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**Paper for the House Committee meeting on 25 May 2018**

**Report of the Bills Committee on Guangzhou-Shenzhen-Hong Kong  
Express Rail Link (Co-location) Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bills Committee").

**Background**

2. The Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") is an express rail system with a total length of about 140 kilometres ("km") linking Hong Kong with Guangzhou. The Hong Kong Section ("HKS") of XRL is a 26-km long underground railway system running from the boundary at Huanggang to the West Kowloon Station ("WKS"), a new terminus located at the north of the West Kowloon Cultural District between the Kowloon Station of the Airport Express and the Austin Station of the West Rail Line. The project is expected to commission in September 2018.

3. The Government of the Hong Kong Special Administrative Region ("HKSAR") and the relevant Mainland authorities reached consensus in July 2017 on the framework for implementing a co-location arrangement. Under the proposed co-location arrangement, passengers could complete clearance procedures of both Hong Kong and the Mainland at the WKS in one go. Passengers departing from Hong Kong could go to cities on the national high-speed rail network without having to undergo clearance procedures again on the Mainland. Likewise, passengers coming to Hong Kong could board trains at any station on the national high-speed rail network in the Mainland, and go through Mainland departure clearance and Hong Kong arrival clearance at the WKS.

4. On 25 July 2017, the Executive Council advised and the Chief Executive ordered that the proposed co-location arrangement at the WKS 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 summarized as follows –

- (a) **Step 1**: the Mainland and the HKSAR are to reach a co-operation arrangement;
- (b) **Step 2**: the Standing Committee of the National People's Congress ("NPCSC") makes a decision approving and endorsing the co-operation arrangement; and
- (c) **Step 3**: both sides implement the arrangement pursuant to their respective laws. In the case of the HKSAR, local enactment would be necessary to implement the co-location arrangement.

5. The HKSAR Government made an announcement on the "Three-step Process" in the afternoon of 25 July 2017. Subsequently, on 15 November 2017, the Legislative Council ("LegCo") passed a non-binding motion moved by the HKSAR Government in support of the Administration in taking forward the follow-up tasks of the co-location arrangement pursuant to the "Three-step Process". Thereafter, the HKSAR Government formally commenced the "Three-step Process" by signing with the Mainland 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") on 18 November 2017. The NPCSC subsequently approved the Co-operation Arrangement through 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" on 27 December 2017 ("Decision"), completing the second step of the "Three-step Process".

6. As the final step of the "Three-step Process", the HKSAR Government published the "Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill" ("the Bill") in the Gazette on 26 January 2018 to commence the local legislative process pursuant to the NPCSC's Decision and the Co-operation Arrangement to implement the co-location

arrangement in the HKSAR. The Bill received its first reading on 31 January 2018 at LegCo.

### **The Bill**

7. The preamble of the Bill sets out its background, including —
  - (a) the Co-operation Arrangement signed on 18 November 2017; and
  - (b) the Decision made by the NPCSC on 27 December 2017.
  
8. To implement the Co-operation Arrangement, the Bill seeks to—
  - (a) declare an area as the West Kowloon Station Mainland Port Area ("MPA");
  - (b) provide that a train compartment of a passenger train in operation on the HKS of the XRL is to be regarded as part of the MPA;
  - (c) provide that the MPA 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.

### **The Bills Committee**

9. At the House Committee meeting on 2 February 2018, members agreed to form a Bills Committee to study the Bill in detail. The membership list of the Bills Committee is in **Appendix I**.

10. Under the chairmanship of Hon Mrs Regina IP LAU Suk-ye, the Bills Committee has held 17 meetings, i.e. 45 hours of duration in total, with the Administration to deliberate on the details of the Bill. The Bills Committee has also held 2 whole-day public hearings, i.e. 19 hours in total, to collect views of the public on the Bill. The Bills Committee has also conducted two site visits to the WKS on 27 February 2018 and 30 April 2018 respectively. The itinerary of the two visits are the same, with the second one conducted especially for the four Members returned from

by-election on 11 March 2018 who have joined the Bills Committee and also other members who were unable to join the first one.

## **Deliberations of the Bills Committee**

11. Divergent views persist amongst members on the Bill. Some members of the Bills Committee support the Bill while some members have strong views against it. During the course of scrutiny, the Bills Committee has focused on a number of areas, including constitutional issues (paragraphs 12 – 54), legal and drafting issues (paragraphs 55 – 146), supplementary provisions (paragraphs 147 – 167), others (paragraphs 168 – 171) and views expressed by deputations at public hearing sessions (paragraphs 172 – 174). The deliberations of the Bills Committee are summarized below.

### Constitutional issues

12. Some members have expressed support for the Bill which is necessary for the implementation of the proposed co-location arrangement at the WKS. They call for the passage of the Bill which is key to the timely commissioning of the HKS of the XRL in September 2018. These members concur with the Administration that the Decision has provided a sound legal basis for implementing co-location arrangement at WKS.

13. Some other members, however, are deeply concerned about the constitutional and legal basis of the Bill and consider that the Bill would contravene the Basic Law, including Articles 4, 11, 18, 19, 22(3), 31, 35, 38, 39, 41, 80, 82 and 87 of the Basic Law. In this regard, the Administration has been requested to explain why the Bill would not contravene the Basic Law.

14. The Administration has advised the Bills Committee that the implementation of the proposed co-location arrangement at the WKS involves the establishment of the MPA to be deemed as an area lying outside Hong Kong but lying within the Mainland for certain purposes. Hence, it is necessary to obtain the approval of the NPCSC on the Co-operation Arrangement prior to its commencement according to the Mainland laws. Given that National People's Congress ("NPC") was the highest organ of state power and that the NPCSC is the NPC's permanent body, pursuant to the Constitution of the People's Republic of China ("PRC Constitution"), the NPCSC has the power and responsibility to exercise its legislative power with respect to certain issues through the making of a decision.

15. The Bills Committee notes that according to the understanding of the Administration, the decision made by the NPCSC is regarded as a law under the Mainland legal system. The NPCSC has considered whether the proposed co-location arrangement is consistent with the PRC Constitution and the Basic Law.. According to the Administration, the Decision and the relevant explanations on the Draft Decision provided by Director Zhang Xiaoming of the Hong Kong and Macao Affairs Office of the State Council ("Explanations") had duly confirmed that the Co-operation Arrangement is in compliance with the PRC Constitution and the Basic Law.

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

16. A few members have stressed that pursuant to BL 11, no law enacted by the LegCo should contravene the Basic Law. A member, Mr James TO, opines that the power of LegCo to enact the legislation concerned should not be based on the Decision, i.e. a Mainland law under the Mainland legal system. He has asked whether any specific provisions of the Basic Law might be invoked to provide the legal basis for deeming an area within the WKS as an area lying outside Hong Kong and not applying the laws of Hong Kong there.

17. The Administration points out that, same as the passage of other laws, in considering whether the Bill should be passed, the LegCo should first consider the policy intent, then examine the provisions of the Bill with reference to the Articles of the Co-operation Arrangement, and exercise its legislative power. According to the Basic Law, the HKSAR has its own immigration system. The HKSAR Government can also formulate appropriate policies and provide suitable environment to encourage investments, promote economy and improve people's livelihood pursuant to Articles 118<sup>1</sup> and 119<sup>2</sup> of the Basic Law. At the same time, the Administration has advised that the Co-operation Arrangement could only be smoothly implemented in Hong Kong in accordance with the law after the Bill has been deliberated and passed by the LegCo.

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<sup>1</sup> Article 118 of the Basic Law reads: The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.

<sup>2</sup> Article 119 of the Basic Law reads: The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries, and pay regard to the protection of the environment.

18. Referring to some members' queries regarding which specific provisions in the Basic Law could be invoked in support of the proposed co-location arrangement, the Administration has advised that members should have focused on whether the Bill would contravene any provisions of the Basic Law, rather than asking for specific provisions in the Basic Law that could authorize the co-location arrangement.

19. The Administration has further advised that since 1997 the HKSAR has enjoyed a high degree of autonomy in accordance with Articles 2, 7, 118, 119, 154 etc. of the Basic Law. Implementation of the proposed co-location arrangement at the WKS through the signing of the Co-operation Arrangement with the People's Government of Guangdong Province is a clear demonstration of the exercise of a high degree of autonomy by the HKSAR in accordance with law. The Administration, in explaining the legal status and effect of the Co-operation Arrangement and the Decision, indicates that the Co-operation Arrangement is in the nature of an agreement entered into between the HKSAR and the Mainland. The conclusion of the Co-operation Arrangement is an act of the executive. The Decision was a decision made by the NPCSC in accordance with the laws of the Mainland and is a law under the Mainland legal system. After the conclusion of the Co-operation Arrangement and the making of the Decision, the HKSAR still needs to legislate locally to implement the Co-operation Arrangement.

20. Ms Claudia MO requests the Administration to pledge that similar co-location arrangement would not be adopted in the territory of Hong Kong again. The Administration has responded that co-location arrangement at the WKS represented unforeseen circumstances which did not exist at the time the Basic Law was drafted. To provide a sound legal basis to accommodate such new circumstances and ensure that the proposed co-location arrangement was consistent with the PRC Constitution and the Basic Law, the NPCSC has approved and endorsed the Co-operation Arrangement by making a decision and subsequently the Administration has commenced local legislative process pursuant to the Decision and the Co-operation Arrangement. The Administration considers it inappropriate to comment on whether similar co-location arrangements would be implemented in other parts of the HKSAR in the future. The Administration has stressed that the legal basis for implementing a policy would be provided as and when necessary having regard to actual circumstances and special needs arising therefrom.

21. Members also note that the Hong Kong Bar Association ("the Bar Association") has issued a statement to the public and provided submissions to the Bills Committee, expressing grave concern that the Bill contravenes the Basic Law and has no sound constitutional basis, and that

the LegCo has no authority to pass a Bill that contravenes the Basic Law. The Administration has responded that it respects different views in the community but emphasizes that the Bill would not contravene the Basic Law.

*Article 18<sup>3</sup> of the Basic Law ("BL 18")*

22. Some members hold the view that the proposed co-location arrangement would contravene BL 18 which stipulates that national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law. Mr Dennis KWOK considers that BL 18 prohibits the application of Mainland laws in the HKSAR. Mr HUI Chi-fung opines that implementing co-location arrangement at the WKS would set a bad precedent for a national law to be implemented in Hong Kong without having to include it in Annex III to the Basic Law. Noting the Administration's explanation that passengers can make their own choice whether to use high-speed rail and enter the MPA and as such the arrangement would not entail general application of Mainland laws to all persons in the HKSAR, Mr LAM Cheuk-ting considers that the above proposition would render BL 18 useless.

23. The Administration has advised that the intent of BL 18 is to restrict the general application of national laws to all persons within the HKSAR, in order not to undermine the high degree of autonomy and the legal system of the HKSAR. Given the above, the Administration considers that the intent of BL 18 is to prevent the following situations from arising in the HKSAR: (a) as far as territorial scope is concerned, Mainland laws are applicable in the entire HKSAR; (b) as regards who would be subject to the laws, Mainland laws are imposed on all persons in Hong Kong; and (c) concerning the enforcement agencies, Mainland laws are enforced by Hong Kong authorities in the entire HKSAR.

24. The Administration has explained that for the following reasons, establishment of the MPA and the application of Mainland laws there in accordance with the Co-operation Arrangement would not give rise to the

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<sup>3</sup> Article 18 of the Basic Law is extracted as follows: The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.

National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

situations as mentioned above:

- (a) It is proposed under the Bill that the MPA would be established for a specific purpose to meet a real policy need (namely, conducting Mainland clearance procedures on high-speed rail passengers) pursuant to the Co-operation Arrangement and does not extend to the entire HKSAR;
- (b) Mainland laws would be mainly applicable to high-speed rail passengers in the MPA but not all persons in Hong Kong;
- (c) Mainland laws would be enforced by Mainland authorities in the MPA but not Hong Kong authorities;
- (d) The entire arrangement would not undermine the immigration system of Hong Kong; and
- (e) Importantly, citizens could make their own choice as to whether to use the high-speed rail and enter the MPA. The arrangement does not compel the application of Mainland laws on any person. This is no different from them having chosen to enter another jurisdiction (e.g. Luohu and Futian Ports etc.) and subjecting themselves to the applicable laws therein.

The HKSAR Government therefore considers that BL 18 is not engaged.

25. A number of members have expressed that they do not subscribe to the Administration's explanations. Some members including Mr Dennis KWOK and Mr James TO disagree with the Administration's position that BL 18 would not be contravened if the Mainland laws to be applied in Hong Kong are confined to a designated area and only applicable to specific groups of individuals. Dr Helena WONG is of the view that while the legislative intent of BL 18 is to safeguard the principle of "one country, two systems" enshrined in the Basic Law, the Administration's interpretation mentioned in paragraph 23 above is at odds with the general public's understanding of BL 18. She considers that the literal meaning of BL 18 is manifestly different from that suggested by the Administration, and hence she is dubious whether Hong Kong courts, if asked to adjudicate whether the Bill, if passed, is consistent with the Basic Law, would agree with the Administration's interpretation of BL 18.

26. In reply, the Administration has advised that applying the principles laid down by the Court of Final Appeal ("CFA") relating to the interpretation of the Basic Law, a purposive approach instead of a literal approach should be adopted. The courts should have to avoid a literal,



technical, narrow or rigid approach in interpreting the Basic Law. Instead, they must consider the purpose and context of the provisions concerned.

27. Mr Paul TSE points out that the legal status of the Decision is fundamentally different from an interpretation of the provision(s) of the Basic Law made by NPCSC in accordance with Article 158 of the Basic Law ("BL 158"). Mr TSE considers that an interpretation made by NPCSC on BL 18 clarifying its intent should have the effect of providing a sound legal basis for the Bill. Mr TSE thus calls on the Administration to consider seeking an interpretation of BL 18 from NPCSC so as to allay the concerns of some members of the Bills Committee and the Bar Association.

