

Secretary for Justice and S for S on co-location
arrangement of Hong Kong Section of
Guangzhou-Shenzhen-Hong Kong Express Rail Link

Following is the transcript of remarks by the Secretary for Justice, Mr Rimsy Yuen, SC, and the Secretary for Security, Mr John Lee, at a media session after attending a radio programme this morning (July 29):

Reporter: Mr Yuen, do you mind explaining a bit further why the scenario suggested by Martin Lee is impossible? Mr Lee, can you explain why it is not practical to limit the power of Mainland law enforcement officers?

Secretary for Justice: In response to your questions, I think we need to, first of all, understand the context and the background as to why we see fit to implement co-location at the West Kowloon station. The background is that years ago, the Hong Kong Government, in considering the future transport development of Hong Kong, took the view that building the Express Rail Link (Hong Kong Section) would be in the best interest of Hong Kong, whether in terms of transport or in terms of Hong Kong's economic development as well as the overall interest of Hong Kong. Having decided to build the Express Rail Link, the next question is how to deal with the questions of customs and other clearance, the CIQ (customs, immigration and quarantine) that we mentioned. There of course are various options. For instance, the option of the traditional separate location arrangement and of course also the co-location arrangement. It is after all these considerations that we decided, having considered the unique nature of the railway system that we are now linking up into as well as the situations in Hong Kong, that the co-location arrangement is the best way forward, because it would help unleash the full potential of the railway system. It is against this background that we negotiate with the Mainland authorities. Therefore, we come up with the "Three-step" approach that

we have explained. Therefore, viewing the whole matter in this context, first of all, you have the reasons, the rationale why we are doing co-location. Secondly, we would have to go through the relevant process. The process is not one-sided. It is not unilateral. The implementation of the co-location requires the consent of Hong Kong. It requires the consent of the Mainland authorities. In fact, it is because Hong Kong requests that, it is upon Hong Kong's request that the Mainland authorities agree to assist us in implementing the co-location. And then, of course there is also the third step, namely the local legislation, which we would have to go through the Hong Kong legislature, the Legislative Council. In terms of the reason, in terms of the rationale, in terms of the procedure, it's not something which would happen out of the blue, nor is it something which would happen within a very short span of time, nor is it something which the Hong Kong community would have no say in the matter. For instance, one of the elements is the last step that I mentioned earlier, namely the local legislation and the Legislative Council would have the responsibility as well as the opportunity to scrutinise the whole thing. So it is not as if it is something that we can do because I want to do and in a split of a second one can do it. Therefore, the suggestion made by Mr Martin Lee is totally impossible.

Secretary for Security: In the models that we examined about co-location overseas, the US-Canada model is only one way, and it is pre-clearance for Canadian visitors or people from Canada to visit the US. So it is pre-entry the US clearance only. The exit (clearance) is done in the same territory of the country, so visitors leaving Canada do their exit clearance in Canada. The US visitors leaving the US will do their clearance in the US if the government wants to do the clearance. In the London-Paris model, the exit clearance is also conducted within the country itself. Visitors leaving France will do their exit clearance in France. Of course the pre-clearance for entry (into London) is done

in France. They operate in pairs. In other words, while there is a clearance area in London, there is a clearance area in Paris.

In our case, we are making visitors to do clearance of the two areas (sides) in the same place. That means the Mainland officers will do the exit clearance in Hong Kong area. In designing the model, I have to take into consideration the security interests of Hong Kong. If the exit control of the Mainland is done in Hong Kong and they (the Mainland officers) are only limited to certain powers, that will mean some Hong Kong laws would have to apply in the same location so as to ensure there is no legal vacuum. In doing so, it will result in overlapping jurisdiction. If a traveller wants to challenge the legal action by either government, he can take the case to court, because there is overlapping jurisdiction. Then he may go to the Hong Kong court for hearing. That will, first of all, create a lot of uncertainties regarding, particularly, criminals who want to escape from the Mainland to come to Hong Kong. In fact, the legal challenge, first of all, will create uncertainties. Then it will create the uncertainties of time as well, because the legal challenge can take a long time to resolve. In the event of positive challenge, that means we will be handling in Hong Kong a criminal who may have committed a very serious crime which the Mainland does not want him to leave. At the same time, as he hasn't committed a Hong Kong offence, we can't arrest him either (because) there is no surrender of fugitive agreement between the two places, we will be stuck and the criminal will be stranded in Hong Kong. Like what, for people who want to make a claim of non-refoulement when he is in Hong Kong territory within the Mainland port, because there is overlapping jurisdiction, any non-refoulement claim, whether he has a criminal background or not, according to the Hong Kong law, we have to accept the claim for examination. On average, such a case takes two to three years to resolve. Some long cases have taken over 10 years. To me, that is a big security

concern. So in designing the model, we want the law and jurisdiction to be very clear and this is mainly to address Hong Kong's interests.

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

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