

Opening remarks by Secretary for Justice at press conference on Co-location Arrangement of Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (with video)

The Chief Executive, Mrs Carrie Lam; the Secretary for Justice, Mr Rimsky Yuen, SC; the Secretary for Transport and Housing, Mr Frank Chan Fan; and the Acting Secretary for Security, Mr Sonny Au, held a press conference this afternoon (December 27) on the decision of the Standing Committee of the National People's Congress on approving the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement. Following are the opening remarks by the Secretary for Justice.

Let me summarise what I said just now in English.

The Government of the Hong Kong Special Administrative Region (HKSAR) fully appreciates that the Hong Kong community is concerned with the legal basis for implementing the co-location arrangement. This is why on different occasions in the past, I and other Government officials have repeatedly pointed out that in the course of discussing co-location, it has always been stressed that the Co-location Arrangement should be consistent with the "one country, two systems" policy and shall not contravene the Basic Law of the HKSAR. Against this background, both sides proposed to adopt the "Three-step Process" to implement the Co-location Arrangement. The Decision made by the Standing Committee of the National People's Congress (NPCSC) today has clearly stated that the co-location arrangement as provided for in the Co-operation Arrangement is consistent with the Constitution of the People's Republic of China and the HKSAR's Basic Law.

Both the NPCSC Decision and the Explanation made by Director Zhang Xiaoming (Director of the Hong Kong and Macao Affairs Office of the State Council) have explained the legal basis for implementing the Co-location Arrangement in detail. I therefore think there is no need for me to repeat them here, but I would, however, like to highlight two main aspects, which I understand is of interest to the Hong Kong community. The first aspect concerns Article 18 of the Basic Law; and the other aspect concerns the questions such as which specific provision in the Basic Law can be invoked to implement co-location as well as questions of authorisation and relevant matters. The Explanation has addressed both these two aspects, and I would like to draw your attention to the relevant contents, in particular the following points.

First of all, Article 18 of the Basic Law provides that "National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. Laws listed in Annex III to [the Basic 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 [HKSAR] as specified by this Law".

The Explanation explains that the Co-location Arrangement will not be in contravention of Article 18. The reason is largely two-fold:

(1) What Article 18 of the Basic Law stipulates is the extension and application of national laws in the entire HKSAR, including the relevant contexts and the route through which they become applicable. Put shortly, the area of application of the relevant national laws stipulated in Article 18 is the entire HKSAR. They are mainly implemented by the HKSAR and they are applicable to all persons in the HKSAR. On the other hand, as regards the application of national laws in the West Kowloon Station

Mainland Port Area, their scope of application is only confined to the Mainland Port Area. They are implemented by the relevant Mainland authorities and they are mainly applicable to high-speed rail passengers present in the Mainland Port Area. The situation therefore is different from the case of application of national laws in the HKSAR under Article 18 of the Basic Law, and therefore there is no question of Article 18 of the Basic Law being contravened.

(2) The Co-operation Arrangement further expressly provides that for the purposes of the application of the laws of the Mainland and the delineation of jurisdiction, the West Kowloon Station Mainland Port Area will be regarded as "being situated in the Mainland". A similar provision was also adopted in the Shenzhen Bay Port Area model. Upon approval of the Co-operation Arrangement and the making of the decision by the NPCSC, this would provide full and sufficient legal basis for the application of national laws solely in the West Kowloon Station Mainland Port Area.

On the other hand, the Explanation also deals with the question of whether any specific provisions may be invoked to implement the Co-location Arrangement as well as the question such as authorisation. In the past, the HKSAR and the Mainland authorities repeatedly studied different proposals, including the proposal to invoke Article 20 of the Basic Law. However, both sides also notice that the Hong Kong community has many different views as to whether Article 20 of the Basic Law is applicable or whether it is the best option. As pointed out by the Explanation, Co-location arrangement is a new situation encountered in the course of implementing the "one country, two systems" policy. Therefore, the fact that the community has many different views is normal and understandable. Upon full consideration, the NPCSC decides that the more appropriate option is for the NPCSC to approve the Cooperation Arrangement.

The NPC is the highest organ of state power, whilst the NPCSC is its permanent body. The advantage of NPCSC's aforesaid approach is that it resolved the issues from a constitutionally higher level, and can thereby avoid disputes such as questions of authorisation and the like, and can be regarded as a more prudent way of dealing with the matter. This also reflects the fact that NPCSC is willing to consider different views expressed by the Hong Kong community.

Thank you.

Ends/Wednesday, December 27, 2017

[Press Conference on Co-location Arrangement of Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link](#)