28. The Administration has responded that the Decision is not an interpretation of the Basic Law made pursuant to BL 158. The CFA has decided on previous occasions that the power of interpretation of the Basic Law is vested in the NPCSC. Notwithstanding this, the Administration has stressed that the Administration's interpretation of BL 18 is consistent with the conclusion made by NPCSC in its Decision.

29. In light of the Administration's views on the interpretation of BL 18 and the Administration's position on the applicability of BL 18 in the context of the proposed co-location arrangement, the legal advisers to the Bills Committee ("Legal Advisers") have asked the Administration to clarify, in view of the principles applicable to the interpretation of the Basic Law laid down by the 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), whether any extrinsic materials (e.g. pre-enactment materials such as the Joint Declaration and the Explanations on the Basic Law (draft) given to the NPC for deliberation before the adoption of the Basic Law) were considered in the said interpretation of BL 18 and if so, to provide details on the extrinsic materials that the Administration is relying on in support of its view.

30. The Administration has responded that the CFA have explained in the above-mentioned two cases that 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. An important aid to interpret BL 18 is Chapter II of the Basic Law. The Administration explains that BL 18 is stipulated in Chapter II of the Basic Law which explains the relationship between the Central Authorities and the HKSAR and provides the most immediate context to the meaning of BL 18 and must be taken

into account. It also concerns the powers which the State confers on the HKSAR and the powers which the State preserves for the Central Authorities. The Administration has also pointed out that apart from the context provided by Chapter II of the Basic Law, it is worthy to note that Article 18(2) of the Basic Law ("BL 18(2)") only concerns national laws<sup>4</sup>, 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 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 laws are laws that would necessarily be applied and implemented in the whole nation including the entire HKSAR.

31. In view of the above, the Administration comes to the conclusion that the intent of BL 18 is to restrict the general application of national laws to all persons within the HKSAR as mentioned in paragraph 23 above, and considers that the application of Mainland laws in the MPA in accordance with the Co-operation Arrangement does not engage BL 18.

32. As regards extrinsic materials, the Administration has advised that they are generally confined to materials brought into existence prior to or contemporaneous with the enactment of the Basic Law, such as the Joint Declaration, the Explanations on the Basic Law (draft) given to the NPC for deliberation before the adoption of the Basic Law, as well as the state of domestic legislation at that time. Even though the proposed co-location arrangement was not something foreseeable at the time the Basic Law was enacted, the Basic Law is a living instrument which enables the LegCo to enact suitable laws to meet changing needs and circumstances.

33. Notwithstanding the Administration's explanation above, some members including Mr HUI Chi-fung, Mr Andrew WAN, Mr Dennis KWOK, Dr Fernando CHEUNG and Mr CHAN Chi-chuen remain of the view that the Bill contravenes the Basic Law including BL 18 thereof and should not be passed by the LegCo.

34. Some members, including Ms Claudia MO, Mr LEUNG Yiu-chung and Dr KWOK Ka-ki, are gravely concerned whether the Administration would adopt similar arrangements to apply Mainland laws to any other particular parts of the HKSAR in the future under the pretext that such

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<sup>4</sup> National laws refer to laws made by the NPC and the NPCSC.

arrangements would bring benefit to Hong Kong people.

35. The Administration disagrees with the notion that Mainland laws could be arbitrarily applied to other parts of Hong Kong. It is stressed that the establishment of the MPA and the co-location arrangement implemented thereat reflects the high degree of autonomy enjoyed by HKSAR in accordance with the Basic Law and that neither HKSAR nor the Mainland could implement the co-location arrangement unilaterally. As such, the Administration refutes the allegation that Mainland laws could be arbitrarily applied to any other part of Hong Kong at the discretion of NPCSC.

36. The Administration has further explained that the co-location arrangement at the WKS is to meet the policy objective of optimizing the benefits of XRL and the Co-operation Arrangement is critical to achieving the aforesaid policy objective. Pursuant to the Co-operation Arrangement, both the Mainland and the HKSAR Government have agreed to establish the MPA to implement the proposed co-location arrangement, and in order to achieve that, the MPA would be regarded as an area lying outside Hong Kong but lying within the Mainland for the purposes of the application of the laws of the Mainland and the delineation of jurisdiction (including jurisdiction of the courts). In view of the above, the Administration has stressed that Mainland laws would not be arbitrarily applied to other parts of Hong Kong as suggested by some members of the community.

*Articles 19, 80 and 87 of the Basic Law ("BL 19", "BL 80", "BL 87")*

37. Noting that under Article 19(2) of the Basic Law ("BL 19(2)"), the courts of HKSAR shall have jurisdiction over all cases in the Region, some members have expressed grave concern whether the Bill would contravene BL 19(2). The Legal Advisers have also sought clarifications on 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. The Administration has also been asked to clarify whether and how such restriction could satisfy the four-step proportionality test (laid down by the 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). The Administration has advised that the restrictions imposed on Hong Kong courts' jurisdiction by "the legal system and principles previously in force in Hong Kong" stipulated in BL 19(2) include those imposed by legislation. Prior to 1 July 1997, the jurisdiction of the courts of Hong Kong was at times restricted by legislation. For instance, under the International Organizations and Diplomatic Privileges Ordinance (Cap. 190), diplomatic immunities and the immunities for international organizations restricted the

jurisdiction of the courts. Such immunities continue to be recognized under Hong Kong law after 1 July 1997.

38. The Administration takes the view that even though the Bill would have the effect of restricting the jurisdiction of Hong Kong courts, such restriction would satisfy the four-step proportionality test adopted by the courts in assessing whether a restriction on a right is within reasonable limits. If the court considers that a particular Basic Law provision confers powers or guarantees rights and freedoms which may be restricted by the executive authorities or the legislature, it would apply the following four-step proportionality test to determine whether the restriction concerned is constitutional: (a) whether the proposed restriction pursues a legitimate aim; (b) whether the proposed restriction is rationally connected to that legitimate aim; (c) whether the proposed restriction is no more than is necessary to accomplish that legitimate aim; and (d) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected right. For the following reasons, the Administration considers it reasonably arguable that the Bill would satisfy the said proportionality test:

- (a) the implementation of co-location arrangement at the WKS would allow Hong Kong to fully enjoy the high-speed rail's advantages of high speed and great efficiency, and ensure the transport, economic and social benefits of the HKS of the XRL. The implementation of co-location arrangement at the WKS and the establishment of the MPA thereat are of great importance for maintaining the long-term economic development of the HKSAR. Meanwhile, in order to allow a large number of people to pass the immigration controls of the two places efficiently and expeditiously at the WKS, the jurisdictions of the HKSAR and the Mainland must be clearly delineated. Therefore, the Administration considers that the restriction on the jurisdiction of the courts of Hong Kong imposed by the Bill should be able to satisfy the first two steps of the proportionality test, that is, it pursues a legitimate aim and it is rationally connected with the accomplishment of that aim;
- (b) regarding the third step, the HKSAR Government and the relevant departments of the Mainland agreed, after discussion and deliberation, that the co-location arrangement must be implemented in a smooth and safe manner in order to avoid creating any security issues. Hence, both sides agreed that the laws of the Mainland would apply in the MPA. On this basis, it was agreed that the laws of the HKSAR would continue to apply to the reserved matters and the courts of Hong Kong

would continue to exercise jurisdiction in respect of those matters. The reserved matters concern the management of land, the operation of the XRL and its safety, the repair and maintenance of buildings and structures and their subsequent structural alterations, the protection of the rights and benefits of those Hong Kong staff members working in the MPA etc.;

- (c) further, the MPA is a limited and specific area, which does not include any surrounding area of the MPA or other places at the WKS. Except for this limited area of around 109 000 m<sup>2</sup> (which is around one-fourth of the total construction floor area of the WKS), the jurisdiction of the courts of Hong Kong at the WKS would not be affected in any way. The Administration therefore considers that the restriction imposed by the Bill on the jurisdiction of the courts of Hong Kong should be able to comply with the third step of the proportionality test; and
- (d) since all passengers would be informed of the arrangement of jurisdiction in the MPA, they can freely choose whether or not to travel between Hong Kong and the Mainland by the XRL. In the circumstances, the restriction on the jurisdiction of the courts of Hong Kong in the MPA for the implementation of co-location arrangement imposed by the Bill should be able to achieve the overall societal interest. It respects the choice of those who wish to travel to and from the Mainland by the XRL and would not undermine the rights and freedoms enjoyed by the residents of the HKSAR in accordance with law. The restriction also would not affect anyone who does not want to travel by the XRL. It should be able to comply with the fourth step of the proportionality test.

39. The Administration reiterates that in any event, it is up to the LegCo to decide whether or not to pass the Bill having considered the policy intent and provisions of the Bill.

40. Mr Dennis KWOK opines that it is not right for the Administration to suggest that Mainland laws could be applied in the MPA so long as the proposed application would satisfy the proportionality test. Some members including Mr CHAN Chi-chuen, Mr Alvin YEUNG, Mr Jeremy TAM and Mr Gary FAN also express concern as to the circumstances in which the said proportionality test would be applied and whether all provisions in the Basic Law, including Article 1<sup>5</sup> of the Basic Law, would

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<sup>5</sup> Article 1 of the Basic Law reads: The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.

be subject to the proportionality test.

41. The Administration has advised that matters relating to BL 18 and the application of proportionality test should be considered separately. The Administration has reiterated its stance that application of Mainland laws in the MPA in accordance with the Co-operation Arrangement does not engage BL 18. In order to implement co-location arrangement pursuant to the Decision and the Co-operation Arrangement, HKSAR has to legislate locally. The Hong Kong courts may apply the four-step proportionality test in deciding whether the restriction imposed on court's jurisdiction under the Bill (if passed) is reasonable or not as explained in paragraph 38 above.

42. A few members, including Mr Dennis KWOK, raise concern that the establishment of the MPA, where the laws of the Mainland would be applied except for reserved matters, might contravene BL 80.

43. The Administration responds that BL 80 is the first provision in Section 4 of Chapter IV of the Basic Law. BL 80 states that the courts of the HKSAR at all levels 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. The Administration explains that Clause 6(1)(b) of the Bill merely serves to delineate Mainland's 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.

44. In this connection, the Administration also advises that 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 contained in Section 4 of Chapter IV of the Basic Law. The Administration stresses that Clause 6(1)(b) of the Bill merely serves to delineate Mainland's 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 Administration considers that the Bill therefore would not give rise to any contravention of BL 87.

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

45. Some members, including Ms Tanya CHAN, Mr CHU Hoi-dick, and Mr LEUNG Yiu-chung, hold the view that allowing Mainland officials to perform their duties at the MPA in accordance with the laws of the Mainland would contravene BL 22.

46. The Administration points out that Article 22(2) of the Basic Law ("BL 22(2)") stipulates that "if there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government." The proposed establishment of the MPA and the implementation of co-location arrangement at the WKS are conducted with the consent of the HKSAR Government and the approval of the Central People's Government, thus BL 22(2) would not be violated. In replying to the Legal Advisers' enquiry on whether and how Clauses 3(1)(b) and 6(1) of the Bill would be consistent with Article 22(3) of the Basic Law ("BL 22(3)")<sup>6</sup>, the Administration has reiterated that the implementation of the Co-operation Arrangement in a smooth manner and in accordance with law could only be ensured by way of local legislation. One of the objectives of the Bill is to allow Mainland personnel to perform their duties at the MPA in accordance with the relevant provisions of the Co-operation Arrangement. In other words, Mainland personnel can perform their duties in the MPA only after the Bill is passed and forms part of the laws of Hong Kong. As such, the Administration considers that the Bill is not inconsistent with BL 22(3).

*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")*

47. Apart from concerns over BL 11, BL 18, BL 19, and BL 22(3) discussed above, some members have requested the Administration to give the reasons for concluding that the Bill would not contravene BL 4, BL 31, BL 35, BL 38, BL 39 and BL 41. The Administration has responded that 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.

48. The Administration advises that BL 31 safeguards the freedom of Hong Kong residents to travel and to enter or leave the Region. BL 35

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<sup>6</sup> Article 22(3) of the Basic Law reads: All offices set up in the Hong Kong Special Administrative Region 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 the Region.

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.

49. The Administration further advises the Bills Committee that Clause 6(1) of the Bill is mainly for the purpose of providing that Mainland laws would be applicable in MPA and that the Mainland would have jurisdiction (including jurisdiction of the courts) over the MPA in respect of non-reserved matters. Passengers would be well informed of such arrangements and could freely choose whether to travel between Hong Kong and the Mainland by high-speed rail or not. At the same time, the arrangements only involve establishing the MPA at the WKS, without affecting the applicable clearance laws and procedures. It is stressed that there is no practical difference between a person entering the MPA and a person entering other restricted port areas (e.g. Luohu and Futian Ports etc.) in the Mainland. Establishment of the MPA at the WKS would allow passengers to fully benefit from the speed and convenience brought by the high-speed rail. On this basis, the Administration states that the Bill would not contravene BL 4, BL 31, BL 35, BL 38, BL 39 and BL 41.

*Article 7 of the Basic Law ("BL 7")*

50. Some members are of the view that the enforcement of Mainland laws by relevant law enforcement agencies within the MPA at the WKS under the co-location arrangement would be tantamount to ceding Hong Kong land to the Mainland. On the other hand, some other members have rejected this view having regard to the fact that after Hong Kong's reunification with the PRC in 1997, the land and natural resources in Hong Kong are State property, and hence urged the Administration to step up its effort in explaining to the general public this fact.

