

LCQ3: XRL Hong Kong section

Following is a question by the Hon Frederick Fung and a reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (December 9):

Question:

On the 21st of last month, the Secretary for Justice (SJ) and the Secretary for Transport and Housing went to Beijing to discuss with officials of the Hong Kong and Macao Affairs Office of the State Council (HKMAO) the implementation of the arrangements for co-location of boundary control (co-location arrangements) upon commissioning of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL). SJ subsequently told the media that in order to deal with the issue of co-location, it was inevitable that mainland personnel must be allowed to enforce laws in the XRL West Kowloon Terminus, and the relevant approach was unavoidable. Regarding the implementation of the co-location arrangements, will the Government inform this Council:

(1) of the latest progress of the authorities' discussion with the officials of HKMAO on the implementation of the co-location arrangements, and the aspects of the co-location arrangements on which a consensus has been reached between both sides; the contents of the various options on the co-location arrangements prepared by the authorities, including the legal and operational issues involved in various options; whether such options include the one that mainland personnel are to conduct immigration clearance for travellers on XRL trains; how the authorities have come to the conclusion that mainland personnel must be allowed to enforce laws in Hong Kong;

(2) whether the authorities, for the sake of implementing the co-location arrangements, have plans to propose to the

Standing Committee of the National People's Congress that the relevant national laws be listed in Annex III to the Basic Law so as to empower mainland personnel to enforce laws in Kong Kong; if they have such plans, of the details, and whether they have assessed if such an action will violate the following provision in Article 18 of the Basic Law: "Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the [Hong Kong Special Administrative] Region as specified by this Law"; and

(3) as some members of the public are worried that the Government, in an attempt to provide immigration convenience to XRL travellers, has deliberately misinterpreted the relevant provisions of the Basic Law and attempted to exploit the loopholes in the wording of the relevant provisions of the Basic Law, which may undermine the rule of law, how the Government dispels the doubts of the public; whether it has assessed if Hong Kong people have grave concern about allowing mainland personnel to enforce laws in Hong Kong; given that Article 18 of the Basic Law provides that "[T]he 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", whether the authorities will withdraw the aforesaid remarks on the premise of strict adherence to that Article, and explore other feasible options for the co-location arrangements; if they will not, of the reasons for that?

Reply:

President,

The Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) has a key role with strategic importance to play in the

development of Hong Kong's external transportation. The XRL, by not only providing express rail services from Hong Kong to Shenzhen and Guangzhou, but also linking Hong Kong with the regional and national railway networks, is set to greatly enhance Hong Kong's connectivity with various parts across the Mainland as a result. Upon commencement of operation, the XRL will reduce the journey time between Hong Kong's West Kowloon Terminus and Guangzhou significantly from currently about 100 minutes to about 48 minutes. As for long-haul services, the Beijing-bound journey time will be shortened from currently about 24 hours to about 10 hours. Apart from saving travelling time between Hong Kong and the Mainland, the XRL will bring about economic and social benefits and also enhance Hong Kong's overall competitiveness.

Implementing the arrangements for the "co-location" of customs, immigration and quarantine facilities (co-location arrangements) at the West Kowloon Terminus can unleash the full potential of the XRL. Under co-location arrangements, passengers who choose to travel from Hong Kong to the Mainland by XRL can before boarding complete immigration clearance etc. of Hong Kong and the Mainland in one go and travel non-stop to all cities along the national XRL network without the need for going through clearance again. Similarly, Hong Kong-bound XRL passengers embarking in any Mainland city along the national XRL network can also travel non-stop to Hong Kong and complete the immigration clearance etc. of the two places at the West Kowloon Terminus upon arrival in Hong Kong. As southbound and northbound passengers can complete immigration clearance etc. for the two places at the West Kowloon Terminus without the need of disembarking for immigration checks en route, they can enjoy the convenience and speediness of the XRL to the full.

The concept of co-location arrangements is not unprecedented. While we would need to consider the unique situation in each place, the examples of co-location arrangements between the United States and Canada, as well

as those between the United Kingdom and France could provide reference. One of the keys to the implementation of the co-location arrangements at the West Kowloon Terminus rests on how Mainland inspecting officers may be allowed, in accordance with the Basic Law as a necessary prerequisite, to enforce the relevant Mainland laws on immigration, customs and quarantine etc. at the West Kowloon Terminus. Therefore, not only does the design of the co-location arrangements involve complex legal issues, practical operational issues have to be considered as well.

The Department of Justice, the Transport and Housing Bureau, the Security Bureau, and the Constitutional and Mainland Affairs Bureau are studying the relevant issues jointly and actively and are also discussing the issues with relevant Mainland authorities. Late last month, I, together with the Secretary for Transport and Housing and other colleagues from the Government of the Hong Kong Special Administrative Region (HKSARG), visited Beijing for a meeting with relevant officials of the Hong Kong and Macao Affairs Office of the State Council etc. to discuss issues relating to the implementation of co-location arrangements. Our common goal is to strive for the implementation of the co-location arrangements at the West Kowloon Terminus, in compliance with the Basic Law, when the Hong Kong Section of the XRL starts operation. However, as both sides need to examine further the legal and operational issues involved etc., both have agreed to discuss again early next year.

The specific issues as mentioned in Hon Fung's question, including whether to conduct immigration clearance for travellers in XRL train compartments, whether to allow Mainland personnel to enforce the relevant Mainland laws within a specified area at the West Kowloon Terminus, and whether there is a need for inclusion of the relevant Mainland laws into Annex III to the Basic Law etc., are all within the scope of our study. Nevertheless, as I have pointed out just now, we must consider both the legal and specific operational

issues when exploring any proposal for implementing the co-location arrangements.

Take the suggestion of handling the procedures in train compartments as an example, although the proposal may appear to be attractive, its feasibility requires consideration. As we understand, each XRL train comprises 8 compartments and the entire train can carry up to 579 passengers. The journey time from the West Kowloon Terminus to Futian is around 14 minutes. In other words, there is only very limited time available to complete the immigration, customs and quarantine procedures for each passenger. While that there are suggestions that we could examine the possibility of handling part of the procedures at different stages, the operational feasibility of such proposal has to be examined carefully.

President, I fully understand that the community has concerns over the implementation of the co-location arrangements, including whether it will bring about impact on the "one country, two systems" principle. I would like to take this opportunity to stress three points. First, it is beyond doubt that the implementation of the co-location arrangements will maximise the effectiveness of the XRL, thereby improving the livelihoods of the Hong Kong people and serving the best overall interests of Hong Kong. Second, both the HKSARG and the Central Government attach great importance to the need to ensure that the future co-location arrangements must be in full compliance with the Basic Law and the "one country, two systems" principle. In other words, not only do we have to ensure the maximum effectiveness of the XRL, we also have to strictly comply with the Basic Law and should not violate the "one country, two systems" principle. Therefore, there will not be any distortion of the Basic Law, nor will the rule of law be prejudiced. Third, ultimately, the co-location arrangements are legal and operational issues arising from a transportation infrastructure. While legal issues should be dealt with through legal means, operational issues can be resolved

through technical methods. Therefore, if we can adopt an objective and pragmatic attitude and focus on the relevant legal and operational issues, I believe that we will finally be able to implement the co-location arrangements properly under the framework of the Basic Law.

Thank you, President.

Ends/Wednesday, December 9, 2015