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 17 March 2018

Government response

(a) Relevant information on arrangement relating to co-location of boundary control facilities adopted by other places/countries; and provide justifications for the co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link as proposed under the Bill

The Government of the Hong Kong Special Administrative Region ("HKSAR") conducted studies on the co-location arrangements implemented by other places/countries. Please refer to **Annex I** and **Annex II** for information on the co-location arrangements implemented between the United Kingdom ("UK") and France as well as between Canada and the United States ("US") respectively.

Efficient and time-saving clearance procedures are absolutely essential to realising the full potential of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") in terms of speed and convenience. Under a co-location arrangement, passengers can complete clearance procedures of both Hong Kong and the Mainland at the West Kowloon Station ("WKS") in one go. Passengers departing from Hong Kong can go to all cities covered by the national high-speed rail network without having to undergo clearance procedures again in the Mainland. Passengers coming to Hong Kong can also board trains at any station of their choice on the national high-speed rail network, and go through Mainland departure clearance and Hong Kong arrival clearance at the WKS. They will not be constrained by whether a particular Mainland city has clearance facilities. In other words, implementation of co-location arrangement at the WKS will enable passengers to travel to and from different destinations across the country conveniently, and allow Hong

Kong to provide direct high-speed rail service to an increasing number of Mainland cities in the days to come in order to cater for future demands for railway service.

If a co-location arrangement is not implemented and a separate-location arrangement is implemented as with the existing Intercity Through Train service between Hong Kong and Guangzhou, XRL passengers may only board or alight at the handful of Mainland stations equipped with clearance facilities. This will hamper the efficiency and flexibility offered by the XRL. In other words, using a separate-location arrangement for the XRL will greatly undermine its benefits and make it just like another intercity express rail without the advantage of easier access to cities throughout the country. In addition to saving passengers' time and realising the speed and convenience of the XRL services, the co-location arrangement is critical to fully unleashing the transport, social and economic benefits of the XRL project.

In formulating the co-location arrangement for the WKS of the XRL, the HKSAR Government not only made reference to the aforementioned overseas examples, but also conducted thorough studies and discussions with the relevant Mainland authorities in great depth in view of the actual circumstances of both places given the fact that the co-location arrangement involves complicated constitutional, legal, operation and other considerations. As stated in the response made by the HKSAR Government to the Legal Service Division of the Legislative Council ("LegCo") dated 22 February 2018 (LC Paper No. CB(4)631/17-18(01)), during the process, the HKSAR Government had once explored the idea of allowing Mainland officials to enforce only those laws relevant to clearance procedures in the Mainland Port Area ("MPA") in the WKS. However, studies revealed that such idea is infeasible and cannot be adopted for the implementation of the co-location arrangement in the WKS.

First of all, as stated in the discussion paper submitted by the HKSAR Government to the LegCo on 25 July 2017, 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, under this idea, Hong Kong laws will not be excluded from the MPA 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, especially legal challenges against immigration and repatriation matters with cases involving offenders of serious offences or terrorists in particular. This will thereby increase the security risks in Hong Kong. Based on the above reasons, the HKSAR Government considers that allowing Mainland officials to enforce only the laws allegedly essential for enforcing the Mainland clearance procedures in the MPA in the WKS will result in confusion in jurisdiction and is practically infeasible. In this connection, overseas examples cannot be fully applied to the WKS of the XRL. It would be essential to make an appropriate co-location arrangement in view of the actual circumstances of both places.

(b) The reasons for concluding that the Bill would not contravene Articles 4, 11, 19, 22(3), 31, 35, 38, 39, 41, 80 and 87 of the Basic Law

As explained in Part 2 of the letter dated 9 March 2018 issued by the HKSAR Government to the LegCo Secretariat (LC Paper No. CB(4)720/17-18(01)) ("the 9 March reply issued by the HKSAR Government"), the Court of Final Appeal held in *Ng Ka Ling v Director of Immigration*[1] and *The Director of Immigration v Chong Fung Yuen*[2] that purpose and context are the cornerstones of constitutional interpretation. The courts must avoid a literal, technical, narrow or rigid approach. Instead, they must consider the purpose and context of the provision concerned.