51. The Administration has explained in response that BL 7 clearly stipulates that the land and natural resources within HKSAR shall be State property and that the HKSAR Government shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The acquisition of the right to use the areas of the MPA, the duration and the fees (including the fees for repairs and maintenance of relevant buildings and structures and related facilities in the MPA) would be provided for by



an agreement to be signed by the HKSAR Government and the Mainland. BL 7 also stipulates that the revenues derived therefrom shall be exclusively at the disposal of the government of the Region. In light of the above, there is no question of ceding Hong Kong land under the co-location arrangement. Furthermore, it is provided under the Bill that the establishment of the MPA at the WKS would not alter the boundary of the administrative division of the HKSAR.

52. As regards the Legal Advisers' enquiry on whether the People's Government of Guangdong Province is considered as "legal persons or organizations" under BL 7, the Administration has advised that BL 7 does not only cover "legal persons or organizations" but also "individuals". The Basic Law does not contain any interpretation provision on the meaning of the term "individuals, legal persons or organizations". In such case, extrinsic materials such as the drafting materials of the Basic Law as well as the established usage of similar term under Hong Kong laws may throw light on the interpretation of the term. In view of the broad definition of "person" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the term would be able to cover the People's Government of Guangdong Province.

#### *Possible court proceedings in relation to the co-location arrangement*

53. Mr CHAN Chi-chuen enquires whether the Administration has any contingency plan if the co-location arrangement is successfully challenged in subsequent judicial review ("JR") proceedings. The Administration has advised in response that the concept of the co-location arrangement has been incorporated in the design and construction of the HKS of the XRL. In view of the fact that the installation of boundary control facilities at the WKS cannot be changed overnight, no contingency plan has been prepared in this respect.

54. In reply to Mr Michael TIEN's enquiry, the Administration has advised that Hong Kong courts generally would have the power to decide whether to grant leave to JR applications.

#### Legal and drafting issues

##### *Long Title*

55. A number of members have commented that certain wordings in the Long Title of the Bill are not specific enough and may lead to difficulty in comprehension. Pointing out that in the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591), the phrase "一個位於內地深圳灣口岸的地域" is used as the corresponding Chinese text for the phrase "an

area in the Shenzhen Bay Port in the Mainland" in the English text, some members including Mr CHU Hoi-dick, Mr AU Nok-hin and Mr WU Chi-wai, opine that using the phrases "an area" and "某範圍" as bilingual equivalents to refer to certain specific area(s) in the Long Title of the Bill is not clear and accurate enough. Ms Tanya CHAN has expressed concern that the phrase "an area" is not defined in the Bill. Ms Claudia MO has queried why the phrase "certain area" is not used to denote "某範圍" in the English text. Ms MO, Mr LAM Cheuk-ting and Mr Gary FAN considers the meaning of the phrase "certain purposes" also unclear.

56. Members are advised that under Rule 50(3) of the Rules of Procedure of the Legislative Council ("RoP 50(3)"), every bill must have a long title setting out the purposes of the bill in general terms. According to paragraph 2.1.7 of "Drafting Legislation in Hong Kong — A Guide to Styles and Practices" compiled by the Law Drafting Division of the Department of Justice, the long title puts the reader on notice as to the purpose or subject of the legislation. The Administration has stressed that it has struck an appropriate balance among different considerations, so as to ensure that RoP 50(3) is complied with.

57. The Administration has further advised that the precise area to be declared as the MPA in the Bill is specified in Clause 4 (to be read together with Schedule 2) which is the relevant operative provision. In compliance with RoP 50(3), the long title should set out the "purposes of the bill in general terms". For this reason, the Administration considers that it is appropriate to use the phrases "an area" and "某範圍" as bilingual equivalents in the Long Title of the Bill to refer to the area specified in the operative provision. Dr Junius HO considers the use of "an area" and "某範圍" as bilingual equivalents appropriate in the Long Title.

58. As for the use of the phrase "certain purposes" in the Long Title, the Administration has advised that the relevant operative provision is Clause 6(1), which proposes that except for reserved matters, the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland for the purposes of the application of the laws of the Mainland and the laws of Hong Kong in the MPA and the delineation of jurisdiction over the MPA. In the light of this, the Administration takes the view that the use of the phrase "certain purposes" in the Long Title is sufficient to reflect generally the effect of that Clause. The Administration also considers it appropriate to use the phrase "an area" to generally refer to a "designated area", which has been defined in Clause 2. Given that the purpose of the long title as prescribed in RoP 50(3) is to set out the purposes of the bill in general terms, the Administration considers that the current drafting of the Long Title of the Bill would be in order.

59. Mr Alvin YEUNG has pointed out that the Long Title of Cap. 591 spells out explicitly that one of the objects of Cap. 591 is to apply the laws of Hong Kong in the Shenzhen Bay Port Hong Kong Port Area (“SBPHKPA”) and to provide for the court's jurisdiction in this connection. Noting that the main purpose of the Bill is to provide for the applicable laws and the delineation of jurisdiction (including jurisdiction of the courts) in the MPA, Mr YEUNG has questioned why such purpose is not mentioned in the Long Title of the Bill.

60. Ms YUNG Hoi-yan has also urged the Administration to consider including in the Long Title the application of laws and the delineation of jurisdiction in the MPA as specified under Clause 6.

61. The Administration has reiterated that the long title of a bill only sets out in general terms the purposes of the bill according to RoP 50(3). The Administration has advised that regarding the application of laws in and the delineation of jurisdiction over the MPA, the relevant operative provision is Clause 6. Clause 6 of the Bill is a deeming provision under which the MPA is to be regarded, in respect of non-reserved matters, as an area lying outside Hong Kong but lying within the Mainland for the purpose of the application of the laws of the Mainland and of the laws of Hong Kong, and for the purpose of the delineation of jurisdiction (including the jurisdiction of the courts) over the MPA. The Long Title of the Bill does not seek to expressly provide for the details of applicable laws and the delineation of jurisdiction in the MPA. By reason of the aforesaid, the Administration considers that the current drafting of the Long Title is sufficiently clear for the purpose of informing readers of the Bill's main objectives.

62. In response to Mr Dennis KWOK's enquiry, the Legal Advisers have advised that the long title of a bill normally would not include every detail of the bill. Proper balance has to be struck in determining how much information should be included in the long title and there is no hard and fast rule in this regard. If certain parts of the Long Title are drafted in detail, it would be necessary to consider whether other parts of the Long Title should also be drafted in detail in order to ensure consistency in drafting.

63. Ms Starry LEE enquired if the term "Declare" used in the Long Title is appropriate and suggested adding the phrase "pursuant to the Decision" to reflect the fact that the establishment of the MPA and the co-location arrangement to be implemented thereat has been approved by the NPCSC. Mr Kenneth LEUNG has also suggested that the term "Declare" should be replaced by "Designate". The Administration has advised that it has made reference to Cap. 591 in respect of the use of the

term "Declare" in the Long Title and the operative provision of the Bill.

64. Referring to the long title of Cap. 591, Ms Tanya CHAN has raised concern that agreements to be signed subsequent to the passage of the Bill, including the agreement in respect of the land use right of the MPA and the XRL Operating Co-operation Agreement made between the Hong Kong operator and the Mainland operator of the XRL, which are mentioned respectively in Article 2 and Article 7 of the Co-operation Arrangement, are not mentioned in the Long Title of the Bill.

65. The Administration has advised that the reference to "certain documents made subsequent to the declaration of the Shenzhen Bay Port Hong Kong Port Area" in the long title of Cap. 591 refers to future documents or future court orders mentioned in sections 12 and 13 of Cap. 591, which concern the construction of the references to Hong Kong in future documents and future court orders. In the Bill, Clause 8 contains provisions for the interpretation of certain future documents in relation to a right or obligation (other than a right acquired or accrued, or an obligation incurred, before the commencement of the Ordinance) if the document contains a reference to Hong Kong or part of Hong Kong to describe the geographical scope for the right or obligation.

66. Ms Claudia MO has raised concerns as to the mixed use of "某些" and "若干" in the Chinese text of the Long Title as the equivalent to the term "certain" which is used uniformly in the English text. The Administration has explained that the specific rights and obligations referred to by "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. Also, 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. In order to set out the purposes of the Bill in general terms in compliance with RoP 50(3), 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. As a matter of fact, amending "若干" to "某些" would not change the actual content of the Long Title.

#### *Preamble*

67. Members note that according to paragraph 2.1.10 of "Drafting Legislation in Hong Kong — A Guide to Styles and Practices", preambles are rarely used in local legislation. A preamble is appropriate if an explanation of certain facts is necessary to provide a context in which to understand the legislation. Some members have called on the

Administration to include more details in the Preamble to explain the background of the Bill.

68. The Administration has advised that a preamble is an introductory part of an ordinance, which may be used as an aid for construction of the operative provisions of the legislation, but is not an operative provision itself. Preambles may be used to provide the relevant contexts in which to understand the ordinance. The Bill has the purpose of completing the third step of the "Three-step Process" to put in place the co-location arrangement at the WKS. Hence, its relevant context is the fact that the first and second steps of the "Three-step Process", i.e. the Co-operation Arrangement and the Decision, had been undertaken. Since the first two steps of the "Three-step Process" have been mentioned in paragraphs (1) and (2) of the Preamble respectively, the Administration takes the view that the content of the Preamble as currently drafted has appropriately and accurately set out the relevant context.

*Commencement date and related issues (Clause 1)*

69. Members note that pursuant to Clause 1(2) of the Bill, 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.

70. Mr CHAN Chi-chuen and Mr LEUNG Yiu-chung ask whether the commencement date would tie in with the commissioning date of the HKS of the XRL. They are concerned about the legal basis for allowing the Mainland personnel to undertake preparatory work, including installation and testing of immigration inspection equipment, in the MPA before its commissioning.

71. The Administration has advised that the MPA would be established and commissioned upon the commencement of the Bill, if passed. This commencement date would be the date of "commissioning" of the MPA mentioned in Article 4 of the Co-operation Arrangement and the Decision. As for whether the HKS of the XRL would be commissioned on the same day when the enacted Ordinance comes into operation, the Administration understands that the Mainland personnel needs to conduct final preparatory work at the MPA prior to the commissioning date of the HKS of the XRL, such as ensuring that all requisite materials have been delivered to the MPA and familiarizing themselves with the relevant operational procedures. The Administration has been considering whether it would be necessary for the enacted Ordinance to come into operation in a short period of time before the commissioning of the HKS of the XRL, so as to ensure that the MPA could operate smoothly after the commissioning of the HKS of the XRL. The Administration indicated that further discussion on the details

of the aforesaid with the Mainland would continue to take place.

72. Members are further advised that in order to meet the target commissioning of the HKS of the XRL in September 2018, installation works of clearance facilities are underway at the MPA. The delivery and installation works of the relevant facilities are conducted in accordance with the laws of Hong Kong. After the completion of installation works, personnel of the Mainland Authorities Stationed at the MPA would conduct testing to ensure that the facilities can operate properly. Such testing would be conducted strictly in accordance with the laws of Hong Kong. According to the Administration, as at 30 April 2018, the Hong Kong Immigration Department approved a total of 167 visa applications of Mainland personnel, who are mainly railway engineers, entering Hong Kong to participate in the preparatory work of the MPA. Prior to the commencement of the enacted Ordinance, relevant personnel working at the MPA must go through immigration and custom clearance procedures according to the laws of Hong Kong when they enter or leave Hong Kong. The Administration further advised that according to its understanding, the Mainland does not have any plan at present to transport firearms to the MPA prior to the commissioning of the MPA (i.e. the commencement date of the enacted Ordinance).

73. In relation to Clause 1(2), the Legal Advisers have sought the Administration's clarifications on the reason for the separate commencement dates for Cap. 591 pursuant to section 1(2) of Cap. 591 and why such an arrangement would not be necessary for the Bill. The Administration has responded that certain statutory powers had to be exercisable prior to the commencement of Cap. 591 to facilitate the establishment of the SBPHKPA. Therefore, different commencement dates were necessary for Cap. 591.

74. Members note that section 14 of Cap. 591 stipulates that Cap. 591 shall expire at midnight on 30 June 2047, which is the day on which the land use period of the SBPHKPA acquired by way of the lease mentioned in paragraph (3)(b) of the preamble is to expire. If the land use right is terminated earlier or the lease is renewed after its expiry, the Secretary for Security shall by notice published in the Gazette stipulate the date on which the land use right or the lease (as so terminated earlier or renewed) is to expire. Some members, including Mr Alvin YEUNG, Dr Fernando CHEUNG and Mr AU Nok-hin, question why the Bill does not contain similar provisions. Mr CHAN Chun-ying enquires if it is due to the differences between the statutory requirements in the Mainland and in Hong Kong.

75. The Administration considers that the aforementioned section 14(1) of Cap. 591 is not a "sunset clause" that strictly limits the duration of Cap. 591, having regard to the fact that section 14(2) provides that if the land use right is terminated earlier or the lease is renewed after its expiry, the Secretary for Security shall by notice in the Gazette publicize the date on which the land use right or the lease (as so terminated earlier or renewed) is to expire.

76. The Administration has further advised that the case of the WKS of the XRL is not the same in this respect. It would be essential for the HKSAR Government to discuss with the Mainland in relation to the right to use the MPA as well as the duration and fee involved. The Bills Committee notes that the HKSAR Government is conducting discussions with the Mainland and will inform members at an appropriate juncture. While noting that the duration for the operation of Cap. 591 is connected with the land use period of the SBPHKPA, the Administration considers that the arrangement serves as a reference rather than a rule to follow.

77. In view of the above, the Administration considers a "sunset clause" unnecessary and indicates that it has no intention to include any "sunset clause" in the Bill to fix an expiry date on the co-location arrangement, given that an end date for the co-location arrangement has not been specified in both the Decision and the Co-operation Arrangement, and that XRL is a cross-boundary transport infrastructure conducive to the long-term development of Hong Kong.

