

**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 April 2018**

Government response

- (a) Explain the rationale for adopting the drafting approach of incorporating the texts of Articles 3, 4 and 7 of the Co-operation Arrangement into the Bill by way of the proposed Schedule 1, as opposed to re-writing the texts of Articles 3, 4 and 7 of the Co-operation Arrangement as substantive provisions of the Bill in order to conform to the normal usage of wording and terminology prevalent in domestic legislation and to clarify the meaning and avoid misinterpretation, for the purpose of providing for the meanings of “reserved matter” and “non-reserved matter” under the Bill**

In general, there are different approaches to drafting local legislation implementing international agreements. One approach is to incorporate the text of an international agreement into the implementing legislation by setting it out in the legislation, usually in a Schedule. Another approach is to transform the text of an international agreement by legislative re-writing.

We have considered these different drafting approaches when preparing the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). We have taken into account the fact that 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”) is an agreement entered into by Hong Kong and the Mainland.

Clause 3 of the Bill defines “reserved matter” and “non-reserved matter” by reference to Articles 3, 4 and 7 of the Co-operation Arrangement, which are set out in Schedule 1. We are of the view that this is an appropriate approach.

In the Bill, the demarcation of “reserved matter” and “non-reserved matter” mainly affects the operation of the deeming provision in Clause 6(1), which is about the delineation of applicable laws and of jurisdiction between Hong Kong and the Mainland in respect of the Mainland Port Area. This delineation has already been set out under Articles 3, 4 and 7 of the Co-operation Arrangement. In particular, Articles 3 and 7 clearly set out those specific matters to which the laws of Hong Kong apply, and over which Hong Kong exercises jurisdiction.

As such, defining “reserved matter” and “non-reserved matter” by reference to Articles 3, 4 and 7 is the most appropriate way to implement the Co-operation Arrangement. This accurately reflects the agreed position between Hong Kong and the Mainland, on the basis of which the delineation of applicable laws and of jurisdiction operates under the deeming provision in Clause 6 of the Bill.

(b) Consider providing a table summarizing and comparing the arrangements, such as the penalties imposed on persons committing an offence, powers of enforcement officers etc. in the relevant legislation, of different control points (including the Hong Kong International Airport, Kai Tak Cruise Terminal, Hung Hom Intercity Through Train Station and other land boundary control points as appropriate)

The purpose of demarcating closed/restricted areas at control points is to prohibit non-cross-boundary passengers or unauthorized persons

from entering a designated area, thereby enhancing the effectiveness of daily operation of the control points concerned. Having regard to individual circumstances of control points, there are different arrangements and statutory bases for demarcating closed/restricted areas thereat (including the methods of demarcation for closed/restricted areas and issuance of entry permits). At present, such demarcation arrangements for closed/restricted areas include –

- (a) Setting up of closed areas by the Chief Executive in Council pursuant to the Public Order Ordinance (Cap. 245). The existing frontier closed areas, land boundary crossings for vehicles and railway ports at frontier closed areas are all designated as closed areas under such an arrangement. Any person who enters or leaves a closed area save in accordance with the permit issued under section 37 commits an offence and is liable on summary conviction to a fine of \$5,000 and to imprisonment for two years.
- (b) Setting up of restricted areas at the airport by the Director-General of Civil Aviation pursuant to the Aviation Security Ordinance (Cap. 494). Any person who, without reasonable excuse, enters or remains in a restricted area, or any land or sea adjacent to a restricted area in contravention of an order of the Aviation Security Authority commits an offence and is liable to a fine of \$5,000 and to imprisonment for one year.
- (c) Setting up of cross-boundary restricted areas by the Mass Transit Railway Corporation Limited (“MTRCL”) pursuant to the Mass Transit Railway By-laws (Cap. 556B). The existing cross-boundary restricted areas for Intercity Through Train at Hung Hom Station have been demarcated under this arrangement. Subject to the provisions in Part 8A of the By-laws, no person shall enter or remain in a cross-boundary

restricted area, or he shall be liable to a fine of \$5,000 and to imprisonment for six months.

