President's ruling on amendments proposed by 13 Members to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill

Thirteen Members have given notices to move a total of 75 amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bill"), subject to the passage of the motion on the Second Reading of the Bill.

Member	Number of proposed amendment(s)
Dr Hon Fernando CHEUNG	12
Hon AU Nok-hin	1
Hon CHU Hoi-dick	13
Hon CHAN Chi-chuen	5
Hon Claudia MO	3
Hon Gary FAN	9
Hon Andrew WAN	4
Hon WU Chi-wai	4
Hon Tanya CHAN	15
Hon Dennis KWOK	5
Hon Alvin YEUNG	2
Hon Jeremy TAM	1
Dr Hon KWOK Ka-ki	1
Total:	**75**

2. In considering the admissibility of the proposed amendments under the Rules of Procedure ("RoP"), I invited the Administration to comment on the amendments and the 13 Members to respond to the Administration's comments.

Background

3. In July 2017, the Government of the Hong Kong Special Administrative Region ("HKSAR") and the Mainland authorities reached a consensus on the framework for implementing a co-location arrangement at the West Kowloon Station ("WKS") of the Hong Kong Section ("HK Section") of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"). On 25 July 2017, the HKSAR Government announced that a Three-step Process be adopted to take forward the co-location arrangement.

4. Following the passage of the HKSAR Government's motion in support of taking forward the follow-up tasks of the co-location arrangement pursuant to the Three-step Process at the Council meeting of 15 November 2017, the HKSAR Government commenced the Three-step Process on 18 November 2017 by signing with the Mainland 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").

5. The Standing Committee of the National People's Congress ("NPCSC") completed the second step of the Three-step Process by making a decision to approve and endorse the Co-operation Arrangement ("Decision") on 27 December 2017. The Decision includes: (a) HKSAR should enact legislation to ensure the implementation of the Co-operation Arrangement; and (b) the establishment of the WKS Mainland Port Area ("MPA") and its specific area are to be approved by the State Council. Subsequently, the proposed area of the MPA was approved by the State Council.

The Bill

6. As the final step of the Three-step process, the HKSAR Government introduced the Bill into the Legislative Council ("LegCo") in January 2018. As explained in its Explanatory Memorandum, the Bill is to implement the Co-operation Arrangement. The term "Co-operation Arrangement" is defined in clause 2 of the Bill to mean the Co-operation Arrangement between the Mainland and HKSAR on the establishment of the MPA at WKS signed on 18 November 2017, as approved by NPCSC on 27 December 2017. According to its long title, the Bill seeks to:

(a) declare an area as the WKS MPA;

(b) provide that a train compartment of a passenger train in operation on the HK Section of XRL is to be regarded as part of the MPA;

(c) provide that the MPA is to be regarded as an area lying outside Hong Kong but lying within the Mainland for certain purposes; and

(d) make supplementary provisions for certain rights and obligations and related matters and for the interpretation of certain documents in relation to rights and obligations.

7. The Bill contains a preamble which sets out the background to the Bill including the Co-operation Arrangement and NPCSC's Decision.

The Administration's comments

8. The Administration considers that all the 75 proposed amendments should not be admitted for infringing RoP 57(4)(a) [1], RoP 57(4)(c) [2], RoP 57(4)(d) [3] or RoP 57(4)(e) [4]. The Administration's comments are in **Appendix 1**.

Members' responses

9. Ten Members do not agree with, and one Member has no views on, the Administration's comments (**Appendices 2A to 2G)**. Two Members have not provided written views on the Administration's comments.

My opinion

Guiding principles

10. Rule 57(4)(a) provides that an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. It is a long-established practice that in ascertaining the subject matter of a bill or a clause, the President will take into account the long title, explanatory memorandum and provisions of the bill, the relevant LegCo Brief and all other relevant factors. In determining whether an amendment is relevant to the subject matter of a bill, the President will consider whether the amendment would have the effect of altering the subject matter of the bill or merely amending its details. In addition, amendments seeking to add new clauses to a bill may fall within the scope of the bill, if the changes sought by those amendments are substantive and relevant to the subject matter of the bill.[5]

---

1 RoP 57(4)(a) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

2 RoP 57(4)(c) provides that an amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.

3 RoP 57(4)(d) provides that an amendment or a series of two or more amendments which is in the opinion of the Chairman frivolous or meaningless may not be moved.

4 RoP 57(4)(e) provides that where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one language only. But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved.

5 Paragraph 21 of the President's ruling on the Committee stage amendments proposed by Hon CHAN Kam-lam and Hon WONG Yuk-man to the Copyright (Amendment) Bill 2014, which was issued on 7 December 2015.

Subject matter of the Bill

11. As shown in the long title, explanatory memorandum and provisions of the Bill as well as the relevant LegCo Brief, it is clear that the subject matter of the Bill, which is intended to implement the last step of the Three-step Process, is to implement the Co-operation Arrangement pursuant to NPCSC's Decision. In this last step, the HKSAR Government has to commence the local legislative process pursuant to the NPCSC's Decision and the approved Co-operation Arrangement to implement the co-location arrangement in HKSAR. This objective is also evidenced in the Preamble of the Bill which sets out the relevant context by citing the Co-operation Arrangement and the NPCSC's Decision.

12. I note that the application of the laws in the MPA and the delineation of jurisdiction (including jurisdiction of the courts) over the MPA are crucial elements for implementing the co-location arrangement under the Co-operation Arrangement as approved by NPCSC. The Co-operation Arrangement stipulates the delineation of matters over which HKSAR would exercise jurisdiction (i.e. "reserved matter" defined in the Bill) and matters over which the Mainland would exercise jurisdiction (i.e. "non-reserved matter" defined in the Bill). Moreover, the relevant Articles of the Co-operation Arrangement, namely Articles 3, 4 and 7, are set out in Schedule 1 to the Bill as a reference for interpreting "reserved matter" and "non-reserved matter".

13. As stated in the long title, a key objective of the Bill is to regard the MPA as an area lying outside Hong Kong but lying within the Mainland for the application of the laws of the Mainland and the laws of Hong Kong in the MPA, and the delineation of jurisdiction (including jurisdiction of the courts) over the MPA except for "reserved matters". "Non-reserved matters" cover matters other than "reserved matters" which include, but not limited to, those relating to customs clearance, immigration control and quarantine.

Admissibility criteria

14. Given the above background, I consider that the Bill, upon enactment as an Ordinance, must be consistent with the Co-operation Arrangement. Therefore, any proposed amendment which is fundamentally inconsistent with or deviates from the arrangements stated in the Co-operation Arrangement would be outside the scope of the Bill, as it would have the effect of altering the fundamental principles and subject matter of the Bill (which is to implement **the** Co-operation Arrangement approved by NPCSC, and not **any** arrangement). Therefore, in the context of this Bill, any amendment that introduces arrangement(s) which is/are not consistent with the Co-operation Arrangement will be out of order. For instance, a proposed amendment which is inconsistent

with the specific area of the MPA approved by the State Council pursuant to NPCSC's Decision would be outside the scope of the Bill. By the same token, if the applicability of Hong Kong laws and Mainland laws in, or the exercise of jurisdiction by HKSAR and the Mainland over, the MPA proposed in an amendment deviates from that provided under the Co-operation Arrangement, such amendment would also be outside the scope of the Bill.

15. In addition to the issue of scope elaborated above, other relevant factors for consideration in determining the admissibility of a proposed amendment include whether it is consistent with the provisions of RoP, such as whether they are unintelligible or otherwise out of order.

Admissible amendments

16. Of the 75 proposed amendments, 24 (proposed by nine Members) introduce proposals covering the following matters:

(a) commencement date of the enacted Ordinance;

(b) expiry date of the enacted Ordinance;

(c) introduction of offence provisions;

(d) application of the Hong Kong Bill of Rights Ordinance (Cap. 383) to the MPA;

(e) specifying that NPCSC's Decision and the Co-operation Arrangement do not form part of the Basic Law or any laws of Hong Kong;

(f) specifying that the enacted Ordinance is a one-off arrangement applying only to the HK Section of XRL and WKS;

(g) amending or deleting the savings provision in clause 7 (and the related Schedules 4 and 5) and the provision on interpretation of future documents in relation to rights and obligations in clause 8; and

(h) other matters including changing the colour used to signify Shek Kong Stabling Sidings and adding a definition to the Bill.

17. As these 24 proposed amendments (which mainly seek to amend details of, or add details to, the Bill) are within the scope of the Bill and consistent with the provisions of RoP, I would allow them to be moved. I am aware of the possible impact of some of them, if passed, on the operation of WKS and the HK Section of XRL. However, this relates to their merits which are not relevant to my consideration of their admissibility. Details of the 24 admissible amendments are in **Appendix 3**.

Inadmissible amendments

18. Taking into account all the relevant factors, I consider that the remaining 51 amendments (proposed by 11 Members) are inadmissible for the reasons detailed in **Appendix 4**:

Outside the scope of the Bill

(a) 39 amendments are fundamentally inconsistent with or deviate from the arrangements stated in the Co-operation Arrangement which the Bill seeks to implement; and

Inconsistent with RoP

(b) 12 amendments are inconsistent with the provisions of RoP as follows:

(i) four amendments to amend the long title of the Bill are inconsistent with RoP 58(9);

(ii) four amendments to amend the preamble of the Bill are inconsistent with RoP 58(8);

(iii) three amendments infringe RoP 57(4)(c) for being unintelligible; and

(iv) one amendment infringes RoP 57(4)(e) for the discrepancy between its Chinese and English texts.

19. As set out above, of the 51 inadmissible amendments, 39 are fundamentally inconsistent with or deviate from the arrangements stated in the Co-operation Arrangement which the Bill seeks to implement. Most of them seek to:

(a) alter the application of the laws in and the delineation of jurisdictions of the Mainland and HKSAR over the MPA, which include revising or deleting the definitions of "reserved matter" and "non-reserved matter";

(b) limit the powers of the officials of the Mainland Authorities Stationed at the MPA;

(c) alter the boundary of the MPA; or

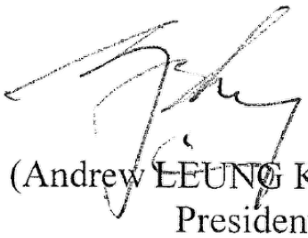
(d) delete the definition of the Co-operation Arrangement or alter the mechanism for amending the Co-operation Arrangement.

20. As explained in paragraphs 11 to 14 above, the application of laws in and the delineation of jurisdiction over the MPA are crucial for implementing the co-location arrangement under the Co-operation Arrangement approved by NPCSC. The Co-operation Arrangement has stipulated the delineation of matters over which HKSAR would exercise jurisdiction (i.e. reserved matters) and matters over which the Mainland would exercise jurisdiction (i.e. non-reserved matters). Moreover, it can be seen from NPCSC's Decision that the Co-operation Arrangement was approved by NPCSC on the basis, among others, that the co-location arrangement is consistent with the principle of "one country, two systems" and would not alter the boundary of the administrative division of HKSAR. All these are important elements that have been covered by the Bill, the object of which is to implement the Co-operation Arrangement. In my view, the 39 amendments highlighted in paragraph 19 above do not merely seek to amend the details of the Bill but would have the effect of undermining the foundation for implementing the Co-operation Arrangement, thus altering the subject matter of the Bill which is not allowed under RoP 57(4)(a). These amendments are therefore inadmissible.

My ruling

21. I rule that of the 75 proposed amendments, 24 (proposed by nine Members) are admissible and 51 (proposed by 11 Members) inadmissible:

Member	Number of admissible amendments	Number of inadmissible amendments
Dr Hon Fernando CHEUNG	3	9
Hon AU Nok-hin	0	1
Hon CHU Hoi-dick	6	7
Hon CHAN Chi-chuen	3	2
Hon Claudia MO	1	2
Hon Gary FAN	2	7
Hon Andrew WAN	0	4
Hon WU Chi-wai	0	4
Hon Tanya CHAN	5	10
Hon Dennis KWOK	2	3
Hon Alvin YEUNG	0	2
Hon Jeremy TAM	1	0
Dr Hon KWOK Ka-ki	1	0
Total:	**24**	**51**



(Andrew LEUNG Kwan-yuen)
President
Legislative Council

4 June 2018

政府總部
運輸及房屋局
運輸科

香港添馬添美道2號
政府總部東翼

Transport and Housing Bureau
Government Secretariat
Transport Branch

East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

電話 Tel: 3509 8177
傳真 Fax: 2136 8016

29 May 2018

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Judy TING)

Dear Ms Ting,

Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill

Thank you for your letters dated 25, 28 and 29 May 2018, inviting the Government's views on the proposed Committee Stage amendments ("CSA") to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("Bill") against the relevant provisions of the Rules of Procedure of the Legislative Council ("RoP").

Subject matter of the Bill

2. The Bill is meant to complete the last step of the "Three-step Process", namely the local legislative process, with a view to implementing co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"),

thereby facilitating passengers' travel between Hong Kong and various parts of the Mainland.

3. As clearly indicated in the Legislative Council ("LegCo") Brief on the Bill dated 26 January 2018 (File Ref.: THB(T)CR 9/1/16/581/99), after detailed studies and thorough discussions of various customs, immigration and quarantine clearance options, the Government of the Hong Kong Special Administrative Region ("HKSAR") and the relevant Mainland authorities reached a consensus in July 2017 on the framework for implementing a co-location arrangement. On 25 July 2017, the Executive Council advised and the Chief Executive ordered that the proposed co-location arrangement at the West Kowloon Station of the XRL be endorsed, so that the HKSAR Government could proceed to take forward the relevant tasks. The proposed "Three-step Process" to put in place the co-location arrangement is summarised as follows –

(a) **Step One**: the Mainland and the HKSAR are to reach a co-operation arrangement;

(b) **Step Two**: the Standing Committee of the National People's Congress ("NPCSC") makes a decision approving and endorsing the co-operation arrangement; and

(c) **Step Three**: both sides implement the arrangement pursuant to their respective laws. In the case of the HKSAR, local enactment will be necessary to implement the co-location arrangement.

4. Following extensive discussions in the community, as well as the passage by the LegCo on 15 November 2017 of a non-binding motion moved by the HKSAR Government in support of the co-location arrangement, the HKSAR Government formally commenced the "Three-step Process". On 18 November 2017, the HKSAR Government and the Guangdong Provincial People's Government signed 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"), marking the first step of the "Three-step Process". Subsequently on 27 December 2017, the NPCSC made 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 ("Decision"), which approved the Co-operation Arrangement, confirmed that the Co-operation Arrangement is consistent with the Constitution and the Basic Law of the Hong Kong Special Administrative Region ("Basic Law"), and stipulated that the HKSAR should enact legislation to ensure the implementation of the Co-operation Arrangement. The NPCSC's Decision signified the accomplishment of the second step in the "Three-step Process" and provided a firm legal basis for the implementation of co-location arrangement at the West Kowloon Station.

5. In accordance with Step Three of the "Three-step Process", the HKSAR Government needs to commence the local legislative process pursuant to the NPCSC's Decision and the approved Co-operation Arrangement to implement the co-location arrangement in the HKSAR. This intent is evidenced by the content of the Preamble of the Bill as currently drafted which sets out the relevant context by mentioning the Co-operation Arrangement and the NPCSC's Decision in paragraphs (1) and (2) respectively. Paragraph 2 of the Explanatory Memorandum, which relates to the Preamble of the Bill, also states that the Bill is to implement the Co-operation Arrangement. Given the above background, **the Bill, which will become the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance ("Ordinance") upon passage by the LegCo, should be consistent with the Co-operation Arrangement, the NPCSC's Decision as well as the "Three-step Process"**. In addition, the objects of the Bill are clearly stated in the Long Title as well as paragraph 1 of the Explanatory Memorandum, and

are reproduced as follows –

(a) to declare an area as the West Kowloon Station Mainland Port Area;

(b) to provide that a train compartment of a passenger train in operation on the Hong Kong Section of the XRL is to be regarded as part of the West Kowloon Station Mainland Port Area;

(c) to provide that the West Kowloon Station Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland for certain purposes; and

(d) to make supplementary provisions for certain rights and obligations and related matters and for the interpretation of certain documents in relation to rights and obligations.

Any proposed amendment to the Bill outside these objects would have the effect of altering the subject matter and therefore should be found inadmissible under Rule 57(4)(a) of the RoP.

CSAs to the Bill

6. Having carefully examined all the 75 CSAs proposed to the Bill, we are of the view that they should not be admitted for the following reasons –

(A) CSAs on removal of the objects of the Bill by deleting references to the "Three-step Process"

7. 6 CSAs (see **Annex A**) to the Bill are intended to delete references to the Co-operation Arrangement, the NPCSC's Decision and the "Three-step Process" in the Bill.