78. Mr LUK Chung-hung agrees with the Administration that there is no need to specify an expiry date in the Bill, adding that this might create uncertainties to the right to use the MPA.

79. Some members do not subscribe to the Administration's explanations, expressing that a lease lacking an expiry date amounts to ceding Hong Kong land permanently to the Mainland. The Administration has reiterated that the boundary of the administrative division of the HKSAR would not be affected under the Bill. The HKSAR Government is authorized to make appropriate arrangements with relevant parties regarding the management of land and natural resources pursuant to BL 7, which is a manifestation of Hong Kong's high degree of autonomy.

80. Some members have repeatedly called on the Administration to disclose details on the arrangement to be entered into by the Mainland and the HKSAR Governments in respect of the right to use the MPA, including the details on the duration and the fee(s) involved. Mr Jeremy TAM notes that paragraph (3)(b) of the Preamble of Cap. 591 expressly provides that

the land use right of the SBPHKPA is acquired by the HKSAR by way of a lease between HKSAR Government and the People's Government of the Shenzhen Municipality of Guangdong Province. He has queried whether similar provisions would be adopted in the Bill and demanded the Administration to confirm whether or not Mainland's acquisition of the right to use the MPA would be by way of a lease contract.

81. The Administration has advised that it has been discussing with the relevant Mainland authorities in relation to the right to use the MPA as well as the duration and the fee involved, and undertook to revert to LegCo once consensus has been reached by both sides. The Administration has advised that it has made reference to the definition and operation of Hong Kong Port Area stipulated in Cap. 591 in respect of the application of the laws in, and the delineation of jurisdiction over, the MPA. Nevertheless, the Administration considers it not necessary to replicate the relevant provisions in the Bill as the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the MPA 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 MPA.

#### *Interpretation (Clause 2)*

82. Members note that Clause 2 contains quite a number of definitions that are necessary for the interpretation of the Bill, including Co-operation Arrangement, geographical scope, the MPA and the WKS. Some members, including Ms Tanya CHAN and Ms Claudia MO, have expressed concern about the fact that the definitions of the phrases "laws of Hong Kong" and "laws of the Mainland" are not provided for in the Bill.

83. Some members including Dr Priscilla LEUNG take the view that the definition of "Mainland" under the Bill, which refers to "the part of China other than Hong Kong, Macau and Taiwan" may be improved and request the Administration to consider amending it to improve its readability. Others such as Mr Kenneth LEUNG question the scope of the definitions of "Court" and "Court order". The Legal Advisers have sought the Administration's clarifications in relation to the definition of "public authority", which excludes "regulatory body", and is different from the definition of "public authority" in section 2(1) of Cap. 591.

84. The Administration has responded that, for the phrase "laws of Hong Kong", members may refer to the definition of "law" in section 3 of Cap. 1, which stipulates that "law means any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong".



As regards the phrase "laws of the Mainland", the Administration has advised that the meaning of "Mainland" is defined in Clause 2 of the Bill, and that the phrase "laws of the Mainland" should be given its ordinary meaning, which refers to the whole body of laws of the Mainland. Members may refer to sections 5 and 6 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597), and section 95 of the Arbitration Ordinance (Cap. 609) as examples in existing legislation using the phrase without a definition. The Administration has also explained, in relation to the definition of "public authority", that given the definition of "statutory authority" under the Bill (which does not exist in Cap. 591) differentiates between "public authority" in paragraph (a)(i), and "regulatory body" in paragraph (a)(ii), it is therefore necessary to exclude "regulatory body" from the definition of "public authority" under the Bill for clarity.

*Definitions of reserved matter and non-reserved matter and the deeming provision (Clauses 3 and 6 and Schedule 1)*

85. Members note that Clause 3 contains the definitions of "reserved matter" and "non-reserved matter". Under Clause 3(1) of the Bill, a "reserved matter" is a matter 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 of the HKS of XRL etc.

86. Clause 6(1) of the Bill proposes that, except for reserved matters, the MPA is to 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 MPA; and (b) the delineation of jurisdiction (including jurisdiction of the courts) over the MPA. The legal effect is that the laws of the Mainland would apply to non-reserved matters in the MPA 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.

87. Some members and the Legal Advisers have enquired why the Administration has adopted the drafting approach of incorporating the texts of Articles 3, 4 and 7 of the Co-operation Arrangement into the Bill by way

of the proposed Schedule 1, as opposed to re-writing the texts of Articles 3, 4 and 7 of the Co-operation Arrangement as substantive provisions of the Bill in order to conform to the normal usage of wording and terminology prevalent in domestic legislation for the purpose of providing for the meanings of "reserved matter" and "non-reserved matter" under the Bill. The Legal Advisers have further pointed out that the Administration may consider introducing definitions for certain terms, such as "維修養護" (which is not an usual Chinese phrase used in local legislation) and "environmental regulation and control" (which is a very general phrase), used in Articles 3, 4 and 7 of the Co-operation Arrangement as reproduced in Schedule 1 to the Bill to ensure that the meanings of those terms would be clear.

88. According to the Administration, there are different approaches to drafting local legislation to implement 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. In the course of drafting the Bill, the Administration has taken into account the fact that the Co-operation Arrangement is an agreement entered into by Hong Kong and the Mainland. The Administration has held that it is appropriate to define "reserved matter" and "non-reserved matter" appearing in Clause 3 of the Bill by reference to Articles 3, 4 and 7 of the Co-operation Arrangement, which are set out in Schedule 1. In particular, Articles 3 and 7 clearly set out the specific matters to which the laws of Hong Kong apply, and over which Hong Kong exercises jurisdiction. In the Bill, the demarcation of "reserved matter" and "non-reserved matter", to which Clause 3 refers, mainly affects the operation of the deeming provision in Clause 6(1), which seeks to provide for the delineation of applicable laws and of jurisdiction in respect of the MPA.

89. In the light of the above, the Administration is of the view that defining "reserved matter" and "non-reserved matter" by reference to the texts of Articles 3, 4 and 7 of the Co-operation Arrangement, which are set out in the Bill, is the most appropriate way to implement the Co-operation Arrangement and to accurately reflect the agreed position between Hong Kong and the Mainland as regards the delineation of applicable laws and of jurisdictions in respect of the MPA.

90. Dr Fernando CHEUNG has enquired whether staff of the Hong Kong operator of the XRL who go on strike and take related actions in the MPA would be considered as covered by employment-related matters under Article 7(3) of the Co-operation Arrangement, thus a reserved matter over which Hong Kong exercises jurisdiction. The Administration has

responded that public order in the MPA is a non-reserved matter, and that the staff concerned should respect and abide by the applicable laws of the respective jurisdictions.

91. Some members including Mr Alvin YEUNG and Mr Andrew WAN have requested the Administration to consider providing definition for the term "Mainland Authorities Stationed at the MPA", which is part of Article 6 of the Co-operation Arrangement and reproduced in the form of a Note in Schedule 1.

92. The Administration has advised that the term, as defined in Article 6 of the Co-operation Arrangement, appears in Article 7 of the Co-operation Arrangement. To facilitate readers' understanding of Article 7 of the Co-operation Arrangement as reproduced in Schedule 1 (as well as its English translation), a note is added to provide a piece of factual information on how the term is defined in the Co-operation Arrangement. The note is thus an aid to readers in reading Article 7 of the Co-operation Arrangement by referring to an existing definition that has already been provided in the Co-operation Arrangement.

93. The Legal Advisers have sought the Administration's clarifications on whether Article 7(1) of the Co-operation Arrangement may give rise to the issue of overlapping jurisdiction, for example where a designated personnel is in possession of a prohibited item under Mainland laws when performing his/her duties in the MPA. The Administration responded that law and order inside the MPA including crime investigation and prevention are non-reserved matters, and therefore if a designated personnel is found to be in unlawful possession of prohibited items in contravention of the criminal law of the Mainland, the matter would be handled by the relevant Mainland authorities in accordance with Mainland law. The Legal Advisers have also enquired, in respect of Article 7(5) of the Co-operation Arrangement, whether it is intended that it would only cover contractual or other legal relationships of a civil nature between e.g. the Hong Kong operator of the XRL vis-à-vis its staff member(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. The Administration responded that Article 7(5) is intended to apply to contractual or other legal relationships of a civil nature between different groups of bodies or individuals mentioned therein, as well as between different bodies or individuals within the same group, and therefore for instance, it would cover any contract made between high-speed rail passengers.

94. Members note that under Clause 6(1) of the Bill, except for reserved matters, the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland for the purpose of the application of the laws of the Mainland, and of the laws of Hong Kong, and for the purpose of the delineation of jurisdiction (including jurisdiction of the courts) over the MPA.

95. Some members are concerned whether LegCo has the legislative competence to enable such a provision to be passed and become enacted as law. The Administration has advised that whether LegCo is competent would depend on whether the provision concerned contravenes the Basic Law including BL 18. As stated in paragraph 24 above, the Administration believes that establishing the MPA and applying Mainland laws therein in accordance with the Co-operation Arrangement does not engage BL 18. Furthermore, according to Article 73(1) of the Basic Law, the LegCo may enact, amend or repeal laws in accordance with the provisions of the Basic Law and legal procedures.

96. Some members have queried the need for Clause 6(2). The Administration has advised that it is appropriate to add such a Clause to make the position clear.

*Applicability of international agreements/treaties*

97. Some members, including Mr LAM Cheuk-ting, are concerned, in relation to the definitions of "reserved matter" and "non-reserved matter" under Clause 3, whether the international treaties currently in force in the HKSAR would continue to apply in the MPA, and if so, how to ensure the compliance with such international treaties by the Mainland authorities especially since the PRC itself may not be bound by such treaties.

98. The Administration has advised that the applicability of international treaties in the MPA would need to be analysed in light of facts of the individual case and other relevant factors, such as the intent, purpose and objective of the treaty concerned, the persons to whom it applies, the content of its provisions, as well as the functions of the MPA and the activities carried out there.

99. As further advised by the Administration, the HKSAR enters into international agreements pursuant to Article 151 of the Basic Law or specific authorization given by the Central People's Government ("CPG"). As the sovereign state of the HKSAR, the PRC would ensure that the HKSAR Government discharges its international duties and obligations. In relation to the MPA, the HKSAR Government has consulted with the CPG on the applicability of international treaties thereat. Both sides consider that

the MPA, as a clearance port, is mainly used for the purposes of immigration, customs and quarantine, and the area involved is limited. Substantial difficulties in applying international treaties due to the implementation of co-location arrangement in the MPA would be rather unlikely. Where necessary, the HKSAR Government and the CPG would engage in consultations on the implementation of international treaties in the MPA and handle the matter as appropriate.

100. With regard to disputes involving the discharge of obligations under international agreements in the MPA, the Administration has advised that international law disputes involving the discharge of obligations by the HKSAR generally would not be referred to the HKSAR courts for determination. On the other hand, if the relevant international treaty is implemented in the HKSAR by way of local legislation, the party concerned may seek an adjudication from the court in respect of his lawful rights and interests in accordance with legal procedures.

*Declaration of the MPA and the relevant plans (Clause 4 and Schedule 2)*

101. The Bills Committee notes that Clause 4 seeks to declare the area delineated by the plans (together with annexes) in Schedule 2 to the Bill as the MPA. It covers the designated areas on B2 and B3 levels, the platform areas on B4 level, as well as the relevant connecting passageways, and includes the Mainland Clearance Area and back office, the waiting hall for departing passengers, station platforms and the connecting passageways and escalators.

102. Ms Tanya CHAN has expressed concern that the specific area of the MPA (including its coordinates) as declared under Clause 4 of the Bill has not been expressly provided for in both the Co-operation Arrangement and the Decision. Noting that the Decision stipulates that the establishment of the MPA and its specific area are to be approved by the State Council, some members have requested the Administration to provide relevant approval document(s) (together with the annex(es), if any) issued by the State Council in this regard.

103. The Administration has responded that subsequent to the Decision made on 27 December 2017, the HKSAR Government submitted, via the Hong Kong and Macao Affairs Office of the State Council ("HKMAO"), the proposed area (including its coordinates) of the MPA to the State Council for its approval. The proposed area referred to in the said submission was identical to that which is particularly delineated in Plan No. 1 and No. 2 in Schedule 2 to the Bill. The HKMAO also notified the HKSAR Government subsequently that the establishment of the MPA and its specific area had been approved by the State Council. As for the

request to provide the document(s) issued by the State Council, the Administration has advised that it is not the usual practice for the HKSAR Government to disclose document(s) relating to the HKSAR Government's communication with the Central Authorities. Hence, relevant document(s) cannot be provided to the Bills Committee.

104. Responding to some members' enquiry, the Administration has advised that any future amendments to the coordinates of the MPA as stipulated in Schedule 2 to the Bill are subject to the prior approval of the State Council, reporting to the NPCSC of relevant change(s) and approval of the LegCo by way of an amendment bill.

105. Members note that upon commissioning of the HKS of the XRL, there would be a series of escalators within the MPA as detailed in Schedule 2 to the Bill. The Legal Advisers sought the Administration's clarifications in relation to (i) the reference to "escalators/staircase... or connecting B3 level and B2 level (as applicable)" in the Notes in Annex 1 to Plan No. 1, whether such escalator/staircase connecting B3 level and B2 level in fact exists and if it does, the reason it is not shown in Section B-B; and (ii) whether the escalator connecting B4 level and B3 level as shown in Section B-B has a part(s) on B3 level (e.g. a landing part) which is currently not shown in Section B-B and if so, whether such part(s) forms part of the MPA. In response to the enquiries of the Legal Advisers and some members concerning these escalators, the Administration has advised that upon commissioning of the HKS of the XRL, there would be a series of escalators within the MPA. These include:

- (a) escalators connecting B3 level and B4 level for departing passengers' use. A part of such an escalator is shown in Section B-B in Annex 1 to Plan No. 1 in Schedule 2 to the Bill;
- (b) escalators connecting B4 level and B2 level for arriving passengers' use, as well as escalators connecting B4 level and B2 level with intermediate landings on B3 level; and
- (c) escalators connecting B2 level and B3 level for staff use, to which passengers have no access.