Overall speaking, the purpose of the Basic Law is to establish the HKSAR being an inalienable part of the People's Republic of China with a

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1 (1999) 2 HKCFAR 4.
2 (2001) 4 HKCFAR 211.

high degree of autonomy in accordance with the principle of "one country, two systems". Same as other constitutional documents, the Basic Law distributes and delimits powers. When interpreting a particular provision of the Basic Law, the courts would consider internal aids as well as extrinsic materials which throw light on the context and purpose of that provision.

Internal aids include provisions in the Basic Law other than the provision in question and the Preamble. Extrinsic materials include (but are not limited to) the Joint Declaration, the Explanations on the Basic Law (draft) given to the National People's Congress for deliberation before the adoption of the Basic Law, materials brought into existence prior to or contemporaneous with the enactment of the Basic Law, as well as the state of domestic legislation at that time.

Article 18 of the Basic Law ("BL 18")

Regarding BL 18, an important aid to interpretation is Chapter II of the Basic Law. BL 18 is stipulated in Chapter II of the Basic Law which explains the relationship between the Central Authorities and the HKSAR. Chapter II is the most immediate context of BL 18 and must be taken into account. Chapter II concerns the powers which the State confers on the HKSAR and the powers which the State preserves for the Central Authorities.

Apart from the context provided by Chapter II of the Basic Law, it is worthy to note that BL 18(2) only concerns national laws[3], but not all Mainland laws. It is thus clear that BL 18(2) is a specific provision dealing with the application of national laws in the HKSAR.

National laws mentioned in BL 18(2) refer to laws that are applied and implemented in the whole nation. Applying national laws in the HKSAR would necessarily entail application of such laws in the entire HKSAR. Taking into account the nature of the national laws listed in

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[3] National laws refer to laws made by the National People's Congress and its standing committee.

Annex III to the Basic Law pursuant to BL 18(3), namely those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified in the Basic Law, such are laws that would necessarily be applied and implemented in the whole nation including the entire HKSAR.

Given the above, the intent of BL 18 is to restrict the general application of national laws to all persons within the entire HKSAR. This is totally different from the application of Mainland laws in the MPA.

1. The MPA is established for a specific purpose (of conducting Mainland clearance procedures on high-speed rail passengers) pursuant to the Co-operation Arrangement and the Decision of the Standing Committee of the National People's Congress (the area of application is not the entire HKSAR).

2. Mainland laws are mainly applicable to high-speed rail passengers in the MPA (not all persons in Hong Kong).

3. They are implemented by Mainland authorities (they are not implemented by Hong Kong authorities in the entire Hong Kong).

4. The entire arrangement does not undermine the immigration system of Hong Kong.

5. The main point is that citizens could make their own choices whether or not to use the high-speed rail and enter the MPA. The arrangement does not force the application of Mainland laws on any person.

6. The situation of passengers entering the MPA is as if they have chosen to enter another jurisdiction (e.g. Luohu and Futian Ports etc.) and subject themselves to the applicable laws therein.

Based on the above discussions, we consider that the Bill would not contravene BL 18.

Article 19 of the Basic Law ("BL 19")

As stated in Part 3 of the 9 March reply issued by the HKSAR Government, BL 19 is stipulated in Chapter II of the Basic Law. The main purpose of BL 19 is to make provision for the judicial powers and jurisdiction for the HKSAR in the light of the relationship between the Central Authorities and the HKSAR. The structure, powers and functions of the Judiciary are the subject matter of Section 4 in Chapter IV of the Basic Law, not BL 19.

BL 19(2) provides that "the courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained." The legal system and principles previously in force in Hong Kong include the restrictions imposed on the court's jurisdiction by legislation.

Before 1 July 1997, the jurisdiction of the courts of Hong Kong could be restricted by legislation. For instance, prior to the establishment of the HKSAR, in accordance with the International Organizations and Diplomatic Privileges Ordinance (Cap. 190), diplomatic immunities and the immunities for international organizations restricted the jurisdiction of the courts. The above immunities continue to be recognized under Hong Kong law after 1 July 1997.