8. As explained in paragraphs 2 to 5 above, the subject matter of the Bill is to implement the Co-operation Arrangement in accordance with the NPCSC's Decision under the "Three-step Process". This intent is clearly demonstrated in the Preamble of the Bill, as well as the LegCo Brief issued on 26 January 2018 (File Ref.: THB(T)CR 9/1/16/581/99). Deleting references to the Co-operation Arrangement, the NPCSC's Decision and the "Three-step Process" in the Bill, which form the basis for the current legislative exercise, as proposed by the CSAs will be tantamount to removing the objects and the context from the Bill. If passed, the CSAs will undermine the foundation for conducting co-location arrangement at the West Kowloon Station in accordance with laws. As such, we consider that these CSAs, if passed, will **alter the subject matter of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(B) <u>CSAs on altering the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area</u>

9. 37 CSAs (see **<u>Annex B</u>**) to the Bill fall under this category which would affect the applicability of Hong Kong laws and Mainland laws in, as well as the exercise of jurisdiction by the HKSAR and the Mainland over, the Mainland Port Area, such as implementing only Mainland laws relevant to Mainland clearance procedures in the Mainland Port Area; limiting the powers of the officials of the Mainland Authorities Stationed at the Mainland Port Area; deleting the supplementary provisions on the applicability of Hong Kong laws over pre-existing orders / court orders and future documents in the Mainland Port Area; providing that the decision of Hong Kong courts on any dispute regarding the exercise of jurisdiction between the two places over a matter in the Mainland Port Area is final; asserting that a particular piece of Hong Kong legislation should apply in the Mainland Port Area (i.e. Hong Kong Bill of Rights Ordinance (Cap. 383)); as well as affecting the applicability of international conventions in the Mainland Port Area.

10. The delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area is a crucial element for implementing the co-location arrangement under the Co-operation Arrangement. The Co-operation Arrangement has clearly delineated matters over which the HKSAR will exercise jurisdiction (i.e. "reserved matter" defined in the Bill) and matters over which the Mainland will exercise jurisdiction (i.e. "non-reserved matter" defined in the Bill). Moreover, the relevant Articles of the Co-operation Arrangement, namely Articles 3, 4 and 7, are set out in Schedule 1 to the Bill as a reference in interpreting "reserved matter" and "non-reserved matter" defined in the Bill. A key objective of the Bill is to regard the Mainland Port Area as an area lying outside Hong Kong but lying within the Mainland for the purposes of the application of the laws of the Mainland, and of the laws of Hong Kong, in the Mainland Port Area, and the delineation of jurisdiction (including jurisdiction of the court) over the Mainland Port Area except for "reserved matters". "Non-reserved matters" cover matters other than "reserved matters" which include, but not limited to, clearance procedures.

11. Apart from giving rise to the legal and security concerns which have been explained by the HKSAR Government in writing to Members' proposed CSAs at the Bills Committee stage (LC Paper No. CB(4)1038/17-18(03)), such CSAs are fundamentally inconsistent with the Co-operation Arrangement which the Bill is intended to implement, clearly deviate from the consensus reached between the HKSAR Government and the Mainland authorities on the co-location arrangement, and alter the scope of such arrangement. If passed, the Co-operation Arrangement could no longer be implemented in the HKSAR in accordance with laws. This would completely defeat the purpose of the local legislative process under the "Three-step Process" to put in place the co-location arrangement at the West Kowloon Station of the XRL and fundamentally alter the object of the Bill. Such CSAs are **not relevant to the subject matter of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(C) CSAs on commencement date of the Ordinance

12. 2 CSAs (see **Annex C**) to the Bill specify different commencement dates of the Ordinance. As explained in the letter from the HKSAR Government in response to a Member of the Bills Committee dated 30 April 2018 (LC Paper No. CB(4)1007/17-18(01)), pursuant to Clause 1(2) of the Bill, the Ordinance, upon passage of the Bill, comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette. The Mainland Port Area will be established and commissioned upon the operation of the Ordinance. This commencement date will be the date of "commissioning" of the West Kowloon Station Mainland Port Area mentioned in Article 4 of the Co-operation Arrangement as well as the NPCSC's Decision. The current CSAs attempting to amend the commencement date of the Ordinance, if enacted, will in effect alter the nature of the arrangement envisaged in the Co-operation Arrangement and the NPCSC's Decision. Such CSAs are **not relevant to the subject matter of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

13. Furthermore, it is observed that different Members propose similar CSAs with merely arbitrary dates for the commencement date of the Ordinance. The President may wish to consider whether such CSAs belong to a series of two or more amendments which is in his opinion frivolous or meaningless under Rule 57(4)(d) of the RoP and thus may not be moved.

(D) CSAs on setting an expiry date for the Ordinance and / or dealing with the right to use the Mainland Port Area

14. 7 CSAs (see **Annex D**) to the Bill seek to specify an expiry date for the Ordinance.

15. The subject matter of the Bill is to implement the Co-operation Arrangement in accordance with the NPCSC's Decision. As stated in

the letter issued by the HKSAR Government in response to Members' proposed CSAs at the Bills Committee dated 6 May 2018 (LC Paper No. CB(4)1038/17-18(03)), the NPCSC's Decision endorsed on 27 December 2017 did not specify any expiry date for the implementation of the co-location arrangement. Such an expiry date is not found in the Co-operation Arrangement either. In this connection, the adoption of any expiry date of the Ordinance will, by way of local legislation, in effect alter the parameters of the Co-operation Arrangement which the Bill is intended to implement and is **not relevant to the subject matter of the Bill** on putting in place the co-location arrangement in accordance with the "Three-step Process". The proposed CSAs should not be admissible under Rule 57(4)(a) of the RoP.

16. Apart from indicating a particular point of time as the expiry date, there are CSAs which connect the duration of the operation of the Ordinance with the right to use the Mainland Port Area or seek to govern how the HKSAR Government should grant / revoke a licence to the Mainland regarding the right to use the Mainland Port Area. The HKSAR Government has repeatedly explained at the Bills Committee meetings that the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area to be implemented by the Bill originates from the NPCSC's Decision and the approved Co-operation Arrangement, and has no direct relationship to the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area which would be provided for by a separate agreement to be signed by the HKSAR Government and the Mainland authorities. As such, these CSAs are **out of scope of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(E) <u>CSAs on changing the status of train compartments</u>

17. 2 CSAs (see **<u>Annex E</u>**) to the Bill intend to amend Clause 5 of the Bill concerning train compartments. The actual impact of these CSAs is to subject train compartments of passenger trains on the Hong Kong Section of the XRL to the jurisdiction of the HKSAR under all

circumstances.

18. In the letter issued by the HKSAR Government in response to Members' proposed CSAs at the Bills Committee dated 6 May 2018 (LC Paper No. CB(4)1038/17-18(03)), we have explained the policy considerations in formulating the Mainland Port Area (i.e. adopting the principle of "absolute necessity" to include only the spaces, in view of high-speed rail passengers' routes, necessary to implement the co-location arrangement). The Long Title specifies that the Bill is "to provide that a train compartment of a passenger train in operation on the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link is to be regarded as part of the West Kowloon Station Mainland Port Area". The current CSAs inventing new arrangements for the train compartments concerned are clearly inconsistent with the purpose of the Bill as specified in the Long Title. They will **alter the object of the Bill and hence subject matter of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(F) CSAs on changing the boundary of the West Kowloon Station Mainland Port Area

19. 2 CSAs (see **Annex F**) to the Bill attempt to change the boundary of the West Kowloon Station Mainland Port Area. The NPCSC's Decision on 27 December 2017 clearly stipulates that the establishment of the West Kowloon Station Mainland Port Area and its specific area are to be approved by the State Council. As stated in the HKSAR Government's response to the LegCo Secretariat on 20 April 2018 (LC Paper No. CB(4)947/17-18(02)), after the NPCSC's Decision, the HKSAR Government submitted, via the Hong Kong and Macao Affairs Office of the State Council ("HKMAO"), the proposed area (including its coordinates) of the West Kowloon Station Mainland Port Area to the State Council for approval. The area in the submission was identical to that of Schedule 2 to the Bill. The HKMAO notified the HKSAR Government subsequently that the establishment of the West Kowloon Station Mainland Port Area and its specific area had been

approved by the State Council.

20. Should the proposed CSAs be passed, the specific area of the West Kowloon Station Mainland Port Area will be unilaterally changed. This would inevitably alter the parameters of the Co-operation Arrangement which the Bill is intended to implement and hence **alter the subject matter of the Bill**, and would be inconsistent with the NPCSC's Decision as well as the approved Co-operation Arrangement which sets out the areas to be included as the Mainland Port Area. As such, these CSAs should not be admissible under Rule 57(4)(a) of the RoP.

(G) CSAs on deleting the description on the HKSAR boundary not being affected

21. 2 CSAs (see **Annex G**) to the Bill intend to delete Clause 6(2) of the Bill. As stated in the letter issued by the HKSAR Government in response to Members' proposed CSAs at the Bills Committee dated 6 May 2018 (LC Paper No. CB(4)1038/17-18(03)), Clause 6(2) is meant to clearly spell out that the implementation of co-location arrangement at the West Kowloon Station of the XRL does not involve realignment of the HKSAR boundary. This is consistent with the views of the NPCSC as stated in the preamble of the NPCSC's Decision that "the establishment of the Mainland Port Area at the West Kowloon Station does not alter the boundary of the administrative division of the Hong Kong Special Administrative Region". The purpose of Clause 6(2) is to articulate an important point of law that the co-location arrangement does not affect the HKSAR boundary.

22. The Long Title states that the Bill is to "provide that the West Kowloon Station Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland for certain purposes". The deletion of Clause 6(2) may result in confusion on whether the HKSAR will no longer exercise jurisdiction over the Mainland Port Area for all purposes due to realignment of the HKSAR boundary. This is clearly not the intention of the Bill as evidenced in the Long Title. We

consider that these CSAs are **not relevant to the subject matter of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(H) CSAs on the Long Title

23. 4 CSAs (see **Annex H**) to the Bill propose primarily textual changes to the Long Title without accompanying CSAs to the operative provisions.

24. These CSAs are **not consistent with the requirements of Rule 58(9) of the RoP and principles set out in previous rulings of the LegCo President**. Rule 58(9) of the RoP provides that "[i]f any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings …". It has been clearly set out in previous rulings of the LegCo President[1] that (1) the long title is not subject to amendment at Committee stage of the bill unless an amendment made to the provisions in the bill makes it necessary to do so, and (2) there has to be a nexus, or a connection, between the CSA to the long title and one or more CSAs to the operative provisions of the Bill which provides the basis for the LegCo President to decide whether such CSA to the long title is made necessary. In the above light, we consider that the current CSAs attempting to alter the Long Title of the Bill alone should not be admissible.

(I) CSAs concerning cessation of the Ordinance if any part of the Ordinance adjudicated or found by the Court in contravention of the Basic Law

25. 4 CSAs (see **Annex I**) to the Bill propose new provisions concerning the hypothetical scenario where any part of the Ordinance is adjudicated to be in contravention of the Basic Law.

---

[1] Relevant precedents include the LegCo President's rulings on Hon Margaret NG's proposed amendments to the Communications Authority Bill dated 27 June 2011 and Hon WONG Yuk-man's proposed amendments to the Special Holiday (3 September 2015) Bill dated 6 July 2015.

26. As stated in the NPCSC's Decision, the NPCSC confirmed that the Co-operation Arrangement is consistent with the Constitution and the Basic Law of the HKSAR. It is not envisaged that the Bill, which is meant to implement the Co-operation Arrangement as approved by the NPCSC, will be in contravention of the Basic Law. Such provisions also do not fall within the objects of the Bill as specified in the Long Title. We consider that theses CSAs are **out of scope of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(J) CSAs concerning amendments to and supplementary agreements of the Co-operation Arrangement

27. 2 CSAs (see **Annex J**) to the Bill propose new provisions concerning amendments to and supplementary agreements of the Co-operation Arrangement, including specifying that such amendments and supplementary agreements must be approved by the LegCo.

28. The Co-operation Arrangement has specified the mechanisms in dealing with amendments to the Co-operation Arrangement and the signing of supplementary agreements. These involve the dealings, negotiations and consultations between the HKSAR Government and the Mainland authorities, and shall not be unilaterally governed by a piece of local legislation enacted by the HKSAR. The newly added provisions clearly exceed beyond the Long Title. As explained by the HKSAR Government at the Bills Committee, the HKSAR will introduce amendment bill to the LegCo in the light of actual circumstances should there be any amendment to or supplementary agreement of the Co-operation Arrangement such that it may be implemented in accordance with laws in the HKSAR. Such provisions also do not fall within the objects of the Bill as specified in the Long Title. These CSAs are thus **out of scope of the Bill** and should not be admissible under Rule 57(4)(a) of the Bill.

(K) Hon CHAN Chi-chuen's CSA on Clause 2 (definition of Mainland Authorities Stationed at the Mainland Port Area)

29. Hon CHAN Chi-chuen proposes a CSA which adds a provision under Clause 2 setting out another definition of the term "Mainland Authorities Stationed at the Mainland Port Area" ("內地派駐機構").

30. As stated in the HKSAR Government's response to the LegCo Secretariat on 26 April 2018 (LC Paper No. CB(4)991/17-18(01)), the term "Mainland Authorities Stationed at the Mainland Port Area" is used in Article 7 of the Co-operation Arrangement and defined in Article 6 of the Co-operation Arrangement. To assist readers in reading Article 7 of the Co-operation Arrangement as reproduced in Schedule 1 (as well as its English translation), a note is added to provide a piece of factual information on how the term is defined in the Co-operation Arrangement. The note is thus an aid to readers in reading Article 7 of the Co-operation Arrangement with the benefit of an existing definition that has already been provided in the Co-operation Arrangement.

31. The current CSA proposed by Hon CHAN Chi-chuen, if passed, will give rise to an anomaly where two definitions on the term "Mainland Authorities Stationed at the Mainland Port Area" will co-exist in the Bill, i.e. (1) the definition in the newly added provision in Clause 2; and (2) the definition which is already reproduced in the existing Schedule 1. This will cause confusion in the interpretation of the term, especially when it has already been defined in the Co-operation Arrangement. In this connection, this CSA will **make the clause which it proposes to amend unintelligible** and should not be admissible under Rule 57(4)(c) of the RoP.

(L) Hon AU Nok-hin's CSA on Clause 3 (adding provisions that largely resemble the Articles of the Co-operation Arrangement)

32. Hon AU Nok-hin's proposed CSA has the effect of creating new provisions under Clause 3 which largely resemble, but not entirely

identical to, the texts in Articles 3, 4 and 7 of the Co-operation Arrangement set out in the original Schedule 1 to the Bill.

33. As stated in the letter issued by the HKSAR Government in response to Members' proposed CSAs at the Bills Committee dated 6 May 2018 (LC Paper No. CB(4)1038/17-18(03)), in general, there are different approaches to drafting local legislation implementing international agreements. One approach is to incorporate the text of an international agreement into the implementing legislation by setting it out in the legislation, usually in a Schedule. Another approach is to transform the text of an international agreement by legislative re-writing. We are of the view that defining "reserved matter" and "non-reserved matter" by reference to the texts of Articles 3, 4 and 7 of the Co-operation Arrangement, which are set out in the Bill, is the most appropriate way to implement the Co-operation Arrangement and to accurately reflect the agreed position between Hong Kong and the Mainland as regards the delineation of applicable laws and of jurisdictions in respect of the Mainland Port Area.

34. If Hon AU Nok-hin's CSA is passed, readers will need to refer to both the newly re-written provisions in Clause 3 and original Articles of the Co-operation Arrangement set out in Schedule 1 to the Bill for the definitions of "reserved matter" and "non-reserved matter" given that the Bill is to implement the Co-operation Arrangement. With inconsistencies in both texts (e.g. the element of "Save as stated above, these personnel should comply with the laws of the Mainland inside the Mainland Port Area and be subject to regulation by the Mainland Authorities Stationed at the Mainland Port Area" in Article 7(1) of the Co-operation Arrangement reproduced in Schedule 1 to the Bill cannot be found in the newly re-written provisions in Clause 3 under the CSA etc.), it will result in confusion as to which definition should prevail, as well as why certain elements are not included in the newly re-written provisions, in interpreting "reserved matter" and "non-reserved matter" in Clause 3. As such, this CSA will **make the clause which it proposes to amend unintelligible** and should not be admissible under Rule 57(4)(c) of the

RoP.

35. Furthermore, since defining "reserved matter" and "non-reserved matter" by reference to the texts of Articles 3, 4 and 7 of the Co-operation Arrangement is to accurately reflect the agreed position between Hong Kong and the Mainland as explained above, any deviation from those Articles would also create doubts as to whether the meaning of "reserved matter" and "non-reserved matter" fails to accurately reflect what is contained in the Co-operation Arrangement. The proposed CSAs are thus **out of scope of the Bill** under Rule 57(4)(a) of the RoP.

