



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2136 8016)

28 February 2018

Mr Andy LAM  
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Transport and Housing Bureau  
Transport Branch  
Division 1  
Land Transport Planning Section  
22/F, East Wing, Central Government Offices,  
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr LAM,

**Guangzhou-Shenzhen-Hong Kong Express Rail Link  
(Co-location) Bill**

We refer to your letter dated 22 February 2018 and shall be grateful for your clarifications on the following matters:

Applicable law in interpreting the Co-operation Arrangement

(1) In your reply to our enquiry (2), it was stated that the courts of the Hong Kong Special Administrative Region ("HKSAR") should have jurisdiction to adjudicate on any provisions of the Bill, including clause 3 on reserved matters or non-reserved matters and Articles 3, 4 and 7 of the Co-operation Arrangement which have been reproduced in Schedule 1 to the Bill. Please clarify whether a court of HKSAR, when asked to decide on a point of interpretation of Articles 3, 4 and 7 of the Co-operation Arrangement, would apply the laws of Hong Kong as the applicable law.

Articles 18, 19 and 22 of the Basic Law ("BL")

(2) In connection with our enquiry (4), you stated that the intent of BL 18 is to restrict the general application of national laws to all persons within HKSAR, in order not to undermine the high degree of autonomy and the legal



system of HKSAR. In view of the principles applicable to the interpretation of BL laid down by the Court of Final Appeal ("CFA") in *Ng Ka Ling v Director of Immigration* (1999) 2 HKCFAR 4 (at 28G-I *per* Li CJ) and *Director of Immigration v Chong Fung Yuen* (2001) 4 HKCFAR 211 (at 224E-225E *per* Li CJ), please clarify whether any extrinsic materials, e.g. pre-enactment materials such as the Joint Declaration and the Explanations on the Basic Law (draft) given at the National People's Congress on 28 March 1990, were considered in the above interpretation of BL 18 and if so, please elaborate on the extrinsic materials that the Administration is relying on in support of the view on the intent of BL 18 as stated above.

(3) In relation to BL 19(2), please clarify whether it is the Administration's position that the Bill, if passed, would have the effect of restricting the jurisdiction of the courts of HKSAR. Please also clarify the basis for your proposition that "the legal system and principles previously in force in Hong Kong" under BL 19(2) should be read as referring to, *inter alia*, "restrictions imposed on court's jurisdiction by legislations". In this regard, in the light of the principles applicable to the interpretation of BL mentioned in (2) above, please clarify whether reference had been made to any extrinsic materials in making the above proposition and if so, provide details of the extrinsic materials in support of the Administration's position.

(4) In connection with BL 19, the Administration also referred to the proportionality test at the Bills Committee meeting held on 23 February 2018. Please clarify, in the light of the Administration's stance that the Bill would have the effect of restricting the courts' jurisdiction, whether and how such restriction could satisfy the four-step proportionality test (laid down by CFA in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372, applied in *Kwok Cheuk Kin v Secretary for Constitutional and Mainland Affairs* [2017] 5 HKC 242) as follows:

- (i) whether the proposed restriction pursues a legitimate aim;
- (ii) whether the proposed restriction is rationally connected to that legitimate aim;
- (iii) whether the proposed restriction is no more than is necessary to accomplish that legitimate aim; and
- (iv) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected right.



(5) In the last paragraph of your reply to our enquiry (4), you have also referred to BL 82 and it was mentioned that CFA has agreed in various cases that their power of final adjudication could be subject to reasonable restrictions. In this regard, please elaborate and provide details of these cases in which CFA came to such a conclusion. Please also clarify, in the light of such cases, whether and how the principles laid down by CFA are applicable to the present case.

(6) In your reply to our enquiry (4), it was stated that BL 22(2) would not be violated. We note that BL 22(3) further provides that all offices set up in HKSAR by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of HKSAR. Please clarify whether and how clauses 3(1)(b) and 6(1) of the Bill would be consistent with BL 22(3).

Article 7 of the Basic Law

(7) In your reply to our enquiry (5), it was stated that the Administration takes the view that the People's Government of Guangdong Province would be covered by the term "individuals, legal persons or organizations" in BL 7. In the light of the principles applicable to the interpretation of BL as mentioned above, please clarify whether the Administration has considered any extrinsic materials (including but not limited to the drafting materials of BL as stated in paragraph 15 of your letter) in coming to the above view, and if so, please elaborate on the extrinsic materials in support of your conclusion.

It is appreciated that your reply in both English and Chinese (or one of the versions when it is available) could reach us by 9 March 2018.

Yours sincerely,



(Timothy TSO)

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