



CO-LOCATION ARRANGEMENT

STATEMENT

1. “One Country, Two Systems” is a unique concept that allows two different legal systems to co-exist. There is a strong consensus in Hong Kong that there should be continual respect between the two legal systems, while the distinctiveness of the common law tradition should be maintained in Hong Kong under the Basic Law.
2. Differences between the two legal systems are illustrated by the recent debate concerning the decision adopted by the Standing Committee of the National People's Congress (“NPCSC”) on 27 December 2017 (“NPCSC Decision”) with respect to the co-location arrangement at the Mainland Port Area within the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“the “Express Rail Link”).
3. The Council of the Law Society of Hong Kong recognises the social and economic benefits as well as the advantages of the Express Rail Link and the co-location arrangement. However, the Council believes that it is in the interests of Hong Kong that the legal basis for the co-location arrangement be clarified.
4. The National People’s Congress is the highest organ of state power and the NPCSC is its permanent body pursuant to the Constitution of the People’s Republic of China (“PRC Constitution”). This has been affirmed by the Court of Final Appeal of the HKSAR¹.
5. The NPCSC Decision states that, in examining the co-operation arrangement entered into between Hong Kong and Guangdong Province for the Express Rail Link (“the Co-operation Arrangement”), it has fully considered the views of the relevant parties of the HKSAR and the Mainland on the establishment of the Mainland Port Area, the related customs arrangement, and the constitutionality and legality of the Co-operation Arrangement. The NPCSC considers the Co-operation Arrangement to be legal and constitutional under Mainland law.

¹ See *Lau Kong Yung and others v Director of Immigration* (1999) 2 HKCFAR 300 (as per Mason NPJ, 345B-C)

6. The HKSAR Government is of the view the NPCSC Decision confirms that the Co-operation Arrangement and, therefore, the co-location arrangement, are consistent with both the PRC Constitution and the Basic Law of Hong Kong.
7. However, the legal issue for Hong Kong is whether this process of applying Mainland law to the Mainland Port Area is consistent with the rule of law under the common law system and the Basic Law.
8. Hong Kong is accustomed to decision-making under the common law where judicial decisions provide comprehensive reasons explaining how they are reached. If the approach is different or perceived to be different for decisions of the NPCSC, this risks undermining the Basic Law and the principle of "One Country, Two Systems".
9. The Council of the Law Society calls upon the HKSAR Government to clearly convey the above concern to the Mainland authorities so that the legal basis for the co-location arrangement under the Basic Law may be clarified.

The Law Society of Hong Kong

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