106. As regards the fact that a part of the escalator mentioned in (a) in paragraph 105 is not shown in Section B-B, the Administration advises that the part also falls within the MPA. As for the escalators with intermediate landings on B3 level mentioned in (b) in paragraph 105 and the escalators mentioned in (c) in paragraph 105, they are the escalators connecting B3 level and B2 level as stated in Note 1 in Annex 1 to Plan No. 1 in Schedule

2. They are situated within the MPA and connect the MPA at B3 level and B2 level. Reference can be made to Section B-B for the relevant boundaries of the MPA, and no additional indication will be necessary.

107. The Legal Advisers have sought clarifications from the Administration on the nature and effect of the area which is coloured in blue and marked "Hong Kong Clearance Area and Passenger Corridor" on Plan No. 1 in Schedule 2 to the Bill. The Administration has advised that the marking is used to demonstrate that the position of the Hong Kong Port Area (including the Hong Kong Clearance Area and Passenger Corridor) of the WKS is adjacent to the MPA, and is meant for illustration purpose. The Administration considers it not necessary to add any notes and/or legend to the mentioned area coloured in blue as they will not affect the effect of any provision of or Schedule to the Bill. The Legal Advisers have also sought the Administration's clarification relating to the upper limit of the MPA as shown in Note 3 in Plan No. 2, and whether the upper limit at B3 level as particularized by the marking of "-4.0 mPD" shown in Section A-A in Annex 1 to Plan No. 1 is the only exception to the upper limit stated in Note 3. The Administration has confirmed that to be the case.

*Definition of train compartments and related issues (Clause 5)*

108. The Bills Committee notes that in accordance with the Co-operation Arrangement, Clause 5(1) seeks to specify that a train compartment of a passenger train in operation on the HKS of the XRL (including a passenger train which is in motion, stationary and during embarkation or disembarkation) would be regarded as part of the MPA. Clause 5(2) provides that a passenger train is not in operation when (a) it is within the Shek Kong Stabling Sidings ("SSS"); or (b) it is making a journey from the SSS to the WKS or a journey from the WKS to the SSS.

109. Some members are concerned whether a passenger would be considered to be situated both inside and outside the MPA if he stuck certain body parts out of the window of a high-speed rail passenger train. The Administration has advised the Bills Committee that train compartments of high-speed rail passenger trains are designed to be enclosed and the windows cannot be opened. The scenario as suggested by members would not happen. It is during embarkation and disembarkation of high-speed rail passenger trains, i.e. at a time when the doors are open, that train compartments are not enclosed.

110. Members are also advised that no cargo train runs along the XRL. Apart from passenger trains, the MTR Corporation Limited ("MTRCL") operates engineering vehicles on the HKS of the XRL to conduct

maintenance work. The Hong Kong Fire Services Department also purchased Rail-Road Fire Appliances that can travel on both roads and rail lines for emergency rescue. These engineering and rescue vehicles are not meant to provide cross-boundary passenger service, and thus are not to be regarded as part of the MPA.

111. Mr Andrew WAN and Mr IP Kin-yuen are concerned whether smuggling activities would take place on board the passenger trains (such as by exploiting any potential loopholes in the garbage disposal system). The Administration has advised that under the laws of Hong Kong, the Hong Kong custom officers are empowered to stop and search any person entering or leaving Hong Kong, and conduct clearance for items (including trash) carried or transported by that person. Operator of the HKS of the XRL will be responsible for handling trash disposal in the WKS, including two port areas, train compartments and platforms. Persons who are allowed to enter and leave the MPA through the "Port Clearance Corridor for Goods and Trash" on B4 level of the WKS must be designated personnel with valid permits pursuant to Article 7 of the Co-operation Arrangement, and have to undergo Hong Kong and Mainland immigration and customs clearance procedures respectively for entry into or exit from the Hong Kong Port Area and the MPA. All items (including trash) passing through the said corridor will also be subject to clearance to be conducted by Hong Kong customs officers. Such an arrangement will be no different from that currently adopted at other immigration control points located at the Hong Kong International Airport, Intercity Through Train Station at Hung Hom and cross-boundary ferry terminals.

112. The Administration further advises that the Customs and Excise Department ("C&ED") officers are tasked with duties to prevent and detect smuggling of contraband items (e.g. narcotics, arms, ammunition, weapons, counterfeit and pirated goods). In discharging such duties, the frontline officers will adopt procedures and protective measures as appropriate, and be aided by the use of high-tech detection devices and inspection equipment so as to enhance contraband detection capability at control points. Should any HKSAR designated personnel (including staff members who are authorized to enter the MPA to collect trash) conduct smuggling activities, they will be governed by the jurisdiction where the person is located at the time of being intercepted. This arrangement is no different from that of other ordinary passengers.

113. Mr Jeremy TAM has also expressed concern about the security arrangements at the SSS, suggesting there might be security loopholes at the SSS which may give rise to smuggling or other illegal activities at the WKS. He therefore enquires about details of the mechanism to be adopted in dealing with illegal activities or contrabands found on a



passenger train departing from the WKS and going towards the SSS.

114. The Legal Advisers have also sought the Administration's clarifications on the issue of customs clearance and immigration arrangements in respect of staff on board the high-speed rail passenger trains in the following situations: (i) when the passenger train leaves the WKS and heads towards the SSS after passenger disembarkation; and (ii) when the passenger train leaves the SSS and heads towards the WKS to operate Mainland-bound train services.

115. In respect of the aforesaid enquiries from members and the Legal Advisers, the Administration has advised that all trains departing from the Mainland to Hong Kong will not go to the SSS direct; similarly no train will depart from the SSS and head to the Mainland direct. The SSS is a place for stabling and maintenance for trains. Passenger trains will remain at the SSS before or after operation, and will not carry passengers when travelling between the WKS and the SSS. Furthermore, only Hong Kong trains will be stabled at the SSS.

116. The Administration has further advised that when a high-speed rail passenger train departs from the WKS for the SSS for stabling or maintenance after passenger disembarkation, the crew members and train compartments will be regarded as entering the jurisdiction of Hong Kong from the MPA. Conversely, after the train leaves the SSS and arrives at the WKS platform, the relevant staff and the train compartments will be regarded as entering the MPA. Immigration and customs clearance for the relevant personnel and the train are therefore required in both cases. The following measures will be implemented by the Administration to prevent illegal activities such as illegal entry and import of prohibited items via high-speed rail passenger trains that depart from the WKS for the SSS:

- (a) upon arrival of a passenger train from the Mainland at the WKS platform, passengers have to leave the train compartment immediately and proceed to the B2 Arrival Level. They cannot stay at the platform. Should train crews discover any left properties on trains, they would be passed to station staff or the Mainland authorities for handling as appropriate in the circumstances. Before the train departs from the platform for the SSS, messages will be broadcast in the train compartment and at the platform to remind the persons on-site that the train concerned will cease operation, and station staff will ensure that all persons have left the train compartment and the platform. After checking, the MTRCL staff will not allow any passenger to enter or return to that platform. Besides, the platforms are

separated by design and surrounded by barriers. Passengers cannot go from one platform to another;

- (b) pursuant to Article 5 of the Co-operation Arrangement, Mainland immigration inspection authority and customs authority will apply regulation in respect of cross-boundary transport vehicles to the trains, and perform relevant immigration inspection and customs regulation in the MPA on trains prior to their departure to the SSS and upon their arrival from the SSS. In case of discovery of any suspicious persons or prohibited items on such trains, the Mainland authorities will handle them according to the Mainland laws;
- (c) the Hong Kong Immigration Department and C&ED will arrange staffing and examination facilities at the SSS to conduct immigration and customs clearances for the trains travelling between the WKS and the SSS, as well as the train crew thereon;
- (d) in terms of immigration and customs clearances in Hong Kong, the laws of Hong Kong empower Hong Kong immigration officers to conduct immigration clearance, including examining any person on his arrival or landing in, or prior to his departure from, Hong Kong or requiring him to submit to further examination, and/or furnishing such information as may be required for this purpose. Besides, under the laws of Hong Kong, Hong Kong customs officers are empowered to board and search any train entering or leaving Hong Kong, and to stop and search any person entering or leaving the train compartment. In order to prevent the smuggling of prohibited/controlled items, C&ED will, under the existing practice as in other control points (such as risk assessment), board and inspect the train compartment upon arrival of a train at the SSS and its departure for the WKS, as well as examine any person entering or leaving the train compartment. The Hong Kong law enforcement agencies will handle any suspicious persons or contrabands found on the high-speed train at the SSS in accordance with the laws of Hong Kong; and
- (e) the SSS will be legally classified as a part of the railway premises which is not intended for public access. The MTRCL will enforce stringent control and deploy security guards for patrol to prohibit unauthorized entry. Multiple

security measures, including setting up of about three-metre high metal perimeter fencing, CCTV and central alarm system, etc., will also be put in place there. Any person who enters the relevant area without authorization shall be liable to an offence under the Mass Transit Railway By-laws (Cap. 556B).

117. The Administration considers that the above multi-pronged measures can address adequately the risk, albeit low, for illegal entry and import of prohibited items on the trains to and fro between the SSS and the WKS.

118. In reply to some members' request to provide definitions for the phrases "train compartment", "passenger train" and "in operation" appearing in Clause 5, the Administration has advised that both "train compartment" and "passenger train" are not jargons and may be given their ordinary meanings. As such, the Bill does not provide definitions for the two phrases. The Administration adds that the MPA is defined in view of the space where passengers are situated along their routes. Therefore, "train compartment" stated in Clause 5 of the Bill refers to the inner space of a train, not the other parts of a train (e.g. body-shells, wheels etc.). As for the term "in operation", Clause 5 of the Bill has made reference to the provisions under Article 2 of the Co-operation Arrangement to specify that the phrase includes "in motion, stationary and during embarkation or disembarkation". Moreover, Clause 5(2) seeks to specify the scenarios in which a passenger train is not "in operation".

119. For "passenger train", as explained in paragraph 110 above, MTRCL operates engineering vehicles on the HKS of the XRL to conduct maintenance works. The Hong Kong Fire Services Department also purchased Rail-Road Fire Appliances that can travel on both roads and rail lines for emergency rescue. These engineering and rescue vehicles are not meant to provide cross-boundary passenger service and as such would not be considered as passenger trains "in operation", and will not be confused with passenger trains.

#### *Emergency rescue arrangement*

120. Some members including Mr YIU Si-wing and Dr CHIANG Lai-wan have expressed concern about the mechanism for handling sudden or emergency incidents occurring in train compartments or the rail tunnels of the HKS of the XRL and enquired about the details in this regard. The Legal Advisers have also enquired whether the Administration is prepared to provide information on the details of the co-operation between the HKSAR and the Mainland authorities on the port liaison and coordination

mechanism, the handling of emergencies, liaison officer system for communication between HKSAR and Mainland authorities, and the collaborative implementation plan for the operational arrangement of the WKS as mentioned in Chapter 4 of the Co-operation Arrangement. In response to members' enquiries and the enquiry of the Legal Advisers on the same subject matter, the Administration has advised that pursuant to Article 11 of the Co-operation Arrangement, the HKSAR and the Mainland agreed to set up a port liaison and coordination mechanism. With reference to the liaison and coordination mechanism which has been effective in other existing land boundary control points, both sides will establish daily liaison and coordination mechanism for the WKS. Under the mechanism, the HKSAR Government and Mainland authorities stationed at the WKS Port will put in place a system of daily liaison officers and telephone hotlines among themselves, and formulate the inter-departmental liaison arrangement between both sides for communications on matters in relation to daily port operation involving various departments at the two port areas.

121. According to the Administration, in cases of sudden and emergency incidents in the MPA, the Mainland Authorities Stationed at the MPA may request and authorize the rescue team of the HKSAR (including first aid personnel, Fire Services officers and Police officers) to enter the MPA and provide assistance in handling the situation and rescue operations for the purposes of avoiding or minimizing casualty or property damage and ensuring that the situation is contained. Based on the principle of "prioritizing rescue", the HKSAR Government and relevant Mainland authorities are now actively discussing the details of the operational mechanism in such circumstances, including the liaison mechanism between both sides and the drill exercises to be conducted under such a mechanism.

122. The Administration has advised that under Article 13 of the Co-operation Arrangement, the two places agree to formulate and sign a collaborative implementation plan for the operation and management of the WKS Port in accordance with the principles established under the Co-operation Arrangement. The plan will prescribe the details of their collaboration in the operation and management of the WKS Port. The Transport and Housing Bureau, the Security Bureau and other relevant departments have already formed a coordination conference and working groups with the relevant Mainland authorities. Both sides are now discussing matters requiring the co-operation and coordination of the two places in order to implement the Co-operation Arrangement and ensure the effective operation of the HKS of the XRL and the WKS Port. These matters include property management and maintenance, the monitoring of the port area and facilities management, clearance arrangement, quarantine

arrangement, as well as the permit for the HKSAR designated personnel's entry into the MPA for performing duties under Articles 3 and 7 of the Co-operation Arrangement. The collaborative implementation plan will set out the arrangement as agreed between both sides on the above matters.

123. Some members have expressed concerns about the contingency measures to be taken if a train failure occurred inside the tunnel section of the HKS of the XRL. The Administration has responded that where the circumstances warrant, the MTRCL will deploy another train to push or pull the train concerned to the next station according to its existing guidelines. In cases of arson or a spread of poisonous gas inside a train, station staff will evacuate passengers to other train compartments as the doors in between the train compartments can block the spread of fire and smoke. In case passengers have to be evacuated from the train, the Administration has advised that there are emergency exits about every 250 meters in the tunnel and passengers can go to the non-incident tunnel through these exits where rescue train will be arranged for evacuating the passengers.

