

**議員個人利益監察委員會
就一宗針對何鍾泰議員、
林健鋒議員及石禮謙議員的投訴
作出考慮後向立法會提交的報告**

**Report of the Committee on Members' Interests
on its consideration of a complaint against
Ir Dr Hon Raymond HO,
Hon Jeffrey LAM and Hon Abraham SHEK**

(2011年6月)

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CHAPTER 1

Introduction

Purpose of the Report

1.1 This is a Report of the Committee on Members' Interests ("CMI") on the preliminary consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK in relation to their failure to disclose the nature of their pecuniary interest in the project to construct the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL Project"), before they spoke at the meetings of the Subcommittee on Matters Relating to Railways ("Railway Subcommittee") of the Panel on Transport of the Legislative Council ("LegCo") held from September to November 2009.

Membership and terms of reference of CMI as well as its procedure for handling complaints

1.2 The membership of CMI is in **Appendix I**.

1.3 Hon Mrs Sophie LEUNG declared that she and Hon Jeffrey LAM were affiliated to the same political grouping, the Economic Synergy. Members raised no objection to Mrs LEUNG chairing the meetings to consider the complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK.

1.4 One of the terms of reference of CMI, as provided in Rule 73(1)(c) of the Rules of Procedure ("RoP"), is to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint.

1.5 For the purpose of handling complaints, CMI adopted at its meeting on 2 January 2009 the "Procedure of the Committee on Members' Interests for handling complaints received in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses" ("the Procedure"). The Procedure was issued to all Members on 13 January 2009 for their reference and a copy of it is in **Appendix II**.

1.6 According to the Procedure, CMI takes a two-stage approach in handling complaints, which consists of the preliminary consideration and investigation stages. Preliminary consideration refers to the process of ascertaining the subject of the complaint and the provisions of the RoP relevant to the allegations in question, as well as gathering information relevant to the complaint and the allegations in question. On the basis of information gathered at the preliminary consideration stage, CMI will determine if it will proceed to the investigation stage.

1.7 According to Paragraph (25) of the Procedure, no member of CMI shall participate as a member of CMI in the handling of a complaint or at the meetings of CMI to deliberate on or inquire into a complaint where the complaint was made by or against him. As Hon Abraham SHEK, being a member of CMI, is a Member under complaint, Mr SHEK did not participate in the handling of the complaint or attend any of the meetings of CMI to deliberate on or inquire into the complaint against him.

The complaint

1.8 On 31 December 2009, the Clerk to CMI received through email a complaint (**Appendix III**) jointly lodged by the Slow Development Hong Kong and People's Planning Action ("the complainants") which alleged that Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK might have conflict of interest and role in respect of the funding proposal for the construction of the XRL Project by virtue of their being non-executive directors ("NEDs") of companies which were involved in the XRL Project or had indicated an interest in bidding for contracts under the Project. The complaint also alleged that the three Members had not declared their interests when they spoke on the XRL Project at the relevant meetings of the Railway Subcommittee, particulars of which are as follows:

- (a) at the meeting of the Railway Subcommittee held on 17 September 2009 and at other meetings of the Railway Subcommittee held thereafter to discuss the XRL Project, Ir Dr Hon Raymond HO spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of China State Construction International Holdings Limited ("CSC");

- (b) at the meetings of the Railway Subcommittee held to discuss the XRL Project, Hon Jeffrey LAM spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of Hsin Chong Construction Group Limited ("HCCG"); and
- (c) at the meetings of the Railway Subcommittee held to discuss the XRL Project, Hon Abraham SHEK spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of MTR Corporation Limited ("MTRCL"), HCCG and NWS Holdings Limited ("NWSH") which is the parent company of Vibro (HK) Limited. Vibro (HK) Limited was awarded a contract for Kwu Tung Core Store and Associated Works under the XRL Project on 12 October 2009.

1.9 The complainants requested CMI to undertake a series of actions, of which the following ones are relevant:

- (a) to investigate thoroughly whether the Members who had conflict of interests or roles had participated in the discussions and voted on matters relating to the XRL Project at meetings of LegCo, whether they had declared their interests; and to explain to the public whether public interest had been undermined by these Members' behaviours; and
- (b) to review if the existing declaration of interest system could adequately monitor and prevent conflict of interest situations.

1.10 This Report only deals with the actions requested of CMI referred to in paragraph 1.9(a) above in respect of the complaint in so far as these actions fall within the terms of reference of CMI set out in paragraph 1.4 above. The action referred to in paragraph 1.9(b) above will be dealt with separately in CMI's on-going study of the requirements and procedures for the registration and disclosure of Members' interests.

1.11 When the complaint was received by the Clerk to CMI, the Chairman of CMI, Hon Mrs Sophie LEUNG, was not in Hong Kong and the complaint was then referred to the Deputy Chairman, Hon Emily LAU, in accordance with Paragraph (1) of the Procedure. The Deputy Chairman decided that a meeting should be convened to consider the complaint. At

the meeting on 11 January 2010, members agreed that CMI should proceed to the "preliminary consideration" stage of the complaint-handling process in accordance with the Procedure.

Subject of the complaint and rules relevant to the allegations in the complaint

1.12 CMI considers that the subject of the complaint is that the three Members were alleged to have spoken at meetings of the Railway Subcommittee on a matter in which they had a pecuniary interest, but had failed to disclose such interest at those meetings. In this regard, CMI has determined that the relevant rule is Rule 83A of RoP, which provides that:

"In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest".

1.13 CMI notes that the Railway Subcommittee meetings referred to in the complaint letter were held to discuss, among other things, the XRL Project, and some of the papers presented by the Administration for deliberation at the meetings were related to the "Funding Arrangement and Special Rehousing Package" of the XRL Project scheduled for submission to the Finance Committee ("FC") for approval in January 2010. CMI has determined that the "matter" in the context of Rule 83A of RoP should be the "XRL Project".

1.14 CMI notes that under Rule 73(1)(e) of RoP, in reporting to the Council, it may make recommendations, including a recommendation to sanction under Rule 85 of RoP. Rule 85 of RoP provides, inter alia, that any Member who fails to comply with the disclosure of pecuniary interests requirements under Rule 83A of RoP may be admonished, reprimanded or suspended by the Council on a motion to that effect.

Preliminary consideration of the complaint

1.15 CMI held a total of 20 meetings from January 2010 to June 2011 to consider the complaint. The purposes of these meetings are to ascertain

the subject of the complaint and the provisions of RoP relevant to the allegations in question, gather information relevant to the complaint and study the procedural rules on pecuniary interests as well as other relevant issues. All the meetings were held in camera in accordance with Paragraph (23) of the Procedure.

1.16 CMI gathered information relevant to the complaint through checking the verbatim transcripts of the relevant meetings of the Railway Subcommittee, studying the Register of Members' Interests, researching LegCo papers and other relevant websites, and seeking from MTRCL the closing tender dates of the relevant contracts under the XRL Project. CMI also obtained response in writing from Dr HO, Mr SHEK and Mr LAM on the allegations made against them in the complaint. Mr SHEK attended a meeting of CMI held on 24 November 2010, whereas Mr LAM declined CMI's invitation to do so.

1.17 Based on the information gathered, CMI is of the opinion that it is able to determine whether or not the complaint is substantiated. In accordance with Paragraph (11) of the Procedure, CMI decides that an enquiry is not necessary and a report on the complaint shall be made to the Council.

1.18 To enable the Members under complaint to have an opportunity to comment on the draft report of CMI, those parts of the draft report relevant to the Members concerned were forwarded to them for comments. CMI received the written comments from Dr HO on 2 June 2011 and from Mr SHEK and Mr LAM on 3 June 2011. CMI has carefully considered these comments before finalizing its report.

The Report

1.19 This Report consists of the main report and relevant documents. The main report comprises five Chapters. This Chapter is mainly an introduction to the background as well as the subject of the complaint and rules relevant to the allegations in the complaint. Chapter 2 gives an account of the information relevant to the complaint gathered by CMI. Chapter 3 sets out the issues which CMI has considered in relation to the procedural rules on pecuniary interests. Chapter 4 sets out the considerations and conclusions of CMI on the complaint. Chapter 5 sets out the recommendations of CMI.

CHAPTER 2

Information gathered by CMI in its preliminary consideration of the complaint

2.1 This Chapter sets out the information gathered by CMI to facilitate its preliminary consideration of the complaint against Ir Dr Hon Raymond HO, Hon Abraham SHEK and Hon Jeffrey LAM. The information so gathered is based on information obtained through checking the verbatim transcripts of the relevant meetings of the Railway Subcommittee, the Register of Members' Interests, LegCo papers and other relevant websites; information from MTRCL on the closing tender dates of the relevant contracts under the XRL Project; information provided by Dr HO, Mr SHEK and Mr LAM in writing on the allegations made against them in the complaint; information provided by Mr SHEK to CMI at its meeting on 24 November 2010.

Ir Dr Hon Raymond HO

Particulars of the complaint

2.2 The complaint alleged that at the meeting of the Railway Subcommittee held on 17 September 2009 and at other meetings of the Railway Subcommittee held thereafter to discuss the XRL Project, Dr HO spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of CSC.