36. In any case, the respective English and Chinese versions of this CSA do not tally with each other (e.g. the proposed English text of the newly added Clause 3(1)(a)(iii) comprises "the performance of duties and functions or matters related to the performance of duties and functions by *designated personnel*"; yet the proposed Chinese text does not provide any corresponding equivalent for the term (i.e. "特定人員")). The CSA will **create a conflict or discrepancy between the text in one language and the text in the other**, and should not be movable under Rule 57(4)(e) of the RoP.

(M) <u>Hon Alvin YEUNG's CSA on adding Clause 5A (application of the Ordinance)</u>

37. Hon Alvin YEUNG's CSA proposes to add a Clause 5A to the effect that except in the Mainland Port Area, the Ordinance does not apply to any other area within Hong Kong.

38. It is incorrect to assert that "except in the Mainland Port Area, the Ordinance does not apply to any other area within Hong Kong". While the laws of the Mainland will not apply to areas outside the Mainland Port Area, the Ordinance itself applies to the whole of Hong Kong. For example, Clause 7(1)(b) refers to "investigation, legal proceedings or remedy" which may occur outside the Mainland Port Area. As such, the CSA is **out of scope of the Bill** and thus should not be

admissible under Rule 57(4)(a) of the RoP.

(N) Hon Jeremy TAM's CSA on adding Clause 9 (one-off arrangement for co-location arrangement)

39. Hon Jeremy TAM's CSA, if passed, adds a new Clause 9 specifying that the Ordinance is a one-off arrangement for the purpose of the Hong Kong Section of the XRL, and will not apply to the customs clearance, immigration control and quarantine of any other railway or any railway in the future.

40. The entire "Three-step Process", including the Co-operation Arrangement, the NPCSC's Decision and the Bill, merely deals with the co-location arrangement of the Hong Kong Section of the XRL (i.e. a specific case). It does not govern the clearance procedures of other cross-boundary transport infrastructure. The CSA expands indefinitely the scope of the Bill to pose a new limitation to the arrangement of any other railway or any railway in the future which does not concern the subject matter of the Bill. It clearly expands the scope of the Bill and is **not relevant to the subject matter** (i.e. the specific case in point). It follows that the CSA should not be movable under Rule 57(4)(a) of the RoP.

(O) Hon Dennis KWOK's CSA on adding Clause 9 (providing that the instruments in the Preamble not part of Hong Kong law)

41. Hon Dennis KWOK proposes adding a new Clause 9 to the effect that the Co-operation Arrangement and the NPCSC's Decision are specified as not part of Hong Kong law.

42. The proposed CSA will have no effect on the application of the Ordinance, which will implement the Co-operation Arrangement in accordance with the NPCSC's Decision in Hong Kong. The addition of this phrase may also cause confusion over the applicability of the instruments in Hong Kong. The President may wish to consider whether

this CSA is an **amendment which is meaningless**, and thus may not be moved under Rule 57(4)(d) of the RoP.

(P) Hon CHAN Chi-chuen's CSA on introducing penalty clauses

43. Hon CHAN Chi-chuen's CSA to the Bill intends to introduce three penalty clauses (Clauses 9 to 11) against the personnel of the Mainland Authorities Stationed at the Mainland Port Area. As for the new Clause 12 proposed under the same CSA, it attempts to set an expiry date for the Ordinance and is thus **out of scope of the Bill** with reference to the justifications set out in part (D) above.

44. The purpose of the Bill has been well specified in the Long Title, which includes, among others, making supplementary provisions for certain rights and obligations and related matters and for the interpretation of certain documents in relation to rights and obligations. This should be read with Clauses 7 and 8 as the operative provisions. The "related matters" therein should be connected with the handling of existing and future rights and obligations in respect of the Mainland Port Area as discussed in Clauses 7 and 8. It is not the Bill's objective to create new criminal offences, whether targeting at passengers, designated personnel of the HKSAR, personnel of the Mainland Authorities Stationed at the Mainland Port Area or any other potential users of the West Kowloon Station Mainland Port Area, who should be governed by the respective laws under the delineation of jurisdiction as described in the Co-operation Arrangement and reflected in the Bill. As such, the CSA on adding Clauses 9 to 11 is **out of scope of the Bill** and should not be admissible under Rule 57(4)(a) of the RoP.

(Q) Hon Tanya CHAN's CSA on amending Schedule 3 (changing the colour used to signify Shek Kong Stabling Sidings)

45. Hon Tanya CHAN's CSA merely deals with changing the colour (which is only indicative in nature and for illustration purpose) of the plan in Schedule 3 to the Bill showing the Shek Kong Stabling Sidings. This

CSA will have no effect at all, including that on the substance of the Ordinance. The President may wish to consider whether this CSA is an **amendment which is frivolous or meaningless** and thus may not be moved under Rule 57(4)(d) of the RoP.

Conclusion

46. Given the considerations above, we submit that the CSAs are inadmissible under the RoP and principles set out in previous rulings of the LegCo President as appropriate.

Yours sincerely,

(Ronald CHENG)
for Secretary for Transport and Housing

c.c. Secretary for Justice
Secretary for Security
Director of Administration

Annex A

CSAs on removal of the objects of the Bill by deleting references to the "Three-step Process"

	Member	Details
1.	Hon Fernando CHEUNG	Deleting Preamble
2.	Hon Fernando CHEUNG	Deleting the definition of "Co-operation Arrangement" in Clause 2
3.	Hon Andrew WAN	Deleting Preamble
4.	Hon Andrew WAN	Deleting Preamble[2]
5.	Hon WU Chi-wai	Deleting Preamble
6.	Hon WU Chi-wai	Deleting the definition of "Co-operation Arrangement" in Clause 2

[2] Two CSAs with the same content was proposed by the Member.

Annex B

CSAs on altering the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area

	Member	Details
1.	Hon Tanya CHAN	Amending Clause 2
2.	Hon Tanya CHAN	Amending Clause 3(1)(a)
3.	Hon Tanya CHAN	Amending Clause 3(1)(b)
4.	Hon Tanya CHAN	Adding "Part 3 Provisions relating to the exercise of powers by Mainland officers in the Mainland Port Area"
5.	Hon Tanya CHAN	Amending Clause 6(1)
6.	Hon Tanya CHAN	Adding Clauses 6A, 6B, 6C, 6D, 6E and 6F
7.	Hon Tanya CHAN	Deleting "Part 3" and substituting "Part 4"
8.	Hon Tanya CHAN	Deleting Clause 7(3)
9.	Hon Tanya CHAN	Amending Clause 8(1)
10.	Hon Tanya CHAN	Deleting Schedule 4
11.	Hon Tanya CHAN	Deleting Schedule 5
12.	Hon Fernando CHEUNG	Deleting Clause 3
13.	Hon Fernando CHEUNG	Amending Clause 3(1)
14.	Hon Fernando CHEUNG	Amending Clause 6(1)
15.	Hon Fernando CHEUNG	Deleting Clause 7(3)
16.	Hon Fernando CHEUNG	Deleting Clause 8
17.	Hon Fernando CHEUNG	Deleting Schedule 1
18.	Hon Fernando CHEUNG	Deleting Schedule 4
19.	Hon Fernando CHEUNG	Deleting Schedule 5
20.	Hon CHU Hoi-dick	Amending Clause 3(1)(a)
21.	Hon CHU Hoi-dick	Amending Clause 3(1)(b)
22.	Hon CHU Hoi-dick	Adding Clause 3(1)(c)

23.	Hon CHU Hoi-dick	Adding Clause 3(3)
24.	Hon CHU Hoi-dick	Adding Clause 6(3) "For the purposes of this Ordinance, the international treaties and bilateral agreements to which Hong Kong is a party are not affected within the Mainland Port Area."
25.	Hon Gary FAN	Amending Clause 3(1)(a)
26.	Hon Gary FAN	Amending Clause 3(1)(b)
27.	Hon Gary FAN	Deleting Clause 3(2)
28.	Hon Gary FAN	Amending Clause 6(1)
29.	Hon Gary FAN	Deleting Schedule 1
30.	Hon Dennis KWOK	Deleting Clause 6(1)(b)
31.	Hon Dennis KWOK	Deleting Clause 8(1)(b)(ii)
32.	Hon KWOK Ka-ki	Adding Clause 6(3)
33.	Hon Andrew WAN	Amending Clause 3(1)(a) "a reserved matter is a matter to which the laws of Hong Kong apply (excluding items related to the management of waste)…"
34.	Hon Andrew WAN	Amending Clause 3(1)(a) "a reserved matter is a matter to which the laws of Hong Kong apply, and over which Hong Kong exercises jurisdiction, under Article 3 or 7 of the Co-operation Arrangement, and includes the obligations and rights as stipulated in the international treaties and bilateral

		agreements which are applicable to Hong Kong; and”
35.	Hon WU Chi-wai	Amending Clause 3
36.	Hon WU Chi-wai	Deleting Schedule 1
37.	Hon Alvin YEUNG	Adding Clause 6(3)

Annex C

CSAs on commencement date of the Ordinance

	Member	Details
1.	Hon CHAN Chi-chuen	Amending Clause 1(2) "This Ordinance comes into operation on the 300th day after the day on which this Ordinance is published in the Gazette."
2.	Hon Claudia MO	Amending Clause 1(2) "This Ordinance comes into operation on the 365th day after the day on which the Bill is passed by the Legislative Council."

Annex D

CSAs on setting an expiry date for the Ordinance and / or dealing with the right to use the Mainland Port Area

	Member	Details
1.	Hon Tanya CHAN	Adding Clauses 9 and 10
2.	Hon Fernando CHEUNG	Adding Clause 9
3.	Hon CHU Hoi-dick	Amending Clause 1(2) "The Ordinance… shall expire at midnight on 31 December 2021."
4.	Hon CHU Hoi-dick	Amending Clause 1(2) "The Ordinance… shall expire 5 years after its commencement date."
5.	Hon CHU Hoi-dick	Amending Clause 1(2) "The Ordinance comes into operation on a day which the lease contract of the Mainland Port Area takes effect, and shall expire 10 years after that date."
6.	Hon Gary FAN	Amending title of Clause 1
7.	Hon Gary FAN	Amending Clause 1(2)

Annex E

CSAs on changing the status of train compartments

	Member	Details
1.	Hon Gary FAN	Amending Clause 5(1)
2.	Hon Gary FAN	Deleting Clause 5(2)

Annex F

CSAs on changing the boundary of the West Kowloon Station Mainland Port Area

	Member	Details
1.	Hon CHAN Chi-chuen	Amending Annex 1 to Plan No. 1 in Schedule 2
2.	Hon CHU Hoi-dick	Amending Plan No. 1 in Schedule 2

Annex G

CSAs on deleting the description on the HKSAR boundary not being affected

	Member	Details
1.	Hon CHAN Chi-chuen	Deleting Clause 6(2)
2.	Hon Fernando CHEUNG	Deleting Clause 6(2)

Annex H

CSAs on the Long Title

	Member	Details
1.	Hon Dennis KWOK	Deleting "Declare", and substituting "Designate"
2.	Hon Dennis KWOK	Deleting "the West Kowloon Station Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland", and substituting "persons in the West Kowloon Station Mainland Port Area are subject to Mainland law"
3.	Hon Claudia MO	In the Chinese text, deleting "若干權利" and substituting "某些權利"
4.	Hon Claudia MO	In the Chinese text, deleting "若干文件" and substituting "某些文件"

Annex I

CSAs concerning cessation of the Ordinance if any part of the Ordinance adjudicated or found by the Court in contravention of the Basic Law

	Member	Details
1.	Hon CHU Hoi-dick	Adding Clause 1(3)
2.	Hon CHU Hoi-dick	Adding Clause 6(3) "When any part of this Ordinance be adjudicated as conflicting with the Basic Law by the Court…"
3.	Hon CHU Hoi-dick	Adding Clause 9 "Where any part of this Ordinance is determined by the courts to be in contravention of the Basic Law…the law of Hong Kong shall apply in the designated area for all matters and any court, tribunal or magistrate in Hong Kong has jurisdiction to hear and determine any cause or matter, civil or criminal, in relation to any such matter as if this Ordinance had not been passed."
4.	Hon CHU Hoi-dick	Adding Clause 9 "If any part of this Ordinance is adjudicated in contravention of the Basic Law…the Mainland Port Area, as declared by this

		Ordinance, is to be regarded as an area lying within Hong Kong but lying outside the Mainland, and over which Hong Kong exercises jurisdiction in accordance with the laws of the HKSAR (including jurisdiction of the courts)."

Annex J

CSAs concerning amendments to and supplementary agreements of the Co-operation Arrangement

	Member	Details
1.	Hon Tanya CHAN	Adding Clause 9 "Implementing arrangements made under this Ordinance"
2.	Hon Tanya CHAN	Adding Clause 9 "Amendments or supplementary agreements to the Co-operation Arrangement"

立法會陳志全議員辦事處

Office Of Chan Chi Chuen, Legislative Councillor

附錄 2A
Appendix 2A
(只備中文本
Chinese version only)

香港中區立法會道 1 號

立法會

立法會主席

梁君彥議員

梁主席：

有關政府就《廣深港高鐵(一地兩檢)條例草案》修訂案的回覆及撤回部份修訂案事宜。

本人對 5 月 29 日政府就本人對《廣深港高鐵(一地兩檢)條例草案》作出的修正案的回覆不表認同，盼　閣下能尊重議員修正條例草案的權利，批准本人在立法會全體委員會階段動議全部本人提交的修訂案。

在政府的回覆中，政府表示修訂生效日期的條文與主題不相關，有關失效日期的修正案超出條例草案範圍及與主題不相關及超出條例草案範圍，刪除第 6(2)條的修正案與主題不相關，在釋義中加入內地派駐機構的釋義的修正案是難以理解，修改中庭高度限制的修正案是改變條例草案主題，有關罰則的修訂是超出條例草案範圍，因而要求主席不批准本人所有的修正案。

首先，就生效日期、失效日期、刪除第 6(2)條、修改高度限制的修正案，本人曾於 5 月 3 日向法案委員會提出上述的修正案，當時政府也曾於 5 月 7 日發出回覆(文件編號：CB(4)1038/17-18(03))，當時政府雖然反對該等修正案，但卻沒有指出上述修正案與主題不相關或改變條例草案主題。然而，在本人於 5 月 28 日提交條例草案的不足 24 小時後，政府的回覆中卻指本人上述四條條例草案與主題不相關或改變條例草案主題。本人對此深表驚訝，並對於　閣下要求本人於接獲政府回覆後的不足 24 小時內作出回覆深表遺憾。此外，政府只提供英文回覆，至今也沒有提供中文回覆，此現象顯示政府是在十份倉促的情況下回覆，而　閣下在政府只提供英文回覆的情況下規定本人須在不足 24 小時內回覆，亦對本人不公平及不合理。

就修改生效日期的修正案，本人認為沒有違反合作安排，因合作安排並沒有寫明生效日期為何時，條例草案也沒有清楚寫明此條例草案何時生效。既然合作安排沒有清楚列明生效日期，本人認為議員是有權修改生效日期的條文。

就失效日期的修正案，政府當局表示合作安排沒有列明失效日期，因此本人的修正案與合作安排不一致，因此與主題不相關。然而，在合作安排第十七條中也有提到，合作安排是由本地立法加以落實，合作安排也沒有禁止立法會訂定失效日期，合作安排更沒有說明一地兩檢安排是永遠執行，故本人認為並沒有違反合作安排。

就當局指刪除條例草案第 6(2)條的修正案與主題不相關，本人不表認同。事實上，詳題並沒有說明會在條例草案內列明特區範圍不變。基於上述原因，本人認為刪除條例草案第 6(2)條並沒有與主題不相關。

香港中區立法會道1號立法會綜合大樓1002室
Room 1002, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong

☎ 2543 9500
🖷 2543 9510

就改變中庭高度限制的修正案，本人希望　閣下留意，合作安排的平面圖中，只粗略列出中庭下候車區的水平範圍，整個合作安排也沒有列出內地口岸區的高度限制。政府當局也曾表示，在簽署合作安排及人大批准合作安排後，當局才草擬附表2至3的圖給國務院審批。由此可見，附表二至三的圖不是由國務院制訂而是由香港政府制訂的。我們不能排除立法會通過本人的修訂後，政府可以修訂這個圖則，再交由國務院審批，　閣下也不能完全排除國務院批准經立法會及政府修訂的圖則的可行性。因此本人認為修改中庭高度限制並沒有違反合作安排，亦沒有改變條例草案主題。

