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Paper for the House Committee

**Report of Subcommittee on Subsidiary Legislation Relating to the
Commissioning of the West Kowloon Station of the
Guangzhou-Shenzhen-Hong Kong Express Rail Link
and Gazetted on 1 June 2018**

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation Relating to the Commissioning of the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link and Gazetted on 1 June 2018 ("the Subcommittee").

Background

2. The Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") is an express rail system with a total length of about 140 kilometres linking Hong Kong with Guangzhou. The Hong Kong Section of XRL is a 26 kilometres 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. According to the Administration, the Immigration Department ("ImmD") has set up detention quarters in various control points including the Hong Kong International Airport, Lok Ma Chau Spur Line and the Hong Kong Port Area of Shenzhen Bay Port, etc. for use by ImmD to carry out routine immigration control and law enforcement duties. There will be the same arrangement in the Hong Kong Port of the Hong Kong-Zhuhai-Macao Bridge to be established.

4. Separately, the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629), which will come into operation on 16 July 2018, requires a person arriving at any specified control

point listed in Schedule 1¹ to the Ordinance from a place outside Hong Kong to make a written declaration of the currency and bearer negotiable instruments ("CBNIs") in his/her possession to the Customs and Excise Department ("C&ED"), using the Red Channel under the Red and Green Channel System ("RGCS"), if the total value of such CBNIs is more than the amount specified in Schedule 4 to the Ordinance, i.e. HK\$120,000.

The subsidiary legislation

Immigration (Places of Detention) (Amendment) Order 2018

5. The Immigration (Places of Detention) (Amendment) Order 2018 ("L.N. 109") is made by the Secretary for Security ("S for S") under section 35(1) of the Immigration Ordinance (Cap 115). It amends the Immigration (Places of Detention) Order (Cap. 115B) by adding the area within WKS of XRL (other than the WKS Mainland Port Area ("MPA")) that is set aside as detention quarters for use by ImmD to the list of places of detention in Schedule 3 to Cap. 115B.

Immigration Service (Designated Places) (Amendment) Order 2018

6. The Immigration Service (Designated Places) (Amendment) Order 2018 ("L.N. 110") is made by S for S under section 13A(9) of Cap. 331. It amends the Immigration Service (Designated Places) Order (Cap. 331B) by adding the area within WKS of XRL (other than the WKS MPA) that is set aside as detention quarters for use by ImmD to the list of designated places in the Schedule to Cap. 331B.

Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018

7. The Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018 ("L.N. 111") is made by the Commissioner of Customs and Excise under

¹ Schedule 1 to Cap. 629 currently includes 13 specified control points, namely (1) Lo Wu Control Point, (2) Hung Hom Station, (3) Man Kam To Boundary Control Point, (4) Sha Tau Kok Boundary Control Point, (5) Hong Kong-Macau Ferry Terminal, (6) China Ferry Terminal, (7) Lok Ma Chau Boundary Control Point, (8) Hong Kong International Airport, (9) Tuen Mun Ferry Terminal, (10) Shenzhen Bay Port Hong Kong Port Area, (11) Lok Ma Chau Spur Line Control Point, (12) Kai Tak Cruise Terminal, and (13) Ocean Terminal.

section 33(1) of Cap. 629 to add WKS of XRL (other than the WKS MPA) to Schedule 1 to the Ordinance as a specified control point.

The Subcommittee

8. At the House Committee meeting on 8 June 2018, Members agreed to form a subcommittee to study three items of subsidiary legislation (i.e. L.N. 109 to L.N. 111) relating to the commissioning of WKS of XRL tabled at the Council meeting of 6 June 2018. The membership list of the Subcommittee is in the **Appendix**.

9. Under the chairmanship of Hon CHAN Hak-kan, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

Commencement date

10. Members note that L.N. 109 to L.N. 111 would come into operation on the commencement date of the Ordinance ("the Ordinance") enacted by Legislative Council ("LegCo") through the passage, with or without amendment, of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bill") published in the Gazette on 26 January 2018.

