

(English Translation)*

**EXPLANATIONS ON THE DRAFT DECISION 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**

On 22 December 2017 at the Thirty-first Session of the Standing
Committee of the Twelfth National People's Congress

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Chairman, Vice-Chairmen, Secretary-General, Members:

On the instruction of the State Council, I hereby provide the following Explanations on the Draft Decision 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:

1. General background

The Guangzhou-Shenzhen-Hong Kong Express Rail Link is a key co-operation initiative on the construction of major infrastructure project between the Mainland and the Hong Kong Special Administrative Region. In this regard, the Hong Kong Section, the construction of which is funded by the Government of the Hong Kong Special Administrative Region, will complete construction and be commissioned in the third quarter of 2018. In order to realize the inter-connection and mutual

* Note: This is an English translation of the original document in Chinese, and is published for information. In case of differences between the Chinese text and the English translation, the Chinese text prevails.

access between the Hong Kong Special Administrative Region and the national high-speed rail network and ensure the maximization of the transport, economic and social benefits and efficiency of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, having studied the matter repeatedly and having made reference to the previous case model where Mainland Port Area and Hong Kong Port Area are established at the Shenzhen Bay in Guangdong Province and co-location arrangement is implemented thereat, the relevant departments of the Central Authorities, the People's Government of Guangdong Province and the Government of the Hong Kong Special Administrative Region have come to the unanimous view that establishing a port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link in the Hong Kong Special Administrative Region ("West Kowloon Station") and implementing co-location arrangement thereat would be the best option. The key contents of that option are: the establishment of a port at the West Kowloon Station, comprising the Hong Kong Port Area and the Mainland Port Area, whereby both sides will, in accordance with their respective laws, exercise exit and entry regulation, including immigration inspection, customs regulation, and inspection and quarantine measures etc., on persons travelling between the Mainland and the Hong Kong Special Administrative Region by high-speed rail, as well as their personal belongings and luggage. Since the implementation of co-location arrangement at the West Kowloon Station involves the establishment of the Mainland Port Area within the Hong Kong Special Administrative Region as well as the delineation of jurisdiction (including jurisdiction of the courts) and the application of laws of the Mainland and the Hong Kong Special Administrative Region, it is necessary to expressly confirm the corresponding legal basis and the specific implementation methods pursuant to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The relevant departments of the Central Authorities and the Government of the Hong Kong Special Administrative Region, having studied the matter in depth, have agreed to adopt the "Three-step Process" for the relevant arrangement, namely: Step One, the Mainland and the Hong Kong Special Administrative Region to sign 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 (“Co-operation Arrangement”); Step Two, the State Council to submit the Co-operation Arrangement to the Standing Committee of the National People’s Congress for approval; Step Three, both sides to implement the Co-operation Arrangement through their respective legal procedures. On 18 November 2017, with the authorization of the State Council, Ma Xingrui, the Governor of the People’s Government of Guangdong Province representing the Mainland, formally signed the Co-operation Arrangement with Lam Cheng Yuet-ngor, the Chief Executive of the Hong Kong Special Administrative Region, thereby completing Step One of the “Three-step Process”.

2. Key contents of the Co-operation Arrangement

The Co-operation Arrangement has a total of 5 chapters, 17 articles in the main body and 1 annex, and its key contents include the following:

First, it provides for matters relating to the establishment of the port. It expressly provides for the establishment of the Hong Kong Port Area and the Mainland Port Area at the West Kowloon Station and the implementation of co-location arrangement thereat; it sets out the area of the Mainland Port Area and expressly provides that the train compartments of trains in operation on the Guangzhou-Shenzhen-Hong Kong Express Rail Link within the Hong Kong Special Administrative Region are also regarded as part of the Mainland Port Area; it expressly provides that the acquisition of the right to use the areas of the Mainland Port Area, the duration and the fees etc. will be provided for in a contract to be entered into by the two sides.