Information gathered by CMI

2.3 CMI has checked the records of the Railway Subcommittee meetings at which the XRL Project was discussed. According to the verbatim transcripts of the Railway Subcommittee meetings held on 17 September, 22 October and 6, 16 and 17 November 2009 (**Appendices IV(a) to (c) and (e) to (f)**), CMI notes that Dr HO did not make any disclosure of pecuniary interest at these meetings. CMI also notes that no motion on any matter relating to the XRL Project had been moved at the above meetings, and hence no voting took place at those meetings.

2.4 According to the Register of Members' Interests, Dr HO registered his directorship in CSC with the Clerk to LegCo on 1 June 2005 in the last legislative term and on 6 October 2008 in the current legislative term.

2.5 CMI wrote to Dr HO on 20 January 2010 to seek his response to the complaint. The correspondence with Dr HO is in **Appendices V(a) to (d)**. A summary of the information provided by Dr HO in his replies is given in paragraph 2.6 below.

2.6 Dr HO has been an independent non-executive director ("INED") of CSC since 1 June 2005. Dr HO receives \$360,000 per annum by way of remuneration and the remuneration is not affected by or related to the performance of the company. Dr HO has not participated in the daily operation of CSC. CSC has not provided Dr HO with information on CSC's plans or bids for contracts under the XRL Project. He has been given to understand that the aforesaid information is confidential and will not be disclosed. At the material time, i.e. from September to November 2009, he had no knowledge that CSC intended to bid for contracts under the XRL Project or that it had participated in the bidding exercise. Dr HO stated that he did not have a pecuniary interest in the matter under discussion by the Railway Subcommittee. He considers that the duty of an INED is to monitor the operation of a listed company and hence, being an INED, is a kind of public duty or community service. In his opinion, the fixed sum of remuneration could be regarded as an honorarium.

2.7 According to the information obtained by CMI from MTRCL, while CSC had not been awarded any contract under the XRL Project when the XRL Project was discussed at the relevant Railway Subcommittee meetings, CSC was awarded a Tai Kong Po to Tse Uk Tsuen Tunnels contract under the XRL Project in a joint venture with Maeda on 12 July 2010. The date of submission of tender by CSC for the Tai Kong Po to Tse Uk Tsuen Tunnels contract under the XRL Project in a joint venture with Maeda was 26 March 2010.

Hon Abraham SHEK

Particulars of the complaint

2.8 The complaint alleged that at the meetings of the Railway Subcommittee held to discuss the XRL Project, Mr SHEK spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of MTRCL, HCCG and NWSH which is the parent company of Vibro (HK) Limited. Vibro (HK) Limited was awarded a contract for Kwu Tung Core Store and Associated Works under the XRL Project on 12 October 2009.

Information gathered by CMI

2.9 CMI has checked the records of the Railway Subcommittee meetings at which the XRL Project was discussed. According to the verbatim transcripts of the Railway Subcommittee meetings held on 6, 16 and 17 November 2009 (**Appendices IV(c) and (e) to (f)**), CMI notes that Mr SHEK did not make any disclosure of pecuniary interest at these meetings. CMI also notes that no motion on any matter relating to the XRL Project had been moved at the above meetings, and hence no voting took place at those meetings.

2.10 According to the Register of Members' Interests, Mr SHEK registered his directorship in MTRCL with the Clerk to LegCo on 3 January 2008, his directorship in HCCG on 23 January 2008, and his directorship in NWSH on 27 September 2004 in the last legislative term; and on 26 September 2008 in the current legislative term.

2.11 The following information was also obtained by CMI:

- (a) MTRCL was asked by the Administration to proceed with the further planning and design of the XRL Project on the understanding that it would be invited to undertake the Project under the concession approach¹;

¹ Paragraph 3 of the Legislative Council Brief on Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link issued by the Transport and Housing Bureau in October 2009.

- (b) HCCG had not been awarded any contract under the XRL Project at the time when the XRL Project was discussed at the relevant Railway Subcommittee meetings; however its wholly-owned subsidiary, Hsin Chong Construction Co. Ltd., was awarded a contract for Nam Cheong Property Foundation Removal/Reprovisioning on 27 January 2010 following FC's approval of the funding arrangements for the Project on 16 January 2010. The closing tender date of the contract was 24 September 2009; and
- (c) NWSH had not been awarded any contract under the XRL Project at the time when the XRL Project was discussed at the relevant Railway Subcommittee meetings; however Vibro (HK) Limited, a 99.8%-owned subsidiary of NWSH, was awarded a contract for West Kowloon Terminus Piles (Site A-South) in a joint venture with Chun Wo on 27 January 2010 following FC's approval of the funding arrangements for the Project on 16 January 2010. The closing tender date of the contract was 2 October 2009.

2.12 CMI wrote to Mr SHEK on 20 January 2010 to seek his response to the complaint. After considering his response, CMI invited Mr SHEK on 7 October 2010 to attend a meeting of CMI to give explanations and provide information and asked him to refer to CMI's views on the principles of how directorship is regarded in the context of Rule 83A of RoP detailed in paragraph 3.13 in Chapter 3 of this Report. In this connection, Mr SHEK attended a meeting of CMI on 24 November 2010 to provide further information and explanation on his case. The correspondence with Mr SHEK is in **Appendices VI(a) to (d)**. A summary of the information provided by Mr SHEK in his replies is given in paragraphs 2.13 to 2.17 below.

2.13 Mr SHEK has been an INED of MTRCL since 18 December 2007. He receives a remuneration of \$300,000 per annum. He does not participate in the daily management of the company. While he had declared his interest as a director of MTRCL at previous meetings of the Panel on Transport and the Railway Subcommittee, he admitted that there was an oversight on his part for not disclosing the nature of his interest in the XRL Project by virtue of his being an INED of MTRCL at the relevant Railway Subcommittee meetings.

2.14 As Mr SHEK is also an INED of HCCG and NWSH, he has made clear to MTRCL that he would not involve or participate in the discussion of any railway contract under MTRCL. Hence, he was not present at the Board meeting of MTRCL held on 8 December 2009 to decide the award of contracts relating to the XRL Project. As he was not present at that Board meeting, he was not aware of any involvement of Hsin Chong Construction Co. Ltd. (a wholly-owned subsidiary of HCCG) and Vibro (HK) Limited (a 99.8%-owned subsidiary of NWSH and itself a listed company) until after the meeting. It was only after the award of the contracts that he learnt of the identities of these two companies which were awarded the contracts from documents provided by MTRCL to him. In MTRCL, selection of tenderers and tender evaluation are issues dealt with by the management and are not taken to the Board. The papers received by Board members prior to a Board meeting do not disclose the identities of the tenderers who are described by letters, i.e. A, B, C, D etc. Board members are only informed of the identities of the tenderers at the Board meeting.

2.15 Mr SHEK has been an INED of HCCG since 23 January 2008. He receives a remuneration of \$200,000 per annum. He has been offered stock options in HCCG in common with other INEDs, but he has not exercised such options up to this date. He does not participate in the day-to-day operation of the company. As he is an INED of MTRCL, he has made clear to HCCG that he would not involve or participate in any discussion of HCCG with regard to contracts under MTRCL, including HCCG's plan to bid for a contract under MTRCL. Hence, at the material time, he was not aware of, nor did he participate in, any of the planning work of HCCG in its bidding for contracts under the XRL Project. As an INED of HCCG, it did not occur to him that he was required to disclose the nature of his interest in the XRL Project, derived from Hsin Chong Construction Co. Ltd. (a wholly-owned subsidiary of HCCG), at the Railway Subcommittee meetings. Neither was he aware or in a position to know that Hsin Chong Construction Co. Ltd. had bid for a contract under the XRL Project because his role as an INED of HCCG was to ensure good corporate governance of HCCG.

2.16 Mr SHEK has been an INED of NWSH since 28 September 2004. He receives by way of remuneration \$250,000 per annum. He has been offered stock options in common with other INEDs of NWSH, but he has not exercised such options up to this date. As he is an INED of MTRCL, he has made clear to NWSH that he would not involve or participate in any discussion of NWSH with regard to contracts under MTRCL, including NWSH's plan to bid for a contract under MTRCL.

Hence, at the material time, he was not aware of, nor did he participate in, any of the planning work of NWSH in its bidding for contracts under the XRL Project. As an INED of NWSH, it did not occur to him that he was required to disclose the nature of his interest in the XRL Project, derived from Vibro (HK) Limited, by virtue of his being an INED of NWSH at the Railway Subcommittee meetings. Neither was he aware or in a position to know that Vibro (HK) Limited had bid for a contract under the XRL Project because his role as an INED of NWSH was to ensure good corporate governance of NWSH. As NWSH's board mainly examined consolidation of financial accounts submitted by its subsidiaries, he was not aware of or in a position to know what contracts had Vibro (HK) Limited entered into. An INED of a parent company would not enquire about the contracts which a subsidiary of the company had bid for.

