

Transcript of remarks at press conference on co-location arrangement of Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link

The Secretary for Justice, Mr Rimsky Yuen, SC; the Secretary for Transport and Housing, Mr Frank Chan Fan; and the Secretary for Security, Mr John Lee, held a press conference on the co-location arrangement of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link this afternoon (July 25). Following is the transcript of remarks at the press conference:

Secretary for Justice: Before responding to your questions, I would like to make a few concluding remarks.

First, I note that there are comments to the effect that implementing co-location would amount to a cession of our land in favour of the Mainland. I would like to clarify, there is no question of any cession or giving up of land. The reasons are obvious. According to Article 7 of the Basic Law, the land and natural resources within the HKSAR shall be State property. The HKSARG shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organisations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the HKSARG. As pointed out earlier, the Mainland Port Area will be leased to the relevant Mainland authorities, and there will not be any transfer of property ownership.

Second, there are views suggesting that the implementation of co-location would prejudice Hong Kong people's rights. I hope the community can look at this question rationally and objectively. Since XRL is a cross-border railway, it will necessarily involve CIQ procedures. The main choices are the traditional separate-location arrangement or the proposed co-location arrangement. If one is to compare co-location with

separate-location arrangement, it will be crystal clear that the proposed co-location arrangement will not change the CIQ procedures or the applicable law; besides, the rights and obligations of the passengers when going through the CIQ procedures will also remain the same.

Third, some people have queried whether the implementation of co-location arrangement would set a bad precedent, and that there would be more and more places within the HKSAR where the Mainland laws would be applied, and thereby contravening the "one country, two systems" policy.

One would not have such a query if one reminds ourselves the background leading to the idea of implementing co-location arrangement. It is the HKSARG who decided to construct the XRL. It is also the HKSARG who proposed to study the implementation of co-location arrangement. The implementation of co-location arrangement is neither a directive nor an order by the Central People's Government (CPG). Besides, the implementation of co-location would require the consent of both the HKSARG and the CPG before it can be done.

The only reason why the HKSARG requests the assistance of CPG for implementing co-location arrangement is to maximise the potentials of the Hong Kong Section of the XRL. There is no intention, let alone reason, to act in contravention of the "one country, two systems" policy. On the contrary, as I have pointed out repeatedly, one of the objectives insisted by both the HKSARG and the CPG through our discussion on co-location is to ensure that the arrangement would be consistent with the "one country, two systems" policy and would not be in contravention of the Basic Law.

Fourth, the implementation of co-location arrangement for the Hong Kong Section of XRL is a transport issue, and

that it concerns the overall future development of Hong Kong and its competitiveness. The legal issues involved can be dealt with through legal means. I hope that people would not over-politicise such transport or legal issues. Over-politicisation would not be conducive to the healthy development of our community or the overall interest of the HKSAR.

Thank you very much! I and my colleagues will be more than happy to answer your questions.

Reporter: Some people fear they would get into troubles in the Mainland port area (MPA) should they, like, say wear a T-shirt commemorating the Tiananmen Square crackdown or, like, calling for the end of one-party rule, even though they are on Hong Kong soil. So how will you address these legitimate concerns? And I understand you believe the arrangement would not violate Article 18 of the Basic Law. But are you confident that it would not be challenged in court or defeated in court? And my second question is would there be any Mainland armed officers in the MPA. If yes, how many of them and would there be any regulations to make sure they would only be able to open fire under very limited conditions? Thank you.

Secretary for Justice: Well, thank you for your question. I think maybe I would endeavour to answer your first two questions and would leave the third question to the Secretary for Security. In answer to your first question, I think the point is exactly the point that I made earlier when I did the concluding remarks and that is, imagine you are now having an express railway but with no co-location. What would happen to a passenger? The passenger would still go through two CIQ checkpoints, and once you are within the Mainland port area, you would be having the same treatment irrespective of what you are going to do, whether you are going to do it at this point of time because of co-location or because there was separate location

arrangement. So my answer to your first point is there is no change, because co-location would not by itself change the rights or obligations, nor would it change the CIQ procedure or the applicable law.

In relation to your second question, we have already explained in my introduction earlier why we do not think Article 18 of the Basic Law will apply, and that is because of what we can generally in legal terms call as the deeming provision, namely that the Mainland port area would be regarded as outside the territorial boundary of Hong Kong, and that is the part which I draw reference to section 5, subsection 2 of Cap 591, which is the Shenzhen port ordinance (Shenzhen Bay Port Hong Kong Port Area Ordinance).

In relation to legal proceedings, of course we, the Government, cannot control people as to whether they would like to commence legal proceedings. On the contrary, we respect people's rights under the Basic Law to institute whatever legal proceedings that they think they are entitled to, and it is for the court to decide whether or not the legal proceedings so commenced are justified or otherwise. And therefore, in so far as we are concerned, we would deal with such legal proceedings as they arise, but having looked into the matter and having considered the matter in quite some depth, we are quite confident that we can withstand legal challenges if we can get through all the three stages. Thank you. Maybe I will leave the third question, as I said, to Secretary for Security, Mr Lee.

Secretary for Security: As regards the question about who will be working in the mainland port and how they will be equipped, in our discussion, I have been told that they will be running this mainland port in the same way as they run a mainland port in the mainland area. They will copy the model that they will be using in running a normal port, copy that model to use it in Hong Kong.

They indicate that they will do no more, that's the first thing, they will do no more than a normal mainland port as if it is in the mainland area. I believe that the officers who eventually work in the mainland port area will come from Guangdong or Shenzhen mainly. So I will talk about the model as I understand they will use in running a port in Guangdong.