Second, it provides for the jurisdiction over the Mainland Port Area. It expressly provides that, except for matters under the jurisdiction of the Hong Kong Special Administrative Region, the Mainland will exercise jurisdiction in accordance with the laws of the Mainland over all other matters including the regulation of exit and entry of personnel and items, and public order within the Mainland Port Area etc., and it expressly provides that the Mainland Port Area will be regarded as “being situated in the Mainland”. The Mainland will station immigration inspection authority, customs authority, inspection and

quarantine authority, integrated port administration authority and railway police authority to perform duties and functions in accordance with law. Matters under the jurisdiction of the Hong Kong Special Administrative Region mainly concern the operation and management of the West Kowloon Station and the Hong Kong Section of the Express Rail Link, which include six categories of matters such as the performance of duties and functions or matters related to the performance of duties and functions by personnel of the Hong Kong Special Administrative Region; matters relating to the standards of, and the duties, responsibilities and liabilities concerning, the construction, insurance and design, repair and maintenance of buildings and structures and related facilities at the West Kowloon Station; matters relating to the management and monitoring of the operational safety of the railway system of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, as well as matters relating to environmental regulation and control etc. The Hong Kong Special Administrative Region is also responsible for the management of the railway transport service at the West Kowloon Station, and should implement, as expressly stated, a passenger real-name ticket sales system and conduct inspection and security checks on passengers.

Third, it makes provisions for liaison and coordination mechanism and mechanism for handling emergencies. Both sides agree to set up a port liaison and coordination mechanism, a mechanism for handling emergencies and a liaison officer system, regularly arrange joint drill exercises and jointly formulate and sign a collaborative implementation plan for the operation and management of the West Kowloon Station Port. It expressly sets out the principles relating to the conduct of activities and the handling of relevant matters, including sudden or emergency incidents, by both sides in the Mainland Port Area.

Fourth, it provides for dispute resolution as well as other relevant matters such as amendment and coming into effect of the Co-operation Arrangement. The Co-operation Arrangement provides, “This Co-operation Arrangement will come into effect after it has been reported to the Central People’s Government and submitted to and approved by the Standing Committee of the National People’s Congress”, “If this Co-operation Arrangement needs to be amended as a result of any change in the conditions of operation or regulation of the West Kowloon

Station Port or for any other reason, the two sides must, after consultation and reaching consensus, sign a written document and submit it to the Central People's Government for approval”.

The annex to the Co-operation Arrangement includes schematic diagrams of B2 Arrival Level of the West Kowloon Station, B3 Departure Level of the West Kowloon Station and B4 Platform Level of the West Kowloon Station.

3. On the reasons for submitting the Co-operation Arrangement to the Standing Committee of the National People's Congress for examination and approval

The implementation of co-location arrangement at the West Kowloon Station is a new situation encountered in the course of implementing “one country, two systems”. Since it involves the establishment of the Mainland Port Area within the Hong Kong Special Administrative Region as well as the delineation of jurisdiction (including jurisdiction of the courts) and the application of laws of the Mainland and the Hong Kong Special Administrative Region, providing for the Co-operation Arrangement to be examined and approved by the Standing Committee of the National People's Congress and for it to expressly state that the Co-operation Arrangement is consistent with the principle of “one country, two systems” and is consistent with the Constitution and the Basic Law of the Hong Kong Special Administrative Region, pursuant to the provisions of the Constitution of the People's Republic of China (“Constitution”) and the Basic Law of the Hong Kong Special Administrative Region concerning the status, powers and functions of the Standing Committee of the National People's Congress, can provide further constitutional legal basis for establishing a port at the West Kowloon Station for implementing co-location arrangement thereat, and provide the legal basis for the State Council to grant approval for the Mainland to establish a port at the West Kowloon Station and station authorities thereat to perform duties and functions in accordance with law.

For this purpose, the Hong Kong and Macao Affairs Office of the State Council, together with the relevant departments of the Central

Authorities, have drafted the Draft Decision 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 submitted to the Standing Committee of the National People's Congress for examination ("Draft Decision"). The Draft Decision has been endorsed by the State Council.

4. Relationship between the Co-operation Arrangement and the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region

In view of the fact that the Hong Kong community is relatively more concerned about the relationship between the Co-operation Arrangement and the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region, I hereby also address this in the following Explanations.

(1) Source of power for the signing of the Co-operation Arrangement between the Hong Kong Special Administrative Region and the Mainland. The making of an appropriate arrangement through consultation on issues relating to the establishment of a port at the West Kowloon Station and the implementation of co-location arrangement thereat by the Government of the Hong Kong Special Administrative Region with the relevant parties of the Mainland, does not alter the boundary of the administrative division of the Hong Kong Special Administrative Region, does not affect the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region in accordance with law, and does not undermine the rights and freedoms enjoyed by the residents of the Hong Kong Special Administrative Region in accordance with law; and is consistent with the provisions of the Basic Law of the Hong Kong Special Administrative Region. Pursuant to the Constitution, the Basic Law of the Hong Kong Special Administrative Region authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy (Article 2), and implement a separate immigration controls system (Article 22(4) and Article 154(2)), and authorizes the Government of the Hong Kong Special Administrative

