

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 2 February 2018**

**Legal Service Division Report on  
Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to implement the co-location arrangement at the West Kowloon Station ("WKS") of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"). It seeks to:

  - (a) declare an area as the West Kowloon Station Mainland Port Area ("Mainland Port Area");
  - (b) provide that a train compartment of a passenger train in operation on XRL is to be regarded as part of the Mainland Port Area;
  - (c) provide that the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland for certain purposes; and
  - (d) make supplementary provisions for certain rights and obligations and related matters and for the interpretation of certain documents in relation to rights and obligations.
- 2. Public Consultation**

The Administration announced the "Three-step Process" on 25 July 2017 to give an account to the community and initiate public discussion. No formal public consultation was conducted.
- 3. Consultation with LegCo Panel**

The Administration briefed Members on the co-location arrangement at a special House Committee meeting on 3 August 2017 and a joint meeting of the Panel on Transport, the Panel on Security and the Panel on Administration of Justice and Legal Services on 8 August 2017 respectively. Members expressed various views on the co-location arrangement.
- 4. Conclusion**

In the light of the views expressed by Members on the co-location arrangement and the possible legal and constitutional issues involved, it is recommended that a Bills Committee be formed to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 31 January 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: THB(T)CR 9/1/16/581/99) issued by the Transport and Housing Bureau on 26 January 2018 for further details.

### **Object of the Bill**

2. The Bill seeks to implement the co-location arrangement at the West Kowloon Station ("WKS") of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"). It seeks to:

- (a) declare an area as the West Kowloon Station Mainland Port Area ("Mainland Port Area");
- (b) provide that a train compartment of a passenger train in operation on XRL is to be regarded as part of the Mainland Port Area;
- (c) provide that the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland for certain purposes; and
- (d) make supplementary provisions for certain rights and obligations and related matters and for the interpretation of certain documents in relation to rights and obligations.

### **Background**

3. On 25 July 2017, the Administration announced the following "Three-step Process" to put in place the co-location arrangement at WKS of XRL: (1) the Mainland and the Hong Kong Special Administrative Region ("HKSAR") would reach a co-operation arrangement in relation to co-location; (2) the Standing Committee of the National People's Congress ("NPCSC") would make a decision approving and endorsing the co-operation arrangement; and (3) both sides would implement the arrangement pursuant to their respective procedures; in the case of the HKSAR, local legislation would be necessary to implement the co-location arrangement. At the Council meeting of 15 November 2017, a Government motion not intended to have legislative effect on taking forward the follow-up tasks of the co-location arrangement at WKS of XRL was passed.

4. On 18 November 2017, 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") was signed. On 27 December 2017, the Decision of the Standing Committee of the National People's Congress 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 was adopted at the Thirty-first Session of NPCSC.

### **Provisions of the Bill**

5. The Bill seeks to implement the third step of the "Three-step Process" by providing for the co-location arrangement at WKS by way of legislation. The major provisions of the Bill are summarized in the ensuing paragraphs.

#### Declaration of the West Kowloon Station Mainland Port Area

6. Clause 4 of the Bill seeks to declare the Mainland Port Area at WKS as delineated and coloured orange on the plans (together with the annexes) in Schedule 2 to the Bill. It covers designated areas on B2 and B3 levels, the platform areas on B4 level, as well as the relevant connecting passageways and escalators/staircases at WKS.

#### Train compartments of passenger trains in operation

7. Under clause 5 of the Bill, a train compartment of a passenger train in operation on XRL (including a passenger train which is in motion, stationary and during embarkation or disembarkation) would be regarded as part of the Mainland Port Area. However, a passenger train would not be in operation while within Shek Kong Stabling Sidings (i.e. the area delineated and coloured orange on the plan (as read with the Notes on the plan) in Schedule 3 to the Bill); or while making a journey from Shek Kong Stabling Sidings to WKS or a journey from WKS to Shek Kong Stabling Sidings.

## Laws and jurisdiction in the Mainland Port Area

### *Reserved matters – application of the laws of Hong Kong*

8. Under clause 3(1) of the Bill, reserved matters are matters to which the laws of Hong Kong would apply, and over which Hong Kong would exercise jurisdiction (including jurisdiction of the courts), under Article 3 or 7 of the Co-operation Arrangement set out in Schedule 1 to the Bill. These matters include performance of duties and functions by certain designated personnel; matters relating to the standards of the construction, insurance and design, repair and maintenance of buildings; matters relating to the carrying on of business, related insurance and tax affairs of the Hong Kong operator of XRL and service provider(s); and matters relating to the regulation and monitoring of the operational safety of the railway system.