就在釋義中加入內地派駐機構的釋義的修正案，本人認為並非難以理解。根據過往經驗，只有條文用字不準確或有文法錯誤，才會屬於令人難以理解的條文。然而，政府沒有指本人此釋義有文法錯誤或用字不準確，故不應視為難以理解的條文。當局指有關內地派駐機構的解釋在附表一及釋義重覆出現，會令人難以理解條文，然而，本人認為只有在釋義及附表一對內地派駐機構作出不同解釋，才會令讀者困惑，但若果釋義及附表一對內地派駐機構的解釋是完全相同，是完全不會對閱讀條文的人士構成困惑。事實上，本人在釋義中對內地派駐機構的解釋與附表一的解釋是完全一樣，故不會令條文變得難以理解。

就罰則的修訂超出條例草案範圍事宜，當局指由於條例草案的詳題沒有說明會加入刑責，便指本人的修訂超出條例草案範圍。然而，現時不少涉及新政策的條例草案，例如私營醫療機構條例草案中，也沒在詳題列明會訂定罰則，但卻在條例草案中新增多個罰則，因此本人認為詳題沒有列明會訂定罰則，不代表條例草案中不能有罰則。此外，本人的修訂案也和條例草案有關，條例草案訂定了內地口岸範圍，但本人認為現時的法例及條例草案並沒有有效防止內地人員進入非內地口岸範圍的條文，而若果內地人員進入非內地口岸範圍又沒有具阻嚇力的刑罰，內地人員便會隨意進入非內地口岸範圍，此條例草案所訂定的內地口岸範圍便形同虛設，故本人就內地人員進入非內地口岸範圍訂定刑罰，是與條例草案的目的，即制訂清晰的內地口岸範圍有關。就妨礙位於內地口岸執行職務的港方人員執行職務的修正，現時只在保留事項列明港方人員在內地口岸執行職務屬於香港法律管轄範圍，但沒有任何一條香港法例可以制裁妨礙此等在內地口岸執行職務的港方人員的人士，而若果沒有相關制裁的條文，合作安排第七條(1)便是一紙空文，故本人就妨礙內地口岸執行職務的港方人員的行為增加刑事責任，是要確保附表一的合作安排第七條(1)獲得充份執行。

基於上述原因，本人認為政府的回覆是沒有理據，更是濫用　"超出條例草案範圍"及"與主題不相關"等理由。本人盼　閣下能讓本人在立法會全體委員會階段動議討論全部本人提交的修訂案，讓立法會可發揮認真審議條例草案的職能。

立法會議員陳志全　謹啟

二零一八年五月三十日

附錄 2B
Appendix 2B
(只備中文本
Chinese version only)

立法會秘書處：

《廣深港高鐵(一地兩檢)條例草案》

就有關運輸及房屋局 5 月 29 日致函立法會，就議員的修正案，包括本人的修正案表達意見，本人回應如下：

有關法案委員會在審議是項條例草案時，確實有不同意見，而本人的修正案一定程度上反映了本人及部分議員認為原草案有其不足之處。有關本人提出的有關內地管轄區只實施「出入境、海關、檢疫」相關內地法例的修正案，旨在減低草案對基本法及一國兩制的衝擊。

立法會主席需明白在香港實施內地法律過往從未出現，而本人的修正案有助減低 《廣深港高鐵(一地兩檢)條例草案》實施後的法律爭議風險。現在政府既然認為本人的修正案超出了條例草案的範圍，政府可以就本人的憂慮主動提出修改草案條文，否則立法會應該有足夠的討論空間，讓議員辯論是否支持本人的修正案。

立法會議員

胡志偉

2018 年 5 月 30 日

附錄 2C
Appendix 2C
(只備中文本
Chinese version only)

立法會秘書處：

《廣深港高鐵(一地兩檢)條例草案》

就有關運輸及房屋局 5 月 29 日致函立法會，就議員的修正案，包括本人的修正案表達意見，本人回應如下：

有關法案委員會在審議是項條例草案時，確實有不同意見，而本人的修正案一定程度上反映了本人及部分議員認為原草案有其不足之處。有關本人提出的兩項有關「國際公約及雙邊協訂」以及「廢物處理」的修正案，旨在修補條例草案的漏洞，完善有關法例。

立法會主席需明白在香港實施內地法律過往從未出現，而本人的修正案有助減低 《廣深港高鐵(一地兩檢)條例草案》的法律爭議風險。現在政府既然認為本人的修正案超出了條例草案的範圍，政府可以就本人的憂慮主動提出修改草案條文，否則立法會應該有足夠的討論空間，讓議員辯論是否支持本人的修正案。

立法會議員

尹兆堅

2018 年 5 月 30 日

AU NOK-HIN 立法會議員辦事處

附錄 2D
Appendix 2D
(只備中文本
Chinese version only)

敬啓者：

回應政府就《廣深港高鐵(一地兩檢)條例草案》修正案的意見

本人於五月二十九日得悉運輸及房屋局長的來函。運房局於來函中就議員擬就《廣深港高鐵(一地兩檢)條例草案》提出的修正案提出意見。就局方提出的理據，現回覆如下：

處理法案全體委員會修正案屬立法會內務事務

1. 根據《基本法》第73(1)條，議員有權依照法定程序制定、修改和廢除法律。《議事規則》第57條則規定議員就法案提出修正案的規定。本人認為，只要提出修正案合乎《基本法》和《議事規則》，主席應當接納修正案並予以討論。前任主席亦於2014年有關裁決中指出，「議員提出修正案的動機和修正案的優劣，並非修正案可否提出的相關因素」。

2. 事實上，立法會議員就有關公共利益事宜監察政府，乃其憲制責任。局方致函本會，就本會處理《廣深港高鐵(一地兩檢)條例草案》修正案不恰當地提述意見，毫不尊重立法行政關係，甚至違反三權分立的原則。本人敦請主席維持立法機關的中立性，按照《議事規則》第57(4)條處理議員提出的修正案。

本人提出之修正案

3. 本人就《廣深港高鐵(一地兩檢)條例草案》提出3項修正案，旨在本地法例一貫用語及通用字眼的一般草擬方式將《合作安排》文本有關「保留事項」及「非保留事項」的釋義寫成《條例草案》的具體條文（藉重寫立法而轉化協定文本），以便公眾清晰理解西九龍站內地口岸區由內地管轄的範疇(包括法律管轄)。

4. 該修訂的背景及相關討論可參見4月10日的會議上法律顧問的評論，及4月23日法案委員會會議席上所作的討論，足證該等修正案絕對屬於《條例草案》的範圍。

政府就本人之擬議修正案的意見

5. 本人察悉局方文件中第32-36段提述政府反對本人之擬議修正案的原因，概括為：

一、本人之擬議修正案將令條文無法理解(untelligible) (第34段)
二、本人之擬議修正案內容與《合作安排》第三、四、七條有所偏離(deviation)，將令人質疑「保留事項」與「非保留事項」的意思未能準確反映《合作安排》涵蓋的內容 (fails to accurately reflect what is contained in the Co-operation Arrangement) (第35段)

香港中區立法會道1號
立法會綜合大樓901室
Room 901, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong
TEL 3904 1751
EMAIL info@aunokhin.hk

6. 本人認為局方文件屬選擇性提述意見，並未如實反映《條例草案》於法案委員會階段及本條例草案之任何階段的討論。

7. 現時《條例草案》就「保留事項 / 非保留事項」的草擬方式，是將《合作安排》相關條文列載於《條例草案》的附表中。正如謝偉俊議員及本人於法案委員會於4月10日及4月23日提出的意見，本人認為該草擬方式相當複雜，令公眾難以掌握「保留事項 / 非保留事項」的涵義。翻閱《條例草案》第3條，亦無法直接從該實質條文中理解條文意義，而需同時參照《條例草案》第6條及對照《合作安排》相關條文，方能理解內地口岸區中「保留事項 / 非保留事項」的涵義及法律管轄權。正是由於該草擬方式令條文無法理解(unintelligible)，本人才提出有關修訂，以釋除公眾疑問。

8. 事實上，本人在法案委員會階段中曾多次就建議的草擬方式查詢政府意見，並考慮作出修訂，以適應本地化語境。然而，政府不論在席上回應或早前的書面回應[1]均沒有就法律本地化的論據作出正面回應，殊為可惜。

9. 另一方面，政府在文件第33段及第34僅重申現時草擬方式的立場，當中指出：

> 「33. .....我們認為藉提述(《合作安排》)第三、四及七條而界定"保留事項"及"非保留事項"是**落實《合作安排》最適切的做法**。這樣可準確反映香港和內地雙方就內地口岸區適用法律及管轄權如何劃分已經同意的安排。
>
> 34. 若區諾軒議員的修正案獲通過，因應《條例草案》旨在**落實《合作安排》**，讀者需同時參照第 3 條新增的重寫條文，以及《條例草案》附表 1 載錄的《合作安排》原有條文，以理解"保留事項"及"非保留事項"的定義.....」

10. 本人認為，儘管政府當局多次強調要「落實《合作安排》」，但此並非與《條例草案》及每條條文的主題相關。《條例草案》的目的並非落實《合作安排》的內容，而《條例草案》的詳題亦未有提述落實《合作安排》為《條例草案》的目的。故此，「落實《合作安排》」並不構成現時草擬方式的正當理據。

11. 政府於文件第35段認為，本人擬議之修正案用字與《合作安排》第七條條文有所偏離，又在第36段指涉有關修正案之語文歧義，本人認為有關論據相當薄弱，同時亦反證本人擬議之修正案關於本地法例一貫用語及通用字眼的必要性。

[1]《因應 2018 年 4 月 23 日會議席上所作討論而須採取的跟進行動一覽表》，見 https://www.legco.gov.hk/yr17-18/chinese/bc/bc102/papers/bc10220180505cb4-1046-1-c.pdf

香港中區立法會道1號
立法會綜合大樓901室
Room 901, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong
TEL 3904 1751
EMAIL info@aunokhin.hk

12. 事實上，《合作安排》第七條提述的「維修養護」及「環境管制」並非本地一般用語。若循此論據，本人擬議之修正案第3(1)(a)(iv)條(即「維修保養 (repair and maintenance)」)及第3(1)(a)(vi)條(即「環境管制的規管及監察 (environmental regulation and control)」)，正以符合在本地法例通用的字眼及術語的慣常用法，以澄清《合作安排》第七條就「維修養護」及「環境管制」意思及避免誤解歧義。

13. 本人亦曾在法案委員會階段會議席上質疑，現時的草擬方式只透過提述《合作安排》第三、四及七條界定「保留事項／非保留事項」，而當中部分字眼並非本地慣常用語。此舉即將有可能因兩地用語不同而造成歧義或誤解，引起法律爭議，惟政府當局一直未有正面回應上述意見。如今政府卻憂慮相關修訂會引起歧義，實在並非負責任的做法。本人認為，主席不應接納有關意見。

修正案與法案主題及有關條文的主題有關

14. 根據前任主席就《2013年香港藝術發展局(修訂)條例草案》修正案的裁決[2]：

> 「13. 在考慮某項修正案是否與條例草案的主題有關時，我可考慮修正案的效力會否改變條例草案的主題(或基本原則)，或只是修訂條例草案的細節。就此方面，法律顧問亦請我參考《議事規則》第56(1)條，該條訂明獲付委某法案的任何全體委員會或專責委員會，只可討論該法案的細節，不得討論其原則。因此，**倘若修正案是與條例草案的細節有關，該等修正案應可提出**，在條例草案的委員會審議階段討論.....」

15. 本人就《條例草案》第3條的擬議修正案，並非修訂條例草案的主題(或基本原則)。與政府立場相反，本人認為，有關修訂旨在完善《條例草案》條文細節，使「保留事項／非保留事項」的定義更為清晰，絕非瑣碎無聊。相反，政府一方屢次強調需要「落實《合作安排》」，此並非與法案主題相關。故此，主席應接納於本人擬議之3項修正案。

就全體委員會審議階段辯論時間安排的意見

16. 本人注意到，主席近年多次大幅縮減政府法案的全體委員會審議階段辯論時間。惟觀乎《2017年撥款條例草案》及《2018年撥款條例草案》的辯論，有不少議員均沒有足夠時間就提出的修正案作解釋和辯論。本人認為，主席就全體委員會審議階段的辯論時間安排，亦是草案審議能否進行有意義辯論的重要因素。誠如

[2] 《立法會主席就何秀蘭議員擬對《2013年香港藝術發展局(修訂)條例草案》提出的全體委員會審議階段修正案的裁決》第13段，https://www.legco.gov.hk/yr12-13/chinese/pre_rul/pre0708-ref-c.pdf

香港中區立法會道1號
立法會綜合大樓901室
Room 901, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong
TEL 3904 1751
EMAIL info@aunokhin.hk

區諾軒
AU NOK-HIN 立法會議員辦事處

主席多次在公開場合指出，本《條例草案》極具爭議性，議員意見分歧，因此主席更應接納議員提出的修正案，以期全體委員會審議階段中能認真審議，使議員妥善行使及履行《基本法》所訂的職權。

17. 更重要的是，在法案委員會階段，儘管多位議員甚至本會法律顧問曾多次要求政府回應，亦不得要領。本人原先提出的修正案，於法案委員會只有五分鐘時間討論，期間政府一方只重複讀出書面回應的立法，說明《條例草案》根本未有依據《內務守則》第21(i)(iii)條規定，得到充分商議。因此，立法會議員提出有關之75項修正案可讓議員進行有意義的辯論，並非瑣屑無聊。主席應接納本人擬議之3項修正案，並應按《條例草案》的三部分編排三節足夠而合理的辯論時間。

結論

18. 謹請主席考慮上述意見，批准本人提出的3項修正案。

此致
立法會秘書 暨 立法會秘書處秘書長
陳維安先生

立法會議員
區諾軒 謹啟

二零一八年五月三十日

香港中區立法會道1號
立法會綜合大樓901室
Room 901, Legislative Council Complex,
1 Legislative Council Road, Central, Hong Kong
TEL 3904 1751
EMAIL info@aunokhin.hk

附錄 2E
Appendix 2E
(只備英文本
English version only)

公民黨 CIVIC PARTY 公道自在民心 The Civic Way, the Fairer Way

31 May 2018

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Judy TING)

Dear Ms. Ting,

Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill

Reply to Administration's view on the amendments by Hon. Tanya Chan, Hon. Dennis Kwok Wing-hang, Hon. Alvin Yeung, Hon. Jeremy Tam Man-ho, Hon. Kwok Ka-ki

This letter sets out the response of Hon. Tanya Chan, Hon. Dennis Kwok Wing-hang, Hon. Alvin Yeung, Hon. Jeremy Tam Man-ho, and Hon. Kwok Ka-ki to the Administration's views on the proposed Committee State amendments ("CSA") to the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("Co-location") Bill ("Bill") in the letter from the Secretary for Transport and Housing to you dated 29 May 2018.

Subject matter of the Bill

2. The Administration's main argument regarding the admissibility of all 75 CSAs proposed by Members of the Legislative Council ("LegCo"), including 24 of those proposed by us, the five Members of Civic Party, lies in para. 5. The Administration attempts to argue that any proposed amendment to the Bill must be according to and consistent with the Co-operation Arrangement, and the NPCSC's Decision cited in the Preamble of the Bill, and the "Three-step Process". Particularly, the Administration attempts to argue that any proposed amendment must

www.civicparty.hk
地址：香港北角渣華道4-6號海景大廈B座2樓202室
Address : Unit 202, 2/F, Block B, Sea View Estate, 4-6 Watson Road, North Point, Hong Kong
電話 Tel : 2865 7111 傳真 Fax : 2865 2771 電郵 Email : contact@civicparty.hk

adhere to the Co-operation Arrangement as it is referred to in the Explanatory Memorandum.

3. The question, then, is whether the subject matter of the bill to implement *the* co-location arrangement set out in the Co-operation Arrangement, the NPCSC's Decision and the "Three-step Process" or *a* co-location arrangement with reference to the Co-operation Arrangement. It is in our firm view that the latter is the proper subject matter of the bill.

4. In substance, the Administration's argument is that it has dictated the terms of the Co-operation Arrangement by signing it with the Mainland in November 2017 without LegCo's prior approval, there will be no room for any meaningful amendment to be raised by LegCo members on the substance of the Bill at all. If the Administration's view on the subject matter of the bill – strictly implementing the Co-operation Arrangement - were to hold, this would impose undue restriction on the LegCo's powers and functions to amend laws under Article 73(1) of the Basic Law.

5. First and foremost, the Administration cannot restrict the constitutional powers and functions of LegCo to raise committee stage amendments or bind LegCo by unilaterally signing an agreement with any party, including the Mainland authorities. Simply puts it, a mere private contract, even though made by a government body, cannot bind statutory law-making power. This "take it or leave it" argument is a misunderstanding of the constitutional powers and functions of the Administration and LegCo under the Basic Law. It also unconstitutionally depletes the autonomy of the legislature to make and amend laws.

6. The NPCSC's Decision does not constitute binding authority on LegCo's powers to make or amend laws either, as it does not form part of the law, in particular, the Basic Law or any Hong Kong law, and is contrary to provisions of the Basic Law (Statement of the Hong Kong Bar Association dated 28 December 2017 on the Decision of the NPCSC of 27 December 2017). LegCo members' powers to raise CSAs are not bound and thus cannot be limited by the "Three-step Process", essentially the implementation of the Co-operation Arrangement.