11. The legal adviser to the Subcommittee has pointed out that the general practice in relation to the scrutiny of subsidiary legislation subject to negative vetting procedure is to allow the full negative vetting period (28 days + 21 days) under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) to run its course before bringing an item of subsidiary legislation into operation, although it is stressed that the practice is not a mandatory requirement. It is however noted that L.N. 109 to L.N. 111 may likely come into operation after the expiry of the 28-day negative vetting period (which will end on 4 July 2018) but before the expiry of the full negative vetting period (which could be extended to the first Council meeting of the next session), if the Ordinance comes into operation in September 2018 in order for the Hong Kong Section of XRL to commission within the timeframe as anticipated. Members have sought clarification from the Administration on why the general practice is not followed in respect of L.N. 109 to L.N. 111.

12. The Administration has advised that in normal circumstances, its practice is to allow, wherever possible, the full negative vetting period under section 34 of Cap. 1 to run its course before bringing an item of subsidiary legislation into

operation. However, there were precedents where an item of subsidiary legislation, due to operational needs, had to commence before expiry of the full negative vetting period. Recent examples include the Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2017, the Industrial Training (Clothing Industry) Ordinance (Amendment of Schedule 2) Order 2017 and the Pharmacy and Poisons (Amendment) Regulation 2018.

13. The Administration has further advised that since the Hong Kong Section of XRL is anticipated to be commissioned in September 2018, ImmD has to, as in other control points, set up detention quarters upon commissioning of WKS for use in its daily immigration control and law enforcement. Separately, the setting of a new specified control point at WKS of XRL with RGCS will facilitate arriving travellers to make written declarations of CBNIs in accordance with Cap. 629. In this connection, L.N. 109 to L.N. 111 have to come into operation on the commencement date of the Ordinance enacted by LegCo, in order to meet the operational needs upon commissioning of the WKS of XRL. The Ordinance would come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette. The Administration has stressed that the amendments are technical in nature. Similar amendments have also been introduced before establishment of other new control points. In view of the tight schedule, once the resumption of Second Reading debate on the Bill has been scheduled to take place at the Council meeting of 6 June 2018, the Administration has taken the first opportunity to arrange for L.N. 109 to L.N. 111 to be gazetted on 1 June 2018 and tabled at the Council meeting of 6 June 2018 such that Members would have reasonable time to scrutinize the subsidiary legislation concerned before their anticipated commencement in September 2018.

Drafting issues

14. Members note that L.N. 109 to L.N. 111 have added terms such as "WKS" and "MPA", which appear in the Bill, to Schedule 3 to Cap. 115B, the Schedule to Cap. 331B and Schedule 1 to Cap. 629 respectively. The legal adviser to the Subcommittee has drawn members' attention to the fact that such terms are not defined under Cap. 115 and Cap. 331, and it is not expressly provided in L.N. 109 to L.N. 111 that the terms have the same meanings as provided in the Bill passed by LegCo. Referring to the letters issued by the Legal Service Division to the Administration dated 6 June 2018 (LC Paper Nos. CB(2)1620/17-18(01) and (02)), the legal adviser enquired whether the Administration would consider expressly providing that the terms mentioned above have the same meanings as provided in the Bill by adding "as defined by the Bill" or "within the meaning of the Bill" in L.N. 109 to L.N. 111 to clarify the matter and to facilitate readers' understanding. Some members including

Miss Tanya CHAN and Mr CHU Hoi-dick have asked whether the meaning of these terms should be expressly provided for in L.N. 109 to L.N. 111 to facilitate the understanding of members of the public.

15. Mr CHAN Chi-chuen is of the view that the use of the phrase "other than the West Kowloon Station Mainland Port Area" in L.N. 109 to L.N. 111 indicates that in other words, Mainland authorities would be permitted to perform their duties at the WKS MPA, which would contravene the Basic Law. He therefore objects in principle to these three items of subsidiary legislation.