### *Non-reserved matters – application of the laws of the Mainland*

9. Except for reserved matters as stated above, clause 6(1) of the Bill proposes that the Mainland Port Area would be regarded as an area lying outside Hong Kong but lying within the Mainland for the purposes of (a) the application of the laws of the Mainland, and of the laws of Hong Kong, in the Mainland Port Area; and (b) the delineation of jurisdiction (including jurisdiction of the courts) over the Mainland Port Area. The legal effect is that the laws of the Mainland would apply to non-reserved matters in the Mainland Port Area at WKS over which the Mainland would exercise jurisdiction (including jurisdiction of the courts) under Article 4 of the Co-operation Arrangement set out in Schedule 1 to the Bill.

### *Boundary of HKSAR not affected*

10. Clause 6(2) of the Bill proposes that 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 dated 1 July 1997 and published as S.S. No. 5 to Gazette No. 6/1997 of the Gazette) would not be affected by the arrangement as stated in paragraph 9 above.

## Savings and supplementary provisions

11. Clause 7 of the Bill contains savings provisions regarding pre-existing rights and obligations (i.e. those acquired, accrued or incurred before the commencement date of the Bill after its enactment ("enacted Ordinance")), legal proceedings, and offences etc. For instance, rights acquired or accrued and obligations incurred before the commencement date of the enacted Ordinance would not be affected by the arrangement as stated in paragraph 9 above.

12. Clause 8 of the Bill contains provisions for the interpretation of certain future documents (i.e. documents made on or after the commencement date of the enacted Ordinance) in relation to rights or obligations (other than rights acquired or accrued, or obligations incurred, before the commencement date of the enacted Ordinance) if the document contains a reference to Hong Kong or part of Hong Kong. Under clause 8(2) and (3), the reference would be interpreted such that in relation to a non-reserved matter, the Mainland Port Area would be regarded as an area lying outside Hong Kong but lying within the Mainland, but this interpretation may be displaced by a contrary intention. Clause 8 does not apply to an enactment, a statutory authority<sup>1</sup> or a Court order.

### **Commencement**

13. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

### **Public Consultation**

14. According to paragraphs 34 and 35 of the LegCo Brief, the Administration announced the "Three-step Process" on 25 July 2017 to give an account to the community and initiate public discussion as early as possible. The relevant officials attended various public events in the following months, including interviews at radio and television programmes, to explain the co-location arrangement and listen to the views of the community. No formal public consultation was conducted.

### **Consultation with LegCo Panel**

15. As advised by the Clerk to the Panel on Transport, the Administration briefed Members on the co-location arrangement at a special House Committee meeting on 3 August 2017 and a joint meeting of the Panel on Transport, the Panel on Security and the Panel on Administration of Justice and Legal Services on 8 August 2017 respectively. Some Members supported the co-location arrangement and expressed that the implementation of such arrangement was necessary and would bring tremendous business opportunities for various industries in Hong Kong. A motion was passed at the Joint Panel meeting on 8

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<sup>1</sup> Under clause 2 of the Bill, "statutory authority" includes a licence, permit, order, requirement, etc. issued, given, made or imposed by the exercise or performance of a statutory power or duty, but excludes a Court order.

August 2017 expressing support for the implementation of co-location arrangement at WKS and urging the Government to step up its efforts in explaining the detailed operation and implementation of the co-location arrangement to the public, and continue to listen to public views. On the other hand, some other Members were deeply concerned about the legal basis of the co-location arrangement. They opined that allowing the Mainland law enforcement agencies to enforce national laws at WKS might violate the principle of "One Country, Two Systems" and the Basic Law and would undermine the rule of law in Hong Kong. In particular, they were worried that the application of Mainland laws in the Mainland Port Area would undermine the rights of Hong Kong residents as protected under the Basic Law. These Members also expressed dissatisfaction at the Administration's reluctance to conduct public consultation.

## **Conclusion**

16. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In the light of the views expressed by Members on the co-location arrangement and the possible legal and constitutional issues involved, it is recommended that a Bills Committee be formed to study the Bill in detail.

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