7. Further, it is trite law and established principle that the Preamble and Explanatory Memorandum of a bill / an ordinance do not form part of the law and are only extrinsic materials which can be referred when provisions are being interpreted. This contrasts the long title of the bill, which is unequivocally part of the law after enactment. Although it is past practice by the LegCo President to take into account the long title, Explanatory Memorandum and provisions of the Bill, the relevant LegCo Brief and other relevant factors in determining whether an amendment is relevant to the subject matter of a bill, the long title must be given the most weight as it forms part of the law whereas the Preamble and Explanatory Memorandum are to be used as non-binding references only. This is also demonstrated by the Administration's deliberate choice to include certain contents in these sections during the bill drafting process knowing that such sections do not have binding effect, as confirmed by the Department of Justice's "Drafting Legislation in Hong Kong: A Guide to styles & practices" ("drafting guide").

8. As noted in drafting guide, "(a) preamble is appropriate if an explanation of certain facts is necessary to provide a context in which to understand the legislation."[1] As such, there is no reason to believe that the Preamble of the Bill binds the subject matter of the bill in any way. Rather, the Preamble simply provides the factual background of the bill, which once again supports our view that the proper subject matter of the bill is to establish *a* co-location arrangement with reference to the Co-operation Arrangement, rather than *the* co-location arrangement set out in the Co-operation Arrangement.

9. The Administration's contention that para. 2 of the Explanatory Memorandum supports its position does not hold either. As noted in the drafting guide, "[t]he Explanatory Memorandum is not part of the proposed legislative text and will not be published with the Ordinance after it is enacted."[2] The Administration's point has no standing in the argument on the subject matter of the Bill, since once the Bill is passed, the Explanatory Memorandum will not be part of the Ordinance, thus any notion of intent stated in the Memorandum will

---

[1] Hong Kong., Department of Justice., Law Drafting Division. (2012). *Drafting legislation in Hong Kong: A guide to styles and practices* (pp. 9). Hong Kong: Law Drafting Division. Dept. of Justice.
[2] *Drafting legislation in Hong Kong: A guide to styles and practices* (pp. 10).

not apply and can not be referenced in understanding the Ordinance. Only the Bill itself should be relevant in the current discussion.

10. In contrast, the Long Title of the Bill sets out the purposes of the Bill in general terms. Within the Long Title of the Bill, there is no mention of the Co-operation Arrangement. Instead, from reading the Long Title alone, the purpose of the Bill must be understood as implementing *a* co-location arrangement, as the entirety of the Long Title concerns the establishment of a Mainland Port Area ("MPA"), and there is no reason to believe that the concept of a MPA must be tied with the Co-operation Arrangement. Indeed, it is possible to conceive of a MPA without reference to the entire Co-operation Arrangement. The concept of the MPA is self-explanatory, and can be entail a variety of scenarios not limited to the case set out in the Co-operation Arrangement. A MPA can be so named even if within the area, Mainland officials could only exercise powers related to customs, immigration control and quarantine. Thus, in the Long Title, there is no evidence to support the Administration's view.

11. It is also worthy to note that Article 16 of the Co-operation Arrangement provides that the Co-operation Arrangement could be amended for any other reason, and matters that are not fully addressed in the Co-operation Arrangement may be provided by means of supplementary agreement(s). The Co-operation Arrangement itself allows flexibility and amendments in implementing the co-location arrangement at West Kowloon Station.

12. Therefore, it is sufficiently clear from the above that the Administration misconstrues the constitutional powers of LegCo to raise amendments and the subject matter of the bill as, to implement *the* co-location arrangement set out in the Co-operation Arrangement, rather than *a* co-location arrangement with reference to the Co-operation Arrangement, which is the proper subject matter of the Bill. The correct approach for the President is therefore to permit CSAs as long as they are relevant to the subject matter of the bill of implementing *a* co-location arrangement.

13. We further set out our responses to the Administration's arguments to individual CSAs below. All of them comply to Rule 57(4) of LegCo Rules of Procedures - are relevant to the subject matter of the bill, do

not have the effect of altering the subject matter of the bill, and are neither frivolous nor meaningless.

Set of CSAs to the Bill by Hon. Tanya CHAN

14. The set of CSAs, which includes no.1-11 in Annex B, and no.1 in Annex J, will be addressed together. No.1 in Annex J will also be addressed separately later.

15. The CSAs seek to augment the delineation of jurisdiction and the applicable laws within the MPA only to the necessary customs, immigration and quarantine ("CIQ") laws by introducing the definition for immigration control in clause 2, amending clause 3 on the definition of reserved and non-reserved matters, amending clause 6 to remove the deeming provision and adding additional clauses to detail the situations for dealing with arrests and limitations on the powers of mainland officials in the MPA, and removing irrelevant clauses and schedules in Part 3 of the Bill. With reference to the subject matter of implementing *a* co-location arrangement, these CSAs are clearly relevant and should be admitted.

16. Arguments in paras 2-13 restated. This set of CSAs is relevant to the subject matter of the bill if it is agreed that the purpose of the Bill is to implement *a* co-location arrangement with reference to the Co-operation Arrangement.

17. This set of CSA still falls within the subject matter of the Bill, even if the Administration's argument on Co-operation Arrangement prevails, when the CSAs are viewed together with adding Clause 9, "Implementing arrangements made under this Ordinance". The entire set of CSAs, including the changes to the delineation of jurisdiction and applicable laws could be implemented through changing the definition of reserved and non-reserved matters in the CSA on clause 3. Again, Article 16 of the Co-operation Arrangement provides that the Co-operation Arrangement could be amended for any other reason, and matters that are not fully addressed in the Co-operation Arrangement may be provided by means of supplementary agreement(s). Article 16 of the Co-operation Arrangement does not expressly prohibit the cause of an amendment to the Co-operation Arrangement being an amendment passed to the current Bill. Likewise,

within the NPCSC's Decision, the only relevant reference is that the HKSAR should enact legislation to ensure the implementation of the Co-operation Arrangement. As mentioned above, the proposed CSAs are in line with the Co-operation Arrangement, and neither does the NPCSC's Decision expressly prohibit amendments to the current Bill.

18. Regarding the legal concerns mentioned by the Administration (LC Paper No. CB(4)1038/17-18(03)), it is not up to LegCo or the HKSAR to decide for the Mainland which laws are essential for enforcing the Mainland clearance procedures. If this set of amendment is passed, the NPCSC would have to determine the laws for the sole purpose of CIQ in accordance with this Ordinance (e.g. Exit and Entry Administration Law of the People's Republic of China). For issues not primarily governed by Mainland CIQ laws, then Hong Kong law and jurisdiction should apply. The issue of overlapping jurisdiction can simply be resolved by Hong Kong Courts having the power of final adjudication, as is the case under the Basic Law. In fact, one may even argue that the establishment of the HKSAR itself causes an issue of overlapping jurisdiction, which is remedied by legislation within the Mainland under the Chinese constitution and the promulgation of the Basic Law itself. There is no reason that the issue of overlapping jurisdiction within the MPA cannot be resolved through sufficient and coherent legislation in both Hong Kong and the Mainland legal systems. Similar arrangements are seen overseas, such as the juxtaposed controls in the United Kingdom, France and Belgium.

19. As for the security concerns mentioned in the same paper, the Express Rail Link ("XRL"), once in operation, is merely one of the many ways in which mainlanders, including offenders of serious offences or terrorists from the Mainland, could enter into Hong Kong. Should these criminals intend to enter Hong Kong, there are other existing land, sea and air routes which they could attempt to cross the boundary. While it is possible to argue that that the co-location arrangement is different from other routes since once the individual is able to get on the train into the MPA, they would have essentially entered Hong Kong, it is important to note that given the robust security regime for Mainland high-speed railways, including the fact that passengers must purchase tickets with their actual identity, it is doubtful whether in reality the XRL would become a major security concern for Hong Kong even if Hong Kong laws apply in the MPA.

Moreover, the Administration has yet to provide any analysis on the security risk that the XRL poses should Hong Kong laws apply in the MPA, including for example, estimates on offenders of serious crime attempting to enter Hong Kong through the XRL. As long as the Administration has yet to convince that the XRL is a security risk should Hong Kong laws apply in the MPA, then there is no sufficient justification that Mainland laws have to apply in the MPA for a co-location arrangement to function.

20. In addition, the amendments set out a reasonably sufficient method of allowing or the Mainland to exercise their powers on by differentiating between XRL passengers bound for the Mainland and XRL passengers bound for Hong Kong. Passengers bound for the Mainland, meaning they have already legally entered into Hong Kong, as well as passengers who are permanent residents, will be processed under Hong Kong law if they are detained in the MPA under the proposed clauses 6B and 6C. On the contrary, under the proposed clause 6D, passengers bound for Hong Kong, if detained in the MPA for CIQ reasons, could be transported back into the Mainland with the approval of the Security of Security. Of course, this does not preclude the possibility of detained individuals applying for habeas corpus or other judicial challenges, but those are core principles under common law, and should not be sacrificed for mere expediency or marginal security benefits.

Hon. Tanya Chan's CSA adding Clauses 9 and 10

21. Arguments in paras 2-11 restated. This CSA is relevant to the subject matter of the bill if it is agreed that the purpose of the Bill is to implement *a* co-location arrangement with reference to the Co-operation Arrangement.

22. The Administration has mentioned at the Bills Committee meeting, Section 14 of Cap. 591 which contains the provision for the expiry of the Shenzhen Bay Port Hong Kong Area ("SBPHKA") Bill is not a "sunset clause" that strictly limits the duration of Cap. 591. Therefore, the proposed clause 10, which is modeled after the aforementioned section, is not a sunset clause either and thus would have minimal impact on the operation of the bill itself.

23. As to the proposed clause 9 which seeks to determine the use of the MPA by the Mainland in the form of a licence, Article 2 of the Co-operation Arrangement merely states that, acquisition of the right to use the areas of the Mainland Port Area will be provided for in a contract to be entered into by the two sides. There is no prescribed form of the contract, e.g. by lease or licence, where the Administration also confirmed at bills committee meetings that they have yet determined the details of the arrangement. LegCo members are free to prescribe the form of letting / use by passing a CSA to the Bill.

Hon. Dennis Kwok's CSA to delete Clause 6(1)(b)

24. Arguments in paras 2-12 restated. This CSA is relevant to the subject matter of the bill.

25. Further, the proposed amendment does not have a bearing on the applicability of Hong Kong laws and Mainland laws in the MPA per se as non-reserved matters of which Mainland laws are applicable continue to apply.

26. It is not appropriate for the Mainland courts to determine legal proceedings or issues arisen in the MPA, which still lies in the region of Hong Kong SAR and thus should still be adjudicated by Hong Kong courts (Article 80 of the Basic Law), notwithstanding the enactment of the bill.

27. It is established that Hong Kong courts can apply foreign laws, including Mainland laws, in appropriate cases, such as legal questions related to private international law / conflicts of law commonly appeared in court. It is only reasonable that LegCo can consider a co-location arrangement proposal which does not delineate jurisdictions of Hong Kong courts even though Mainland laws are applied in the MPA.

Hon. Dennis Kwok's CSA to delete Clause 8(1)(b)(ii)

28. This clause is unrelated to the Co-operation Arrangement and so as the CSA.

29. This CSA has no bearing on the applicability of Hong Kong laws and Mainland laws in the MPA as it does not change the applicability of laws and jurisdictions under the bill. The proposed clause 8(1)(b)(ii) seems to restrict the LegCo's power to enact a statutory authority with features prescribed by the proposed Clause 8(1)(a) on its face. Yet, the Administration has confirmed that the proposed clause 8(1)(b)(ii) is redundant and meaningless as LegCo always reserves the autonomy to amend the laws once enacted. The CSA merely serves to remedy this ambiguity.

Hon. KWOK Ka-ki's CSA to add Clause 6(3)

30. Arguments in paras 2-12 restated. This CSA is relevant to the subject matter of the bill.

31. Further, this CSA is necessary to clarify the applicability of Hong Kong law in the MPA instead of changing or altering the scope and nature of such. It does not affect the applicability of Hong Kong laws and Mainland laws in the MPA. The Hong Kong Bill of Rights Ordinance (Cap. 383) is an entrenchment of provisions in the International Covenant on Civil and Public Rights (ICCPR), which is recognized by the Central People's Government that provisions of the ICCPR as applied to Hong Kong, should remain in force in the territory after 1997.

32. It is widely recognized international law principles that provisions of the ICCPR continue to apply to the land / territory and persons of that particular piece of land / territory once ratified. There is no denunciation mechanism for ICCPR and therefore provisions of ICCPR *must* continue to apply to the MPA (which still lies in the Hong Kong territory despite not being treated as a Hong Kong jurisdiction) notwithstanding the enactment of the bill. Therefore, this CSA does not alter any substance of the bill at all but serves the purpose of clarification instead.

Hon. Alvin YEUNG's CSA to add Clause 6(3)

33. The blue bill has not dealt with the possible scenario of a dispute or question arisen on the governing jurisdiction of a certain matter, such as whether legal questions related to labour strikes by designated

personnel (e.g. MTR staff members) under Article 7(1) of Co-operation Arrangement are to be determined by Hong Kong or Mainland jurisdiction.

34. The proposed CSA plugs the loophole of jurisdictional dispute by clearly giving Hong Kong courts the powers of final determination.

Hon. Dennis Kwok's CSA to delete "Declare" and substitute "Designate"

35. The proposed CSA is necessary as the bill essentially indicates and marks a certain area in the West Kowloon of Hong Kong – the MPA - as an area lying outside Hong Kong with concrete boundaries. According to Merriam-Website Dictionary, "designate" means "to indicate and set apart for a specific purpose... / to point out the location of" while "declare" merely means "to make known formally..." It is only accurate to use the word "designate" instead of "declare" to describe the purpose of the bill.

Hon. Dennis Kwok's CSA to delete "the West Kowloon Station Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland", and substitute "persons in the West Kowloon Station Mainland Port Area are subject to Mainland law"

36. The proposed CSA is necessary as it is clearly unconstitutional to cede part of Hong Kong territory or treat it as an area outside Hong Kong under the Basic Law and Order of the State Council of the People's Republic of China No. 221. There is also no available mechanism to amend any law or legal instrument, including the Basic Law, to facilitate this.

37. Although this proposed CSA may not sit well with Article 18 of the Basic Law and risks being unconstitutional, it is necessary to remedy the dire consequence of the current drafting of the bill, which naturally means ceding part of Hong Kong indefinitely.

Hon. Dennis Kwok's CSA to add Clause 9 (providing that the instruments in the Preamble not part of Hong Kong law)

38. This CSA effectively clarifies the legal status of the Co-operation Arrangement and the NPCSC's Decision, especially when relevant

constitutional and legal questions are to be determined by the court, such as determining the empowering legal instruments of the bill. The CSA absolutely cannot fall within the scope of "amendment which is meaningless".

39. Further, the Administration faced difficulty in illustrating the legal status of the Co-operation Arrangement and the NPCSC's Decision under Hong Kong laws or their applicability to Hong Kong laws in the bills committee meetings. It is clear that the NPCSC's Decision is not law (para 6 restated) and is wholly different from a legislative interpretation made by the NPCSC (which may form part of the Basic Law). The Co-operation Arrangement is also merely an agreement signed by the Hong Kong Administration and the Mainland Government. This CSA serves the necessary purpose of clarifying their legal statuses to the courts and the public.

Hon. Tanya Chan's CSA on adding Clause 9 "Amendments or supplementary agreements to the Co-operation Arrangement"

40. As the Administration has noted in its reply para.28, "HKSAR will introduce amendment bill to the LegCo in the light of actual circumstances should there be any amendment to or supplementary agreement of the Co-operation Arrangement such that it may be implemented in accordance with laws in the HKSAR." The proposed amendment seeks to make this an obligation for the HKSAR regardless of the scope of the amendment or supplementary agreement. This proposed CSA allows LegCo to retain its role in overseeing the implementation of the Co-operation Agreement and the co-location arrangement, and should be ruled as within the scope of the Bill.

41. More importantly, the argument that the process of amending the Co-operation Arrangement and the signing of supplementary agreements would be "unilaterally governed by a piece of local legislation" is also a flawed understanding of this proposed CSA. Essentially, the proposed CSA would require the HKSAR and Mainland to go through the "Three-step Process" each time an amendment or a supplementary agreement on the Co-operation Arrangement is made. This is closely mirrors the intent and procedure of the Bill itself, and it would be unreasonable to consider this CSA inadmissible.

Hon. Alvin Yeung's CSA on adding Clause 5A (application of the Ordinance)

42. The Administration confirmed in the Bills Committee meeting that the blue bill only applies to the MPA. It should be up to LegCo to determine to scope of application of the Bill.

