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6 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

Committee Stage amendments proposed by Members

We refer to your letter dated 4 May 2018, enclosing the Committee Stage amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill proposed by various Members of the Legislative Council. The response from the Government is enclosed at the **Annex**.

Yours sincerely,

(Ronald CHENG)
for Secretary for Transport and Housing

c.c. Secretary for Justice
Secretary for Security

Annex

Government response to the Committee Stage amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill proposed by Members

The Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("Bill") is meant to complete the last step of the "Three-step Process", namely the local legislative process, with a view to implementing co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"), thereby facilitating passengers' travel between Hong Kong and various parts of the Mainland.

As stated by the Secretary for Transport and Housing during the commencement of the Second Reading debate of the Bill at the Legislative Council ("LegCo") sitting of 31 January 2018, the co-location arrangement must be constitutional and consistent with the law. The Central Authorities and the Government of the Hong Kong Special Administrative Region ("HKSAR") have thus solemnly studied the relevant legal basis for the co-location arrangement. Following the HKSAR Government's announcement of the "Three-step Process" on 25 July 2017, there were widespread discussions on the co-location arrangement in the community of Hong Kong. The LegCo subsequently passed a motion on 15 November 2017 supporting the HKSAR Government in taking forward the follow-up tasks of the co-location arrangement at the West Kowloon Station of the XRL, thereby reflecting the views of the community of Hong Kong on launching the "Three-step Process" by the HKSAR Government.

On 18 November 2017, the HKSAR Government and the Guangdong Provincial People's Government signed 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"), making the first step of the "Three-step Process". Subsequently on 27 December 2017, the Standing Committee of the National People's Congress ("NPCSC") made the Decision 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"), which approved the Co-operation Arrangement, confirmed that the Co-operation Arrangement is consistent with the Constitution and the Basic Law of the Hong Kong Special Administrative Region ("Basic Law"), and stipulated that the HKSAR should enact legislation to ensure the implementation of the Co-operation Arrangement. This Decision signified the accomplishment of the second step in the "Three-step Process" and provided a firm legal basis for the implementation of co-location arrangement at the West Kowloon Station.

The HKSAR Government introduced the Bill into the LegCo in accordance with the NPCSC's Decision and the approved Co-operation Arrangement. The purpose of the Bill is to implement the Co-operation Arrangement and provide legal basis for putting in place the co-location arrangement at the West Kowloon Station. Having reviewed the Committee Stage amendments ("CSAs") proposed by various Members in detail, we consider that the relevant CSAs deviate from the subject matter of the Bill and thus cannot be supported. Detailed justifications are provided below to clearly set out the stance of the HKSAR Government.

1. CSAs proposed by Hon CHAN Chi-chuen (LC Paper No. CB(4)1027/17-18(01))

(a) Amending Clause 1(2) (Commencement date of the Ordinance)

The relevant provision deals with the commencement date of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance ("Ordinance") after the passage of the Bill. Hon CHAN Chi-chuen proposes substituting Clause 1(2) with the wording "on the 300th days [sic] after the day on which the Legislative Council approves this bill". The HKSAR Government does not support this CSA.

Construction works of the Hong Kong Section of the XRL have been 99.4 per cent complete as at end March 2018. The project has entered into the trial operation stage in April 2018, pressing ahead in full swing for the target commissioning this September. The proposed commencement date in the CSA is baseless and will prevent the Hong Kong Section of the XRL from coming into service as originally scheduled. This will incur losses to society of Hong Kong and defy

public expectations for early enjoyment of high-speed rail service.

(b) Deleting Clause 6(2) (Deleting the description on not affecting the HKSAR boundary)

As stated in the letter issued by the HKSAR Government on 19 April 2018 in response to Hon AU Nok-hin's written enquiry (LC Paper No. CB(4)947/17-18(03)), Clause 6(2) provides that Clause 6(1) does not affect the boundary of the administrative division of the HKSAR promulgated by the Order of the State Council of the People's Republic of China No. 221 (i.e. the same boundary referred to in Schedule 2 to the Interpretation and General Clauses Ordinance (Cap. 1)).

Clause 6(2) is meant to clearly spell out that the implementation of co-location arrangement at the West Kowloon Station of the XRL does not involve realignment of the HKSAR boundary. This is consistent with the views of the NPCSC as stated in the preamble of the Decision that "the establishment of the Mainland Port Area at the West Kowloon Station does not alter the boundary of the administrative division of the Hong Kong Special Administrative Region". As such, the HKSAR Government considers that the purpose of Clause 6(2) is to articulate an important point of law that the co-location arrangement does not affect the HKSAR boundary, and thus does not support this CSA.