Besides, as discussed in Part 4 of the 9 March reply issued by the HKSAR Government, we consider that there are reasonable arguments to show that the restriction on Hong Kong courts' jurisdiction imposed by the Bill would satisfy the proportionality test.

Article 80 of the Basic Law ("BL 80")

BL 80 is the first provision in Section 4 in Chapter IV of the Basic Law. BL 80 states that the courts at all levels of the HKSAR shall be the judiciary of the Region, exercising the judicial power of the Region.

None of the provisions of the Bill seeks to affect the role of the courts at all levels of the HKSAR as the judiciary of the Region. Clause 6(1)(b) of the Bill merely serves to adjust the jurisdiction over the MPA, but not the role of the courts at all levels of the HKSAR as the judiciary of the Region or their power to adjudicate cases. As such, the Bill would not give rise to any BL 80 concern.

Article 87 of the Basic Law ("BL 87")

BL 87 states that, in criminal or civil proceedings in the HKSAR, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained. BL 87 is also stipulated in Section 4 in Chapter IV of the Basic Law. As discussed above, Clause 6(1)(b) of the Bill merely serves to adjust the jurisdiction over the MPA. None of the provisions of the Bill seeks to affect the principles applicable in criminal and civil proceedings in the HKSAR. The Bill therefore would not give rise to any BL 87 concern.

Articles 4, 31, 35, 38, 39 and 41 of the Basic Law ("BL 4", "BL 31", "BL 35", "BL 38", "BL 39" and "BL 41")

BL 4 safeguards the rights and freedoms of the residents of the HKSAR and of other persons in the Region. That provision is stipulated in Chapter I (General Principles) of the Basic Law. There are all together 11 general principles in Chapter I which govern the systems and policies practised in the HKSAR from the constitutional, economic and legal angles. The fundamental principle stipulated by BL 4 is reflected in various chapters of the Basic Law, especially Chapter III (Fundamental Rights and Duties of the Residents). BL 31, BL 35, BL 38, BL 39 and BL 41 are all found in Chapter III of the Basic Law.

BL 31 safeguards the freedom of Hong Kong residents to travel and to enter or leave the Region. BL 35 protects the lawful rights of Hong Kong residents to confidential legal advice and access to courts. BL 38 guarantees that Hong Kong residents shall enjoy other rights safeguarded by the laws of the HKSAR. BL 39 stipulates that the provisions of

international conventions such as the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. BL 41 provides that persons in the HKSAR other than Hong Kong residents shall, in accordance with law, enjoy the rights of Hong Kong residents prescribed in Chapter III.

We consider that Clause 6(1)(b) of the Bill merely makes adjustment to the laws applicable in the MPA and the jurisdiction over the MPA. Passengers would be well informed by the Bill of such arrangements and can freely choose whether to travel between Hong Kong and the Mainland by high-speed rail. At the same time, the arrangements only involve relocating the Mainland port to the WKS, without affecting the applicable clearance laws and procedures. There is no difference between entering the MPA and entering other restricted port areas (e.g. Luohu and Futian Ports etc.). Relocating the Mainland port to the WKS would allow passengers to fully benefit from the speed and convenience brought by high-speed rail, as well as strengthen Hong Kong's status as the regional transport hub. As such, the Bill would not engage the right of Hong Kong residents to travel and to confidential legal advice, let alone other rights that Hong Kong residents and other persons enjoy in accordance with the laws of the HKSAR. On this basis, the Bill would not contravene BL 4, BL 31, BL 35, BL 38, BL 39 and BL 41.

At the same time, Clause 6 of the Bill states that, except for reserved matters, the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland. As a matter of fact, the LegCo has previously enacted a similar deeming provision in respect of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591)[4].

As pointed out by Hartmann J in *Chu Woan Chyi v Director of Immigration*[5], while the four applicants who were non-Hong Kong

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[4] Section 5(2) of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) provides that "For the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, the Hong Kong Port Area is regarded as an area lying within Hong Kong."