124. Noting the Administration's explanation above, some members have further enquired about the immigration and clearance arrangements for passengers and train crews after train incidents. The Administration has advised that according to the Bill, a train compartment of a passenger train in operation on the HKS of the XRL is to be regarded as part of the MPA. If passengers on such passenger trains in operation need to be evacuated, the Administration will apply the principle of "prioritizing rescue" and tackle any resultant clearance matters in view of the specific circumstances.

125. The Administration has stressed that in any event, Article 6 of the Co-operation Arrangement provides that Mainland law enforcement officers shall not enter any area outside the MPA to enforce the law, and have no law enforcement powers outside the MPA. Therefore, any Mainland law enforcement officer who needs to be evacuated to an area outside the MPA as a result of emergencies shall abide by the laws of Hong Kong as other ordinary passengers do, and shall have no law enforcement powers.

*Preventive measures against the outbreak of communicable diseases*

126. Dr Fernando CHEUNG and Dr KWOK Ka-ki are concerned about the measures to be implemented at the WKS by the Administration in respect of the prevention of imported communicable diseases from the Mainland. Dr CHEUNG is of the view that to better protect the community against the outbreak of communicable diseases, matters relating

to public health and hygiene should be categorized as "reserved matter" and should be subject to the laws of Hong Kong.

127. The Administration has advised that a well-established mechanism for preventing the spread of infectious diseases has already been put in place at various control points and similar measures would be adopted at the WKS. Both the Mainland and HKSAR agree to set up a mechanism for handling sudden or emergency incidents which may occur in the MPA in the course of operation, including sudden occurrences of public health incidents, outbreak of communicable diseases, outbreak of animal and plant diseases and so on. Operators of XRL have been advised that their train crews should inform the station officers concerned of any suspected or confirmed cases found on trains, prior to the trains' arrival in the next station. Isolation facilities are available in the MPA for handling of any suspected or confirmed cases.

128. The Administration reiterates that in the event of a large-scale outbreak of communicable diseases, the HKSAR Government will enhance its co-operation with the Mainland with respect to the implementation of control measures with a view to minimizing the risk of imported cases. The representatives of the Department of Health have been discussing with the relevant Mainland health authorities on the control of communicable diseases and the relevant contingency plans in the WKS.

*Telecommunication services in the train compartments*

129. As advised by the Administration, given that the tunnels of the HKS of the XRL are within the areas of Hong Kong, mobile phone signals provided by local mobile network service providers should be available for users in the train compartments. Hence, roaming charges will not be imposed by the mobile network service providers on users of those mobile networks in the high-speed rail passenger train compartments.

130. Some members including Mr Charles MOK are concerned whether the relevant Mainland authorities have the authority to collect evidence directly from the Hong Kong mobile network service providers in the course of investigation of any incident or crime that has allegedly taken place in the train compartments.

131. Pursuant to Article 7(3) of the Co-operation Arrangement, matters relating to the carrying on of business of the Hong Kong operator of the XRL and service provider(s) are to be governed by the HKSAR in accordance with the laws of the HKSAR, and thus are regarded as "reserved matters" under Clause 3 of the Bill. In this connection, provision of service by Hong Kong telecommunications operators in the

MPA, including whether customer information may be disclosed, is regulated by the laws of Hong Kong, and as such Mainland laws do not apply.

132. Noting that the Administration has communicated with the Insurance Authority concerning the coverage of insurance policy in the MPA, Mr Charles MOK is concerned whether the Administration will also communicate with other related organizations such as the Communications Authority and the Consumer Council to alert both the service providers and the consumers in respect of matters relating to the service provision in the MPA, with a view to avoiding disputes and safeguarding consumers' rights. The Administration has replied that they will liaise with various related organizations regarding the operation of the Bill when necessary.

*Security measures and administration of the WKS*

133. Responding to Mr YIU Si-wing's enquiry, the Administration has advised that the standards and requirements of the security measures adopted for the XRL are drawn up with reference to the case of the SBPHKPA. The Hong Kong operator of the XRL should comply with these standards and requirements set out by the Security Bureau, which would put in place a mechanism for reviewing the security measures at the WKS and their implementation regularly.

134. The Administration explains that under the existing design of the WKS, there is a clear demarcation of boundaries of the two port areas at the WKS, so that the jurisdictions of the HKSAR and the Mainland would be clearly delineated. Similar to the practice of other land boundary control points, a series of security measures would be adopted at the WKS with a view to avoiding possible security risks including illegal immigration, such as patrolling by the Hong Kong operator of the XRL and the Hong Kong Police, installing security facilities such as closed circuit television cameras and alarm systems at various passageways and doors to ensure that no person could make use of these doors or passageways to cross the boundary illegally and setting up robust structural partitioning, barriers and safety facilities on the boundary between the two port areas to ensure that there will be no illegal boundary crossing. Furthermore, to prevent passengers on the platforms from accessing the tracks, the platforms shall be protected by safety panels except for the boarding locations.

135. Ms Tanya CHAN expresses concern over the number and location of doors including emergency exits at the WKS, and the security measures to be adopted at the WKS in respect of the management of doors and passageways connecting the MPA and the Hong Kong Port Area ("the two port areas"). Mr CHAN Chun-ying also seeks details on the management

measures to be deployed to ensure these doors and passageways are properly used.

136. The Administration has advised that there are three types of passageways connecting the two port areas, i.e. (a) Passengers Immigration Passageways for travellers to conduct customs, immigration and quarantine ("CIQ") procedures; (b) Port Clearance Corridor for Goods and Trash; and (c) one essential passageway on B2 level specifically for allowing the elevating work platform for Atrium maintenance and cleansing to move between the two port areas. The Administration indicates that any persons passing through these passageways will be required to undergo both Hong Kong and Mainland CIQ procedures. As regards doors connecting the two port areas, these doors will only be used for rescue and evacuation in case of emergency and fire, and will not be used for other purposes. No one will be allowed to use these doors and they will be securely locked and fully controlled and managed by the Hong Kong side. Besides, conspicuous signs will be displayed to warn against illegal usage of these doors and corridors. The responsibilities of the MTRCL, as the Hong Kong operator of the XRL, in relation to the management and operation of the XRL, would be set out clearly in the relevant agreement. The security measures to be implemented by the MTRCL would have to meet the standard required by the Security Bureau, including additional requirements that may be needed for enhancement.

137. The Administration also explains that there are 211 doors for fire access and escape at the WKS. They shall not be used for other purposes under normal circumstances, and no person (including passengers as well as Mainland and Hong Kong staff and law enforcement officers) will be entitled to use them. The doors will be securely locked, and will be under the full control and management of the Hong Kong side. They will also be equipped with closed-circuit television and alarm systems with relevant monitoring records. Only under emergency situation can they be used for escape. When there is a need for escape during emergencies, the signs showing the fire and emergency escape routes in the WKS will be lit up. There will also be broadcast announcements, and staff will point out the escape routes to ensure the safe evacuation of passengers.

138. Ms Claudia MO is concerned whether the law enforcement agencies of the Mainland and Hong Kong would maintain a list of staff members, and those staff members on the list can pass through the two port areas and provide assistance to travellers without completing CIQ procedures. The Administration has advised that discussion with the relevant Mainland authorities on establishing a mechanism for rendering assistance to travellers involving the two port areas is underway. According to Article 7(1) of the Co-operation Arrangement, designated



personnel will be issued a permit by the HKSAR Government or the Hong Kong operator of the XRL to enter the MPA or pass through the MPA to other places for the purposes of carrying out duties and functions. This notwithstanding, the Administration has stressed that they still have to go through the CIQ procedures when leaving or entering the MPA. Furthermore, the Mainland law enforcement officers shall not be permitted to enter any area outside the MPA and have no law enforcement powers outside the MPA pursuant to the Decision and the Co-operation Arrangement.

139. In response to the enquiries of some members, including Dr Priscilla LEUNG and Mr YIU Si-wing, relating to the handling of cross-boundary crimes at the WKS, the Administration has responded that such crimes will be handled in accordance with legal principles applicable to cross-boundary crimes as in other contexts. The Administration has further advised that following the practice in other land boundary control points, such as Lo Wu and Lok Ma Chau Spur Line, stringent security measures would be adopted at the WKS to prevent cross-boundary crimes. Generally speaking, depending on jurisdiction of the location at which an offence is committed, investigation will be conducted by the relevant law enforcement agencies of that jurisdiction in accordance with the applicable laws of that jurisdiction. Since the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland save for reserved matters under Clause 6(1) of the Bill, in accordance with the New Arrangements on the Reciprocal Notification Mechanism between the Mainland and the Hong Kong Special Administrative Region Relating to Situations Including the Imposition of Criminal Compulsory Measures or the Institution of Criminal Prosecution effective since 1 February 2018, the Mainland should notify Hong Kong of the criminal compulsory measures imposed on Hong Kong residents, as well as the unnatural deaths of residents in the MPA.

*Application of the laws of the Mainland at the MPA not limited to CIQ procedures*

140. A few members have asked why Mainland laws other than those relating to CIQ procedures would need to be applied to the MPA. Members are advised that the laws of the Mainland to be applied are not restricted to laws relevant to clearance procedures for the following two reasons. First, it is impossible to define in practice what Mainland laws are essential for enforcing the Mainland clearance procedures. This is because clearance procedures concern various matters, and numerous Mainland laws and regulations may be involved. Secondly, if only those Mainland laws relevant to clearance procedures are to be applied and Hong Kong laws are not to be excluded from the MPA, that would lead to problems of overlapping of jurisdictions, 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 increase the security risks in Hong Kong and thus will be undesirable.

*Demarcation and management of a cross-boundary restricted area in WKS*

141. Members note that according to Article 1(2) of the Co-operation Arrangement, apart from the MPA, the WKS would be subject to the HKSAR's jurisdiction in accordance with the laws of the HKSAR. Furthermore, the Administration informs the Bills Committee that the Hong Kong Clearance Area would be declared by MTRCL as a cross-boundary restricted area by notice published in the Gazette in accordance with by-law 41B of Cap. 556B. Some members have queried the rationale for such arrangement, as it is different from that adopted at the SBPHKPA in which the HKSAR is to administer the Hong Kong Port Area as a closed area as defined in section 2(1) of the Public Order Ordinance (Cap. 245). Some members including Mr Andrew WAN and Mr AU Nok-hin have pointed out that the penalties to be imposed on persons committing an offence and the powers of enforcement officers as stipulated in Cap. 245 and Cap. 556B are very different.

142. The Administration has advised that the WKS is different from the SBPHKPA in that it is not only a control point, but also a station to be managed by the operator of the HKS of the XRL – a situation akin to that of the Intercity Through Train service in Hung Hom Station. The Hong Kong Clearance Area within the WKS would be declared as a cross-boundary restricted area according to Cap. 556B, which is the same arrangement as that adopted for the Intercity Through Train service in Hung Hom. Under Cap. 556B, no person shall enter or remain in a "cross-boundary restricted area" except for persons with valid permits and specified train passengers etc. Hence, management as a "cross-boundary restricted area" by demarcation of "cross-boundary restricted area" under Cap. 556B will be no different from administration as a closed area by demarcation of closed area under Cap. 245, in that both can achieve the purpose of effectively prohibiting entry by non-cross-boundary passengers and unauthorized persons, and are conducive to maintaining the law and order in the restricted area. An advantage for management in a railway station as a "cross-boundary restricted area" under Cap. 556B is its convenience to the daily operation management of the railway operator. For example, it will be more convenient for the railway operator to issue permits direct to eligible persons (including railway crew and personnel at the railway stations) for entry into the "cross-boundary restricted area" for work, obviating the need to apply to the Hong Kong Police Force for such permits each and every time as in the case of closed area.

143. The Administration has further advised that the purpose of demarcating closed/restricted areas at control points is to prohibit non-cross-boundary passengers or unauthorized persons from entering a designated area, thereby enhancing the effectiveness of daily operation of the control points concerned. Having regard to individual circumstances of control points, there are different arrangements and statutory bases for demarcating closed/restricted areas thereat (including the methods of demarcation for closed/restricted areas and issuance of entry permits). For the land boundary control points located within the frontier closed area, such as Lok Ma Chau and Lo Wu, the Administration considers it appropriate to administer such facilities as closed area pursuant to Cap. 245. As for the restricted areas located at Hong Kong-Macau Ferry Terminal and China Ferry Terminal, they are demarcated under the Shipping and Port Control Ordinance (Cap. 313). Though closed/restricted areas are demarcated by different methods in control points, the Administration is of the view that all of them can achieve the purpose of effectively prohibiting entry to designated areas by non-cross-boundary passengers or unauthorized persons. The law enforcement powers and capabilities will not be affected by whether a site is regulated as a closed area, a cross-boundary restricted area or a restricted area.

144. Some members have expressed concern over the Administration's stance that a notice published by the MTRCL in the Gazette to declare an area to be a cross-boundary restricted area (which is defined under by-law 41A of Cap. 556B) is not subsidiary legislation and is not subject to the scrutiny of the LegCo. The Legal Advisers have also sought the Administration's clarifications on the aforesaid issue, referring in particular to sections 34 and 62 of the Mass Transit Railway Ordinance (Cap. 556). The Administration has responded that under section 62 of Cap. 556, a commencement notice issued under section 1(2) of the Ordinance, a regulation made under section 33 of the Ordinance and a bylaw made under section 34 of the Ordinance are all subsidiary legislation, but any other instrument issued under the Ordinance is not subsidiary legislation. A notice published in the Gazette by the MTRCL to declare a cross-boundary restricted area is made under by-law 41B of Cap. 556B. It is not a commencement notice, regulation or bylaw as referred to in section 62 of Cap. 556, and hence is not subsidiary legislation. It is thus not subject to the procedures for scrutiny of subsidiary legislation of the LegCo.

