

**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 5 May 2018**

Government response

(a) Consider providing definitions for the terms “investigation”, “legal proceedings” and “remedy” appearing in Clause 7(1)(b) of the Bill

As stated in Part 11 of the reply issued by the Government in response to the Legal Service Division of the Legislative Council (“LegCo”) Secretariat dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)), Clause 7(1)(a) of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”) preserves the rights and obligations which arose from acts or omissions before the commencement date in the designated area (i.e. the area declared as the West Kowloon Station Mainland Port Area under Clause 4 of the Bill). On this basis, such rights and obligations may still be enforced after the commencement date.

Clauses 7(1)(b) and (c) of the Bill refer to some specific instances of enforcement of certain rights and obligations for the avoidance of arguments. However, even if a particular manner of enforcement of a right or obligation is not specifically mentioned in Clauses 7(1)(b) and (c), this in itself should not affect the enforceability of such right or obligation which is already preserved by Clause 7(1)(a).

We therefore do not consider it necessary for the Bill to provide for further definitions of the terms “investigation”, “legal proceedings” and “remedy” in Clause 7(1)(b) of the Bill. For the interpretation and scope of these terms, please refer to Part 11 of the aforementioned reply issued by the Government in response to the Legal Service Division of the LegCo Secretariat dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)).

(b) In relation to Clause 8(1)(b) concerning future Court orders etc, consider whether to adopt provision(s) similar to section 13 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) for the purpose of the Bill

Section 13 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) deals with the territorial limit of rights conferred and obligations imposed by future Court orders.

Unlike the documents to which Clause 8 of the Bill applies, which are documents of private nature, future Court orders fall within the realm of public law. The effect of a future Court order in the Mainland Port Area depends on the jurisdiction of the Hong Kong court over the Mainland Port Area in respect of the future Court order in question. That is a matter already dealt with in Clause 6(1) of the Bill. As such, in accordance with Clause 6(1) of the Bill, to the extent that a right conferred, or an obligation imposed, by a future Court order may be exercised or discharged in relation to a non-reserved matter, the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland, while a reserved matter is not affected by Clause 6(1) of the Bill.

(c) In terms of drafting, consider expressly providing in Clause 8(3) of the Bill (such as through the use of the expression “for the avoidance of doubt”) that the operation of Clause 6(1) of the Bill (relating to the application of the laws of the Mainland and the delineation of jurisdiction) would not be affected by Clause 8(3)

Clause 8 of the Bill provides for an interpretation aid for documents of private nature. If such documents contain a reference to Hong Kong or part of Hong Kong to describe the geographical scope for a right or obligation in relation to a non-reserved matter, then in interpreting the reference, the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland. This is a default interpretation subject to a contrary intention.

Clause 8 of the Bill respects the rights of the private parties to decide among themselves the geographical scope for their rights and obligations arising from contract etc. While Clause 8(3) of the Bill provides that the private parties are free to displace the default rule, it does not authorise them to change or override the delineation of the applicable laws and jurisdiction between the HKSAR and the Mainland as provided in Clause 6(1) of the Bill. The delineation of the applicable laws and jurisdiction is entirely a separate matter.

(d) Consider clarifying the meaning of and providing definitions for certain terms appearing in the Co-operation Arrangement as reproduced in Schedule 1 to the Bill, such as “維修養護” (which is not an usual phrase used in local legislation) and “環境管制” (which is a very general phrase) in Article 7(2) and (4) of the Co-operation Arrangement respectively

As explained in the letter issued by the Government in response to the LegCo Secretariat dated 4 May 2018 (LC Paper No. CB(4)1046/17-18(01)), 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 Bill, and 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. Setting out Articles 3, 4 and 7 of the Co-operation Arrangement in Schedule 1 to the Bill is the most appropriate way to implement the Co-operation Arrangement. This accurately reflects the

agreed position between Hong Kong and the Mainland.