2.17 Mr SHEK agreed to CMI's views on the principles of how directorship is regarded in the context of Rule 83A of RoP detailed in paragraph 3.13 in Chapter 3 of this Report that a Member, by virtue of his being an INED of a company, should take reasonable steps to find out what the company was doing for the purpose of making the required disclosures under Rule 83A of RoP. He indicated that he would do so in future. He, however, did not consider it fair to require a Member to find out what a subsidiary of the company was doing for the purpose of making the required disclosures under Rule 83A of RoP because it was not practicable to do so. He considered that to judge him on the basis of this requirement of which he was not aware would amount to "backtracking" given that Rule 83A of RoP was not drafted in the terms as set out in CMI's understanding of the Rule.

Hon Jeffrey LAM

Particulars of the complaint

2.18 The complaint alleged that at the meetings of the Railway Subcommittee held to discuss the XRL Project, Mr LAM spoke on the XRL Project without disclosing his pecuniary interest in the Project by virtue of his being an NED of HCCG.

Information gathered by CMI

2.19 CMI has checked the records of the Railway Subcommittee meetings at which the XRL Project was discussed. According to the verbatim transcripts of the Railway Subcommittee meetings held on 22 October and 13 and 16 November 2009 (**Appendices IV(b) and (d) to (e)**), CMI notes that Mr LAM did not make any disclosure of pecuniary interest at these meetings. CMI also notes that no motion on any matter relating to the XRL Project had been moved at the above meetings, and hence no voting took place at those meetings.

2.20 CMI wrote to Mr LAM on 20 January 2010 to seek his response to the complaint. After considering his response, CMI invited Mr LAM on 7 October 2010 to attend a meeting of CMI to give explanations and provide information and asked him to refer to CMI's views on the principles of how directorship is regarded in the context of Rule 83A of RoP, which are detailed in paragraph 3.13 in Chapter 3 of this Report. Although Mr LAM declined CMI's invitation to attend a meeting of CMI, he nevertheless provided further explanations to CMI in writing. CMI considers the information provided by Mr LAM and that gathered by CMI sufficient in its preliminary consideration of the complaint against Mr LAM. The correspondence with Mr LAM is in **Appendices VII(a) to (d)**. A summary of the information provided by Mr LAM in his replies is given in paragraph 2.21 below.

2.21 Mr LAM has been an INED of HCCG since 24 August 2002. Mr LAM receives \$200,000 per annum by way of remuneration. He has been offered stock options in HCCG in common with other INEDs, but he has not exercised such options up to this date. At the material time, he was not aware of, nor did he participate in, any of the work of HCCG in its plans or bids for contracts under the XRL Project. He is not involved in the day-to-day operation of HCCG. At all relevant times, he was not aware of, nor did he participate in, any of the work of Hsin Chong Construction Co. Ltd., a subsidiary of HCCG, in its plans or bids for contracts under the XRL Project. Hsin Chong Construction Co., Ltd. has its own board of directors, and he is not a board member of Hsin Chong Construction Co. Ltd. Mr LAM considered it unreasonable to expect him, as an INED of HCCG, to find out, for the purpose of making the required disclosures under Rule 83A of RoP, from its subsidiary company, Hsin Chong Construction Co. Ltd., whether it had bid for a contract under the XRL Project. He considered the interest being too remote, as he could only make disclosures in respect of the company of which he was a director.

2.22 According to the Register of Members' Interests, Mr LAM registered his directorship in HCCG with the Clerk to LegCo on 2 October 2004 in the last legislative term and on 2 October 2008 in the current legislative term. As mentioned in paragraph 2.11(b) above, while HCCG had not been awarded any contract under the XRL Project at the time when the XRL Project was discussed at the relevant Railway Subcommittee meetings, its wholly-owned subsidiary, Hsin Chong Construction Co. Ltd., was awarded a contract for Nam Cheong Property Foundation Removal/Reprovisioning on 27 January 2010 following FC's approval of the funding arrangements for the Project on 16 January 2010. The closing tender date of the contract was 24 September 2009.

CHAPTER 3

Issues considered in relation to procedural rules on pecuniary interests

3.1 As the complaint raises, for the first time, the issue of whether a Member's position as an NED of a company may give rise to a situation under which the Member is considered to have a pecuniary interest by virtue of that position under Rule 83A of RoP, and having regard to some of the points made by Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK in their respective response, CMI has examined the following issues in its preliminary consideration of the complaint against the three Members:

- (a) the information provided to Members prior to December 2009 on disclosure of interests, including direct and indirect pecuniary interests;
- (b) the meaning of direct and indirect pecuniary interests under Rule 83A of RoP;
- (c) the role of an INED in a company and the circumstances under which a Member who is an INED of a company would be required to make disclosure of pecuniary interests under Rule 83A of RoP; and
- (d) how Rule 83A of RoP is interpreted and applied when speaking at meetings, including at which point in time should a pecuniary interest be disclosed and whether the same pecuniary interest should be disclosed each time when the Member speaks.

Information on disclosure of pecuniary interest available to Members of Fourth LegCo

3.2 CMI notes that the following documents were made available to all Members of the Fourth LegCo after they had assumed office:

- (a) the Guidelines on Registration of Interests, together with the Registration Form on Members' Interests to be completed and returned to the Clerk before the first meeting of the new term, were issued to all Members on 11 September 2008. In paragraph III (3) of the Guidelines, it is stipulated that the registration of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interests under Rule 83A of RoP;
- (b) one set of RoP was issued to all Members on 19 September 2008;
- (c) a circular (LC Paper No. CB(3) 69/08-09) on "Disclosure of Pecuniary Interest by Members" (**Appendix VIII**) was issued on 20 October 2008 in response to enquires from some Members regarding Members' participation in the debate and voting on the motion on "Assisting the victims of the Lehman Brothers Incident". The circular further explained the requirements under Rules 83A and 84(1) of RoP;
- (d) the subject of "Disclosure of Pecuniary Interests under Rule 83A of the Rules of Procedure" was discussed at the CMI meeting on 16 December 2009, on the eve of the consideration of the funding proposal of the XRL Project at the FC meeting on 18 December 2009. A paper (LC Paper No. CMI/17/09-10) (**Appendix IX**) which provided information on matters relating to compliance with Rule 83A of RoP, including the meaning of direct and indirect pecuniary interests and the interests involved in non-executive directorships, was issued on 15 December 2009. As the meeting of CMI was open to the public, the discussion paper and the minutes of the meeting were uploaded onto LegCo's website and are accessible by all Members; and
- (e) a circular on "Procedural Implications of Pecuniary Interests on Speaking and Voting on a Matter before the [Finance] Committee" (LC Paper No. FC 27/09-10) (**Appendix X**) was issued by the Clerk to FC to all Members on 17 December 2009. The circular explained

some practical issues relating to the compliance of Rule 83A of RoP, such as timing for making the declaration, disallowance of vote on grounds of direct pecuniary interest, non-executive directorships, chairing of meetings by Members who may have a pecuniary interest, etc.

Meaning of direct and indirect pecuniary interests

3.3 Under Rule 83A of RoP, to the extent that it is relevant to the complaint, a Member shall not speak on a matter in which he has a pecuniary interest, whether direct or indirect, except where he discloses the nature of that interest. CMI notes that there is no provision in the RoP which provides the circumstances which constitute "direct pecuniary interest" and "indirect pecuniary interest" in the context of Rule 83A of RoP.

3.4 CMI takes the view that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. As regards "indirect pecuniary interest", CMI is of the view that it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member.

Role of INEDs

3.5 CMI notes that there is no distinction between executive and non-executive directors in law. CMI also notes that all the directors of a company owe a fiduciary duty to their company. This means that they must at all times act honestly and diligently, showing the company their highest loyalty, acting in good faith and in the company's best interests. Although an INED has no executive or management responsibility in the company on whose board he sits, the duty of INEDs to act bona fide in the interests of the company as a whole is identical to that of their executive colleagues.

3.6 The Code on Corporate Governance Practices, contained in the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, also states that every director is required to keep abreast of his responsibilities as a director of a listed company and of the conduct, business activities and development of that issuer. Given the essential unitary nature of the board, NEDs have the same fiduciary duties and duties of care and skill as executive directors.

Circumstances under which a Member who is an INED would be required to make disclosure of pecuniary interests under Rule 83A of RoP by virtue of being an INED

3.7 CMI had taken almost a year from January 2010 to December 2010 in 13 meetings to study the circumstances under which a Member who is an INED would be required to make disclosure under Rule 83A of RoP by virtue of being an INED.

3.8 CMI notes that the disclosure of the nature of the direct or indirect pecuniary interest in the matter before a committee is a condition to a Member's speaking on the matter. Based on the principle that it is a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to judge if his views on the matter have been influenced by his interest, a Member should disclose his pecuniary interest at the beginning of his speech on the matter.