(c) Adding Clause 9 (Setting an expiry date for the Ordinance)

This CSA proposes the inclusion of midnight on 30 June 2047 as the expiry date of the Ordinance. As stated in the letter issued by the HKSAR Government on 22 March 2018 in response to Hon IP Kin-yuen's written enquiry (LC Paper No. CB(4)805/17-18(01)), the NPCSC's Decision endorsed on 27 December 2017 did not specify any expiry date for the implementation of the co-location arrangement. In this connection, the adoption of midnight on 30 June 2047 as the expiry date of the Ordinance as proposed by the CSA lacks solid foundation.

Moreover, the CSA proposes to provide that if the Mainland Port Area and the Hong Kong Section of the XRL have not been in operation for 365 successive days at any time before midnight on 30 June 2047, the Ordinance shall expire at midnight on the 365th day. We do not envisage a scenario where the Mainland Port Area and the Hong Kong Section of the XRL will be out of operation for a long period of

time, and cannot understand the basis for adopting the 365th day as the expiry date of the Ordinance. As a matter of fact, Article 16 of the Co-operation Arrangement provides that "If this 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."

As explained by the HKSAR Government officials at previous Bills Committee meetings, the HKSAR Government drafted the Bill in order to implement the Co-operation Arrangement signed between the HKSAR Government and the Mainland on 18 November 2017. Should there be a need to amend the Co-operation Arrangement in future, the HKSAR Government will submit an amendment bill to the LegCo in the light of actual circumstances with a view to implementing the amended Co-operation Arrangement which has been approved by the State Council. At that juncture, the LegCo may decide whether the amendment bill should be passed. As such, the CSA is unfounded and does not garner our support.

(d) Amending Schedule 2 (Changing the boundary of the Mainland Port Area on B3 level)

The CSA proposes an amendment to Section A-A in Annex 1 to Plan No. 1 in Schedule 2 to the Bill, changing the Mainland Port Area on B3 level of the Atrium in the West Kowloon Station from -4.0 mPD to "1 metre above the top level of the floor structural slab of B3 level". In effect, the vertical boundary of the Mainland Port Area on B3 level would be lowered.

The concerned part of the CSA is the waiting hall for departing passengers on B3 level of the West Kowloon Station, where high-speed rail passengers will stay before proceeding to B4 platform level for embarkation. Should this CSA be adopted, passengers staying at the waiting hall for departing passengers on B3 level in future will find their body parts from the floor on B3 level to 1 metre high lying inside the Mainland Port Area, which are subject to the laws of the Mainland; and their body parts from 1 metre above lying outside the Mainland Port Area, which are subject to the laws of Hong Kong. This arrangement is clearly against common sense and totally infeasible. The HKSAR

Government does not support this CSA.

2. <u>CSAs proposed by Hon Tanya CHAN (LC Paper No. CB(4)1027/17-18(02))</u>

(a) First CSA for the Preamble, as well as amending Clauses 2 and 3 (Implementing only Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area)

The CSA fundamentally deviates from the Co-operation Arrangement and the NPCSC's Decision, and does not align with the purpose and scope of the Bill. As a matter of fact, the co-location arrangement involves complicated constitutional, legal, operation and other considerations. The HKSAR Government has thus conducted thorough studies and discussions with the relevant Mainland authorities. During the process, the HKSAR Government had once explored the idea of allowing Mainland officials to enforce only those Mainland laws relevant to Mainland clearance procedures in the West Kowloon Station Mainland Port Area. However, studies revealed that such idea is infeasible and cannot be adopted for the implementation of the co-location arrangement at the West Kowloon Station.

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

Secondly, allowing Mainland officials to enforce only those Mainland laws relevant to Mainland clearance procedures in the West Kowloon Station Mainland Port Area may lead to security issues and law enforcement problems, creating security loopholes in Hong Kong that cannot be overlooked and taken lightly. Specifically, by enforcing only those Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area, Hong Kong laws will not be excluded from the Mainland Port Area and will therefore still be applicable. As a result, there will be problems of overlapping in laws and jurisdiction, giving rise to legal disputes and proceedings. From a security point of view, it is most worrisome that offenders of serious offences or terrorists in the Mainland may mount judicial challenges against the law enforcement actions of Mainland law enforcement officers at the HKSAR courts (such as applying for habeas corpus etc.). This will increase the security risks

in Hong Kong. In this connection, this arrangement is unacceptable from the perspective of Hong Kong's own security.