[5] HCAL 32/2003, 23 March 2007.

residents had already set foot on Chek Lap Kok Airport, since they had not completed the clearance procedures of Hong Kong, they should not be treated as having entered Hong Kong. Accordingly, they could not resort to BL 4 and BL 41. As far as non-reserved matters are concerned, as the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland, the relevant protections in Chapter III of the Basic Law are not applicable.

Given the above analysis, we consider that the Bill does not contravene BL 4, BL 31, BL 35, BL 38, BL 39 and BL 41.

Article 22(3) of the Basic Law ("BL 22(3)")

As stated in Part 6 of the 9 March reply issued by the HKSAR Government, only after the Bill is enacted and forms part of the laws of Hong Kong can Mainland personnel perform their duties in the MPA. We therefore consider that the Bill is not inconsistent with BL 22(3).

Article 11 of the Basic Law ("BL 11")

Since the Bill does not contravene any provision of the Basic Law, if it is passed by the LegCo, it would not contravene BL 11.

Department of Justice
Transport and Housing Bureau
Security Bureau
4 April 2018

Annex I

Juxtaposed Control Zones of the UK and France

This note covers the juxtaposed control zones ("JCZs") agreed between the Governments of the UK and France for the operation of the Fixed Channel Link ("Tunnel")[1].

JCZs

2. In brief, JCZs are specified locations within the national geographical territory of the host State which are specially set aside by treaty and local law for the operation of juxtaposed controls[2].

3. The two Governments agreed to establish juxtaposed national control bureaux in the terminal installations situated at each other's end of the Tunnel. Reciprocal arrangements were put in place whereby each country shall carry out entry controls extra-territorially in the State of departure. In other words, frontier controls are carried out in the terminal of the State of departure. For instance, people entering the Tunnel in the UK have to complete the exit procedures with the UK authorities and then go through the entry checks by French authorities before they can board the shuttle train[3]. They can leave immediately upon arrival in France from the Tunnel.

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1 Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaries of a Channel Fixed Link done at Canterbury on 12 February 1986.

2 Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link done at Sangatte on 25 November 1991 ("Sangatte Protocol"). In the UK, the Sangatte Protocol is implemented by the Channel Tunnel (International Arrangements) Order, 1993 ("1993 Order") made under section 11 of the Channel Tunnel Act, 1987.

3 The term "shuttle trains" is defined in Article 1(2)(i) of the Sangatte Protocol to mean "trains travelling solely within the Tunnel".

Jurisdiction

4. Different legal regimes exist for frontier control offences detected in the JCZs and for law and order offences in the Tunnel.

Frontier Control Offences

5. The law and regulations relating to frontier controls of the adjoining State apply in the control zone, i.e. the JCZ, in the host State. These are enforced by the officers of the adjoining State in the same way as the officers would enforce them in their own territory (Sangatte Protocol, Article 9). Accordingly, any act or omission which takes place outside the UK in the JCZ (i.e. in France) which would, if taking place in the UK, constitute an offence under a frontier control enactment, is treated as taking place in the UK (Sangatte Protocol, Article 11).

6. Frontier Controls means police, immigration, customs, health, veterinary and phytosanitary, consumer protection, and transport and road traffic controls, as well as any other controls provided for in national or European community laws and regulations (Sangatte Protocol, Article 1(2)(a)).

Law and Order Offences in the Tunnel

7. Inside the Tunnel, the law of the UK applies to the part of the Tunnel within its territory while French law applies to the part of the Tunnel on French soil. When an offence is committed in the territory of either the UK or France, the relevant State has jurisdiction up to its frontier including the territory within the Tunnel (Sangatte Protocol, Article 38(1)).

8. In addition, there are three situations in which either State has jurisdiction and either can apply its own law (Sangatte Protocol, Article 38(2)(a)):

(a) when it cannot be determined with certainty where an offence has been committed;
(b) when an offence committed in the territory of one State is

related to an offence committed in the territory of the other State; or

(c) when an offence has begun in or has been continued into its own territory.