145. Regarding some members' concerns relating to "valid permit" (有效證件) mentioned in Article 7(1) of the Co-operation Arrangement and "permit" (許可證) as defined under by-law 41A of Cap. 556B, the Administration has advised that the latter refers to any permit to be issued by the MTRCL to its employees or any other persons on application to

perform maintenance or operation-related duties within the cross-boundary restricted area, while the former would be issued by the HKSAR Government or the Hong Kong operator of the XRL for designated personnel who may need to enter or pass through the MPA to carry out duties related to the repair and maintenance of buildings, structures and related facilities. The Administration has clarified that the permit mentioned in Article 7(1) of the Co-operation Arrangement would only be issued to Hong Kong personnel for entering or passing through the MPA, but not to the Mainland personnel for entering or passing through the Hong Kong Port Area.

146. Mr Dennis KWOK has expressed concern as to whether the MTRCL would exempt Mainland personnel from all or any of the requirements of any MTR by-laws regarding entry into a restricted area in accordance with section 34(1A)(b)(iii) of Cap. 556. The Administration has replied in the negative.

Supplementary provisions – savings (Clause 7 and Schedules 4 and 5)

147. Members note that Clause 7(1)(a) provides that Clause 6(1) does not affect a right acquired or accrued, or an obligation incurred, because of an act that was done, or an omission that was made in the area to be declared as the MPA under Clause 4 before the commencement date.

148. Ms Tanya CHAN seeks clarification on whether in respect of any right acquired or accrued in connection with the MPA prior to the commencement date, the MPA would be regarded as an area lying within Hong Kong for the purpose of determining the geographical scope of the pre-existing right, regardless of whether the right or obligation is in relation to a reserved matter or non-reserved matter.

149. The Administration explains that the intended effect is that, on and after the commencement date, even if a right acquired or accrued or an obligation incurred prior to commencement date (i.e. falling within Clause 7(1)(a)) is in relation to a non-reserved matter, the MPA continues to be an area lying within Hong Kong for the purposes of the application of laws and the delineation of jurisdiction in respect of such right or obligation. If the laws of Hong Kong apply to, and Hong Kong exercises jurisdiction over, the right or obligation before the commencement date, these will continue on and after the commencement date. On the other hand, since Clause 6(1) does not apply to a reserved matter, a right or obligation in relation to a reserved matter is not affected by Clause 6(1) in any event, whether or not it falls within Clause 7(1)(a).

150. The Administration further explains that Clause 7(1)(a) preserves the rights and obligations which arose from acts or omissions before the commencement date in the designated area. On this basis, such rights and obligations may still be enforced after the commencement date. Clauses 7(1)(b) and 7(1)(c) refer to some specific instances of enforcement of such rights and obligations. However, even if a particular manner of enforcement of a right or obligation is not specifically mentioned in Clauses 7(1)(b) and 7(1)(c), this in itself should not affect the enforceability of such right or obligation which is already preserved by Clause 7(1)(a).

151. Ms Tanya CHAN and the Legal Advisers suggest that definitions for the terms "investigation", "legal proceedings" and "remedy" which appear in Clause 7(1)(b) should be provided in the Bill. The Administration responds that the term "investigation" refers only to investigation which may be lawfully conducted under the laws of Hong Kong. Lawful investigation by the Police and Hong Kong Independent Commission Against Corruption are already covered. Whether or not investigation by any other person or organization may be conducted depends on whether it may be lawfully conducted under the laws of Hong Kong. The term "legal proceedings" is wide enough to cover both criminal and civil proceedings. There is no policy intention to cover legal proceedings outside the HKSAR. For the reasons stated above, a right or obligation preserved by Clause 7(1)(a) is still enforceable even if the proceedings for enforcement do not fall within the term "legal proceedings". The Bills Committee notes that the term "remedy" refers to the means available at law or equity by which a right is enforced or the infringement of a right is prevented, redressed, or compensated. It covers remedies whether granted by a court or any other body with such power. The Administration has further responded that even if a particular means of enforcement of a right or an obligation is not specified in Clause 7(1)(b) or (c), it does not affect the generality of Clause 7(1)(a), which seeks to preserve all rights and obligations which have arisen from acts or omissions prior to the commencement date.

152. Some members, including Mr CHAN Chi-chuen, are concerned about how the investigation of a criminal case, e.g. murder, would be handled if the crime took place before the commencement date and evidence of the crime (e.g. a corpse) was discovered at the MPA after the commencement date. The Administration advises that at the operational level, there would be a mechanism on how the police from both Mainland and the HKSAR Government would co-operate on actions like exchanging information and interviewing witnesses in order to facilitate the investigation. Besides, if there is any jurisdictional dispute, i.e. whether there was a pre-existing right acquired or accrued or an obligation incurred

before the commencement date, the court could have the final decision based on the evidence of the case.

153. Ms Tanya CHAN seeks clarification on whether any future amendment to Schedules 4 and 5, after the passage of the Bill, would be done by way of negative vetting or positive vetting. The Administration advises that since the Schedules would become part of the Ordinance after the passage of the Bill, legislative amendment to the Schedules will have to be done by way of an amendment bill.

154. Pointing out that Part 3 of Cap. 591 also deals with pre-existing rights and obligations, Ms Tanya CHAN asks why the savings provision in the Bill does not seem to cover all the relevant matters which have been set out in Cap. 591. Ms Tanya CHAN also asks whether Clause 7(3)(a) and (c) of the Bill would have the effect of technically determining a "new boundary of HKSAR" for the purposes of application of laws within the boundary in respect of the rights and obligations arisen under the orders specified in Schedules 4 and 5 to the Bill.

155. The Administration explains that in drafting Clause 7(3)(a) of and Schedule 4 to the Bill, reference is made to section 9(1) of and Schedule 2 to Cap. 591 and that Clause 7(3)(c) of and Schedule 5 to the Bill are drafted with reference to section 10(1) of and Schedule 4 to Cap. 591.

156. The Administration advises that Clause 7(3)(a) covers a pre-existing right or pre-existing obligation that has arisen because of an order specified in Schedule 4 and Clause 7(3)(c) covers a right conferred, or an obligation imposed, by a pre-existing Court order specified in Schedule 5, regardless of whether the right or obligation relates to a matter falling within Clause 7(1). The orders specified in Schedule 4, and the Court orders specified in Schedule 5 to the Bill, involve persons or things crossing the boundary. These orders relate to immigration, import and export controls, and quarantine of Hong Kong. The Administration advises that before the commencement of the Bill, such orders would have been issued on the basis that the MPA was lying within Hong Kong. However, after the commencement of the Bill, the MPA would be regarded as lying outside Hong Kong for the purposes of immigration, import and export controls and quarantine. It is therefore necessary to state clearly in the Bill the change in effect of such orders which existed before the commencement date of the Bill.

157. The Administration further explains that Clause 7(3)(d) seeks to cover rights and obligations arisen from other court orders, in a wider scope, and the Administration considers that the proposed Schedules 4 and 5 should have adequately covered all types of orders which are necessary to

meet the actual operational need in the MPA.

Supplementary provisions - Interpretation of future documents in relation to rights and obligations (Clause 8)

158. Members note that Clause 8 deals with future documents, i.e. document made on or after the commencement date. It does not apply to an enactment, a statutory authority or a Court order. Some members, including Ms Tanya CHAN, Mr Dennis KWOK, Mr Alvin YEUNG, as well as the Legal Advisers request the Administration to explain the rationale for the exclusion of enactments, statutory authorities and Court orders from the application of Clause 8.

159. The Administration explains that Clause 8 has the intended purpose of providing 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, in interpreting the reference, the MPA 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. It is stressed that Clause 8 respects the rights of the private parties to decide among themselves the geographical scope for their rights and obligations arising from contract and the like. In documents to which Clause 8 does not apply, a reference to Hong Kong or part of Hong Kong to describe the geographical scope for a right or obligation is to be interpreted in accordance with Clause 6(1). To the extent that a non-reserved matter is involved, the MPA is to be regarded as lying outside Hong Kong but lying within the Mainland for the purpose of determining the geographical scope for rights and obligations.

160. The Administration advises that unlike documents of private nature, enactments, statutory authorities and Court orders are matters of public law rather than matters of intention of private parties. Thus, Clause 8 would have no application to them. The Administration explains that since Clause 6(1) does not apply to a reserved matter, a right or obligation in relation to a reserved matter is not affected by Clause 6(1) in any event.

161. The Legal Advisers have sought clarification from the Administration that in respect of Clause 8(2) of the Bill, whether the courts of HKSAR would have jurisdiction to adjudicate whether a matter falls within the definition of "reserved matter" or "non-reserved matter" provided in Articles 3, 4 and 7 of the Co-operation Arrangement which is reproduced in Schedule 1 to the Bill.

162. The Administration advises that after the Bill is passed and enacted as an Ordinance, it will become part of the laws of Hong Kong. The courts would have to apply the provisions of the Ordinance to cases where such provisions are relevant, including the provisions which differentiate between reserved matters and non-reserved matters.

163. In respect of Clause 8(3), the Legal Advisers have also requested the Administration to clarify whether parties would be at liberty to override the delineation of the respective jurisdictions of HKSAR and the Mainland under Articles 3, 4, and 7 of the Co-operation Arrangement and the Legal Advisers also suggest the Administration to consider, if in fact 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), to provide so expressly in Clause 8(3) for the avoidance of doubt.

164. The Administration explains that Clause 6(1) deals with the application of laws and the delineation of jurisdiction in the MPA and that Clause 8 deals with the interpretation of future documents of private nature if the documents contain a reference to Hong Kong or part of Hong Kong to describe the geographical scope for a right or obligation. It is noted that Clause 8(2) sets out the default position in interpreting any such reference in the document, i.e. the MPA is regarded as an area lying outside Hong Kong in relation to a non-reserved matter. The Administration clarifies that Clause 8(3) only provides that the parties are free to displace this default rule, but does not authorize them to change the delineation of the respective jurisdictions of the HKSAR and the Mainland under Articles 3, 4 and 7 of the Co-operation Arrangement provided in Clause 6(1), which is a separate and distinct matter.

165. Noting that Part 4 of Cap. 591 also deals with future rights, obligations and court orders besides future documents, Ms Tanya CHAN asks why Clause 8 only deals with future documents and that future rights, obligations and court orders are not covered by the Bill. The Legal Advisers have also asked the Administration to consider adding a provision similar to section 13 of Cap. 591 in dealing with future Court orders etc.

166. The Administration explains that section 11 of Cap. 591 deals with the issue of extension of the territorial limit of future rights or obligations to include the SBPHKPA. However, the same issue does not arise in the case of the MPA. Regarding future Court orders, the Administration further explains that 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 MPA will depend on the jurisdiction of the Hong Kong court over the MPA



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 MPA 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.

167. Some members have enquired whether future documents and contracts made inside the train compartments within the territory of HKSAR would be considered as being subject to the jurisdiction of Hong Kong, which may have implications relating to tax matters. The Administration has responded that the train compartments of a train in operation are considered to be part of the MPA which, except for reserved matters, would be regarded as an area lying outside Hong Kong but lying within the Mainland for the purposes of the application of the laws of the Mainland and the delineation of jurisdiction over the MPA.

#### Others

##### *Future variation(s) of the Co-operation Arrangement by way of supplementary agreement(s)*

168. Some members are concerned whether the Bill, if passed, should be amended if supplementary agreement(s) is to be signed between the Mainland and Hong Kong pursuant to Article 16 of the Co-operation Arrangement in the future. The Administration has advised that the Bill is drafted in accordance with the Decision made on 27 December 2017 as well as the approved Co-operation Arrangement signed on 18 November 2017 in order to implement the Co-operation Arrangement. As indicated in the Decision, HKSAR should enact local legislation to ensure the implementation of the Co-operation Arrangement. Should both sides subsequently sign supplementary agreement(s) pursuant to Article 16 of the Co-operation Arrangement, and the substance of such supplementary agreement(s) is not covered by the Bill, the Administration will put forward amendment bill(s) in the light of actual circumstances.

##### *Site visit*

169. In response to certain members' request to inspect the boundaries of the MPA as well as the doors and passageways connecting the two port areas, the Administration has responded that as notified by the Hong Kong and Macao Affairs Office of the State Council, the establishment of the WKS MPA and its specific area had been approved by the State Council. Information on the passageways and doors connecting the two port areas in

the WKS, and the security measures to be adopted specifically for these passageways and doors, as well as for areas in the vicinity of the boundary of the two port areas has also been provided vide LC Paper No. CB(4)731/17-18(01). That said, the Administration has arranged another visit to the WKS and the route of the visit has aligned with that previously arranged.

*Other information requested by members*

170. Mr CHU Hoi-dick has queried whether Cap. 556 or Cap. 556B has to be amended in order to facilitate the adoption of real-name ticket purchase for the HKS of the XRL. Some members have requested the Administration to disclose information relating to the Supplemental Service Concession Agreement to be signed between the Administration and MTRCL, together with the financial estimates and economic benefits of the HKS of the XRL. The Administration is of the view that the above requested information is not strictly related to the Bill, and may not be relevant to the scope of discussion of the Bills Committee. That said, the Administration has provided its responses vide LC Paper Nos. CB(4)865/17-18(01) and CB(4)1038/17-18(06) to facilitate future discussions on appropriate platforms on the subject matters as necessary.

171. The Administration has also been requested to provide information relating to co-location arrangements adopted by other places/countries. Its reply can be found at the relevant LC Paper No. CB(4)870/17-18(01).