Based on the above reasons, the HKSAR Government considers that allowing Mainland officials to enforce only Mainland laws allegedly essential for enforcing Mainland clearance procedures in the West Kowloon Station Mainland Port Area will result in confusion in jurisdiction. It poses serious security threats to Hong Kong and is also practically infeasible. We do not support this CSA.

(b) Adding Part 3, involving an amendment to Clause 6 and addition of Clauses 6a to 6f (Limiting the powers of the officials of the Mainland Authorities Stationed at the Mainland Port Area)

As stated in Part 2(a) above, the HKSAR Government had once explored the idea of allowing Mainland officials to enforce only those Mainland laws relevant to Mainland clearance procedures in the West Kowloon Station Mainland Port Area. However, studies revealed that such idea will result in confusion in jurisdiction, poses serious security threats to Hong Kong and is also practically infeasible. As a result, this cannot be adopted for the implementation of the co-location arrangement at the West Kowloon Station.

In this connection, the Co-operation Arrangement stipulates that except for the matters provided for in Article 3 and Article 7 over which the HKSAR will exercise jurisdiction, the Mainland will exercise jurisdiction over the Mainland Port Area in accordance with the laws of the Mainland. Article 6 of the Co-operation Arrangement also stipulates that Mainland law enforcement officials 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.

Both Mainland officials and the HKSAR Government officials will perform their duties under the respective powers and responsibilities stipulated in the Co-operation Arrangement in order to co-operate in the implementation of the co-location arrangement at the West Kowloon Station. The Co-operation Arrangement does not authorize any HKSAR Government officials to participate in the exercise of immigration inspection, customs regulation, and inspection and quarantine measures

of the Mainland. As such, this CSA has completely gone beyond the content of the Co-operation Arrangement, and does not align with the purpose and scope of the Bill.

Moreover, the CSA has confused the respective powers and jurisdiction of the law enforcement departments of both places, resulting in overlapping in jurisdiction between the two places. Affected parties may mount legal challenges in the HKSAR against the decisions of relevant officials, with a view to obstructing the exercise of immigration inspection, customs regulation, and inspection and quarantine measures of the Mainland. This will give rise to security loopholes in the HKSAR. The HKSAR Government all along respects the jurisdiction of other regions or countries; yet, the actual impact of the CSA is to interfere and undermine the powers of Mainland officials to exercise jurisdiction in the Mainland Port Area which have been authorized by the Co-operation Arrangement and the laws of the Mainland. We consider that the CSA is devoid of reason and cannot be supported.

(c) Second CSA for the Preamble (Stating that the Co-operation Arrangement and the Decision do not form part and parcel of the Basic Law or any laws of Hong Kong)

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."

The Bill is prepared for the third step of the "Three-step Process" to put in place the co-location arrangement at the West Kowloon Station of the XRL. Hence, its relevant context is the first and second steps of the "Three-step Process", namely the Co-operation Arrangement and the NPCSC's Decision mentioned in paragraphs (1) and (2) of the Preamble respectively. The content of the Preamble of the Bill as currently drafted serves the purpose of setting out the relevant context. Whether the Co-operation Arrangement or the Decision forms part and parcel of the Basic Law or any laws of Hong Kong is a legal question, not a factual background. It is thus inappropriate to be included in the Preamble. We do not support this CSA.

(d) Adding Clause 5A (Stating that the Ordinance only applies to passenger trains "in operation" and the Mainland Port Area)

The interpretative provisions under Clause 2 as currently drafted have provided a clear definition of the Mainland Port Area, which means the area declared as the West Kowloon Station Mainland Port Area under Clause 4 (i.e. "designated area" defined in the Bill) and includes a train compartment to be regarded as part of the West Kowloon Station Mainland Port Area under Clause 5. In implementing the co-location arrangement, Clause 6 will only affect the delineation of applicable laws and jurisdiction in respect of the Mainland Port Area, and thus it is unnecessary to add provisions to state that the Ordinance does not apply to areas of the HKSAR that fall outside the Mainland Port Area. Hence, we do not support this CSA.