Hon. Jeremy Tam's CSA on adding Clause 9 (one-off arrangement for co-location arrangement)

43. The argument that the CSA expands indefinitely the scope of the Bill is the opposite of the intention of this CSA, which is to limit the scope of this Bill by limiting its use as context or as a reference material for establishing co-location arrangements for other railway or any railway in the in the future. This CSA clarifies the Bill's intent in a form consistent with the intent of the Bill, which is to establish a MPA in West Kowloon Station.

Hon. Tanya Chan's CSA on amending Schedule 3 (changing the colour used to signify Shek Kong Stabling Sidings)

44. This is not a frivolous or meaningless amendment to the Bill. As mentioned in the discussion in the Bills Committee, Hon. Tanya Chan has raised the question on why the same colour is used to denote the MPA in Schedule 2 and Shek Kong Stabling Sidings, which is not part of the MPA, in Schedule 3. To avoid confusion, the colour of the plan in Schedule 3 should be different from the colour used in Schedule 2 for the MPA.

Hon. Tanya Chan's CSA on adding Clause 9 "Implementing arrangements made under this Ordinance"

45. As mentioned in the comments made in para.14, this proposed CSA is not only in accordance with the Co-operation Arrangement, but also provides a mechanism to implement the majority of the 75 CSAs once being passed. When the other proposed CSAs are paired with this CSA, it will be clear that the CSAs are in accordance with the Co-operation Arrangement, particularly Article 16. Relevance to the subject matter of the Bill can also be appropriately construed regardless of whether the subject matter of the Bill is interpreted as to

implement *the* co-location arrangement set out in the Co-operation Arrangement, or *a* co-location arrangement with reference to the Co-operation Arrangement. This fact should be considered in the President's decision on whether to admit various CSAs.

CSAs raised by LegCo Members of Civic Party

46. As illustrated above, all of our proposed CSAs have been carefully considered and drafted. They are relevant to the subject matter of the Bill – with an attempt to remedy the glaring unconstitutionality posed by the Administration's proposed bill, plug loopholes in the Bill, clarify certain areas and provide protection to Hong Kong people. The CSAs are in compliance with the Basic Law and Rule 57(4) of LegCo Rules of Procedure. There is no reason for the President to rule out any of the CSAs.

Yours Sincerely,

Hon. Tanya Chan **Hon. Dennis Kwok** **Hon. Alvin Yeung**

Hon. Jeremy Tam **Hon. Kwok Ka-ki**

敬啟者

關於：回應運房局助理秘書長鄭朗峰 5 月 29 日一地兩檢條例草案修正案信件

謹回覆如下

（一）有關立法會以及立法會主席的權力基礎

（1）立法會議員提出修正案的權力基礎

立法會議員提出修正案的權力基礎主要源自《基本法》以及《議事規則》。

一如政府當局於立法會 CB(4)865/17-18(01)號文件正確指出：

「按照《基本法》第 73(1)條，香港特區立法會可根據 《基本法》規定並依照法定程序，對《條例草案》的條文提出修正案。」

立法會議員根據《基本法》第 73(1)條賦予立法機關的權力，可以自由提出符合《議事規則》的修正案，不但行政機關無權干涉，立法會主席亦無權不批准議員就《條例草案》提出符合《基本法》及《議事規則》的修正案。

（2）立法會主席就議員提出條例草案修正案作出裁決的權力和空間

立法會主席行使權力的部份來源無疑來自《基本法》、《議事規則》以及法庭於有關案例中作出的裁決和詮釋。然而，本人必須指出，立法會主席作出裁決的權力和空間亦受立法機關的行事方式所限制。

《香港特別行政區立法會歷史、規則及行事方式參考手冊》中第 1.34 段所指出：

「一如其他普通法司法管轄區（如英國、加拿大、澳洲及 紐西蘭）的行事方式，香港立法機關亦有一套由多年以來立法會主席所作出的裁決。這些裁決是關於議員就規程問題而提出的問題，或提出議案或法案的要求，或對擬動議的議案及法案提出修正案的要求，或請政府答覆的問題。這些裁決成為一套先例，是立法會主席據以作為指引，就《議事規則》規則的應用及先前慣例作出決定和詮釋。」

立法會主席就一事項作出裁決並成為一套先例時，往往應用一系列原則和對《議事規則》的詮釋，該一系列原則及詮釋的應用對往後立法會主席具有約束力。本人認為，就歷屆立法會主席已作出裁決且成為先例的事宜，立法會主席在沒有重

大且特殊的理由下，不得作出違背該等先例所應用的原則和詮釋的裁決，以確保立法機關行事的一致性。

立法會主席於履行主席職責時，只能依據《基本法》、《議事規則》作出裁決，有關裁決亦必須符合有關先例所應用的原則和標準。立法會主席在決定是否越權否決議員提出的合法修正案時，應謹記以上要點，以維持立法機關的尊嚴。

（二）有關條例草案

（3）條例草案並不符合基本法，立法會無權審議或通過

《基本法》第十一條清楚訂明：

「香港特別行政區立法機關制定的任何法律，均不得同《基本法》相抵觸。」

本《條例草案》經多月審議及討論，政府有關當局均未能就本《條例草案》的憲制基礎提供有力說明。因此，本人確信本《條例草案》至少違反《基本法》第 18 條、第 19 條以及第 22 條，立法會主席無權批准政府把《條例草案》提交至本會進行二讀、三讀及所有有關程序。

為履行立法會主席的憲制職責、捍衛立法機關的尊嚴及合法性，本人認為立法會主席從政府當局向本會提交《條例草案》進行首讀時已經應該把《條例草案》根據基本法第 11 條退回予政府當局。

為免立法機關違憲審議甚至通過不符合《基本法》的《條例草案》，本人認為立法會主席應立即把《條例草案》退回予政府當局。

退一步言，即使立法會主席及有關法律顧問並不能完全確定本《條例草案》違憲，亦應至少向外至少尋求兩組法律意見以供本會參考，以確保本會不會違反《基本法》第 11 條，通過違憲的《條例草案》。此舉動並非罕有，過往本會亦多番就有爭議性的議案或法案外尋求法律意見，包括去年由建制派議員提出的《修改議事規則》議案。

如立法會主席及本會法律事務部一意孤行，拒絕尋求獨立法律意見，請以書面正式向本會議員詳細解釋。

（4）條例草案修正案整體出發點

如上，本人、多名議員及社會公眾，一直已多次指出，整份《廣深港高鐵（一地兩檢）條例草案》（下稱「條例草案」），乃違反《基本法》、違反多項條例、傷害一國兩制下的基本法治。

本人提出的修正案，及下面的回應亦立足於此；即，所有修正案皆是以盡量減少對法治的傷害為出發點，而非以最貼近政府一地兩檢的安排的政策原意為出發點。

本人認為本人透過修正案表達此一立場，乃《基本法》賦予立法會議員的權責之內，且並無違反任何《議事規則》。

（三）有關運房局鄭朗峰先生信件的附件 B 的第 20 至第 24 項修正案

（5） 就此 5 項修正案，及其他議員提出的相類的修正案，立法會主席須判斷的問題為：

・問題（a）該等修正案，是否與主題（subject matter）相關，及，主題的定義為何，例如是否只包括短題及詳題的具體條文；

・問題（b）該等修正案，是否與本條例草案的相關文件《內地與香港特別行政區關於 在廣深港高鐵西九龍站設立口岸 實施"一地兩檢"的合作安排》（下稱《合作安排》）有所衝突；

・問題（c）即使該等修正案被理解為與《合作安排》有所衝突，本會議員是否有權提出該等修正案。

有關問題（a）

（6）《條例草案》的主題

條例草案的主題由條例的短題及詳題所界定，其他有關說明，包括政府當局所引述的《條例草案》「摘要說明」，性質上只是旨在說明《條例草案》的背景及內容，以供本會議員在審議《條例草案》時作參考之用，並不界定條例草案的主題。

根據《條例草案》文本，短題及詳題分別為：

「《廣深港高鐵（ 一地兩檢 ）條例草案》」

以及

「本條例草案旨在宣布某範圍為西九龍站內地口岸區；訂定廣深港高速鐵路香港段上營運中的客運列車的車廂，視為在西九龍站內地口岸區範圍之內；訂定就某些目的而言，西九龍站內地口岸區的範圍，視為處於香港以外並處於內地以內；並就若干權利及義務及相關事宜，以及就解釋關乎權利及義務的若干文件，訂定補充條文。」

因此，由運房局助理秘書長鄭朗峰先生署名的，政府當局在 5 月 29 日就一地兩檢條例草案修正案之信件中，第 2 至第 4 段的內容，跟《議事規則》中所指的「條例草案的主題」，並沒有任何關系。

換言之，任何有關此《條例草案》的修正案，只要是跟上述的短題及詳題有關，當即符合《議事規則》第 57 條對修正案所作出的規定。

（7）條例草案的所有部分，特別是述明條例草案主題的文字，即短題及詳題，皆無述明或指出或暗示，此條例之擬定的目的，為實施《合作安排》。

因此，條例草案的任何部分，只要與主題及詳題有關，絕對可包括《合作安排》沒有指明的內容。

（8）夾附於條例草案正文後的《摘要說明》，其第 2 段的確有如此描述：「本條例草案旨在落實《合作安排》。」，作為「弁言」的解釋。然而，《摘要說明》乃政府擬定的補充說明，對條例草案並無實質約束力。

條例草案的主題，只應包括就條例草案的短題及詳題的正文，作直接解讀。

（9）事實上，我們必須注意到，「弁言」的正文中，並無述明或指出或暗示，條例草案旨在落實《合作安排》。

政府的《摘要說明》純粹屬於其中一種對「弁言」的詮釋。

（10）即便政府認為「弁言」帶有「條例草案旨在落實《合作安排》」的含意，然而，「弁言」的性質及功能，旨在說明條例草案的背景，而絕非約束「詳題」之範圍。

同上，條例草案的主題，只應包括就條例草案的短題及詳題的正文，作直接解讀。

（11）《議事規則》第 57(4)(a) 條說明，「修正案必須與法案的主題及有關條文的主題有關」，而絕非可直接引申為「修正案必須與《合作安排》有關」。

（12）運房局助理秘書長鄭朗峰先生的來函中，第 8 段提到：

「正如上文第2至5段所述，《條例草案》的主題為在「三步走」程序下依據全國人大常委會的《決定》落實《合作安排》。」

此一立論是完全錯誤的，是經過詮釋的僭建，背離短題及詳題的具體正文。短題及詳題並無隻字述明或指出或暗示，條例草案的主題為實施《合作安排》。

而弁言及其詮釋（即《摘要說明》），或一份立法會文件，只能反映政府對條例草案的主旨的理解，但卻不能等同約束修正案的規範依據。

把「弁言」、《摘要說明》或立法會文件，用來直接等同短題及詳題正文，是毫無法理及邏輯基礎的。

（13）因此，立法會主席考慮修正案是否合乎《議事規則》第 57(4)(a) 條時，須考慮的，並不是修正案有否超出《合作安排》的範圍，或《合作安排》對條例草案的約束，而是條例草案的短題及詳題正文中，對條文及相關的修正案的原則性約束。

如上，條例草案的短題為：

「廣深港高鐵（一地兩檢）條例草案」

條例草案的詳題為：

「本條例草案旨在宣布某範圍為西九龍站內地口岸區；訂定廣深港高速鐵路香港段上營運中的客運列車的車廂，視為在西九龍站內地口岸區範圍之內；訂定就**某些目的**而言，西九龍站內地口岸區的範圍，視為處於香港以外並處於內地以內；並就若干權利及義務及相關事宜，以及就解釋關乎權利及義務的若干文件，訂定補充條文。」

本人上述提出的 5 項修正案（即運房局鄭朗峰先生信件的附件 B 的第 20 至第 24 項修正案），正是辯論詳題中「某些目的」的定義，與詳題正文明顯相關。

因此，該等修正案合乎《議事規則》第 57(4)(a)的規定。

有關問題（b）

（14）同時，《合作安排》沒有述明任何有關國際公約及雙邊協定效力的說明，即沒有說明其是否屬於或不屬於保留事項，或是否受條例影響，或如何受條例影響（silent on the matter）。

故此，本人上述提出的 5 項修正案（即運房局鄭朗峰先生信件的附件 B 的第 20 至第 24 項修正案），指定國際公約及雙邊協定為保留事項，或指定其於內地口岸區有效，或指定其於內地口岸區不受本條例影響，與《合作安排》並無任何衝突。

立法會主席理應接納及准許提交立法會。

有關問題（c）

（15）基本法第 73(1)條述明：

「香港特別行政區立法會行使下列職權：
（一）根據本法規定並依照法定程序制定、修改和廢除法律；」

即便政府認為本人之修正案，與《合作安排》有潛在衝突，這種判斷也完全無損《基本法》第 73(1)條賦予立法會的權責。

事實上，《基本法》第三節（第 66 條第 79 條）並無述及對立法會就政府法案而提出的修正案的規範。即，唯一對修正案的規範，只來自從《基本法》第 75 條得到權力的立法會《議事規則》。

即，唯一可能凌駕本會議員按《基本法》第73(1)條提出修正案的情況，就是該等修正案違反了上述《議事規則》第57(4)(a) 或其他《議事規則》的規定。

上文已充分說明了，為何本人之修正案，並沒有違反《議事規則》第57(4)(a)。

簡言之，《基本法》及目前所有法例，均絕對沒有賦予政府權力，以《合作安排》框限及凌駕本會立法權。

本會議員提出修正案權利，純粹限於該等修正案須符合《議事規則》。

一旦任何符合《議事規則》，但與《合作安排》有任何衝突或潛在衝突的修正案在本會通過，政府須重議、修訂或補充《合作安排》。

（四）有關運房局鄭朗峰先生信件的附件D的第3至第5項修正案

（16）若生效日期及／或失效日期與本條例草案視為「無關」（irrelevant），並屬於立法審議的範圍以外（out of scope），則條例草案第1(2) 條亦應刪去。因條例草案第1(2) 條正是限制生效日期及／或失效日期。

事實上，香港每項法例都必然需要述明或暗示條例之生效日期及／或失效日期；因此該等事宜絕對屬於本條例草案審議範圍及立法會權力範圍以內。

一直以來，多項法例都有辯論生效日期與日落條款。

可參考的裁決例子為2014年7月8日曾鈺成主席的信件〈立法會主席就張宇人議員、郭榮鏗議員、梁美芬議員、陳志全議員及何秀蘭議員 擬對《2014年婚姻(修訂)條例草案》提出的全體委員會審議階段修正案所作的裁決〉。

當中第49段提述到以「就一項條例草案加入日落條款」作為修正案內容的正當性：

「49. 我同意法律顧問的意見，並無一項推定假設任何條例的條文必須無限期維持有效，及條文施行在時間上不能受到限制。我認為擬議的日落條款在條例草案的範圍之內，可以動議。」

本人必須強調，若生效日期與失效日期的修正案不被准許提交立法會大會，將形成與過去多項法案審議衝突的裁決先例，議會權力受到不必要的削減，遺害甚深。立法會主席不應作出如此冒險及激進的決定。

（五）有關運房局鄭朗峰先生信件的附件F的第2項修正案

（17）本人就修正附表2平面圖編號1的修正案的內容為，把B2層及B3層的「內地辦公備勤區」的部分，由內地口岸區，修訂為非內地口岸區。

立法會主席應否接納此修正案，可沿兩個方向考慮：

・方向（a）

——內地口岸區範圍修訂，是否與《合作安排》有所牴觸？

——即便被政府視為有所牴觸，此一牴觸會否影響到立法會議員提出修正案的權利？

・方向（b）

——內地口岸區範圍修訂，是辯論條例草案的細節，抑或條例草案的原則？

——若為條例草案細節，是否可以提出修正案？

——若政府無足夠資料證明或推論，內地口岸區範圍修訂屬於條例草案的原則部分，是否可成為不接納修正案的足夠理由？

有關方向（a）

（18）在《合作安排》的附件中，即第10頁的圖則中，有此一說明：

「本附件所顯示的內地口岸區範圍及其他資料只供說明之用，相關具體情況最終根據全國人大常務委員會的有關決定確定」。

根據此句，《合作安排》附件的圖則只有參考性質，對簽訂合作安排的雙方，沒有約束性質。

即，本人提出的修正案，沒有牴觸《合作安排》的內容；因《合作安排》附件的圖則，不屬《合作安排》具約束性的正式內容。

（19）運房局鄭朗峰先生信件第19段的鋪陳及分析，與《合作安排》附件對簽訂合作安排的雙方，有否約束性質一事，完全不相關。

（20）進而論之：即使本人的修正案被理解為與《合作安排》有所衝突，本人是否有權提出該項修正案？上文已仔細推論。承上文，《合作安排》不屬於條例草案主題，及，《基本法》及目前所有法例，均絕對沒有賦予政府權力，以《合作安排》框限及凌駕本會立法權。

