the Mainland Port Area, as well as whether the phrase “laws of the Mainland” appears in existing legislation and if so, whether (and how) the phrase has been defined

As set out in our response in paragraph (a)(i) above, the phrase “laws of the Mainland” should be given its ordinary meaning as the whole body of the laws of the Mainland. Except for reserved matters, the laws of the Mainland are to be applied in the Mainland Port Area (“MPA”) on and after the commencement date of the Bill.

As explained in the letter dated 22 February 2018 from the Government in response to the Legal Service Division of the LegCo Secretariat (LC Paper No. CB(4)631/17-18(01)), the laws of the Mainland to be applied are not restricted to laws relevant to clearance procedures for the following reasons.

First, it is impossible to define in practice what Mainland laws are essential for enforcing the Mainland clearance procedures. This is because clearance procedures concern various matters, and numerous Mainland laws and regulations may be involved.

Secondly, if only those Mainland laws relevant to clearance procedures are to be applied and Hong Kong laws are not to be excluded from the MPA, there will be problems of overlapping in laws and jurisdictions, giving rise to legal disputes and proceedings, especially legal challenges against immigration and repatriation matters with cases involving offenders of serious offences or terrorists in particular. This will increase the security risks in Hong Kong and thus will be undesirable.

For examples of the phrase “law of the Mainland” appearing in existing legislation, please see sections 5 and 6 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597), and section 95 of the Arbitration Ordinance (Cap. 609). Those two Ordinances do not contain a definition of the phrase “law of the Mainland”.

(c) Details of the mechanism to be adopted in dealing with illegal activities or contrabands found on a high-speed train departing from the West Kowloon Station and going towards Shek Kong Stabling Sidings

Under the Co-operation Arrangement and the Bill, a train compartment of a passenger train in operation on the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) is to be regarded as part of the West Kowloon Station (“WKS”) MPA. “In operation” covers in motion, stationary, and during embarkation or disembarkation, but does not cover two scenarios, namely –

- (a) a passenger train while within the Shek Kong Stabling Sidings (“SSS”); or
- (b) a passenger train while making a journey from the SSS to the WKS or a journey from the WKS to the SSS.

All trains that depart from the Mainland to Hong Kong will **not** be driven to the SSS direct; similarly, **no** train will depart from the SSS in Hong Kong to the Mainland direct.

The SSS is a place for stabling and maintenance for trains. Passenger trains will only stay at or go to and fro between the SSS before or after operation, and will not carry passengers to and fro between the SSS. Only Hong Kong trains will be stabled at the SSS.

When a passenger train sets for the SSS, the train crew and the train compartment will be regarded as entering the jurisdiction of Hong Kong from the MPA. However, a stationary high-speed rail passenger train at the WKS platform is to be regarded as part of the MPA regardless of its destination for the next journey (whether the SSS or not), and the Mainland law applies except for reserved matters.

In other words, before a passenger train starts to depart for the SSS, the train compartment in question remains to be part of the MPA; after the passenger train is in motion during the journey from the WKS to the SSS, conduct or activities in the train compartment will be governed by the Hong Kong jurisdiction. On the contrary, upon arrival of a passenger train from the SSS at the WKS, the train compartment in question will be regarded to be part of the MPA; conduct or activities in the train compartment will be governed by the Mainland jurisdiction except for reserved matters.

As explained in the Government's reply of 9 March 2018 to Hon Jeremy TAM's written enquiry (LC Paper No. CB(4)724/17-18(01)) and at the previous Bills Committee meetings, the following measures will be put in place to prevent illegal activities such as illegal entry and import of prohibited items via high-speed rail trains that depart from the WKS for the SSS –

(1) “Clearing” of the trains by the staff of MTR Corporation Limited (“MTRCL”) at the WKS

Upon arrival of a passenger train from the Mainland at the WKS platform, passengers have to leave the train compartment immediately and proceed to the B2 Arrival Level. They cannot stay at the platform. If the train crew locates on the train any items, including those left by passengers or hidden items, such items will be passed to the station staff or the Mainland authorities for handling as appropriate in the circumstances. Before the train departs from the platform for the SSS,

messages will be broadcast in the train compartment and at the platform to remind the persons on-site that the train concerned will cease operation, and station staff will ensure that all persons have left the train compartment and the platform. After “clearing”, the MTRCL staff will not allow any passenger to enter or return to that platform. Besides, the platforms are separated by design and surrounded by barriers. Passengers cannot go from one platform to another.

(2) Mainland law enforcement officers’ immigration and customs clearances of the trains and the staff travelling to and from the SSS at the WKS

Under Article 5 of the Co-operation Arrangement, Mainland immigration inspection authority and customs authority will apply regulation in respect of cross-boundary transport vehicles to the trains, and perform relevant immigration inspection and customs regulation in the MPA. Accordingly, the Mainland law enforcement officers will perform immigration and customs clearances of the trains and the staff at the WKS that are about to set off for the SSS, as well as those that have just arrived at the WKS from the SSS. In case of discovery of any suspicious persons or prohibited items on such trains, the Mainland authorities will handle them according to the Mainland laws.

(3) HKSAR law enforcement officers’ immigration and customs clearances of the trains and the staff travelling to and from the SSS

The Hong Kong Immigration Department (“ImmD”) and the Hong Kong Customs and Excise Department (“C&ED”) will arrange staffing and examination facilities at the SSS to conduct, under the laws of Hong Kong, immigration and customs clearances for the trains travelling between the WKS and the SSS, as well as the train crew thereon.

Insofar as Hong Kong immigration and customs clearances are concerned, the laws of Hong Kong empower ImmD officers to conduct immigration clearance, including to examine any person on his arrival or landing in, or prior to his departure from, Hong Kong or to require him to submit to further examination, and/or to furnish such information as may be required for this purpose.

Besides, under the laws of Hong Kong, C&ED officers are empowered to board and search any train entering or leaving Hong Kong, and to stop and search any person entering or leaving the train compartment. Upon arrival of a train at the SSS and its departure for the WKS, C&ED will, specifically for the train compartment and the persons entering or exiting from the train compartment, follow the existing practice as in other control points (such as risk assessment) to prevent and combat the smuggling of prohibited/controlled items. In case of discovery of any suspicious persons or prohibited items on such trains at the SSS, the Hong Kong law enforcement agencies will handle them according to Hong Kong law.

(4) Security measures at the SSS to prevent unauthorized entry and exit

The SSS will be legally classified as a part of the railway premises which is not intended for public access. Any person other than a staff member hiding on a high-speed rail train to and fro between the SSS and entering the SSS will be regarded as unauthorized entry into the relevant area, and thus liable to an offence under the Mass Transit Railway By-laws (Cap. 556B).

Multiple security measures, including setting up of three-metre high metal perimeter fencing, CCTV and central alarm system at the SSS, etc., will be put in place to prevent unauthorized persons from entering or leaving the SSS. The MTRCL will also enforce stringent control and deploy security guards for patrol around the area of the SSS.

With the above multi-pronged measures, we perceive a low risk for illegal entry and import of prohibited items on the trains to and from between the SSS.

Department of Justice

Security Bureau

Transport and Housing Bureau

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