Region to enjoy powers to manage the land within the Hong Kong Special Administrative Region (Article 7), provide an economic and legal environment for encouraging investments, technological progress and the development of new industries (Article 118) and formulate appropriate policies to promote and co-ordinate the development of various trades (Article 119) etc. Therefore, the establishment of a port within the Hong Kong Special Administrative Region and the implementation of co-location arrangement thereat reflects the exercise of the relevant powers stipulated by the Basic Law of the Hong Kong Special Administrative Region, and provides the legal basis for the Hong Kong Special Administrative Region to consult on and sign the Co-operation Arrangement with the Mainland. That is to say, the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region in accordance with law is the source of power for it to make the above-mentioned co-location arrangement with the Mainland.

(2) Relationship with the provisions concerning the application of national laws in the Hong Kong Special Administrative Region. Article 18 of the Basic Law of the Hong Kong Special Administrative Region stipulates, “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 this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of autonomy of the Region as specified by this Law”. What that Article stipulates is the extension and application of national laws in the entire Hong Kong Special Administrative Region, including the relevant subject areas and the route through which they become applicable. Specifically, the area of application of the relevant national laws stipulated in that Article is the entire Hong Kong Special Administrative Region. They are mainly implemented by the Hong Kong Special Administrative Region and they are applicable to all persons in the Hong Kong Special Administrative Region. On the other hand, as regards the application of national laws in the West Kowloon Station Mainland Port Area, their area 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. This situation is different from the case of application of national laws in the Hong Kong Special Administrative Region under

Article 18 of the Basic Law of the Hong Kong Special Administrative Region, thus there is no question of the provisions of Article 18 of the Basic Law of the Hong Kong Special Administrative Region being contravened. 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”. Upon approval by the Standing Committee of the National People’s Congress through the making of a decision, the Co-operation Arrangement can provide full and sufficient legal basis for the application of national laws only in the West Kowloon Station Mainland Port Area.

(3) Relationship with provisions concerning the authorization by the Standing Committee of the National People’s Congress. Article 20 of the Basic Law of the Hong Kong Special Administrative Region stipulates, “The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People’s Congress, the Standing Committee of the National People’s Congress or the Central People’s Government”. There have been suggestions that the Standing Committee of the National People’s Congress may rely on this provision to authorize the establishment of a port at the West Kowloon Station and implementation of co-location arrangement thereat. We are of the view that the legal issues concerning the Co-operation Arrangement are relatively complex and that legal issues at different levels need to be resolved through the “Three-step Process”. In this regard, the Standing Committee of the National People’s Congress needs to confirm that it is consistent with the Constitution and the Basic Law of the Hong Kong Special Administrative Region for the Hong Kong Special Administrative Region, pursuant to the high degree of autonomy enjoyed by it, to consult on and sign the Co-operation Arrangement with the Mainland. It also needs to authorize the Mainland to establish the Mainland Port Area at the West Kowloon Station and station authorities thereat to perform duties and functions in accordance with the laws of the Mainland. Adopting the approach of making an approval decision would be more appropriate.

5. The examination opinion of the State Council

After examination, the State Council is of the view that the implementation of co-location arrangement at the West Kowloon Station is conducive to realizing the inter-connection and mutual access between the Hong Kong Special Administrative Region and the national high-speed rail network as well as the maximization of the transport, economic and social benefits and efficiency of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link; conducive to promoting interactions between the people of, and economic and trade activities between, the Hong Kong Special Administrative Region and the Mainland; conducive to the deepening of mutually beneficial co-operation between the Hong Kong Special Administrative Region and the Mainland; and conducive to the Hong Kong Special Administrative Region's further integration into the macro picture of national development. These have great significance for maintaining the long-term prosperity and stability of the Hong Kong Special Administrative Region. The Co-operation Arrangement has fully considered the concerns of relevant parties of the Mainland and the Hong Kong Special Administrative Region, is consistent with the principle of "one country, two systems", is consistent with the Constitution and the Basic Law of the Hong Kong Special Administrative Region, accommodates the actual need for establishing a port at the West Kowloon Station, and can ensure the safe, smooth and effective operation and management of the Mainland Port Area.

You are kindly requested to examine whether the Draft Decision 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 and the above Explanations are in order.