3.9 CMI considers that as NEDs have the same fiduciary duties and duties of care and skill as executive directors in a company, a Member who is an INED of a company should be knowledgeable about the nature of business of the company. Under the circumstances, if the company of which a Member is an INED has a direct pecuniary interest in a matter before a committee, CMI considers that the Member should have an indirect pecuniary interest in the matter. It follows that the Member should, for the purpose of making the required disclosures under Rule 83A of RoP, take reasonable steps to find out whether the company of which he is an INED has a pecuniary interest in the matter under consideration by a committee of the Council. CMI notes that Members would disclose their pecuniary interests in a project being considered by FC if they consider that any company related to them had submitted or might submit a bid or bids for contract(s) under the project. On the other hand, where initiatives have not yet evolved into financial proposals and are being considered at Panel meetings, it is much less likely that Members would disclose their pecuniary interests.

3.10 CMI considers that as a general rule, where a subsidiary of a company has bid for a contract or has been awarded a contract under a project, the parent company is regarded as having an indirect interest in a project. It follows that a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project. However, CMI is aware that the circumstances of each individual case could vary and sometimes the indirect pecuniary interest could be too remote to be caught by Rule 83A of RoP.

3.11 CMI has also deliberated at which juncture in a tender exercise that a company should be regarded as having a pecuniary interest. While members generally agree that it is fair to require a Member who is an INED of a company which has actually put in a bid in a tender exercise for a project to declare his indirect pecuniary interest derived from his company's bidding the project, some members consider that the Member has the obligation to declare his interest as soon as the company has indicated interest in the project even though it has not yet submitted any formal bid or an "expression of interest" in response to a formal invitation. These members consider that as the purpose of disclosure of interests by Members is to uphold the credibility of LegCo, the issue should also be examined from the perspective of public perception. Generally speaking, the public may not be able to draw a distinction between a Member whose company has submitted a bid for contracts under a project and another Member whose company is considering submitting a bid, as both Members' actions, speeches or votes on the project being considered may reasonably be thought by others to be subject to the influence of their involvement in the respective companies. It is therefore a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to judge if his views on the matter have been influenced by his interest. Hence, a Member should disclose his pecuniary interest at the beginning of his speech on the matter.

3.12 The majority of members consider that a company should not be regarded as having a pecuniary interest in a project if it is merely contemplating the making of a bid for a contract under the project since no potential detriment or advantage to the company has arisen yet. These members consider that the making of bids for contracts under a project by a company is a concrete action which can be easily identified. They consider that as a company might be interested in various business opportunities, to regard a company which is contemplating the making of bids for contracts under a project as having a pecuniary interest in the project might have wide ramifications on Members' observing the requirement to disclose their pecuniary interest under Rule 83A of RoP.

3.13 CMI's views on the principles of how it would regard directorships for the purpose of Rule 83A of RoP are set out as follows:

- (a) a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;
- (b) if a company is regarded as having a direct pecuniary interest in a project by virtue of (a) above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;
- (c) generally speaking, if a subsidiary of a company ("parent company") has bid for a contract or has been awarded a contract under a project, then, the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project;
- (d) there is no distinction between executive directors, non-executive directors and independent non-executive directors as far as disclosure of pecuniary interest under Rule 83A of RoP is concerned; and
- (e) a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee.

3.14 After deliberation and having regard to Mr SHEK's and Mr LAM's views on CMI's views on the principles of how directorship is regarded in the context of Rule 83A of RoP, CMI agrees to adjust the order of the views so as to highlight the connection of a Member and the company of which he is a director and his obligation as a director under (a) to (d), and to set out separately in (e) that generally speaking, the Member still has an indirect pecuniary interest if the subsidiary of the company of which he is a director has a direct pecuniary interest. Accordingly, CMI considers that the principles applicable to Rule 83A of RoP are as follows:

- (a) a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;
- (b) if a company is regarded as having a direct pecuniary interest in a project by virtue of (a) above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;
- (c) there is no distinction between executive directors, non-executive directors and independent non-executive directors as far as disclosure of pecuniary interest under Rule 83A of RoP is concerned;
- (d) a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee; and
- (e) generally speaking, if a subsidiary of a company ("parent company") has bid for a contract or has been awarded a contract under a project, then, the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project.

3.15 CMI recognizes that a Member might not have access to the information on the day-to-day operation of a company of which he is an INED, but a Member should be vigilant of the potential pecuniary interest which he might have if the nature of the business of the company falls within the scope of subject matter under consideration by a committee. CMI also considers that it would not cause undue hardship to the Member to find out the nature of business of the subsidiaries of the company of which he is an INED for the purpose of considering if there is any pecuniary interest that he should disclose under Rule 83A of RoP, bearing in mind that to reflect the proper balance struck between public accountability and privacy of the Member, the Member is only required to

disclose the nature of the pecuniary interest. In the light of the above, CMI is of the view that it would not be unreasonable to expect the Member to find out the nature of business of the subsidiaries of the company of which he is an INED, and to decide whether and in what manner he is to find out if he has to disclose any pecuniary interest which derives from the pecuniary interest of the subsidiaries. Hon Paul CHAN and Hon WONG Yung-kan are of the view that a Member should only be expected to find out the primary nature of business of the major subsidiaries of the company of which he is an INED for the purpose of Rule 83A of RoP. These two members consider that to expect a Member to find out the nature of business of each and every subsidiary of the company of which he is an INED is sometimes not reasonably practicable.

3.16 CMI considers that the claim by a Member that he has no knowledge of any pecuniary interest of the company of which he is an INED and that he does not participate in the day-to-day management of the company are not relevant considerations when examining whether a non-disclosure of pecuniary interest constitute a breach of Rule 83A of RoP. The relevant question for determination in accordance with the terms of Rule 83A of RoP is whether the Member has a direct or indirect pecuniary interest in the matter under consideration by the relevant committee and, where such pecuniary interest is derived from the pecuniary interest of a subsidiary company of the company of which the Member is a director, whether or not the interest is too remote for it to be regarded as an indirect pecuniary interest that should be caught by Rule 83A of RoP. The question of remoteness is to be determined by CMI based on all the relevant information that it has gathered, including the information available to the Member at the material time and the explanation provided by the Member concerned.

CHAPTER 4

Considerations and conclusions

Ir Dr Hon Raymond HO

4.1 CMI considers that Dr HO did not have a pecuniary interest in the XRL Project by virtue of his being an INED of CSC at the time he spoke on the Project at the relevant meetings of the Railway Subcommittee held from September to November 2009, as the date of submission of tender by CSC for the Tai Kong Po to Tse Uk Tsuen Tunnels contract under the XRL Project in a joint venture with Maeda was 26 March 2010.

4.2 CMI does not accept Dr HO's views, as mentioned in paragraph 2.6 in Chapter 2 of this Report, that the duty of an INED is to monitor the operation of a listed company and hence, being an INED, is a kind of public duty or community service and that the fixed sum of remuneration could be regarded as an honorarium, having regard to the role of INEDs detailed in paragraphs 3.5 and 3.6 in Chapter 3 of this Report. However, on the basis of the facts set out in paragraph 4.1 above, CMI is of the view that the complaint against Dr HO is not substantiated.

4.3 CMI wrote to Dr HO on 20 May 2011 to invite his response to the relevant parts of the draft Report, including CMI's views on his case as set out in paragraphs 4.1 to 4.2 above.

4.4 Dr HO expressed strong opposition to CMI's decision to conduct a preliminary consideration of a complaint against him which in his views was based on media reports, and therefore contrary to the provision in Paragraph (7)(ii) of the Procedure that information gathered by CMI relevant to the complaint and the allegations in question should not include media reports. The correspondence with Dr HO is in **Appendix V(e)**.

4.5 CMI does not agree to Dr HO's views. CMI's decision to conduct a preliminary consideration of a complaint against him was not based on media reports though the media reports were part of the information provided by the complainants. Under Rule 73 (1)(c) of RoP,

it is CMI's duty to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint. CMI had decided to meet to consider the complaint against Dr HO in accordance with Paragraphs (1) and (2) of the Procedure. Unless the complaint is outside the terms of reference of CMI or the complaint is merely based on speculations, inferences or unfounded judgements, etc., CMI would have to meet to consider the complaint. During the preliminary consideration stage, CMI gathered information relevant to the complaint and the allegations in question. Such information included the verbatim transcripts of the relevant meetings of the Railway Subcommittee, the Register of Members' Interests, LegCo papers and other relevant websites, as well as information from MTRCL on the closing tender dates of the relevant contracts under the XRL Project. The facts detailed in Chapter 2 of the Report are based on the above information.

Hon Abraham SHEK

4.6 CMI notes Mr SHEK's agreement to CMI's interpretation of Rule 83A of RoP set out in paragraph 3.13 in Chapter 3 of this Report that a Member, by virtue of his being an INED of a company, should take reasonable steps to find out what the company was doing for the purpose of making the required disclosures under Rule 83A of RoP. He indicated that he would do so in future. He, however, did not consider it fair to require a Member to find out what a subsidiary of the company was doing for the purpose of making the required disclosures under Rule 83A of RoP because it was not practicable to do so. If he were to be judged on the basis of this requirement on which he was not aware of, it would amount to "backtracking", as Rule 83A of RoP was not drafted in the terms as set out in CMI's understanding of the Rule.