本會議員提出修正案權利，純粹限於該等修正案須符合《議事規則》。

即使修正案與《合作安排》有任何衝突或潛在衝突，只要符合《議事規則》，立法會主席便應接納。

何況，本人之修正案，與《合作安排》並無任何衝突，因《合作安排》附件圖則，只屬參考性質。

有關方向（b）

（21）本人認為，本人修正案對內地口岸區範圍之修訂，完全不會改變條題草案中的主題，只屬條例草案的細節，不論通過與否，對一地兩檢安排影響不大。

假若把「內地辦公備勤區」的部分，由內地口岸區，修訂為非內地口岸區，目前沒有任何證據顯示，會實質影響《合作安排》的執行。

《合作安排》亦完全沒有說明，為何中國政府需要設置內地辦公備勤區，及，為何中國政府設置的內地辦公備勤區，須在法律上為內地口岸區。

（22）即，不設置「內地辦公備勤區」，亦可能完全不影響一地兩檢安排（本會完全沒有資料判斷）。

（23）及，即使設置「內地辦公備勤區」，而該等區域設定為非內地口岸區，亦可能完全不影響一地兩檢安排（本會完全沒有資料判斷）。

（24）因此，運房局鄭朗峰先生信件第20段提到：

『若擬議修正案獲得通過，西九龍站「內地口岸區」的具體範圍將會遭單方面改變。這將無可避免地改變了《條例草案》旨在落實《合作安排》的要素，因而改變《條例草案》主題，亦違反已說明「內地口岸區」涵蓋範圍的《合作安排》和全國人大常委會的《決定》。』

此一分析毫無事實基礎。本會根本沒有資料判斷，內地口岸區的範圍改變，有否改變落實《合作安排》的要素，或有否改變《條例草案》主題。

立法會主席亦無此資料，因此亦沒有理據，褫奪本人就此提出修正案的權利。

（25）議員提出的修正案，有權討論條例草案的細節，而不可討論條例草案的原

則。過去立法會主席裁決，亦曾就此介定準則。

先例可參見，2013年7月8日曾鈺成主席發表的〈立法會主席就何秀蘭議員擬對《2013年香港藝術發展局(修訂)條例草案》 提出的全體委員會審議階段修正案的裁決〉。

當中第13段說明：

立法機關法律顧問給我的意見是，在考慮某項修正案是否與條例草案的主題有關時，我可考慮修正案的效力會否改變條例草案的主題(或基本原則)，或只是修訂條例草案的細節。就此方面，法律顧問亦請我參考《議事規則》第56(1)條，該條訂明獲付委某法案的任何全體委員會或專責委員會，只可討論該法案的細節，不得討論其原則。因此，倘若修正案是與條例草案的細節有關，該等修正案應可提出，在條例草案的委員會審議階段討論。

當中第15段說明：

根據《議事規則》的規定，並經考慮各項相關事宜，包括條例草案的詳題、摘要說明及條文、立法會參考資料摘要和以往的裁決，我認為何秀蘭議員的擬議修正案與條例草案就該條例第3(5)條提出的修訂有關。透過賦予"個人"一詞的涵義，並使有關"個人"的資格準則成為法定準則，該等修正案旨在就條例草案所載的建議提供實施細節。該等修正案不會剝奪或根本地改變行政長官根據該條例新訂第3(5)條指明個人或團體(或指明兩者)的權力。因此，何秀蘭議員的修正案應與條例草案的主題有關。我注意到該等修正案如獲通過，或會有限制或縮窄行政長官在指明個人方面的酌情決定權的效力。依我之見，這是關乎修正案的優劣，我在決定該等修正案可否提出時，不應予以考慮。

按此裁決，關注於條例草案細節修訂的修正案，應可提出。

（26）綜合上述，若按本人理解，此一內地口岸區的範圍，屬於條例草案的細節，與條例草案的原則無關。立法會主席應予接納。

即使按照政府理解，內地口岸區的範圍，可能與條例草案的原則有關——他們亦無相關資料，足以說明修訂該等範圍，足以影響內地口岸區運作。

證明本人修正案內容屬於討論條例草案原則或主題的舉證責任，完全在於政府，而他們自始至終沒有提供相關資料。立法會主席並無理據拒絕本人提出此一修正案。

其他方向

（27）有關此一修正案，本人必須慎重說明，在法案委員會階段及本條例草案之任何階段，即使議員多次要求參觀相關區域，亦不得要領。

即，立法會根本沒有開始及完成就該等區域應否作為內地口岸區之審議工作，本會是否有權力，通過未經審議的法例，實屬極大疑問。若貿然通過把該等區域設為內地口岸區的平面圖編號1，必將帶來法律風險。

本人就此提出修正案，實屬合理之至。

（六）有關運房局鄭朗峰先生信件的附件I的第1至第4項修正案
（即《條例》任何部分被法院裁定或認為違反《基本法》以致《條例》停止生效的修正案）

（28）根據基本法第19條，香港特別行政區享有獨立的司法權和終審權。

《條例草案》是否違反《基本法》，最終決定權在香港特區終審法院。根據中國憲法及內地法制，全國人大常委會固然有權就不同問題作出決定，包括作出《決定》。

然而，在沒有根據基本法第158條就《基本法》第18條、第19條及第22條作出解釋的情況下，全國人大常委會就此《條例草案》是否合乎《基本法》，並沒有憲制上的角色，因此《決定》對本地法院及本會均沒有約束力。

《決定》認為《條例草案》及《合作安排》沒有違反《基本法》，僅屬全國人大常委會的「意見」，並不影響此《條例草案》有可能違憲的可能。

一如上文所言，本人提出修正案的最大目的是為了減少本會通過一條違憲草案對《基本法》、法治及一國兩制的傷害，政府認為《條例草案》並不可能會違憲，政府當局當然有權提出此「意見」，跟全國人大常委會有權提出相關「意見」一樣，並不代表可以以此為理據，限制本人有符合《基本法》及《議事規則》的情況下提出有關修正案，以確保法院一旦裁定本《條例草案》違憲後，本《條例草案》不會繼續生效。

此外，此修正案旨在訂明「內地口岸區」在本條例草案的任何一部份被法院裁定為違憲後的情況，跟詳題的第一部份（宣布某範圍為西九龍站內地口岸區）、第二部份（訂定廣深港高速鐵路香港段上營運中的客運列車的車廂，視為在西九龍站內地口岸區範圍之內）跟第三部份（訂定就某些目的而言，西九龍站內地口岸區的範圍，視為處於香港以外並處於內地以內）均有直接關系，絕對符合《議事規則》第57(4)(a)條及《基本法》第73(1)條。

（七）結論

（29）立法會主席應以維護一國兩制，保障《基本法》賦予議會之權力及責任，為最大原則，去考慮所有修正案。本人認為，本人所有修正案，皆應予以准許，提交立法會。

本人再三及必須指出的是：立法會有無可爭議的法定權力，否決本條例草案，即，立法會有權單方面否決《合作安排》的實施，單方面否決《決定》。

《合作安排》的實施並非必然，立法會更絕無責任落實《合作安排》的實施。《合作安排》實施與否，或如何實施，絕對不應是考慮本條例草案審議程序的前提。

感謝。

此致
梁君彥議員
運房局助理秘書長鄭朗峰先生

立法會議員朱凱廸謹啟

2018年5月31日

香港中區立法會道1號立法會綜合大樓903室
ROOM 903, LEGISLATIVE COUNCIL COMPLEX, 1 LEGISLATIVE COUNCIL ROAD, CENTRAL, HONG KONG
2809 2102 2811 2210 INFO@CHUHOIDICK.HK

Re: Administration's views on Members' amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (Chinese version)
Leung, Christine
to:
Sharon WS LAM
01/06/2018 11:42

附錄 2G
Appendix 2G
(只備英文本
English version only)

Dear Sharon,

Thank you for your email. Our office has no comment regards the administration's views on the Members' amendment(s) to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill.
If you have any enquiries, please contact Mr Kwok Wing-Kin directly through [redacted]. Thank you.

Best regards,
Christine

Christine LEUNG
Assistant
Dr Fernando Cheung Chiu-hung LegCo Member's Office
Tel: 2613 9200
Fax: 2799 7290

Appendix 3

24 admissible amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill

(A) 2 amendments on commencement date of the enacted Ordinance (i.e. the Bill upon enactment as Ordinance)

Member	Gist of amendments	Reason for admission
Hon CHAN Chi-chuen (1 amendment)	To amend clause 1(2) to change the commencement date to the 300th day after the day on which the enacted Ordinance is published in the Gazette.	These amendments only seek to amend the details of the Bill and are thus within its scope.
Hon Claudia MO (1 amendment)	To amend clause 1(2) to change the commencement date to the 365th day after the day on which the Bill is passed by the Legislative Council.	

(B) 9 amendments on expiry date of the enacted Ordinance

Member	Gist of amendments	Reason for admission
Hon CHU Hoi-dick (6 amendments)	To amend clause 1(2) to stipulate that the enacted Ordinance will expire at midnight on 31 December 2021.	There is no presumption in law that provisions of an Ordinance must remain in force indefinitely and their application could not be restricted in time. The provisions proposed by Mr CHU relate to the details of the Bill and do not have the effect of altering the subject matter of the Bill.
	To amend clause 1(2) to stipulate that the enacted Ordinance will expire 5 years after its commencement date.	
	To add new subclause (3) to clause 1 to provide that if any part of the enacted Ordinance is adjudicated to be in contravention of the Basic Law ("BL"), the enacted Ordinance ceases to be valid immediately; and the Mainland Port Area ("MPA") is to be regarded as an area lying within Hong Kong but lying outside the Mainland, and over which Hong Kong exercises jurisdiction in accordance with the laws of the Hong Kong Special Administrative Region ("HKSAR") (including jurisdiction of the courts).	

Member	Gist of amendments	Reason for admission
	To add new subclause (3) to clause 6 to provide that when any part of the enacted Ordinance is adjudicated as conflicting with BL by the Court, the MPA is to be regarded as an area lying within Hong Kong but lying outside the Mainland, and the enacted Ordinance ceases to be valid immediately.	Same reason as above.
	To add new clause 9 to provide that if any part of the enacted Ordinance is adjudicated to be in contravention of BL, the enacted Ordinance ceases to be valid immediately; and the MPA is to be regarded as an area lying within Hong Kong but lying outside the Mainland, and over which Hong Kong exercises jurisdiction in accordance with the laws of HKSAR (including jurisdiction of the courts).	
	To add new clause 9 to provide that where any part of the enacted Ordinance is determined by the courts to be in contravention of BL, the enacted Ordinance ceases to have force immediately; and the MPA ceases to be regarded as an area lying outside Hong Kong but lying within the Mainland for any purpose, but shall be regarded as an area lying within Hong Kong.	
Hon Gary FAN (2 amendments)	To amend clause 1(2) to provide that the enacted Ordinance will expire on the day of the termination of operation of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"); and to make corresponding changes to the heading of clause 1.	
Dr Hon Fernando CHEUNG (1 amendment)	To add new clause 9 to set an expiry date of midnight on 30 June 2023 for the enacted Ordinance.	

(C) 1 amendment on introduction of offence provisions and expiry date of the enacted Ordinance

Member	Gist of amendments	Reason for admission
Hon CHAN Chi-chuen (1 amendment)	To add new Part 4 (new clauses 9 to 12) to: (a) introduce offence provisions relating to the personnel of the Mainland Authorities Stationed at the MPA; and (b) provide that (i) the enacted Ordinance expires at midnight on 30 June 2047; and (ii) if the MPA and the Hong Kong Section of XRL have not been in operation for 365 days consecutively at any time before midnight on 30 June 2047, the enacted Ordinance expires at midnight on the 365th consecutive day on which the MPA and the Hong Kong Section of XRL have not been in operation.	According to Article 6 of the Co-operation Arrangement, Mainland Authorities stationed at the MPA will perform duties and functions in the MPA in accordance with the laws of the Mainland and they shall not enter any area outside the MPA to enforce the law. Under Article 7 of the Co-operation Arrangement, the performance of duties and functions in the MPA by designated Hong Kong personnel holding valid permits is a reserved matter to which the laws of Hong Kong would apply. The criminal offences and penalties proposed by Mr CHAN relate to the enforcement of the above provisions of the Co-operation Arrangement which the Bill seeks to implement. The amendment only seeks to add details to the Bill and is thus within the scope of the Bill. The expiry provision is admissible for the same reason given for Hon CHU Hoi-dick's amendments above.

(D) 1 amendment on application of the Hong Kong Bill of Rights Ordinance (Cap. 383) to the MPA

Member	Gist of amendments	Reason for admission
Hon KWOK Ka-ki (1 amendment)	To add new subclause (3) to clause 6 to provide that the Hong Kong Bill of Rights Ordinance (Cap. 383) remains in force in the MPA.	In the decision made by NPCSC to approve and endorse the Co-operation Arrangement ("Decision"), it is clearly stated that the establishment of the MPA at the West Kowloon Station does not undermine the rights and freedoms enjoyed by the residents of HKSAR in accordance with law. Mr KWOK's amendment seeks to reflect the above principle stated in the Decision and is therefore consistent with the Co-operation Arrangement and relevant to the subject matter of the Bill.

(E) 1 amendment specifying that the Decision and the Co-operation Arrangement do not form part of BL or any laws of Hong Kong

Member	Gist of amendments	Reason for admission
Hon Dennis KWOK (1 amendment)	To add new Part 4 (new clause 9) to the effect that the Co-operation Arrangement and NPCSC's Decision referred to in the Preamble of the enacted Ordinance do not form part and parcel of BL or any laws of Hong Kong.	Mr KWOK's amendment is of a similar nature to a "for the avoidance of doubt" provision.

(F) 1 amendment specifying that the enacted Ordinance is a one-off arrangement

Member	Gist of amendments	Reason for admission
Hon Jeremy TAM (1 amendment)	To add new Part 4 (new clause 9) to stipulate that the enacted Ordinance is a one-off arrangement for the purposes of the Hong Kong Section of XRL and West Kowloon Station, and will not apply to the customs clearance, immigration control and quarantine of any other railway or any railway in the future.	Mr TAM's amendment is of a similar nature to a "for the avoidance of doubt" provision.

(G) 7 amendments on amending or deleting the savings provision in clause 7 (and the related Schedules 4 and 5) and the provision on interpretation of future documents in relation to rights and obligations in clause 8

Member	Gist of amendments	Reason for admission
Dr Hon Fernando CHEUNG (2 amendments)	To delete clause 7(3) which makes provision for determining the geographical scope for specified rights or obligations in the context of the MPA being regarded as an area lying outside Hong Kong but lying within the Mainland.	Dr CHEUNG's amendments only seek to amend the details of the Bill and are thus within its scope.
	To delete clause 8 which contains provisions for the interpretation of certain future documents in relation to rights and obligations (other than a right acquired or accrued, or an obligation incurred, before the commencement date) if the document contains a reference to Hong Kong or part of Hong Kong to describe the geographical scope for the right or obligation.	
Hon Tanya CHAN (4 amendments)	To delete clause 7(3) which makes provision for determining the geographical scope for specified rights or obligations in the context of the MPA being regarded as an area lying outside Hong Kong but lying within the Mainland.	Ms CHAN's amendments only seek to amend the details of the Bill and are thus within its scope.
	To delete clause 8(1)(b) which relates to interpretation of certain future documents in relation to rights and obligations.	
	To consequentially delete Schedule 4 which specifies orders for clause 7(3)(a).	
	To consequentially delete Schedule 5 which specifies pre-existing Court order for clause 7(3)(c).	
Hon Dennis KWOK (1 amendment)	To delete clause 8(1)(b)(ii) which relates to interpretation of certain future documents in relation to rights and obligations.	Mr KWOK's amendment only seeks to amend the details of the Bill and is thus within its scope.

(H) 2 amendments on other matters including changing the colour used to signify Shek Kong Stabling Sidings and adding a definition

Member	Gist of amendments	Reason for admission
Hon Tanya CHAN (1 amendment)	To amend Schedule 3 to change the colour used to signify Shek Kong Stabling Sidings.	According to Ms CHAN's explanation, her amendment seeks to draw a distinction between the area delineated to be the MPA to which Mainland laws applies over non-reserved matters and the area delineated to be Shek Kong Stabling Sidings.
Hon CHAN Chi-chuen (1 amendment)	To add the definition of "Mainland Authorities Stationed at the Mainland Port Area" to clause 2.	Mr CHAN's amendment only seeks to amend the details of the Bill, as the definition proposed to be added is derived from Article 6 of the Co-operation Arrangement and reflects the provision in the Note to Schedule 1 to the Bill.