9. If this occurs, the following rules apply:

(a) the State which first receives the person suspected of having committed an offence in the above circumstances has priority in exercising jurisdiction (Sangatte Protocol, Article 38(2)(b));

(b) if the receiving State decides not to exercise its priority jurisdiction, it must inform the other State without delay;

(c) the other State may then exercise jurisdiction over the offence but if it decides not to; then

(d) the receiving State shall be obliged to exercise its jurisdiction (Sangatte Protocol, Article 38(3)).

10. Article 38 of the Sangatte Protocol thus establishes a mechanism under which one of the States must exercise jurisdiction. This mechanism is buttressed by Article 41 of the Sangatte Protocol which makes it clear that the competent authorities of the State of arrival have the responsibility to determine the exercise of jurisdiction under Article 38. This mechanism is reproduced in Schedule 3 of the 1993 Order[4].

Authority and Protection of Officers

11. Officers of the adjourning State may wear their national uniform in the host State. Further, the host State will issue permanent licences to carry firearms to officers of the adjourning State exercising their official functions

[4] See para 4 of Part I of Schedule 3 which deals with the situation when the UK is the State of arrival and the person has been arrested by French officers and taken to a police station in the UK. The custody officer at the police station shall determine whether the UK has jurisdiction under Article 38 of the Sangatte Protocol and whether the UK should exercise jurisdiction. If the custody officer determines that the UK does not have jurisdiction or that the jurisdiction under the article is not to be exercised, the custody officer shall immediately inform the competent French authority and shall arrange for the person to be transferred to France within the permitted period (which is the period of 48 hours beginning at the time at which the person arrives at the police station). See also the discussion on Article 41 at paragraph 18 below.

within the JCZ of the host State and on board trains (Sangatte Protocol, Articles 28(2)).

12. Within the JCZ, officers of the adjoining State are permitted to exercise any power of arrest and detention in accordance with the laws and regulations relating to frontier controls of the adjoining State. They are also permitted to detain or arrest persons sought by the authorities of adjoining State or wanted on warrant and conduct such persons to the territory of the adjoining State (Sangatte Protocol, Article 10(1); 1993 Order, Article 3(2) and Schedule 3, Part I).

13. Within the Tunnel, each Government permits officers of the other State to carry out their functions in its own territory in exercising the officers' frontier control powers (Sangatte Protocol, Article 8). Officers of both States can circulate freely in the whole of the Tunnel for official purposes (Sangatte Protocol, Article 26).

14. In addition, the police and customs officers of one State may, in accordance with their own national laws, make arrests on the territory of the other State in cases where a person is found committing, attempting to commit or just having committed an offence on board any train which has commenced its journey and is within the Tunnel (Sangatte Protocol, Article 40).

15. The host State grants the same protection and assistance to officers of the adjoining State in the exercise of their functions as they grant to their own officers (Sangatte Protocol, Article 29(1)). Provisions of the criminal law in force in the host State for the protection of officers in the exercise of their functions apply equally to the punishment of offences committed against officers of the adjoining State in the exercise of their functions (Sangatte Protocol, Article 29(2)).

16. Officers of the adjoining State may not be prosecuted by the authorities of the host State for any acts performed in the JCZ or within the Tunnel whilst in the exercise of their functions. In such a case they come under the jurisdiction of the adjoining State as if the act had been committed

in that State (Sangatte Protocol, Article 30(2)).

Mutual Assistance

17. When investigations and proceedings concern offences committed in the Tunnel, or having a connection with the Tunnel, the authorities of the host State shall, at the request of the authorities of the adjoining State, undertake official enquiries, examination of witnesses and experts and notification to accused persons of summonses and administrative decisions (Sangatte Protocol, Article 16). This assistance has to be provided in accordance with the laws, regulations and procedures in force in the State providing the assistance, and with international agreements to which that State is a party (Sangatte Protocol, Article 17).

18. When it is decided that jurisdiction will be exercised by the other State in the circumstances covered by Article 38 (see paragraph 9 above), the person may be transferred to the territory of that State. Any such transfer must take place within 48 hours of the presentation of that person to the competent authorities of the State of arrival for that State to determine the exercise of jurisdiction under Sangatte Protocol, Article 41(a) (Sangatte Protocol, Article 41(b)).