4.7 CMI has carefully examined Mr SHEK's point of "backtracking", but has come to the view that "backtracking" only exists when some changes or new requirements are introduced. The principles set out in paragraph 3.13(a) to (e) in Chapter 3 of this Report do not add new requirements to Rule 83A of RoP, but are to reflect how the Rule should be applied generally to situations where a Member is a director of a company which has a pecuniary interest in a matter before the Council, a committee or subcommittee. "Backtracking" therefore does not exist in this case.

4.8 In considering whether the interest of a subsidiary of a company of which a Member is an INED is too remote to be caught by Rule 83A of RoP, CMI is of the view that this is a question of fact to be decided on the facts of each case, taking into account relevant factors including the nature of business of the parent company and the relationship between the parent company and the subsidiary concerned.

Allegations relating to MTRCL

4.9 CMI finds that Mr SHEK had not disclosed the nature of his interest in the XRL Project by virtue of his being an INED of MTRCL when he spoke at the relevant meetings of the Railway Subcommittee. CMI accepts Mr SHEK's admission that it was an oversight on his part for the non-disclosure and that he had no intention of hiding his interest as an INED of MTRCL. Nonetheless, as Mr SHEK was aware of his obligation but he did not disclose his interest as a director of MTRCL when he spoke on the XRL Project during the relevant meetings of the Railway Subcommittee, CMI considers that Mr SHEK had breached Rule 83A of RoP and recommends that he be admonished by a motion to that effect in accordance with Rule 85 of RoP.

Allegations relating to HCCG and NWSH

4.10 CMI considers that it should have occurred to Mr SHEK that NWSH and/or its subsidiaries might have bid for contracts under the XRL Project, having regard to the fact that NWSH is mainly engaged in infrastructural construction as indicated in the annual report of NWSH². As such, CMI does not consider that the interest which Mr SHEK has in the XRL Project in his capacity as an INED of NWSH when Vibro (HK) Limited, its subsidiary the principal activities of which are piling ground investigation and civil engineering, had bid for and was awarded a contract under the XRL Project is too remote.

4.11 CMI also considers that Mr SHEK's pecuniary interest in the XRL Project as an INED of HCCG when its wholly-owned subsidiary, Hsin Chong Construction Co. Ltd., had bid for and was awarded a contract under the Project is not too remote to be caught by Rule 83A of RoP. CMI

² NWSH 2010 Annual Report

notes that construction is the core activity of HCCG, which is mainly carried out through its wholly-owned subsidiary, Hsin Chong Construction Company Limited³. As such, it should have occurred to Mr SHEK that HCCG or Hsin Chong Construction Co. Ltd. might have bid for a contract under the XRL Project.

4.12 CMI does not accept the explanations given by Mr SHEK that he does not have the capacity or the duty to keep abreast of the business activities of the subsidiaries of NWSH and HCCG, nor can he be expected to probe into information relating to Vibro (HK) Limited and Hsin Chong Construction Co. Ltd. to which he is not entitled in law to do so. CMI is of the view that it is not unreasonable to expect a Member to take steps to find out, for the purpose of deciding whether to make the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee of the Council. CMI also considers that Mr SHEK could have taken steps to find out whether Vibro (HK) Limited and Hsin Chong Construction Co. Ltd. had bid for a contract under the XRL Project indirectly through the NWSH Board and the HCCG Board respectively.

4.13 CMI considers that Mr SHEK had breached Rule 83A of RoP for not disclosing his pecuniary interests in the XRL Project, which were derived from Hsin Chong Construction Co. Ltd. (a wholly-owned subsidiary of HCCG) and Vibro (HK) Limited (a 99.8% owned subsidiary of NWSH) of which he is an INED of HCCG and NWSH, when he spoke at the relevant meetings of the Railway Subcommittee.

4.14 CMI however accepts Mr SHEK's explanation that it did not occur to him that for the purpose of complying with Rule 83A of RoP he was required to disclose the nature of his interests in the XRL Project by virtue of his being an INED of NWSH and HCCG when he spoke at the relevant meetings of the Railway Subcommittee, having regard to the following:

- (a) Rule 83A of RoP does not expressly provide for the requirement to disclose pecuniary interests of a Member which are derived from those subsidiary companies of a company of which he is a director; and

³ HCCG 2009 Annual Report

- (b) the information on disclosure of pecuniary interests available to Members as set out in paragraph 3.2 in Chapter 3 of this Report does not expressly remind Members that they should disclose the nature of their pecuniary interests if a subsidiary of the company of which they are an INED had bid for or was awarded a contract in a project under consideration by a committee of the Council.

4.15 CMI also considers that it would not be fair to expect Mr SHEK to know that he was required to disclose the nature of his interests in the XRL Project by virtue of his being an INED of NWSH and HCCG at the time when he spoke at the relevant meetings of the Railway Subcommittee, having regard to the fact that the interest arising from a subsidiary company had never been discussed or made known to Members and even CMI had taken considerable time to come to its understanding on a Member's obligation in relation to subsidiaries of the company of which he is an INED for the purpose of Rule 83A of RoP.

4.16 On the basis of the considerations set out in paragraphs 4.14 and 4.15 above, CMI has decided not to recommend any sanction against Mr SHEK under Rule 85 of RoP in this case.

4.17 CMI wrote to Mr SHEK on 20 May 2011 to invite his response to its views as set out in paragraphs 4.9 to 4.16 above. The correspondence with Mr SHEK is in **Appendix VI(e)**. A summary of the views expressed by Mr SHEK in his response is set out in paragraphs 4.18 to 4.21 below.

4.18 Mr SHEK disputed CMI's interpretation that a Member has the duty to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the subsidiary of a company ("parent company") of which he is an INED has bid for a contract or has been awarded a contract under a project being considered by a committee of the Council. Mr SHEK considered that such a requirement would impose too onerous a duty on Members. It would also put Members in an impossible position in that they must constantly ask for information from the subsidiaries whose business activities in many situations were varied and/or remote from the parent company.

4.19 Mr SHEK disagreed that he had breached Rule 83A of RoP for not disclosing the nature of his pecuniary interest in the XRL Project when he spoke at the relevant meetings of the Railway Subcommittee by virtue of his being an INED of HCCG and NWSH, as he should be judged in the context of what was known to him at the relevant time. A Member who had no knowledge of a relevant interest at the relevant time should not be censured based on information developed afterwards. Mr SHEK stated that the role of an INED was to ensure that the interests of the minority shareholders of the company were protected. Hence, he did not usually have any dealings with the directors, management or staff of the subsidiaries of the parent company of which he was an INED. An INED of a parent company would usually come to know of a subsidiary's plans only when he was presented with reports and financial statements of the subsidiary.

4.20 Mr SHEK reiterated that to judge him on the basis of the requirement that a Member, by virtue of his being an INED of a parent company, should take reasonable steps to find out what the subsidiary of the parent company was doing for the purpose of making the required disclosures under Rule 83A of RoP would amount to "backtracking" given that Rule 83A of RoP was not drafted in the terms as set out in CMI's understanding of the Rule detailed in paragraph 3.13 in Chapter 3 of this Report.

4.21 While admitting it was an oversight on his part for not disclosing the nature of his pecuniary interest in the XRL Project when he spoke at the relevant Railway Subcommittee meetings by virtue of his being an INED of MTRCL, Mr SHEK was of the view that he should not be admonished by a motion to that effect under Rule 85 of RoP as his oversight should be looked at as technical in nature given the absence of any detriment to the public or LegCo.

4.22 CMI has carefully considered Mr SHEK's response. CMI remains of the view that Mr SHEK's point about the duty to find out whether the subsidiary of a parent company of which a Member is an INED has bid for a contract or has been awarded a contract under a project being considered by a committee of the Council is too onerous for the Member has already been addressed in paragraphs 3.14 to 3.16 in this Report. CMI has re-adjusted the principles set out in paragraph 3.14 in this Report after taking into account Mr SHEK's view to highlight that each case

will be looked into on the basis of its individual circumstances but the general principle is that a Member who is a director of the parent company of a subsidiary company which has bid for or been awarded a contract under the project under the consideration of LegCo is regarded as having an indirect pecuniary interest in the project. The question of remoteness is to be determined by CMI based on all relevant information that it has gathered. CMI notes that Hon Mrs Sophie LEUNG and Hon WONG Yung-kan hold different views to the above. Details of Mrs LEUNG's and Mr WONG's views are set out in paragraph 4.34 below.

4.23 Nevertheless, CMI acknowledges that the general principle on the interest arising from a subsidiary company has never been discussed or made known to Members. In the circumstances, although Mr SHEK has been found in breach of Rule 83A of RoP for not disclosing his interests in the XRL Project derived from Hsin Chong Construction Co. Ltd. (a wholly-owned subsidiary of HCCG) and Vibro (HK) Limited (a 99.8% owned subsidiary of NWSH) which are the subsidiaries of HCCG and NWSH of which he is an INED when he spoke at the relevant meetings of the Railway Subcommittee, CMI will not recommend any sanction against him for the considerations set out in paragraphs 4.14 and 4.15 above.