51 inadmissible amendments to the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill

(A) 39 inadmissible amendments which are outside the scope of the Bill, including being fundamentally inconsistent with or deviating from the Co-operation Arrangement

Member	Gist of amendments	President's ruling
Hon Tanya CHAN (10 amendments)	To amend clause 2 to add the definitions of "immigration control", "immigration officer", "Mainland authorities" and "Mainland officer".	The application of laws in and the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) over the MPA are crucial for implementing the co-location arrangement under the Co-operation Arrangement approved by the Standing Committee of the National People's Congress ("NPCSC"). The Co-operation Arrangement stipulates the delineation of matters over which HKSAR would exercise jurisdiction (i.e. "reserved matter" defined in the Bill) and matters over which the Mainland would exercise jurisdiction (i.e. "non-reserved matter" defined in the Bill). Ms CHAN's amendments to clauses 2, 3 and 6 are inconsistent with the Co-operation Arrangement as they would have the effect of narrowing the scope of applications of the laws of the Mainland and the Mainland's jurisdiction over non-reserved matters in the MPA. Ms CHAN's amendment to add new Part 5 (new clause 9) is inconsistent with the object of the Bill which is to implement the Co-operation Arrangement. The co-location arrangement provided for in the Bill must be implemented by way of local legislation instead of amending the Co-operation Arrangement. Her amendment is also inconsistent with Article 16 of the Co-operation Arrangement, which provides that if the
	To amend clause 3(1) to revise the definitions of "reserved matter" and "non-reserved matter" to the effect that only matters related to immigration control of the Mainland would constitute "non-reserved matter".	
	To amend clause 6(1) and add new clauses 6A to 6F to provide for certain powers exercisable by Mainland officers in the MPA; and to make corresponding technical amendments.	
	To add new Part 5 (new clause 9) to stipulate that the Government of the Hong Kong Special Administrative Region ("HKSAR") must implement any arrangement made under the enacted Ordinance by amending the Co-operation Arrangement, or by a supplementary agreement to be signed with the Mainland.	
	To add new Part 4 (new clauses 9 and 10) to stipulate that: (a) the HKSAR Government must grant a licence to the Mainland to specify the conditions of use of the MPA by the Mainland, and reserves the power to revoke the licence; (b) the licence expires no later than 30 June 2047, and the enacted Ordinance expires on the same day as the expiry date of the licence; and (c) if the licence is terminated earlier or renewed, the Secretary for Transport and Housing is to publicize the date on which the licence is to expire by notice in the Gazette; and the enacted Ordinance expires at midnight on the published date.	

Member	Gist of amendments	President's ruling
	To add new Part 4 (new clause 9) to stipulate that any changes to the Co-operation Arrangement, including amendments and supplementary agreements, must be approved by the Legislative Council through an amendment to the enacted Ordinance before taking effect.	Co-operation Arrangement needs to be amended, the Mainland and HKSAR Government must, after consultation and reaching consensus, sign a written document and submit it to the Central People's Government for approval. Ms CHAN's amendment to add new Part 4 (new clauses 9 and 10) is irrelevant to the subject matter of the Bill which is to implement the Co-operation Arrangement. Article 2 of the Co-operation Arrangement provides, among others, that the acquisition of the right to use the areas of the MPA, the duration and the fees etc. will be provided for in a contract to be entered into by HKSAR and the Mainland. As such, the land use arrangement of the MPA which the amendment seeks to introduce is not a matter intended to be covered by the Bill and is therefore outside its scope. The proposed expiry provisions, which are tied to those on the land use arrangement of the MPA, are therefore also inadmissible. Ms CHAN's amendment to add new Part 4 (new clause 9) falls outside the scope of the Bill as it seeks to provide for a mechanism for effecting changes to the Co-operation Arrangement, which is inconsistent with Article 16 of the Co-operation Arrangement (which provides that if the Co-operation Arrangement needs to be amended, HKSAR and the Mainland must, after consultation and reaching consensus, sign a written document and submit it to the Central People's Government for approval).

Member	Gist of amendments	President's ruling
Dr Hon Fernando CHEUNG (5 amendments)	To delete clause 3 on "reserved matter" and "non-reserved matter".	Dr CHEUNG's amendments to clauses 3 and 6(1) are inadmissible for the same reasons as stated in my ruling on Ms CHAN's amendments to clauses 3 and 6 above. It should be noted that clause 6(2) seeks to spell out clearly that the boundary of the administrative division of HKSAR would not be affected by the establishment of the MPA. This is an important aspect on which the co-location arrangement is based pursuant to the Co-operation Arrangement and NPCSC's Decision. It can be seen from NPCSC's Decision that NPCSC decided to approve the Co-operation Arrangement on the basis, among others, that the co-location arrangement is consistent with the principle of "one country, two systems" and would not alter the boundary of the administrative division of HKSAR. Dr CHEUNG's proposed deletion of clause 6(2) would have the effect of removing the basis on which NPCSC decided to approve the Co-operation Arrangement. This is clearly not the object of the Bill as evidenced in its long title. As such, Dr CHEUNG's amendment is inconsistent with the object of the Bill which is to implement the co-location arrangement pursuant to the Co-operation Arrangement and NPCSC's Decision. Dr CHEUNG's proposed deletion of the definition of "Co-operation Arrangement" is inconsistent with the object of the Bill which seeks to implement the Co-operation Arrangement approved by NPCSC under the Three-step Process. Removing the definition of
	To amend the definition of "reserved matter" in clause 3(1)(a) to the effect that all the laws of Hong Kong, except those related to customs clearance, immigration control and quarantine ("CIQ"), are included as "reserved matter".	
	To amend clause 6(1) to the effect that the Mainland would exercise jurisdiction (including jurisdiction of the courts) over the MPA in accordance with the laws of the Mainland only in relation to CIQ.	
	To delete clause 6(2) which provides that clause 6(1) does not affect the boundary of the administrative division of HKSAR promulgated by the Order of the State Council of the People's Republic of China No. 221 dated 1 July 1997.	
	To delete the definition of "Co-operation Arrangement" from clause 2.	

Member	Gist of amendments	President's ruling
		"Co-operation Arrangement" would be tantamount to removing the object and relevant context of the Bill, as well as undermining the foundation for implementing the co-location arrangement at WKS. The amendment would clearly have the effect of altering the subject matter of the Bill and is therefore inadmissible.
Hon AU Nok-hin (1 amendment)	To amend clause 3 to the effect that the texts of Articles 3 and 7 of the Co-operation Arrangement would be incorporated into clause 3 for the purpose of providing for the meanings of "reserved matter" and "non-reserved matter".	Mr AU's amendment seeks to provide for the definitions of "reserved matter" and "non-reserved matter" in clause 3 by reproducing the contents of Articles 3 and 7 of the Co-operation Arrangement set out in Schedule 1 to the Bill. However, the contents of his proposed definitions only largely resemble but are not entirely identical to Articles 3 and 7 of the Co-operation Arrangement. For instance, the wording of "Save as stated above, these personnel should comply with the laws of the Mainland inside the MPA and be subject to regulation by the Mainland Authorities Stationed at the Mainland Port Area" cannot be found in his proposed definitions. If Mr AU's amendment is passed, the discrepancy between the proposed definitions in his amendment and the relevant text of Articles 3 and 7 of the Co-operation Arrangement would result in confusion as to which version should prevail. As his amendment would introduce matters that are inconsistent with the Co-operation Arrangement, it falls outside the scope of the Bill.

Member	Gist of amendments	President's ruling
Hon Gary FAN (7 amendments)	To amend the definition of "reserved matter" in clause 3(1)(a) by deleting "under Article 3 or 7 of the Co-operation Arrangement" therefrom.	Mr FAN's amendments are outside the scope of the Bill as they are inconsistent with the Co-operation Arrangement. Some of them would have the effect of fundamentally altering the intended effect of the clauses which are to implement the Co-operation Arrangement. For instance, his amendments to clause 5 would have the effect of subjecting train compartments of passenger trains on the Hong Kong Section of XRL to the jurisdiction of HKSAR under all circumstances. This is clearly inconsistent with the long title of the Bill which provides that, among others, a train compartment of a passenger train in operation on the Hong Kong Section of XRL is to be regarded as part of the MPA.
	To amend the definition of "non-reserved matter" in clause 3(1)(b) to the effect that only the laws of the Mainland relating to immigration control may be implemented in the MPA.	
	To delete clause 3(2) which contains reference to Articles 3, 4 and 7 of the Co-operation Arrangement.	
	To amend clause 5(1) to the effect that a train compartment of a passenger train in operation on the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") is to be regarded as "within Hong Kong" instead of "part of the WKS Mainland Port Area".	
	To delete clause 5(2) which sets out the circumstances in which a passenger train is not in operation.	
	To amend clause 6(1) to the effect that except for reserved matters, the MPA is to be regarded as "an area lying within Hong Kong" instead of "an area lying outside Hong Kong but lying within the Mainland.	
	To consequentially delete Schedule 1 which sets out Articles 3, 4 and 7 of the Co-operation Arrangement.	
Hon Andrew WAN (2 amendments)	To amend clause 3(1)(a) to the effect that items related to the management of waste would be excluded from the definition of "reserved matter".	Mr WAN's amendments are inadmissible for the same reasons as stated in my ruling on Ms CHAN's amendments to clause 3 above.
	To amend the definition of "reserved matter" in clause 3(1)(a) to include the obligations and rights as stipulated in the international treaties and bilateral agreements which are applicable to Hong Kong.	

Member	Gist of amendments	President's ruling
Hon WU Chi-wai (3 amendments)	To amend the definition of "reserved matter" in clause 3(1)(a) to the effect that only the laws of the Mainland relating to CIQ may be implemented in the MPA.	Mr WU's amendments are inadmissible for the same reasons as stated in my ruling on Ms CHAN's amendments to clause 3 above. Mr WU's proposed deletion of the definition of "Co-operation Arrangement" is inadmissible for the same reasons as stated in my ruling on Dr CHEUNG's amendment to clause 2 above.
	To amend the definition of "non-reserved matter" in clause 3(1)(b) in that it only refers to a matter to which the laws of the Mainland relating to CIQ apply, and over which the Mainland exercises jurisdiction.	
	To consequentially delete Schedule 1 which sets out Articles 3, 4 and 7 of the Co-operation Arrangement.	
	To delete the definition of "Co-operation Arrangement" from clause 2.	
Hon CHU Hoi-dick (6 amendments)	To amend clause 3(1) or add new subclause (3) to clause 3 to provide that a matter concerning the international treaties or bilateral agreements to which Hong Kong is a party is also a reserved matter.	Mr CHU's amendments to clauses 3 and 6 are inadmissible for the same reasons as stated in my ruling on Ms CHAN's amendments to clauses 3 and 6 above. Pursuant to NPCSC's Decision to approve the Co-operation Arrangement, the specific area of the MPA is to be approved by the State Council. According to the Administration, the proposed area of the MPA (identical to that detailed in Schedule 2 to the Bill) was submitted by the HKSAR Government to the State Council and it was subsequently approved. Mr CHU's amendment to Schedule 2 is inconsistent with the specific area of the MPA approved by the State Council pursuant to NPCSC's Decision, and therefore falls outside the scope of the Bill.
	To add new subclause (3) to clause 6 to provide that the international treaties and bilateral agreements to which Hong Kong is a party are not affected within the MPA.	
	To amend Plan No. 1 in Schedule 2 to change the boundary of the MPA.	
Hon Dennis KWOK (1 amendment)	To amend clause 6(1)(b) by deleting "including jurisdiction of the courts" from the delineation of jurisdiction over the MPA.	Mr KWOK's amendment falls outside the scope of the Bill as it is inconsistent with Article 4 of the Co-operation Arrangement which provides that except for reserved matters, the Mainland would exercise jurisdiction (including jurisdiction of the courts) over the MPA.

Member	Gist of amendments	President's ruling
Hon CHAN Chi-chuen (2 amendments)	To delete clause 6(2) which provides that clause 6(1) concerning laws and jurisdiction in the MPA does not affect the boundary of the administrative division of HKSAR promulgated by the Order of the State Council of the People's Republic of China No. 221 dated 1 July 1997. To amend Section A-A of Annex 1 to Plan No. 1 in Schedule 2 to the effect that the vertical boundary of the MPA on B3 level would be lowered.	Mr CHAN's amendment to clause 6(2) is inadmissible for the same reason as stated in my ruling on Dr CHEUNG's amendment to clause 6(2) above. Mr CHAN's amendment to Schedule 2 is inadmissible for the same reason as stated in my ruling on Mr CHU's amendment to Schedule 2 above.
Hon Alvin YEUNG (2 amendments)	To add new subclause (3) to clause 6 to provide that if there is a dispute regarding the exercise of jurisdiction over a matter in the MPA, the decision of the Courts on the matter is final. To add new clause 5A stipulating that except in the MPA, the enacted Ordinance does not apply to any other area within Hong Kong.	Mr YEUNG's amendment to clause 6 is inconsistent with Article 15 of the Co-operation Agreement which provides for a dispute resolution mechanism, i.e. the Mainland and HKSAR agree to resolve the disputes arising in the course of the implementation of the Co-operation Arrangement through consultations, in the spirit of mutual co-operation, mutual support as well as mutual understanding. As described in its long title, the Bill seeks to, among others, provide that a train compartment in operation on the Hong Kong Section of XRL is to be regarded as part of the MPA (clause 5). The Bill also provides for the case when the train compartment is not in operation, it is regarded as an area within Hong Kong. Necessarily, the Bill needs to apply to not just the MPA, but also the rest of Hong Kong. Mr YEUNG's amendment (new clause 5A) which seeks to disapply the enacted Ordinance to all areas within Hong Kong except the MPA is thus inconsistent with the object of the Bill. Hence the amendment is outside the scope of the Bill and inadmissible.

(B) 12 amendments which are inconsistent with the Rules of Procedure ("RoP")

4 amendments which are inconsistent with RoP 58(9)		
Member	**Gist of amendments**	**President's ruling**
Hon Dennis KWOK (2 amendments)	To replace "Declare" with "Designate" in the long title. To replace "the West Kowloon Station Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland" with "persons in the West Kowloon Station Mainland Port Area are subject to Mainland law" in the long title.	Mr KWOK's amendments are inconsistent with RoP 58(9) which governs amendments to the long title of a bill. A clear principle has been established in past rulings that the long title of a bill is not subject to amendment at Committee stage of the bill unless an amendment made to the provisions in the bill makes it necessary to do so or for some other technical reasons such as improving the language or clarifying a certain point which is within the scope of the bill.[1] An amendment to the long title of a bill is in essence a consequential amendment. An amendment to the long title to enlarge the scope of a bill should not be admissible unless it is made necessary by other amendments already made to the bill. Mr KWOK's amendments are inadmissible as they are not necessitated by other amendments and are not made for technical reasons as stated in the past rulings mentioned above.
Hon Claudia MO (2 amendments)	To replace "若干權利" with "某些權利" in the Chinese text of the long title. To replace "若干文件" with "某些文件" in the Chinese text of the long title.	In view of the above-mentioned principle applicable to amendments to the long title of a bill, I do not see any justification for admitting Ms MO's amendments.

[1] For example, please see paragraph 39 of the President's ruling on the Committee stage amendments proposed by Hon CHAN Kam-lam and Hon WONG Yuk-man to the Copyright (Amendment) Bill 2014, which was issued on 7 December 2015.

4 amendments which are inconsistent with RoP 58(8)		
Member	**Gist of amendments**	**President's ruling**
Dr Hon Fernando CHEUNG (1 amendment)	To delete the Preamble which sets out the background to the Bill including the Co-operation Arrangement and the NPCSC's Decision.	These amendments are not made necessary by other amendments to the Bill and are therefore inconsistent with RoP 58(8), which provides that no amendment to the preamble of a bill should be considered which is not made necessary by a previous amendment to the bill.
Hon Andrew WAN (2 amendments)		
Hon WU Chi-wai (1 amendment)		
4 amendments which infringe RoP 57(4)(c) or RoP 57(4)(e)		
Member	**Gist of amendments**	**President's ruling**
Hon CHU Hoi-dick (1 amendment)	To repeal clause 1(2) and substitute with "This Ordinance comes into operation on a day which the **lease** contract of the Mainland Port Area takes effect, and shall expire 10 years after that date."(emphasis added)	Mr CHU's amendment is inadmissible under RoP 57(4)(e) in view of the discrepancy between the term "lease" in the English text and "租貸" in the Chinese text reproduced below: "本條例自西九龍站內地口岸區**租貸**合同的生效日期起實施，於**租貸**合同的生效日期起十年後失效。"(emphasis added)
Dr Hon Fernando CHEUNG (3 amendments)	To delete "Shedule 1"	Dr CHEUNG's amendments are inadmissible under RoP 57(4)(c) as they are unintelligible given the incomprehensible term "Shedule" used in their English texts.
	To delete "Shedule 4"	
	To delete "Shedule 5"	