



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

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URGENT

By Fax (2868 1552)

6 June 2018

Mr Parson LAM
Principal Assistant Secretary (Security) D
Security Bureau
10/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr LAM,

Immigration (Places of Detention) (Amendment) Order 2018 (L.N. 109)
Immigration Service (Designated Places) (Amendment) Order 2018 (L.N. 110)

We are scrutinizing the legal and drafting aspects of the subject Orders ("the Two Orders"). We should be grateful if you could clarify the following matters:

(1) Definition of terms

L.N. 109 and L.N. 110 amend Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115B) and the Schedule to the Immigration Service (Designated Places) Order (Cap. 331B) respectively by adding the following item:

"The area within the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (other than the West Kowloon Station Mainland Port Area) that is set aside as detention quarters for use by the Immigration Department."

We note that the terms "West Kowloon Station" and "Mainland Port Area" above are not defined in the Immigration Ordinance (Cap. 115), the Immigration Service Ordinance (Cap. 331) and the Two Orders. Please clarify:

- (a) whether those terms in the Two Orders have the same meaning as in clause 2 of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill published in the Gazette on 26 January 2018 ("the Bill"); and
- (b) whether the issue mentioned in (a) above should be expressly provided for in L.N. 109 and L.N. 110 to facilitate readers' understanding, e.g. by adding "as defined by" or "within the meaning of" the Bill.

(2) Commencement date

Pursuant to section 1 of L.N. 109 and L.N. 110, the Two Orders come into operation on the commencement date of the Ordinance enacted by the Legislative Council through the passage, with or without amendment, of the Bill. According to footnote 20 on page 32 of *Drafting Legislation in Hong Kong – A Guide to Styles and Practices* published by the Department of Justice in 2012, the practice is to allow, wherever possible, 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. If the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link is to be commissioned in September 2018 as anticipated, L.N. 109 and L.N. 110 would come into operation before the expiry of the full negative vetting period (which could be extended to the first Council meeting of the next session). In the circumstances, please clarify why the above-mentioned practice is not followed in respect of the Two Orders.

Please let us have your reply in both English and Chinese as soon as practicable, preferably by 11 June 2018.

Yours sincerely,



(Cliff IP)
Assistant Legal Adviser

c.c. Department of Justice
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