(e) Amending Part 3 to Part 4, and adding Clauses 7(4) and 7(5)

Clause 7(4) which is proposed to be added stipulates that provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong, and the Hong Kong Bill of Rights Ordinance (Cap. 383) shall remain in force in the Mainland Port Area. However, pursuant to Article 4 of the Co-operation Arrangement, whether the laws of Hong Kong or the laws of Mainland shall be applied in the Mainland Port Area depends on whether the matter is one stipulated in Articles 3 and 7 of the Co-operation Arrangement (i.e. "reserved matter" defined in the Bill), and thus the issue cannot be dealt with in general terms. Clause 7(4) which is proposed to be added clearly deviates from the Co-operation Arrangement, and we do not support this CSA.

As for the proposal of adding Clause 7(5), it concerns the conflict of jurisdiction between the two places. The Co-operation Arrangement has clearly delineated matters over which the HKSAR will exercise jurisdiction (i.e. "reserved matter" defined in the Bill) and matters over which the Mainland will exercise jurisdiction (i.e. "non-reserved matter" defined in the Bill). Hong Kong courts or Mainland courts shall adjudicate on matters over which they consider to have jurisdiction. If necessary, the HKSAR Government and the Mainland will resolve the disputes arising in the course of the implementation of the Co-operation Arrangement through consultations

in accordance with Article 15 of the Co-operation Arrangement. It would be impossible for Hong Kong courts to make the final decision as suggested in the CSA. As the CSA deviates from the Co-operation Arrangement and does not align with the purpose and scope of the Bill, we do not support this CSA.

(f) Adding Clause 9 (Right to use the Mainland Port Area and train compartments)

As stated in the letter issued by the HKSAR Government on 4 April 2018 in response to the LegCo Secretariat (LC Paper No. CB(4)865/17-18(01)), the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area to be implemented by the Bill originates from the NPCSC's Decision and the approved Co-operation Arrangement, and has no direct relationship to the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area.

Under the co-location arrangement, the use of the Mainland Port Area by Mainland officials in conducting clearance procedures for high-speed rail passengers involves a practical demand for a venue. Matters such as the acquisition of the right to use, duration and fees of the Mainland Port Area would be provided for by an agreement to be signed by both sides. This agreement does not involve any so-called "right to use" for train compartments.

So long as the implementation of the co-location arrangement is continued, the HKSAR Government and the Mainland authorities will need to negotiate on the extension of the agreement on the right to use at different junctures. We consider that the scenario where the Ordinance would continue to operate after the expiry of the right to use the Mainland Port Area will not exist, and thus do not support the new Clause in the CSA.

(g) Adding Clause 10 (Need to sign a supplementary agreement in accordance with the Ordinance between the two places)

As stated in the LegCo Brief of the Bill submitted by the HKSAR Government on 26 January 2018 (File Ref.: THB(T)CR 9/1/16/581/99), after detailed studies and thorough discussions of various customs, immigration and quarantine clearance options, the HKSAR

Government and the relevant Mainland authorities reached consensus in July 2017 on the framework for implementing a co-location arrangement. On 25 July 2017, the Executive Council advised and the Chief Executive ordered that the proposed co-location arrangement at the West Kowloon Station of the XRL be endorsed, so that the HKSAR Government could proceed to take forward the relevant tasks. The proposed "Three-step Process" to put in place the co-location arrangement is summarised as follows –

(i) Step One: the Mainland and the HKSAR are to reach the Co-operation Arrangement;

(ii) Step Two: the NPCSC makes a Decision approving and endorsing the Co-operation Arrangement; and

(iii) Step Three: both sides implement the arrangement pursuant to their respective laws. In the case of the HKSAR, local enactment will be necessary to implement the co-location arrangement.

The CSA proposes that the HKSAR shall separately sign a supplementary agreement with the Mainland in accordance with the arrangement set out in the Ordinance. This CSA fundamentally deviates from the "Three-step Process" and is inconsistent with the consensus of the two places in implementing the co-location arrangement at the West Kowloon Station of the XRL. We do not support this CSA.

(h) Adding Clause 11 (Stipulating that amendments to the Co-operation Arrangement need to be approved by the LegCo)

As stated in Part 1(c) above, Article 16 of the Co-operation Arrangement provides that "If this 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." Should there be a need to amend the Co-operation Arrangement in future, the HKSAR Government will submit an amendment bill to the LegCo in the light of actual circumstances with a view to implementing the amended Co-operation Arrangement which has been approved by the State Council. At that juncture, the LegCo may

decide whether the amendment bill should be passed. As such, we do not support this CSA.