They will be, as I explained, stationing officers from five areas. First of all, they are immigration staff, so you can understand how they will work because we have a similar immigration department in Hong Kong. Then they will station customs officers and we have a customs service in Hong Kong, so you can understand how they work. Then they have the safety in regard to health and quarantine, and I think you generally understand how they will work.

The fourth area is something that we don't have in Hong Kong, which is the administration of port. This unit generally has no power of enforcement, so they have no legal power to take any enforcement measures against travellers or passengers. They mainly do administration in regard to the port and also coordinate different officers that work there.

The fifth area is the police post that they may be setting up as they would set up in a normal port in Guangdong. The model as I understand in Guangdong is this police post will basically receive reports from people who need help. They will be dealing with emergencies, they will assist to request for help, and also, they may do patrol. When they do patrol on a day-to-day basis, they will be carrying their batons. The model as I understand in Guangdong is that when an officer goes on patrol, that's the equipment they carry. Regarding other equipment, they will draw as circumstances require. So say when there is an intelligence about terrorist attack, of course they will have to do some

precautions. Then the equipment will be drawn as necessary to deal with that particular incident. But on a day-to-day basis, when they do patrol, in the Guangdong model, generally they will equip with a baton.

On other question you asked how many officers will be working there, they are working out. I believe the format they use will be the same format they adopt as if this port is just one of the normal port areas.

Reporter: Mr Yuen, for the arrangement, you are effectively having parts of Hong Kong, even though it's in the basement and the train compartments, you are effectively making them not Hong Kong soil. You are making them Mainland area. Are you actually creating an arrangement that overrides the Basic Law, that does not have the Basic Law implemented there? Secondly, a very practical question: When a passenger is waiting for a train on the platform, can they access websites such as Facebook, etc? Thank you?

Secretary for Justice: The second question first. The short answer is I do not know the answer to your question, but one thing I can tell you is when you are a northbound passenger and you are waiting for the train, you won't be standing on the platform, because there is a designated waiting area and you will be waiting there. I think it's a very good question. I think I would like to find out the answer later myself, so thank you for raising that.

In relation to your first question, I think my answer is no. It's not really in the way that you put it. Again, if I may hark back on the reference point that I have made earlier, and that is Cap 591 of the Laws of Hong Kong, and I would urge you to look at the wordings of that particular section, and if I remember correctly it is to the effect that for the purpose of the applications of the Hong Kong law then the Hong Kong port area at the Shenzhen Bay would be regarded as

within the territory of Hong Kong. So, in other words, the point that I will like to highlight is for a deeming provision of this nature it would specify the purpose of the deeming provision, and in section 5, subsection 2 of Cap 591 it specifies that the deeming provision is solely for the purpose of the application of Hong Kong law and therefore applying the same approach and by parity of reason, what we would be suggesting that we will be doing is that for the purpose of the application of Hong Kong law as well as the Mainland law and the division of the two as well as the division or demarcation of the respective jurisdictions, and it is for that specific purpose that the Mainland port area would be regarded as outside the territorial boundary of Hong Kong. So, in other words, it is (a) for a specific purpose, namely the purpose that I have identified, and (b) it is solely in the context of our co-location arrangement implementation. It is not for a general purpose. Therefore, I would beg to differ that it is in effect carving out a part of Hong Kong outside Hong Kong and I hope you would accept my explanation. Thank you.

Reporter: Just now you said that the arrangement is solely to enable co-location. Can you promise that such an arrangement of putting a part of land regarded not as Hong Kong's territory will not be repeated in the future, because you said it is solely for the purpose of co-location? Second of all, in the document you've prepared, you said that the agreement could be amended, including perhaps changing or enlarging the area of the Mainland port area due to need or expansion of the station. Can you tell us a bit about how large can the area get? Do you have a limit on that?

Secretary for Justice: As far as I understand, any suggestions as to the enlargement of the area, especially in relation to the area on B2 and B3, would be unlikely, if not impossible. The only possibility that we will be talking about is the detailed arrangement in relation to the platform, because that would depend on the number of trains that

would be making use of the platform, and that would depend on the future traffic and therefore I don't think one should worry too much, if at all, about the expansion of the Mainland port area. Perhaps if I may emphasise again, as I was trying to make the point, perhaps it's my thought that I haven't made it clear, and that is in discussing the area of the Mainland port area I tried to give a narrative of what constitutes the area and then I also said look at it from a different angle. It involves effectively the path of a passenger who is arriving from the Mainland, and then plus the path of a passenger who is departing Hong Kong, and therefore in fact the whole idea or the rationale of devising and demarcating the area, which gave rise to or which we label as the Mainland port area, is for that particular purpose. And therefore that is a very operational rationale and therefore I don't see any reason, really, to enlarge the Mainland port area, and I guess perhaps the other side wouldn't want to pay an extra rent for that as well. So for that reason I guess the risk is unlikely.

In response to your first question, I think of course I cannot say anything for the future terms of the Government. I think what I can say is for the time being, if you agree with me, as I explained earlier, that the whole point of asking the Central People's Government to agree to assist us in making this co-location arrangement happen is because we want to maximise the potential of the XRL. I don't anticipate that in the near future we would have yet another XRL, but if that is the case perhaps it would be good for Hong Kong and it would be the very intention or the things that our Secretary for Transport and Housing would have to consider. I can't answer that from the legal perspective. Thank you.

(Please also refer to the Chinese portion of the transcript.)

Ends/Tuesday, July 25, 2017