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4 May 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**

Letter from Hon IP Kin-yuen dated 20 April 2018

We refer to your letter dated 20 April 2018, enclosing a letter from Hon IP Kin-yuen of the same date in respect of the follow-up enquiry on the content of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). Our reply is as follows.

(A) Matters in relation to “Port Clearance Corridor for Goods and Trash”

Trash processing procedures

(Parts A(1) to (3) of Hon IP Kin-yuen’s written enquiry)

Under the laws of Hong Kong, the Hong Kong Customs and Excise Department (“C&ED”) officers are empowered to stop and search any person entering or leaving Hong Kong; as well as to examine the items (including trash) or goods carried or transported by that person.

At present, at the control points of the Hong Kong International Airport, the Hung Hom Intercity Through Train Station and each ferry terminal, it is necessary to handle the trash carried into Hong Kong by planes, trains and ferries. C&ED officers examine the trash transported to Hong Kong via these transport conveyances in accordance with law.

For the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”), the Hong Kong operator of the XRL will be responsible for collecting trash from the entire West Kowloon Station (including the two port areas, train compartments and platforms) and will send it to waste disposal facilities. Arrangements for staff members who are authorized to enter the Mainland Port Area for trash collection will hinge on the actual operational needs. As stated in our reply of 10 April 2018 (LC Paper No. CB(4)897/17-18(02)), C&ED will station staff on B4 level of the West Kowloon Station to conduct clearance for staff passing through the “Port Clearance Corridor for Goods and Trash”. Such an arrangement is no different from that at other control points in Hong Kong.

C&ED officers are tasked with the duties to prevent and detect smuggling of contraband items (e.g. narcotics, arms, ammunition, weapons, counterfeit and pirated goods). In discharging such duties, the

frontline officers will adopt procedures and protective measures as appropriate in the circumstances, and be aided by the use of high-tech detection devices and inspection equipment so as to enhance contraband detection capability at control points.

Prevention of smuggling activities

(Part A(4) of Hon IP Kin-yuen's written enquiry)

Since immigration and customs clearance procedures are not matters specified in Article 3 or Article 7 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"), they are non-reserved matters under the Bill of which the Mainland will exercise jurisdiction in the Mainland Port Area. As such, designated personnel under Article 7 of the Co-operation Arrangement (including staff members who are authorized to enter the Mainland Port Area to collect trash mentioned in the incoming letter) have to undergo Hong Kong and Mainland immigration and customs clearance procedures respectively for entry into or exit from the Hong Kong Port Area and the Mainland Port Area.

Should any designated personnel (including staff members who are authorized to enter the Mainland Port Area to collect trash) conduct smuggling activities, they will be governed by the jurisdiction where the person is located at the time of being intercepted. This arrangement is no different from that of other ordinary passengers.

Civil litigation matters

(Part A(5) of Hon IP Kin-yuen's written enquiry)

According to Articles 7(1), 7(3) and 7(5) of the Co-operation

Arrangement and Clause 3 of the Bill, in relation to staff members of the Hong Kong operator of the XRL and service provider(s) who are designated personnel carrying out duties and functions in the Mainland Port Area, matters concerning their employment-related rights and benefits, protection and civil legal relationship with high-speed rail passengers are reserved matters to be governed by Hong Kong laws and subject to the jurisdiction of the Hong Kong Special Administrative Region.

Handling of each case must be considered on the specific facts of the case. Generally speaking, if a staff member sustains injuries arising out of and in the course of employment in the Mainland Port Area, the employer is liable to pay compensation in accordance with the Employees' Compensation Ordinance (Cap. 282). Furthermore, if the staff member concerned has grounds for making a civil claim for compensation against a high-speed rail passenger, he may take out civil proceedings in the Hong Kong court. The proceedings involved would be no different from where the staff member concerned has sustained injury at work or has suffered civil wrong in any other place of Hong Kong.

(B) Mainland personnel's activities at the West Kowloon Station prior to the operation of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance ("Ordinance")

(Part B of Hon IP Kin-yuen's written enquiry)

To dovetail with the target commissioning of the Hong Kong Section of the XRL in September 2018, the construction works of the West Kowloon Station Mainland Port Area (including installation of facilities) are underway. After the completion of installation works, personnel of the Mainland Authorities Stationed at the Mainland Port Area will test the relevant facilities and participate in various types of drill exercises, including those related to the handling of emergencies (e.g.

fire, passenger injuries requiring immediate medical care etc.). Prior to the operation of the Ordinance, relevant personnel must undergo immigration and customs clearance procedures in accordance with Hong Kong law when they enter or leave Hong Kong. As at 30 April 2018, the Hong Kong Immigration Department (“ImmD”) approved a total of 167 visa applications of Mainland personnel entering into Hong Kong to participate in the preparatory works of the West Kowloon Station Mainland Port Area.