3. CSAs proposed by Hon WU Chi-wai (LC Paper No. CB(4)1027/17-18(03))

(a) Deleting Preamble, amending Clause 2 and deleting Schedule 1 (Not mentioning the Co-operation Arrangement)

The Bill is prepared for the third step of the "Three-step Process" to put in place the co-location arrangement at the West Kowloon Station of the XRL. Hence, the relevant context of the Bill is that the first and second steps of the "Three-step Process" have been completed. The first step refers to the Co-operation Arrangement, and the second step refers to the NPCSC's Decision. As the first and second steps have been mentioned in paragraphs (1) and (2) of the Preamble respectively, the content of the Preamble of the Bill as currently drafted has set out the relevant context in an appropriate and accurate manner. Clause 2 also sets out the interpretation of the Co-operation Arrangement. Moreover, Schedule 1 sets out Articles 3, 4 and 7 of the Co-operation Arrangement to assist in interpreting "reserved matter" and "non-reserved matter" defined in the Bill.

The Bill is an essential component of the "Three-step Process" in order to implement the Co-operation Arrangement at the West Kowloon Station of the HKSAR. The CSA deletes the provisions on the Co-operation Arrangement, disregarding the Co-operation Arrangement as the basis for the local legislative process. It deviates from the purpose and scope of the Bill, and thus we do not support this CSA.

(b) Amending Clause 3 (Implementing only Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area)

This CSA is similar to Hon Tanya CHAN's CSA by nature. We do not support this CSA. Relevant justifications are set out in our response in Part 2(a) above.

4. CSAs proposed by Hon AU Nok-hin (LC Paper No. CB(4)1027/17-18(04))

(a) Amending Clauses 3(1) and 3(2) (Setting out Articles 3 and 7 of the Co-operation Arrangement in the Clauses)

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 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. Based on the above reasons, we do not support this CSA.

(b) Adding Clause 9 (Setting an expiry date for the Ordinance)

This CSA is similar to Hon CHAN Chi-chuen's CSA by nature, proposing the inclusion of midnight on 30 June 2047 as the expiry date of the Ordinance. We do not support this CSA. Relevant justifications are set out in our response in Part 1(c) above.

As stated in Part 2(f) above, the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area to be implemented by the Bill originates from the NPCSC's Decision and the approved Co-operation Arrangement, and has no direct relationship to the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area. We do not support the CSA which connects the commencement date of the Ordinance with matters on the right to use the Mainland Port Area.

5. <u>CSA proposed by Hon Andrew WAN (LC Paper No. CB(4)1027/17-18(05))</u>

This CSA proposes to incorporate "the obligations and rights as stipulated in the international treaties and bilateral agreements to which Hong Kong is a party" into the definition of "reserved matter" in Clause 3. As stated in Part 4(a) above, Articles 3 and 7 of the Co-operation Arrangement clearly set out those specific matters to which the laws of Hong Kong apply, and over which Hong Kong exercises jurisdiction (i.e. "reserved matter" defined in the Bill). It does not include "the obligations and rights as stipulated in the international treaties and bilateral agreements to which Hong Kong is a party". This CSA clearly deviates from the Co-operation Arrangement and does not garner our support.

6. <u>CSAs proposed by Hon Claudia MO (LC Paper No. CB(4)1027/17-18(06))</u>

(a) Amending Clause 1(2) (Commencement date of the Ordinance)

This CSA is similar to Hon CHAN Chi-chuen's CSA by nature, which proposes substituting Clause 1(2) with the wording "on the 365th days [sic] after the day on which the Legislative Council approved this Ordinance". We do not support this CSA. Relevant justifications are set out in our response in Part 1(a) above.

(b) Amending the Long Title (Textual amendment)

According to rule 50(3) of the LegCo Rules of Procedure, the bill shall be given a long title setting out the purposes of the bill in general terms. The specific rights and obligations included in "certain rights and obligations" ("若干權利及義務") as stated in the Long Title of the Bill have been set out in the relevant operative provision, namely Clause 7. Similarly, the "certain documents" ("若干文件") as stated in the Long Title of the Bill refers to the documents specified in the relevant operative provision, namely Clause 8. Both the terms "certain rights and obligations" ("若干權利及義務") and "certain documents" ("若干文件") adequately reflect the content of the operative provisions. This arrangement is appropriate as the terms set out the subject matter of the Bill and are in compliance with the requirement in the LegCo Rules of Procedure. As a matter of fact, amending "若干" to "某些" will have no change to the actual content of the Long Title. Hence, we do not support this CSA.

7. <u>CSAs proposed by Hon Fernando CHEUNG (LC Paper No. CB(4)1027/17-18(07))</u>

(a) Amending Clause 3(1)(a) (Implementing only Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area)

This CSA also concerns the implementation of only Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area by nature. We do not support this CSA. Relevant justifications are set out in our response in Part 2(a) above.