Views expressed by deputations at public hearing sessions

172. The Bills Committee has held two public hearing sessions on 17 March 2018 and 7 April 2018 respectively to receive public's views on the Bill. Among the 218 deputations and individuals who attended the two sessions, a great majority of deputations have expressed support for the implementation of co-location arrangement at the WKS and found the legal basis sound. They urged the LegCo to pass the Bill as early as possible. Some other deputations and individuals have held different views. They have cast doubt on the legality of the Decision and hold the view that the Bill is in contravention of the Basic Law and that the LegCo has no authority to enact an ordinance that contravenes the Basic Law. They also opine that the implementation of the co-location arrangement would amount to ceding of the territory of Hong Kong to the Mainland. A list of deputations/individuals who have given oral presentation or written submissions to the Bills Committee can be found at **Appendix II**.

173. The Administration has noted the concerns expressed by some members of the community about the co-location arrangement and advised

that it will continue to provide due explanations on the Bill so as to address public's concerns. Some members, including Ms Starry LEE, have urged the Administration to step up its effort to publicize to the public the features of the co-location arrangement, the rights and responsibilities when using the WKS and so on before commissioning of the HKS of the XRL.

174. As for deputations and individuals who expressed concerns over the legal basis for the co-location arrangement, the Administration has made it clear that the co-location arrangement is consistent with the Basic Law and the principle of "one country, two systems" numerous times at Bills Committee meetings. The Administration has reiterated that it respects the rule of law, the PRC Constitution and the principle of "one country, two systems", and the Bill is in strict compliance with the Basic Law. In the course of the discussions on the co-location arrangement, the HKSAR Government and the Mainland authorities have been meticulous in ensuring that the co-location arrangement will be consistent with the principle of "one country, two systems" and not in contravention of any provisions of the Basic Law. The Administration respects the rights of different parties to express their views, and expresses its hope that different sectors of the community would come to an objective and holistic view of the PRC Constitution, the Basic Law and the Bill.

### **Proposed amendments to the Bill**

175. The Administration will not propose any amendments to the Bill.

176. The Bills Committee has received proposed amendments to the Bill from a total of eight members (please refer to LC Paper Nos. CB(4)1027/17-18(01)-(08) for details). Some of the proposed amendments seek to amend the Long Title and the Preamble, clauses relating to the declaration of the MPA, the scope of the applicable Mainland laws and the delineation of jurisdiction within the WKS, the substance of the Co-operation Arrangement, and the commencement date, or introduce an expiry date for the Bill. The proposed amendments have been presented by the respective members at a meeting and the Administration has given their response to the proposed amendments. The Bills Committee has decided not to move any of the proposed amendments on behalf of the members.

### **Resumption of Second Reading debate**

177. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting of 6 June 2018.

### **Advice sought**

178. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4  
Legislative Council Secretariat  
23 May 2018

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

**Membership list**

**Chairman** Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Deputy Chairman** Hon CHEUNG Kwok-kwan, JP

**Members**

Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Hak-kan, BBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Hon Dennis KWOK Wing-hang

Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Dr Hon Elizabeth QUAT, BBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon LUK Chung-hung  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho  
Hon Gary FAN Kwok-wai  
Hon AU Nok-hin  
Hon Vincent CHENG Wing-shun, MH  
Hon Tony TSE Wai-chuen, BBS

(Total : 64 Members)

|                       |                                   |
|-----------------------|-----------------------------------|
| <b>Clerk</b>          | Ms Sophie LAU                     |
| <b>Legal advisers</b> | Mr Timothy TSO<br>Miss Joyce CHAN |
| <b>Date</b>           | 12 February 2018                  |

\* Changes in membership are shown in Annex to Appendix I.

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

**Changes in membership  
(Year 2017-2018)**

| <b>Member</b>                   | <b>Relevant date</b> |
|---------------------------------|----------------------|
| Hon Gary FAN Kwok-wai           | Since 21 March 2018  |
| Hon AU Nok-hin                  | Since 22 March 2018  |
| Hon Tony TSE Wai-chuen, BBS     | Since 22 March 2018  |
| Hon Vincent CHENG Wing-shun, MH | Since 24 March 2018  |

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

**List of deputations/individuals which/who have given oral presentation to  
the Bills Committee**

Deputations

1. Alliance for Peace and Democracy
2. Ap Lei Chau Care Association
3. Association of Engineering Professionals in Society Ltd
4. Business Environment Council Limited
5. Civic Party
6. Civil Force
7. Co-location Arrangement Concern Alliance
8. "Co-location" Concern Group (Expert Group)
9. Democratic Alliance for the Betterment and Progress of Hong Kong
10. Democratic Party
11. Doctoral Exchange
12. Dynamic Island
13. Federation of Hong Kong Industries
14. Guangdong-Hong Kong Association for the Promotion of Technology Enterprise (HK) Ltd.
15. Heung To Middle School Alumni Association Ltd.
16. Hong Kong All Youth Alliance
17. Hong Kong Auto Parts Industry Association
18. Hong Kong Bar Association
19. Hong Kong Chinese Institute of Engineers
20. Hong Kong Economic & Trade Association
21. Hong Kong Federation of Innovative Technologies and Manufacturing Industries
22. Hong Kong Federation of Railway Trade Unions
23. Hong Kong Higher Education Convergence
24. Hong Kong Innovative Technology Development Concern Group
25. Hong Kong Jewellery Manufacturers' Association
26. Hong Kong Power Youth Association



27. Hong Kong Professionals And Senior Executives Association
28. Hong Kong Tourism Association
29. Hong Kong Social Workers and Welfare Employees Union
30. Hong Kong United Youth Science and Technology Association
31. Hong Kong Vehicle Repair Merchants Association Ltd
32. Hong Kong Volunteers Federation
33. Hong Kong Y.Elites Association
34. Hong Kong Youth Cultural And Entertainment Association
35. Hong Kong-Shanghai Youth Association
36. Internet Professional Association
37. Island West Dynamic Movement
38. Kowloon Chamber of Commerce
39. Labour Party
40. League in Defense of Hong Kong's Freedoms
41. Long Ping Resident Association
42. Maritime Silk Road Society
43. Music Zone Foundation Association
44. New People's Party
45. Railway Reform Association
46. Real Hong Kongers' view
47. Savantas Policy Institute
48. Southern Keen Youth
49. Tai Po Youth Association
50. The Association of Hong Kong Professionals
51. The Association of Zhuangzi Culture & Research of Hong Kong
52. The Chinese General Chamber of Commerce
53. The Chinese Manufacturers' Association of Hong Kong Youth Committee
54. The Chinese Manufacturers' Association of Hong Kong
55. The Confucian Academy
56. The Hong Kong Chinese Importers' and Exporters' Association
57. The Hong Kong Electronic Industries Association
58. The Hong Kong Island Federation
59. The Hong Kong Registered Contractors Association
60. The Hong Kong Taoist Association
61. The International Institute of Management
62. The Y.Elites Association, Committee on Community and Social Affairs
63. The Young Civic
64. Travel Industry Council of Hong Kong
65. Vibrant TST West

66. Yuen Long District Women's Association Limited
67. Yung Ming-chau Michael's District Councillor Office
68. 中西區交通關注組
69. 新界元朗區坊眾互助會
70. 法律界關注一地兩檢聯席
71. 自由黨青年團
72. 荃灣葵青居民聯會
73. 荃灣青年會
74. 華富愛心協會
75. 雲港台青年交流促進會
76. 香港中國旅遊協會
77. 香港中華攝影學會
78. 香港公共管治學會
79. 香港外遊領隊協會
80. 香港天津青年會
81. 香港專業導遊總工會
82. 香港工商專業界一地兩檢關注組
83. 香港旅遊業僱員總會
84. 香港註冊中醫學會
85. 香港軍事觀察者聯盟
86. 香港陽光協會

### Individuals

87. Dr IP Pui-lam
88. Dr SHAM Lai-shan Lisa
89. Dr YIM Fung
90. Miss CHENG Wing-nga
91. Miss HUI Pui-yan Betty
92. Miss LEUNG Pik-man Tracy
93. Miss LI Ka-ying
94. Miss LI Lok-yan
95. Miss YIU Ho-yee
96. Mr AU Wing-kwan
97. Mr Chan Tsim-heng

98. Mr CHAN Chung-yu
99. Mr CHAN Denny-kam Chuen
100. Mr CHENG Tat-hung
101. Mr CHEUNG Kwan-kiu Steve
102. Mr CHEUNG Sze-chung
103. Mr CHIU Chi-keung
104. Mr CHIU Yan-loy
105. Mr CHOI Shing-hin
106. Mr CHU Hock-hoi Erwin
107. Mr FAN Yat-ho
108. Mr FU Ka-ho
109. Mr HO Chak-ho
110. Mr HO Pok-ho
111. Mr HO Wai-lun
112. Mr HO Wai
113. Mr HUI Matthew
114. Mr IP Man-pan
115. Mr IU Chun-yip Lawrence
116. Mr KWAN Chun-kit
117. Mr KWOK Wing-kin
118. Mr LAI Jee-shing
119. Mr LAI Tak-keung
120. Mr Lai Wai-tong
121. Mr LAM Hin-fai
122. Mr LAM Hon-wai
123. Mr LAM Joe
124. Mr LAM Wang-kit
125. Mr LAU Kwok-yan
126. Mr LAU Ngai Victor
127. Mr LAU Tin-ching Timothy
128. Mr LEE Chee-chong
129. Mr LEE Ching-hang
130. Mr LEE Ka-ho
131. Mr LEE Kwok-pong
132. Mr LEE Man-lung Joey
133. Mr LEUNG Ka-ho
134. Mr LEUNG Ka-wai
135. Mr LEUNG Ping-kin
136. Mr LEUNG Wing-yan

137. Mr LI Kai-lap Riben
138. Mr LI Ka-leung Philip
139. Mr MOK Kam-sum
140. Mr MUK Ka-chun
141. Mr NG Chun-yu
142. Mr NG Pan-pan
143. Mr PANG Chor-fu Tony
144. Mr PAU Ming-hong
145. Mr POON Cheuk-hong
146. Mr SHI Shirong
147. Mr SHIH Jan-noel
148. Mr SIN Hiu-pan
149. Mr TAM Hoi-pong
150. Mr TING Kacee
151. Mr TONG Chi-wah Gary
152. Mr TONG Ho-wai Howard
153. Mr TONG Tak-chun
154. Mr Tony TANG Hing-tin
155. Mr TSOI Hing-fa
156. Mr TSUI Pui-hung
157. Mr WHY
158. Mr Wong Chun-ting
159. Mr WONG ho-wa
160. Mr WONG Kai-yeung
161. Mr WONG Ka-wing
162. Mr WONG Wai-kit
163. Mr YEUNG Kwong-fu Huios
164. Mr YIP Chun-yuen
165. Mr YU Andrew
166. Mr YU Hon-kwan
167. Mr YU Tak-po Andy
168. Mrs LAM Hang-ngoi
169. Mrs LAU Helen
170. Ms CHAN Hoi-yung
171. Ms FONG shun-yan
172. Ms FUNG Wing-yin
173. Ms KWOK Ching-yin, Christy
174. Ms LAI Ka-man
175. Ms LAM Ying-wai

176. Ms LEE Yuek-ping
177. Ms LEE Suk-fong
178. Prof LOCK Fat-shing Louis
179. 丘淑明女士
180. 劉婉琴女士
181. 劉懿樂小姐
182. 劉有光先生
183. 司徒駿軒先生
184. 單志明先生
185. 姚柏良先生
186. 姜淑敏女士
187. 左匯雄先生
188. 張思穎小姐
189. 張慕真小姐
190. 曾柏淇先生
191. 朱煥釗先生
192. 李健先生
193. 李嘉欣小姐
194. 李琮女士
195. 李鎮強先生
196. 杜礎圻先生
197. 林婉濱女士
198. 梁文廣先生
199. 盧騰光先生
200. 胡綽謙先生
201. 范秋華小姐
202. 莫遠君先生
203. 萬子殷先生
204. 蔡惠誠先生
205. 蕭煒忠先生
206. 許珊珊女士
207. 謝雪英女士
208. 鄭楚光先生
209. 鍾秀賢女士

210. 關振瀚先生
211. 陳建業先生
212. 陳志興先生
213. 陳慧靈小姐
214. 陳永德先生
215. 陳立志先生
216. 陳鑑波先生
217. 黃君焯先生
218. 黃啟進先生

**List of deputations/individuals which/who have provided written submissions to the Bills Committee**

1. Aberdeen Fishery Merchants & Seafood Association
2. Business and Professionals Federation of Hong Kong
3. Catering Trade Administrative Employees Association
4. Catering Trade Chiuchow and Cantonese Workers Union
5. China Hong Kong and Macau Boundary Crossing Bus Association
6. Electrical & Audio Visual Trades Employees Association
7. Empowering Hong Kong
8. Hong Kong (Chinese) Tour Guides General Union
9. Hong Kong Catering Masters (National Occupational Qualification) Association
10. Hong Kong Department Stores & Commercial Staff General Union
11. Hong Kong Hotels Association
12. Hong Kong Professional Chefs General Union
13. Hong Kong Professional Dim Sum Chef General Union
14. Hong Kong Retail Management Association
15. Hotels, Food & Beverage Employees Association
16. Mr CHAN Fu-ming
17. Mr Eric NG
18. Mr Hanson Y HUANG
19. Ms CHAN Wai-li
20. Ms TONG YU-ning Nancy
21. New Youth Forum
22. The Association Of Harbin's Overseas Friend Limited

23. The Real Estate Developers Association Of Hong Kong
24. Tin Wan Kai-Fong Federal Association
25. Tuen Mun District Council
26. 公共交通解放陣線
27. 呂少娟女士
28. 呂碧霞女士
29. 洪加景先生
30. 香港佛山社團總會
31. 麥照希先生
32. 17 members of public