4.24 As regards Mr SHEK's breach of Rule 83A of RoP in respect of his directorship in MTRCL, CMI has considered the facts that Mr SHEK had registered his interest as an INED of MTRCL in the Register of Members' Interests and he had declared that he was an INED of MTRCL at previous meetings of the Panel on Transport and the Railway Subcommittee on other matters. As Mr SHEK's breach was due to an oversight and he had no intention of hiding his interest as an INED of MTRCL, CMI recommends that Mr SHEK be admonished by a motion to that effect in accordance with Rule 85 of RoP which is the lightest sanction under the Rule.

Hon Jeffrey LAM

4.25 CMI does not accept that as an INED of HCCG, Mr LAM does not have the capacity or duty to keep abreast of the business activities of the subsidiaries of HCCG. For the same reason set out in paragraph 4.11 above, CMI is of the view that Mr LAM's interest in the XRL Project as an INED of HCCG when its wholly-owned subsidiary, Hsin Chong Construction Co. Ltd., had bid for and was awarded a contract under the Project is not too remote to be caught by Rule 83A of RoP. As such, it should have occurred to Mr LAM that HCCG or Hsin Chong Construction Co. Ltd. might have bid for a contract under the XRL Project.

4.26 CMI considers that Mr LAM had breached Rule 83A of RoP for not disclosing his pecuniary interests in the XRL Project which were derived from Hsin Chong Construction Co. Ltd., a wholly-owned subsidiary of HCCG of which he is an INED, when he spoke at the relevant meetings of the Railway Subcommittee.

4.27 CMI however accepts that Mr LAM was not aware of the requirement to disclose the nature of his interests in the XRL Project by virtue of his being an INED of HCCG when he spoke at the relevant meetings of the Railway Subcommittee for the same reasons given in paragraphs 4.14 and 4.15 above. On the basis of this, CMI has decided not to recommend any sanction against Mr LAM under Rule 85 of RoP in this case.

4.28 CMI wrote to Mr LAM on 20 May 2011 to invite his response to the relevant parts of the draft Report, including the views of CMI as set out in paragraphs 4.25 to 4.27 above. The correspondence with Mr LAM is in **Appendix VII(e)**. A summary of the response provided by Mr LAM is given in paragraphs 4.29 to 4.31 below.

4.29 Mr LAM disputed CMI's interpretation that a Member has the duty to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the subsidiary of a company of which he is an INED has bid for a contract or has been awarded a contract under a project being considered by a committee of the Council, for the reasons similar to those given by Mr SHEK in paragraphs 4.18 to 4.20 above.

4.30 Mr LAM disagreed that he had breached Rule 83A of RoP for not disclosing the nature of his pecuniary interest in the XRL Project when he spoke at the relevant meetings of the Railway Subcommittee by virtue of his being an INED of HCCG, as a Member could only properly be judged on what he knew at the relevant time and in the context then existing. A Member who had no knowledge of a relevant interest at the relevant time should not be censured based on information developed afterwards. Mr LAM pointed out that imposing the new requirement of complying with Rule 83A of RoP retrospectively on his case was in breach of the rules of natural justice and most unfair to him.

4.31 CMI has carefully considered Mr LAM's view on retrospective application of a new standard of reporting pecuniary interests. CMI remains of the view that there is no question of such as the principles set out in paragraph 3.14 in Chapter 3 of this Report do not add new requirements to Rule 83A of RoP, but are to reflect how the Rule should be applied generally to situations where a Member is a director of a company which has a pecuniary interest in a matter before the Council, a committee or subcommittee.

4.32 CMI also remains of the view that Mr LAM had breached Rule 83A of RoP for not disclosing his interest in the XRL Project by virtue of his being an INED of HCCG when he spoke at the relevant meetings of the Railway Subcommittee. CMI however will not recommend any sanction against Mr LAM under Rule 85 of RoP in this case for the considerations set out in paragraphs 4.14 and 4.15 above.

4.33 CMI would like to emphasize that as a LegCo Member, Mr SHEK and Mr LAM should stay alert and be vigilant in observing the requirement to disclose their pecuniary interests as provided in the relevant provisions of RoP of LegCo.

4.34 Hon Mrs Sophie LEUNG and Hon WONG Yung-kan have reservation about one of the principles applicable to Rule 83A of RoP as mentioned in paragraph 3.14(e) in Chapter 3 of this Report, as that principle has never been applied to disclosure of pecuniary interest derived from the subsidiary of a company of which a Member is an INED and has never been fully discussed among Members. Mrs LEUNG and Mr WONG consider it not practicable at all for a Member to find out the business involvements of the subsidiaries of the company of which he is an INED for the purpose of complying with Rule 83A of RoP. They also consider it too drastic to apply this principle to the cases of Mr LAM and Mr SHEK as the basis for concluding that they had breached Rule 83A of RoP despite the fact that no sanction against them is recommended.

CHAPTER 5

Recommendations

Admonishment

5.1 On the basis of the conclusion set out in paragraph 4.9 in Chapter 4 of this Report, CMI recommends that Hon Abraham SHEK be admonished on a motion to that effect in accordance with Rules 73(1)(e) and 85 of RoP.

Other recommendation

5.2 To assist Members in complying with Rule 83A of RoP, CMI recommends that the principles applicable to Rule 83A of RoP set out in paragraph 3.14 in Chapter 3 of this Report should be set out in the form of guidelines to remind Members of their obligations as directors and to formalize arrangements for the disclosure of pecuniary interests at meetings of committees. These principles are reproduced as follows:

- (a) a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;
- (b) if a company is regarded as having a direct pecuniary interest in a project by virtue of (a) above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;
- (c) there is no distinction between executive directors, non-executive directors and independent non-executive directors as far as disclosure of pecuniary interest under Rule 83A of RoP is concerned;

- (d) a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee; and
- (e) generally speaking, if a subsidiary of a company ("parent company") has bid for a contract or has been awarded a contract under a project, then, the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project.

5.3 In view of the rising public expectation of the conduct and propriety of a LegCo Member, CMI calls upon all Members to stay alert and be vigilant in observing the requirement to disclose their pecuniary interests as provided in the relevant provisions of RoP of LegCo in order to uphold the credibility of the Council.

Council Business Division 3
Legislative Council Secretariat
21 June 2011

議員個人利益監察委員會

委員名單

(2010 - 2011年度)

主席	梁劉柔芬議員, GBS, JP
副主席	劉慧卿議員, JP
委員	吳靄儀議員(自2010年2月26日起) 黃容根議員, SBS, JP * 石禮謙議員, SBS, JP 梁家傑議員, SC (至2010年1月28日) 陳茂波議員, MH, JP 黃成智議員
秘書	蘇美利小姐
法律顧問	馮秀娟女士

* 因為石禮謙議員是被投訴的委員，所以並無參與處理該投訴或委員會就考慮及調查針對他的投訴所舉行的會議。

Committee on Members' Interests

Membership List

(Year 2010 - 2011)

Chairman	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Deputy Chairman	Hon Emily LAU Wai-hing, JP
Members	Dr Hon Margaret NG (since 26 February 2010) Hon WONG Yung-kan, SBS, JP * Hon Abraham SHEK Lai-him, SBS, JP Hon Alan LEONG Kah-kit, SC (up to 28 January 2010) Hon Paul CHAN Mo-po, MH, JP Hon WONG Sing-chi
Clerk	Miss Mary SO
Legal Adviser	Ms Connie FUNG

* *As Hon Abraham SHEK is a Member under complaint, Mr SHEK has not participated in the handling of the complaint or in the meetings of the Committee to deliberate on or inquire into the complaint made against him.*

**議員個人利益監察委員會
接獲有關議員登記或申報個人利益、
或議員申領工作開支償還款額的
投訴時的處理程序**

2009 年 1 月

**THE PROCEDURE OF
THE COMMITTEE ON MEMBERS' INTERESTS
FOR HANDLING COMPLAINTS RECEIVED
IN RELATION TO THE REGISTRATION OR
DECLARATION OF MEMBERS' INTERESTS OR
MEMBERS' CLAIMS FOR REIMBURSEMENT OF
OPERATING EXPENSES**

January 2009

議員個人利益監察委員會
接獲有關議員登記或申報個人利益、
或議員申領工作開支償還款額的
投訴時的處理程序

首次會議的召開

- (1) 議員個人利益監察委員會("委員會")接獲議員或市民(下稱"投訴人")就某位議員(下稱"被投訴的議員")登記或申報其個人利益或某位議員申領工作開支償還款額事宜所作出的書面投訴後，委員會秘書("秘書")須立即聯絡該投訴人及查證其身份，然後將該項投訴以機密文件方式發送給各委員，並請委員會主席("主席")（主席如不在香港或被投訴的議員是主席，秘書應請示副主席，下同）在兩個工作天內決定應否就此召開會議。若投訴(i) 是由匿名、不能辨別身份或無法取得聯絡的人士作出、或(ii) 是針對前任議員的，或(iii) 關乎議員被指稱在投訴日期之前 7 年或以上期間所作的作為或漏報事件，主席須指示秘書將該項投訴以機密文件方式發送給各委員備悉，但委員會不會考慮該項投訴。
- (2) 在決定應否就收到的投訴召開會議時，主席可就下列理由考慮無須舉行會議：
- (a) 該項投訴與議員個人利益的登記或申報，或議員申領工作開支償還款額無關；
 - (b) 該項投訴的指控純屬臆測、推論或並非基於事實的判斷；
 - (c) 該項投訴涉及實質重複的指稱，而該等指稱已獲委員會處理，但如出示新的證據則作別論；或
 - (d) 主席認為其他適當的理由。
- (3) 若主席決定應召開會議，則須指示秘書安排委員會在緊隨的 7 個工作天內就該項投訴召開首次會議。