(b) Adding Clause 9 (Setting an expiry date for the Ordinance)

This CSA is identical to Hon AU Nok-hin's CSA, which also proposes the inclusion of midnight on 30 June 2047 as the expiry date of the Ordinance. We do not support this CSA. Relevant justifications are set out in our response in Parts 1(c) and 4(b) above.

8. <u>CSAs proposed by Hon Gary FAN (LC Paper No. CB(4)1027/17-18(08))</u>

(a) Amending Clause 1(2) (Stating that the Ordinance will expire starting from the date when the Hong Kong Section of the XRL ceases to operate)

At this stage, we do not envisage that the Hong Kong Section of the XRL will cease to operate. Even if this scenario arises, the HKSAR Government and the Mainland will review the Co-operation Arrangement. As stated in Part 1(c) above, should there be a need to amend the Co-operation Arrangement in future, the HKSAR Government will submit an amendment bill to the LegCo in the light of actual circumstances with a view to implementing the amended Co-operation Arrangement which has been approved by the State Council. At that juncture, the LegCo may decide whether the amendment bill should be passed. As such, we do not support this CSA.

(b) Deleting Clauses 3(1)(a) and 3(2), and amending Clauses 3(1)(b) and 6(1) (Not mentioning the Co-operation Arrangement and the deeming provision)

Pursuant to Article 1 of the Co-operation Arrangement, both sides agree to establish a port at the West Kowloon Station of the HKSAR to implement co-location arrangement whereby both sides will, in accordance with their respective laws, exercise exit and entry regulation, including immigration inspection, customs regulation, and inspection and quarantine measures etc., on departing and arriving persons travelling between the Mainland and the HKSAR, as well as their personal belongings and luggage. In particular, the West Kowloon Station Port comprises the Hong Kong Port Area and the Mainland Port Area. The Hong Kong Port Area is to be established by the HKSAR and be subject to its jurisdiction in accordance with the laws of the HKSAR and managed as a cross-boundary restricted area. The Mainland Port Area is to be established by the Mainland and be subject to its jurisdiction in accordance with the Co-operation Arrangement and the laws of the Mainland, and the port administration system is to be implemented thereat.

In addition, Article 4 of the Co-operation Arrangement provides that, with effect from the date of commissioning of the Mainland Port

Area, except for the matters provided for in Article 3 and Article 7 of the Co-operation Arrangement, the Mainland will exercise jurisdiction (including jurisdiction of the courts) over the Mainland Port Area in accordance with the Co-operation Arrangement and the laws of the Mainland. In handling those matters which are subject to the jurisdiction of the Mainland as set out in the preceding provision, for the purposes of the application of the laws of the Mainland and the laws of the HKSAR and the delineation of jurisdiction (including jurisdiction of the courts), the Mainland Port Area will be regarded as being situated in the Mainland.

The Bill has been drafted with a view to implementing the Co-operation Arrangement signed between the HKSAR Government and the Mainland on 18 November 2017. As the CSA is totally inconsistent with the Co-operation Arrangement, we do not support this CSA.

(c) Amending Clause 5(1) and deleting Clause 5(2) (Issues in relation to passenger trains)

The actual impact of the CSA is to subject train compartments of passenger trains on the Hong Kong Section of the XRL to the jurisdiction of the HKSAR under all circumstances. As a matter of fact, in discussing with the Mainland on the area of the West Kowloon Station Mainland Port Area, the HKSAR Government has adopted the principle of "absolute necessity" and included only the spaces, in view of high-speed rail passengers' routes, necessary to implement the co-location arrangement.

As the Mainland Port Area should be a seamless area, southbound high-speed rail passengers who are in the train compartments of passenger trains have not yet undergone Mainland departure clearance, and thus should remain under the jurisdiction of the Mainland; whilst northbound high-speed rail passengers have undergone Mainland arrival clearance procedures before getting onto the train compartments of passenger trains at the West Kowloon Station, and thus should remain under the jurisdiction of the Mainland. It is thus essential for train compartments of passenger trains to be regarded as part of the Mainland Port Area. As the CSA is totally inconsistent with the Co-operation Arrangement, we do not support this CSA.

(d) Deleting Clause 6(2) (Deleting the description on not affecting the HKSAR boundary)

This CSA is identical to Hon CHAN Chi-chuen's CSA. We do not support this CSA. Relevant justifications are set out in our response in Part 1(b) above.