19. Article 41 therefore enables the authorities to avoid having to institute extradition proceedings in the circumstances covered by Article 38. If, however, the above transfer does not take place within the prescribed time limits, it is likely that the only recourse would be for the prosecuting authorities to resort to formal extradition proceedings.

Annex II

Canada and US Preclearance Arrangement

This note covers the preclearance arrangement between Canada and the US, which allows travellers in either country to be cleared for entry to the other country before departing from the first mentioned country.

1974 Agreement

2. Canada has allowed the US Federal Inspection Services to operate air passenger preclearance in Canada since the 1950s. In 1974, Canada and the US formally entered into a Preclearance Agreement ("1974 Agreement"), which provided for reciprocal preclearance arrangements between the two countries.

2001 Agreement

3. On 18 January 2001, Canada and the US entered into a fresh Air Transport Preclearance Agreement ("2001 Agreement") in replacement of the 1974 Agreement. This Agreement regulates the current arrangement.

4. As compared with the 1974 Agreement, the new Agreement is more elaborated in its terms, particularly on the powers and immunities of the inspecting country in the host country with respect to preclearance. The following provisions of the new Agreement are noteworthy:

(a) the inspecting country is authorised to administer its laws concerning customs, immigration, public health, food inspection, and plant and animal health in the preclearance area in the host country (to the extent that they are not considered criminal) for the purposes of preclearance, but since the laws of the host country continue to apply in the preclearance area, the preclearance has to be carried out in a manner consistent with the laws and regulations of both countries (Articles II.3 and II.6);

(b) the inspecting country shall be authorized to administer its

civil fines and monetary penalties on travellers except when the host country institutes penal proceedings with respect to the same act or omission (Article II.8);

(c) whilst the inspecting country's preclearance officers shall be authorized to conduct frisk searches (pat downs) of travellers for preclearance purposes, only the host country shall have the authority to conduct strip (body) searches and more intrusive searches (Articles IV.3 and IV.4(a));

(d) the inspecting country's preclearance officers shall be authorized to seize, detain and forfeit goods (other than currency and monetary instruments), but the host country shall retain and control goods for which the possession, import, export or handling is prohibited under the host country's law (Articles IV.6 and IV.7). Further, the goods that are required as evidence of an offence proceeding to a resolution in a court of the host country, as well as goods that are required by law to be dealt with in accordance with the host country's law shall be retained by the host country to be dealt with in accordance with its laws and international agreements between the parties (Article II.9);

(e) the armed law enforcement officers of the host country shall continue to be present in the preclearance area;

(f) a civil action in respect of anything that is, or is purported to be, done or omitted to be done within the scope of his/her duties by a preclearance officer may be brought against the inspecting country to the extent that the inspecting country is not immune under the relevant state immunity legislation of the host country. Defences available under the host country's law, including procedural and substantive defences, remain available to the inspecting country (Article X.4).

2004 Framework

5. On 17 December 2004, Canada and the US signed a framework agreement in which they committed to put land preclearance in place at the Buffalo-Fort Erie Peace Bridge and at one other border crossing. In order

to accommodate the need for land preclearance, Canada and the US conducted negotiations in accordance with various policies and principles to reach an agreement.

2015 Agreement

6. On 14 March 2015, Canada and the US entered into Agreement on Land, Rail, Marine, and Air Transport Preclearance ("2015 Agreement") with a view to superseding the current 2001 Agreement.

7. As compared with the 2001 Agreement, the new Agreement expands preclearance to not only air transport, but also land, rail and marine transportation as well. It provides more powers for officers of the inspecting country to perform their preclearance duties. There is also a more elaborated regime to govern the conduct of preclearance officers.

8. For the implementation of the 2015 Agreement, the US and Canada have already commenced their local legislative exercise. In the US, the Promoting Travel, Commerce and National Security Act of 2016 was passed in December 2016. In Canada, the Preclearance Act 2016 was passed in December 2017. Once the enabling regulations are in place, Canada and the US could ratify the 2015 Agreement and start expanding preclearance operations to other modes of transportation – land, rail and marine – in addition to the new locations in the air mode.