**The procedure of the Committee on Members' Interests
for handling complaints received
in relation to the registration or declaration of Members' interests or
Members' claims for reimbursement of operating expenses**

Convening the first meeting

- (1) Upon receipt of a written complaint by the Committee on Members' Interests ("the Committee") from a Member or a member of the public (hereinafter referred to as "the complainant") about the registration or declaration of interests of a Member or a Member's claims for reimbursement of operating expenses (hereinafter referred to as "the Member under complaint"), the Clerk to the Committee ("the Clerk") shall forthwith contact and verify the identity of the complainant. The Clerk shall then distribute the complaint in the form of a confidential document to members of the Committee ("members") and he shall ask the Chairman of the Committee ("the Chairman") to decide within two working days whether a meeting on the matter should be held (in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, the Clerk shall seek instruction from the Deputy Chairman; the same principle shall apply in subsequent paragraphs). If a complaint (i) is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or (ii) is made against a former Member, or (iii) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of the complaint, the Chairman shall instruct the Clerk to circulate the complaint to other members in the form of a confidential document for information. However, the Committee will not consider the complaint.
- (2) In deciding whether a meeting should be held to consider the complaint received, the Chairman may consider not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration or declaration of a Member's interests, or a Member's claims for reimbursement of operating expenses;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) the complaint involves substantially repeated allegations which have already been dealt with by the Committee, except where fresh evidence has been produced; or
 - (d) other reasons he deems appropriate.
- (3) If the Chairman decides that the Committee should meet, he shall instruct the Clerk to arrange for the first meeting to be held within the next seven working days to consider the complaint.

- (4) 若主席決定無需召開會議，並如是向秘書發出指示及提供其理由，秘書須將主席的決定及其理由通知各委員。如有委員向秘書書面表示不同意該項決定，秘書須以書面傳閱方式，請委員會委員就應否召開會議考慮該項投訴在3個工作天內回覆秘書。秘書如在限期內收到過半數委員答覆贊成召開會議，秘書須請主席決定會議舉行的日期、時間及地點，以考慮該項投訴。首次會議舉行的日期須為緊隨的7個工作天之內。
- (5) 若主席作出不需召開會議的決定，並且沒有過半數委員在秘書發出傳閱文件後的3天限期內表示應召開會議，則委員會將不會就該項投訴採取進一步行動。

初步考慮

- (6) 委員會可就該項投訴舉行一次或多次會議，以考慮該項投訴。
- (7) 此等會議的目的為：
- (i) 確定投訴的內容及指稱事宜所涉及的《議事規則》條款；及
 - (ii) 掌握上述投訴及指稱事宜的有關資料，如：日期、金錢數額（若有的話）、涉及的人士等等。該等資料不得包括傳播媒介的報道、不具名人士所提供的資料、個別人士的猜測、推論或判斷。
- (8) 在考慮有關議員申領工作開支償還款額的投訴時，除了考慮委員會可能認為有關的任何其他事宜外，委員會須顧及《立法會議員申請發還工作開支的指引》的條文。
- (9) 委員會可邀請投訴人出席會議，並提交資料。委員會亦可邀請被投訴的議員出席會議作出解釋，以及提交資料。在作出邀請的同時，委員會須告知被投訴的議員，若他拒絕出席會議或在會議中拒絕回答委員會的提問，委員會可引用《立法會(權力及特權)條例》(第 382 章)所賦予的權力，命令他到委員會席前，作證或出示所管有的文件，並可安排他在宣誓後接受訊問。

- (4) If the Chairman decides not to hold such a meeting and conveys to the Clerk his decision as well his reasons for making such a decision, the Clerk shall inform other members of the Chairman's decision and his reasons. If any member indicates disagreement with the decision in writing, the Clerk shall, by way of a circular, ask the members to forward replies to him within three working days on whether a meeting should be held to consider the complaint. In the event that the Clerk receives replies in which the majority of members indicate their support for holding a meeting, he shall ask the Chairman to fix the date, the time and the venue for the meeting. The first meeting shall be held within the next seven working days.
- (5) If the Chairman makes a decision of not holding a meeting and the Clerk does not receive replies from a majority of members indicating disagreement with this decision after the expiry of the three-day deadline since the issue of the circular, the Committee will not take any further action on the complaint.

Preliminary consideration

- (6) The Committee may hold a meeting or a series of meetings to consider the complaint.
- (7) The purposes of such meetings are:
- (i) To ascertain the subject of the complaint and the provisions of the Rules of Procedure relevant to the allegations in question; and
 - (ii) To gather information relevant to the complaint and the allegations in question, such as the dates, amounts of money (if any), persons involved, etc. Such information should not include media reports, information provided by anonymous persons and speculations, inferences or judgements made by individuals.
- (8) In considering a complaint relating to a Member's claims for reimbursement of operating expenses, the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.
- (9) The Committee may invite the complainant to attend a meeting(s) to provide information. The Committee may also invite the Member under complaint to attend a meeting(s) to give explanations, and provide information. At the time of making the invitation, the Committee shall inform the Member under complaint that if he refuses to attend such meeting(s) or refuses to answer questions of the Committee at such meetings, the Committee may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before the Committee, and to give evidence or to produce documents, and may cause him to be examined on oath.

- (10) 被投訴的議員可由最多 3 名人士陪同出席委員會會議，向他提供協助或意見。這些人士可包括法律顧問，每次出席的陪同人士可以是不相同的。然而，被投訴的議員必須親自回答提問、作出解釋或提供資料。陪同人士不得向委員會發言。
- (11) 若被投訴的議員在此階段承認所有指稱事項，而委員會認為可就此決定投訴是否成立，並決定無須舉行研訊，委員會須向立法會提交報告，並建議向被投訴的議員施加何種處分。
- (12) 委員會若認為該項投訴不成立，可決定不進一步採取調查行動。

調查

- (13) 若委員會決定就該項投訴進行調查，委員會須指示秘書通知投訴人及被投訴的議員該項決定，並將所接獲有關投訴的資料提供予被投訴的議員。
- (14) 在進行研訊時，委員會可根據《立法會(權力及特權)條例》(第 382 章)第 9(1)條，命令任何人到委員會席前，作證或出示其所管有或控制的任何文據、簿冊、紀錄或文件。在該研訊中，委員會可安排此等證人在宣誓後接受訊問。委員會可要求投訴人、被投訴的議員及其他人在宣誓後確認其在先前會議提供的資料及陳述等。
- (15) 被投訴的議員有權就投訴的內容及有關事宜作出解釋、申辯及提交資料。被投訴的議員可由最多 3 名人士陪同出席委員會會議，向他提供協助或意見。這些人士可包括法律顧問，每次出席的陪同人士可以是不相同的。然而，被投訴的議員必須親自回答提問、作出解釋或提供資料。陪同人士不得向委員會發言。

- (10) In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.
- (11) If the Member under complaint admits all the allegations at this stage, and the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, the Committee shall report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint.
- (12) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (13) If the Committee decides to conduct an investigation into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint and to provide the Member under complaint with information received in relation to the complaint.
- (14) In the course of conducting an enquiry, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. At such a hearing, the Committee may cause witnesses to be examined upon oath. The Committee may ask the complainant, the Member under complaint and other persons to confirm upon oath the information and statements they have provided at previous meetings.
- (15) The Member under complaint shall have the right to give explanations, make clarification and provide information on the subject of the complaints and the related matters. In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.