As per our understanding, the Mainland does not have any plan at present to transport guns to the West Kowloon Station Mainland Port Area prior to the commissioning of the Mainland Port Area (i.e. the commencement date of the Ordinance).

(C) Immigration and customs clearance arrangements at the Shek Kong Stabling Sidings (“SSS”)

(Part C of Hon IP Kin-yuen’s written enquiry)

With reference to the frequency of high-speed rail trains travelling between the West Kowloon Station and the SSS, ImmD and C&ED will deploy manpower to conduct immigration and customs clearances for the trains travelling between the West Kowloon Station and the SSS, as well as the train crew thereon. As the SSS is not part of the Mainland Port Area, the layout and position of its internal facilities are not matters to be dealt with in the Bill, and may involve security considerations in the daily operation of the Hong Kong Section of the XRL in future. We regret that such information cannot be provided.

(D) Matters in relation to Mainland Authorities Stationed at the Mainland Port Area

Wording of the Bill

(Part D(1) of Hon IP Kin-yuen's written enquiry)

As explained in the letter dated 22 February 2018 from the Government in response to the Legal Service Division of the Legislative Council 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 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.

Using notes to provide factual information is a commonly used technique (see paragraph 9.4.3 of *Drafting Legislation in Hong Kong – A Guide to Styles and Practices*), and notes are printed in a smaller font size.

Operation of Mainland Authorities Stationed at the Mainland Port Area

(Parts D(2) to (4) of Hon IP Kin-yuen's written enquiry)

Under Article 6 of the Co-operation Arrangement, the Mainland Authorities Stationed at the Mainland Port Area includes immigration inspection authority, customs authority, inspection and quarantine authority, integrated port administration authority and railway police authority stationed by the Mainland. They will perform duties and functions in the Mainland Port Area in accordance with the laws of the

Mainland. They shall not enter any area outside the Mainland Port Area to enforce the law, and have no law enforcement powers outside the Mainland Port Area.

Amongst these, the integrated port administration authority is established by the Port Administration Office of the Shenzhen Municipal People's Government, responsible for integrated port administration at the Mainland Port Area to be established in future. Its major responsibilities are to fully enforce the laws, regulations and policies of the nation, the province and the municipality in relation to port administration, and to coordinate other Mainland Authorities Stationed at the Mainland Port Area to ensure effective management and operation of the Mainland Port Area. The integrated port administration authority will not take part directly in the enforcement works concerning law and order management, immigration and customs clearances, as well as inspection and quarantine. These will be under the respective responsibilities of the railway police authority, immigration inspection authority, customs authority as well as inspection and quarantine authority.

As for Hon IP Kin-yuen's enquiry on whether the Mainland Authorities Stationed at the Mainland Port Area will have "directorates officers", the rank structure of the Mainland Authorities Stationed at the Mainland Port Area and that of the Hong Kong civil service are different. Both sides will each be represented by staff of appropriate ranks to coordinate and participate in the communication and liaison work, having regard to the operational needs.

Amendment to the definition of "Mainland Authorities Stationed at the Mainland Port Area"

(Part D(5) of Hon IP Kin-yuen's written enquiry)

As stated above, the definition of "Mainland Authorities

Stationed at the Mainland Port Area” has been stipulated in Article 6 of the Co-operation Arrangement. Any amendment to the definition thus needs to be handled in accordance with the mechanism specified in the Co-operation Arrangement. Pursuant to Article 16 of the Co-operation Arrangement, if the Co-operation Arrangement needs to be amended as a result of any change in the conditions of operation or regulation of the West Kowloon Station Port or for any other reason, the two sides must, after consultation and reaching consensus, sign a written document and submit it to the Central People’s Government for approval.

Since the definition of “Mainland Authorities Stationed at the Mainland Port Area” has been included as a note in Schedule 1 to the Bill, the Government will propose an amendment to the note should there be any future change in the definition to inform the public on such a change.

Yours sincerely,



(Ronald CHENG)

for Secretary for Transport and Housing

c.c. Secretary for Justice
Secretary for Security