16. The Administration has explained that the identities and locations of the places referred to in the relevant Schedules to Cap. 115B, Cap. 331B and Cap. 629 can be ascertained according to the ordinary meaning of the descriptions in the relevant contexts. The Schedules do not contain definitions by way of reference to other legislation. In the view of the Administration, the references to "WKS of XRL" and "WKS MPA" in the subsidiary legislation can be clearly understood according to their ordinary meaning without the need to define them by reference to other legislation. The use of the phrase "other than the West Kowloon Station Mainland Port Area" would put it beyond doubt that the area of WKS referred to in L.N. 109 to L.N. 111 is the area in which the laws of Hong Kong would apply, and over which Hong Kong would exercise jurisdiction. In particular, as far as L.N. 109 and L.N. 110 are concerned, Cap. 115 provides that persons required or authorized to be detained by or under that Ordinance may be detained in such places as specified in Schedules 1, 2 and 3 to Cap. 115B. Under Cap. 331, where an arrested person is taken to an office of the Immigration Service, he may be detained at that office of the Service or at a designated place set out in Cap 331B for the purposes of inquiries. At present, the items set out in Schedule 3 to Cap. 115B and the Schedule to Cap. 311B are the same which refer to places such as the Hong Kong Airport Building, the River Trade Terminal at Tuen Mun and the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area.

Setting up and use of detention quarters at WKS

17. Noting that the detention quarters of ImmD will be located at a cross-boundary restricted area in WKS, Miss Tanya CHAN has enquired about the demarcation arrangement of the area concerned and whether there are similar arrangements in other control points. The Administration has advised that the cross-boundary restricted area in WKS would be declared by the Mass Transit Railway Corporation Limited by notice published in the Gazette in accordance with the Mass Transit Railway By-laws (Cap. 556B), which is the same arrangement as that adopted for the Intercity Through Train service in Hung Hom. There are different arrangements and statutory bases for demarcating closed/restricted areas at various control points, having regard to

individual circumstances of control points. Demarcation arrangements include setting up of restricted areas in Hong Kong cross-boundary ferry terminals pursuant to regulations made by the Chief Executive in Council under the Shipping and Port Control Ordinance (Cap. 313) and in the cruise terminal by the Commissioner for Tourism pursuant to the Kai Tak Cruise Terminal Ordinance (Cap. 627), etc. Regardless of the means of demarcation, all of the relevant provisions achieve the same purpose of effectively prohibiting entry to designated areas by non-cross-boundary passengers or unauthorized persons.

18. Members have enquired about the precise location of the detention quarters at WKS and whether law enforcement agencies other than ImmD can use the detention quarters at WKS. The Administration has affirmed that the area within WKS that is set aside as detention quarters will be located in an area on the B2 Arrival Level, which is subject to the jurisdiction of Hong Kong, and the detention quarters will only be used by ImmD for its routine immigration control and law enforcement duties.

Power to stop and search and obtain particulars of persons on trains

19. Mr CHAN Chi-chuen has enquired whether an officer, who is authorized under sections 16 and 20 of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629) to stop, board and search a cross-boundary conveyance, and to obtain particulars of persons on cross-boundary conveyance respectively, would have power to take such enforcement action inside the train compartments of XRL. According to the Administration, passenger trains in operation on the Hong Kong Section of XRL are within the meaning of cross-boundary conveyances for the purpose of Cap. 629. Meanwhile, under the Bill, the train compartments of a passenger train in operation on the Hong Kong Section of XRL are regarded to be part of WKS MPA which, except for reserved matters as defined under the Bill, 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 the delineation of jurisdiction (including the jurisdiction of the courts) over MPA. Where an authorized officer has to obtain particulars of passengers of a train in operation on the Hong Kong Section of XRL under section 20 of Cap. 629, such officer may seek the assistance of the operator of the passenger train concerned.

Recommendation

20. The Subcommittee raises no objection to L.N. 109 to L.N. 111 and will not propose any amendment to these three items of subsidiary legislation.

Advice Sought

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
26 June 2018

**Subcommittee on Subsidiary Legislation relating to the Commissioning of
the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong
Express Rail Link and Gazetted on 1 June 2018**

Membership list

Chairman Hon CHAN Hak-kan, BBS, JP

Deputy Chairman Hon Frankie YICK Chi-ming, SBS, JP

Members

Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
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 Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon YUNG Hoi-yan
Hon CHAN Chun-ying

Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Hon AU Nok-hin

(Total : 40 members)

Clerk Miss Betty MA

Legal adviser Miss Joyce CHAN

Date 20 June 2018