In interpreting Articles 3, 4 and 7 of the Co-operation Arrangement as set out in Schedule 1 to the Bill, one should also take into account the background and context. Articles 3, 4 and 7 of the Co-operation Arrangement are related to railway operation of the Mainland Port Area of the West Kowloon Station, and do not involve complicated settings. Moreover, Article 7(2) of the Co-operation Arrangement clearly specifies that “repair and maintenance” (“維修養護”) concern with those related to relevant buildings and structures and related facilities (including fire safety; storage facilities of dangerous goods; lifts; escalators; plumbing installations; installations relating to waste and wastewaters; public address systems; ventilation; electricity and energy efficiency etc.); and Article 7(4) also clearly specifies that “environmental regulation and control” (“環境管制”) is related to the railway system of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”). We consider that setting out Articles 3, 4 and 7 of the Co-operation Arrangement in Schedule 1 to the Bill in full has clearly illustrated the relevant stipulations. It would be sufficient to give the provisions a natural and ordinary meaning, without providing definitions for certain terms.

(e) Clarify whether Article 7(1) of the Co-operation Arrangement would give rise to the issue of overlapping jurisdiction in that designated personnel would be subject to both the laws of the HKSAR and the laws of the Mainland, in particular, clarify the effect of Article 7(1) in a scenario where a designated personnel is in possession of a prohibited item under Mainland laws when performing his/her duties in the Mainland Port Area

According to Article 7(1) of the Co-operation Arrangement, the performance of duties and functions or matters related to the performance of duties and functions by designated personnel, i.e. holders of valid permit issued by the Government of the Hong Kong Special Administrative Region (“HKSAR”) or the Hong Kong operator of the XRL who enter the

Mainland Port Area or pass through the Mainland Port Area to other places within the West Kowloon Station to carry out duties and functions, would be subject to the jurisdiction of the HKSAR (including jurisdiction of the courts) and handled in accordance with the laws of the HKSAR. Yet, immediately following this, Article 7(1) of the Co-operation Arrangement makes it clear that save as stated above, these personnel should comply with the laws of the Mainland inside the Mainland Port Area and be subject to regulation by the Mainland Authorities Stationed at the Mainland Port Area.

In other words, whether the conduct of designated personnel would be subject to the jurisdiction of the HKSAR and handled in accordance with the laws of the HKSAR depends on whether such conduct may be regarded as “the performance of duties and functions or matters related to the performance of duties and functions”. The law and order inside the Mainland Port Area, including crime investigation and prevention, are non-reserved matters. Hence, if designated personnel are found to be in unlawful possession of prohibited items in the Mainland Port Area in contravention of the criminal law of the Mainland, the matter would be handled by the relevant Mainland authorities in accordance with Mainland law. We consider that Article 7(1) of the Co-operation Arrangement has provided for a clear delineation of the HKSAR and Mainland jurisdictions and would not give rise to any issue of overlapping jurisdiction.

(f) In respect of Article 7(5) of the Co-operation Arrangement, for the purpose of making clear the extent to which the HKSAR exercises jurisdiction over contractual or other legal relationships of a civil nature among bodies and/or individuals in the Mainland Port Area, clarify whether it is intended that Article 7(5) would only cover contractual or other legal relationships of a civil nature between e.g. the Hong Kong operator of the Guangzhou-Shenzhen-Hong Kong Express Rail Link vis-à-vis its staff member(s), service provider(s) vis-à-vis passenger(s), or alternatively, it is intended that Article 7(5) would cover contractual or other legal

relationships of a civil nature between all the bodies or individuals particularized in Article 7(5), such as between individual passengers

According to Article 7(5) of the Co-operation Arrangement, unless the parties by agreement indicate otherwise (whether such agreement is made in writing, orally or by conduct), matters pertaining to the contractual or other legal relationships of a civil nature among the following bodies or individuals in the Mainland Port Area would be subject to the jurisdiction of the HKSAR and handled in accordance with the laws of the HKSAR: the Hong Kong operator of the XRL, contractor(s) of construction works of the West Kowloon Station, material or service provider(s), staff member(s) of the above bodies, and passenger(s) of the XRL.

Article 7(5) of the Co-operation Arrangement would not only apply to the contractual or other legal relationships of a civil nature between different groups of bodies or individuals mentioned above. It would also apply to the contractual or other legal relationships of a civil nature between different bodies or individuals within the same group, including those between passengers.

**Department of Justice
Transport and Housing Bureau
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