

## Response of the HKSAR Government on Co-location Arrangement

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Different views have been expressed in recent days by individuals and groups in society about the Decision adopted by the Standing Committee (NPCSC) of the National People's Congress (NPC) on December 27 on the implementation of co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Decision), and the Explanations on the draft Decision provided by Director of the Hong Kong and Macao Affairs Office of the State Council, Zhang Xiaoming, (Explanations). Among those views include the statement issued by the Hong Kong Bar Association as well as views expressed by individual members of society in the media. In response to media enquiry on those views, the HKSAR Government provides the following consolidated response:

First, the HKSAR Government fully respects the rule of law. At the same time, it respects the Constitution of the People's Republic of China (PRC), the basic policy of "one country, two systems" as well as the Basic Law of the HKSAR. The HKSAR Government reiterates that in the course of the consultations on co-location arrangement, both sides have always agreed that the co-location arrangement must be consistent with "one country, two systems" and must not contravene the Basic Law. HKSAR Government officials have also stated in the past that "one country, two systems" will not be harmed or the Basic Law contravened just for the sake of promoting convenience or enhancing economic benefits and efficiency. It is precisely for this reason that the two sides have over the past period of time repeatedly studied different co-location arrangement options as well as the legal issues involved, including the different views in society on relevant provisions of the Basic Law such as Articles 7, 18, 19, 20 and 22. Therefore, there is absolutely no question of the

Constitution, the Basic Law or "one country, two systems" being disregarded or disrespected just because the subject matter concerns "a good thing".

On the contrary, on the basis of respecting the Constitution, the Basic Law and "one country, two systems", the SAR and the Mainland have adopted the "Three-step Process" in taking forward the co-location arrangement. Step One of the "Three-step Process" reflects the enjoyment of a high degree of autonomy by the SAR and reflects the fact that neither the SAR nor the Mainland can implement co-location arrangement on its own. Step Two, apart from respecting the PRC Constitution and the constitutional status of the NPCSC, can also ensure that the co-location arrangement is ultimately consistent with the Basic Law. Step Three, through the local legislative process, fully reflects the autonomy of the SAR in handling co-location arrangement.

Second, views have been expressed that the Decision made by the NPCSC does not explain the legal basis or is lacking in it. However, both the Decision itself and the Explanations of Director Zhang Xiaoming have explained the legal basis of the Decision. Chairman of the HKSAR Basic Law Committee under the NPCSC, Li Fei, further explained the legal basis of the Decision at the press conference held after the adoption of the Decision. Legal experts often have different views on the same issue, so it is naturally understandable that different persons may have different views about the legal reasoning behind the Decision, but this does not mean the Decision has no legal basis.

Third, co-location arrangement involves enabling Mainland personnel to conduct procedures for exit and entry on high-speed rail passengers at the West Kowloon Station Mainland Port Area. Some have queried whether such arrangement would contravene Article 18 of the Basic

Law. Although Article 18 of the Basic Law stipulates that national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law, the Explanations and Chairman Li Fei have explained the two main reasons why the co-location arrangement does not contravene Article 18 of the Basic Law:

(1) What Article 18 of the Basic Law prescribes is the extension and application of national laws in the entire HKSAR. In short, the area of application of the relevant national laws stipulated in Article 18 of the Basic Law is the entire HKSAR; they are implemented by the HKSAR itself and they are applicable to all persons in the HKSAR. However, the situation of co-location arrangement is clearly different from that prescribed under Article 18 of the Basic Law. When implementing co-location arrangement, the area of application of the national laws is only confined to the Mainland Port Area at the West Kowloon Station. The national laws are implemented by the relevant Mainland authorities and they are mainly applicable to high-speed rail passengers present in the Mainland Port Area.

(2) The Co-operation Arrangement 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". Therefore, as a matter of law, Article 18 of the Basic Law no longer applies. Similar provision has been used for the co-location model at the Shenzhen Bay Port Hong Kong Port Area, and "deeming provisions" of a similar nature can also be found in other legal contexts from time to time. Moreover, since the NPCSC has approved the Co-operation Arrangement, this also provides legal basis for the above provision.

There are also views in society that the present Decision amounts to an announcement that the Co-operation

Arrangement complies with the Constitution and the Basic Law "just because the NPCSC says so", and there are even views that this amounts to the "rule of man". The HKSAR Government and members of society understand that under every system, there will be (and must be) an organ of highest and ultimate authority. Under "one country, two systems", the HKSAR enjoys a high degree of autonomy in accordance with the Basic Law, but it must also respect the PRC Constitution as well as the status and powers of the NPCSC under the constitutional order of the State.

The NPC is the highest organ of state power, whereas the NPCSC is the NPC's permanent body. The entire process leading to the adoption of the present Decision by the NPCSC, which involves the SAR signing the Co-operation Arrangement with the Mainland, followed by submission by the State Council to the NPCSC for examination, and then, following deliberations in group meetings, the adoption of the Decision by the NPCSC by voting, is fully consistent with the constitutional process of the State. In other words, the present Decision is a decision made entirely pursuant to the PRC Constitution and related procedures. It has legal effect and is not a mere executive decision as suggested by some. Nor is it a case of "just because someone says so", not to mention a case of "rule of man" or a retrograde step in the implementation of the Basic Law. Moreover, in the course of the local legislative process under the Third Step, Legislative Council Members and different sectors of society will have the opportunity to discuss the relevant issues, and it is ultimately up to Legislative Council Members to decide whether to enact the local legislation thereby implementing co-location arrangement.

Finally, co-location arrangement is a matter that must be dealt with in light of the developments in the communication and transportation systems. For the high-speed rail passengers who use the procedures for exit

and entry under co-location arrangement, the procedures and their rights are basically the same as those under the traditional "separate location" arrangement. The main difference is that co-location arrangement is more convenient and efficient. It is hoped that members of society can understand co-location arrangement and related matters in an objective, pragmatic and all-rounded manner.

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