- (d) Setting up of restricted areas in Hong Kong cross-boundary ferry terminals pursuant to regulations made by the Chief Executive in Council under the Shipping and Port Control Ordinance (Cap. 313). The existing restricted areas in China Ferry Terminal in Tsim Sha Tsui, Hong Kong-Macau Ferry Terminal in Sheung Wan and Tuen Mun Ferry Terminal in Tuen Mun have been demarcated under such an arrangement. Subject to these regulations, no person shall enter or remain in a restricted area, or he shall be liable to a fine of \$20,000 and to imprisonment for six months.
- (e) Setting up of restricted areas in the cruise terminal by the Commissioner for Tourism pursuant to the Kai Tak Cruise Terminal Ordinance (Cap. 627). Subject to the Ordinance, a person must not enter or remain in a restricted area, or he shall be liable to a fine of \$25,000 and to imprisonment for six months.

Though closed/restricted areas are demarcated by different methods in control points, all of them can achieve the purpose of effectively prohibiting entry to designated areas by non-cross-boundary passengers or unauthorized persons.

It should be noted that demarcation of closed/restricted areas **absolutely does not**, and **absolutely will not**, transfer the law enforcement responsibilities and powers as those of exercising immigration control, combating illegal immigration and smuggling as well as maintaining law and order from the law enforcement officers (including the personnel of the Police, the Customs and Excise Department (“C&ED”) and the Immigration Department (“ImmD”) etc.) to the operators of relevant control points. Specifically speaking –

- (a) There is no restriction in the relevant Hong Kong laws that the Police, C&ED and ImmD officers can carry out duties in relation to combatting illegal immigration and smuggling as well as maintaining law and order etc. only at the border or a control point. As such, irrespective of which arrangement a closed/restricted area (or even a non-closed/restricted area) is demarcated in a control point, the Police, C&ED and ImmD officers have responsibilities and powers under relevant Hong Kong laws to discharge such duties as exercising immigration control, combating illegal immigration and smuggling, as well as maintaining law and order.

- (b) It is an offence to enter a closed/restricted area without specific authorization or legal immunity. For example, the law requires that a permit must be obtained from the Commissioner of Police in advance for entry to a closed area; and prior authorization must be obtained from the MTRCL under the Mass Transit Railway By-laws for entry to a cross-boundary restricted area for Intercity Through Train in Hung Hom Station. Persons permitted to enter a land boundary closed area or a closed area within Lo Wu Station are subject to Hong Kong's immigration and customs inspection procedures. It will be the same case in the Hong Kong Port Area of the West Kowloon Station, as a cross-boundary restricted area, in future.

At the Hong Kong Port Area of the West Kowloon Station, if the MTRCL needs assistance, from the perspective of actual operation, in enforcing control in the cross-boundary restricted area, the Police will offer such assistance and may exercise other statutory powers of police officers.

As such, seen objectively, the existing practice of demarcating closed/restricted areas pursuant to the corresponding laws having regard

to specific situations of control points can effectively meet their operational needs. It can also effectively achieve the purpose of prohibiting non-cross-boundary passengers or unauthorized persons from entering a designated area. The law enforcement powers and capabilities will not be affected by whether a site is regulated as a closed area, a cross-boundary restricted area or a restricted area.

(c) Explain in detail the legal basis for the Administration's stance that a notice published by the MTR Corporation Limited in the Gazette to declare an area to be a cross-boundary restricted area (which is defined under by-law 41A of the Mass Transit Railway By-laws (Cap. 556B)) pursuant to by-law 41B of Cap. 556B is not a subsidiary legislation and is not subject to the scrutiny of the Legislative Council, with reference to sections 34 and 62 of the Mass Transit Railway Ordinance (Cap. 556)

Under section 62 of the Mass Transit Railway Ordinance (Cap. 556), a commencement notice issued under section 1(2) of the Ordinance, a regulation made under section 33 of the Ordinance and a bylaw made under section 34 of the Ordinance are all subsidiary legislation, but any other instrument issued under the Ordinance is not subsidiary legislation. A notice published in the Gazette by the MTRCL to declare a cross-boundary restricted area is made under by-law 41B of the Mass Transit Railway By-laws (Cap. 556B). It is not a commencement notice, regulation or bylaw as referred to in section 62 of the Mass Transit Railway Ordinance, and hence is not subsidiary legislation. It is not subject to the procedures for scrutiny of subsidiary legislation of the Legislative Council.

**Department of Justice
Security Bureau
Transport and Housing Bureau
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