暫時中止有關投訴的工作

- (16) 在初步考慮或調查階段，若委員會獲悉該項投訴或有關事宜正由執法機關調查，或與在法庭待決的案件有關，委員會可暫時中止其調查，直至執法機關的調查或法律程序完結為止。

委員會作出投訴是否成立的決定

- (17) 若委員會決定有足夠證據證實投訴成立，便須將該決定通知投訴人及被投訴的議員。
- (18) 被投訴的議員在收到委員會決定投訴成立的通知後，可在緊隨的7個工作天內以書面向委員會提出覆檢其決定的要求，並可向委員會提交書面陳述及提交在較早前聆訊的時候無法獲得的資料。委員會在接獲被投訴的議員要求覆檢其決定的書面通知後，主席須指示秘書安排委員會在緊隨的7個工作天內就覆檢要求召開會議，聆聽被投訴的議員的解釋及覆檢其先前的決定。
- (19) 若委員會認為投訴成立，或委員會經覆檢後仍認為投訴成立，委員會須將該項投訴、證據及其意見向立法會提交報告。委員會亦可根據《議事規則》第 85 條，向立法會提交對被投訴的議員施加何種處分的建議。委員會在考慮是否建議作出處分，或建議何種處分時，須顧及被投訴的議員是否由於無心之失，以致違反了《議事規則》的有關規則。
- (20) 若委員會認為投訴不成立，委員會須將該項決定通知投訴人及被投訴的議員。委員會可決定是否就此向立法會提交報告。若委員會決定不就此向立法會提交報告，委員或任何其他人士不得披露關於該項投訴的任何資料；但委員會在公開會議中所取得的證據或所收到的文件除外。

Suspension of work on the complaint

- (16) If, during the preliminary consideration or the investigation stages, the Committee has come to the knowledge that the complaint or related matters is/are being investigated by a law enforcement agency, or is/are relating to a case pending in a court of law, the Committee may suspend its investigation until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

The Committee's decision as to whether a complaint is substantiated

- (17) If the Committee decides that there is sufficient evidence to substantiate a complaint, it shall inform the complainant and the Member under complaint of its decision.
- (18) Upon receipt of the Committee's notification of its decision that the complaint is substantiated, the Member under complaint may make a request in writing to the Committee for a review of the decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable at hearings held earlier. Upon receipt of the written request for a review of the Committee's decision from the Member under complaint, the Chairman shall instruct the Clerk to arrange for a meeting to be held for such purpose within the next seven working days to hear the explanation made by the Member under complaint and to review its earlier decision.
- (19) If the Committee is of the opinion that the complaint is substantiated, or it is still of the opinion after the review that the complaint is substantiated, the Committee shall present a report to the Council on the complaint, in which the evidence and its opinion should be set out. The Committee may also make a recommendation to the Council as to a sanction to be imposed on the Member under complaint under Rule 85 of the Rules of Procedure. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part.
- (20) If the Committee is of the opinion that the complaint is not substantiated, it shall convey the decision to the complainant and the Member under complaint. The Committee may decide whether it should submit a report on this to the Council. If the Committee decides not to submit a report on this to the Council, members or any other person must not disclose any information regarding the complaint, except the evidence taken before the Committee and documents presented to it during meetings of the Committee held in public.

保密規定

- (21) 出席委員會閉門會議的所有委員及其他人士(被投訴的議員除外),均須簽署保密承諾書,承諾在委員會將其報告提交立法會前,不會發表委員會所取得的證據、所收到的文件,或所作的考慮或決定。當委員會裁定某位委員或其他人士違反了其向委員會所作承諾,委員會將考慮是否及如何處置該委員或其他人士,並可採取行動,包括在立法會根據《議事規則》第 81 條(證據的過早發表)動議議案訓誡或譴責該委員,或由委員會通過議案,對該委員或其他人士違反承諾表達不滿。
- (22) 在委員會按第 17 或 20 段通知被投訴的議員委員會所作的決定前,被投訴的議員須簽署保密承諾書,承諾不會在委員會將其報告提交立法會前,發表委員會註明機密的文件。當委員會裁定被投訴的議員違反了其向委員會所作承諾,委員會將考慮是否及如何處置該議員,並可採取行動,包括由委員會通過議案對他違反承諾表達不滿。
- (23) 委員會的會議,包括聆訊的會議,須為閉門會議;但如被投訴的議員要求聆訊的會議為公開會議,則該等聆訊須在公開會議進行。
- (24) 聆訊中所聽取證供的謄本全文須盡量刊載於委員會的報告內,並作為該報告的一部分。

委員參與委員會的審議工作


- (25) 任何提出投訴或被投訴的委員會委員,均不得以委員會委員身份參與處理該項投訴或參與委員會審議或調查該項投訴的會議。

Confidentiality Requirement

- (21) All members and other persons attending meetings of the Committee held in camera (except the Member under complaint) shall be required to sign a confidentiality undertaking that they will not publish evidence taken before the Committee, documents produced to it, or its deliberations and decisions before the Committee has presented its report to the Council. Where the Committee finds that a member or other person has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the member or that other person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the Rules of Procedure, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.
- (22) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 17 or 20, the latter shall be required to sign a confidential undertaking not to publish any document marked as confidential by the Committee before it has presented its report to the Council. Where the Committee finds that the Member under complaint has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.
- (23) Meetings of the Committee, including those at which hearings are conducted, shall be held in camera. However, hearings shall be conducted at meetings held in public if the Member under complaint makes such a request.
- (24) The transcript of evidence taken at such hearings shall be published in full as far as possible and form part of the report of the Committee.

Participation of members in the deliberations of the Committee

- (25) No member of the Committee shall participate as a member of the Committee in the handling of a complaint or in the meetings of the Committee to deliberate on or inquire into a complaint where the complaint was made by or against him.

From: [REDACTED]
To: mi_c@legco.gov.hk
Date: Thursday, December 31, 2009 03:12AM
Subject: 就廣深港高速鐵路工程的利益衝突問題而提出的關注
History:  This message has been forwarded.

附錄 III
Appendix III

致議員個人利益監察委員會：

來函謹附上 就廣深港高速鐵路工程 的 利益衝突問題而提出的關注，請轉交主席及各委員參考。謝謝！

香港慢慢發行動組，及
人民規劃行動

Attachments:

PPA-legco CMI submission full ver 2812099.pdf

致立法會
議員個人利益監察委員會
梁劉柔芬主席：

**就廣深港高速鐵路工程的利益衝突問題
而向立法會議員個人利益監察委員會提出的關注**

立法會財務委員將於二零一零年一月八日就廣深港高速鐵路工程的撥款申請進行討論及表決。我們關注個別議員就高鐵工程撥款或涉及利益、角色衝突的問題。為此，特此來函促請立法會澄清個別議員所涉及的相關利益（如任職有關公司的董事、承辦高鐵項目工程等），是否可以參與立法會會議中有關高鐵工程的討論、議案及撥款申請的表決。由於整個高鐵項目的撥款達港幣六百六十九億元，涉及龐大的公帑運用，我們促請立法會盡快就議員的利益衝突問題作出處理及制定相關指引。我們認為在立法會解決有關疑慮前，政府當局應暫緩高鐵工程的撥款申請。

以下為我們所注意到個別議員或涉嫌角色、利益衝突問題：

1. 何鍾泰議員為中國建築國際集團有限公司的非執行董事，根據集團年報，何鍾泰議員每年的袍金連以股份為基礎之付款的總酬金達港幣三十六萬七千元。

於二零零八年五月二十六日，其集團行政總裁周勇曾向傳媒表示「公司今明兩年的大計是籌備投標廣深港高速鐵路工程。（詳情見附件一）」而「中國建築國際」股票同樣受惠於十大基建上馬，被資深投資分析公司評為「跑贏大市」（詳情見附件二）。此外，中國建築國際集團過往參與多項本港鐵路設施及地下鐵隧道工程，如：九鐵南環線佐敦至南昌的鐵路隧道工程及東鐵馬鞍山—大圍至石門及石門至利安的工程，以及西鐵車廠土木工程等（詳情見附件三）。

此外，我們翻查立法會的會議錄音，何鍾泰議員於二零零九年九月十七日於「立法會鐵路事宜小組委員會」發表支持興建高鐵及高鐵應採用專用通道方案的言論，並其後一直於鐵路事宜小組委員會參與高鐵工程的討論及發言，惟何鍾泰議員並沒有就其身任中國建築董事的身份作出任何申報。

2. 我們留意到林健鋒議員及石禮謙議員同為新昌營造集團有限公司（「新昌營造」）之非執行董事，根據集團年報，二人每年的袍金連

以股份為基礎之補償，每年獲集團支付金額達九十一萬六千元的酬金（每人）。

而我們留意到該集團在報章的特約特輯中表示有意參與包括高鐵工程的十大基建。並預期首項「廣深港高速鐵路」工程即將啓動，集團已有計劃在各方面加以準備，並希望與海外建造商或合作夥伴等攜手參與這項工程。（詳見附件四）此外，單是因為市場憧憬基建上馬，新昌營造股票在逆市受追捧，半日成交增至 486 萬股，更為近年罕見的情況（詳見附件五）。同時，「新昌營造」旗下之「新昌管理」與香港鐵路有限公司簽有設施管理合約（詳見附件六），可見新昌管理與港鐵素有業務來往。

故此，林健鋒議員、石禮謙議員身作為新昌營造集團的非執行董事，高鐵工程撥款與其集團的利益關係明顯。惟林健鋒議員及石禮謙議員於鐵路事宜小組委員會參與高鐵工程的討論及發言時，並無申報其作為新昌營造集團非執行董事的身份。

3. 此外，石禮謙議員亦同為香港鐵路有限公司及新創建集團有限公司的非執行董事，獲港鐵支付袍金每年三十萬元，及獲新創建集團支付袍金、基本薪金、津貼及購股權福利，其每年的薪酬總額達 193 萬。

而根據港鐵公司的合約公告，新創建集團旗下的一間子公司惠保(香港)有限公司於本年十月十二日承辦了一份有關廣深港高速鐵路建造合約，金額達港幣一千一百多萬元。（詳情請見附件七）。但石禮謙議員於鐵路事宜小組委員會參與高鐵工程的討論及發言時，並沒有就其港鐵董事身份及其所屬集團的子公司已取得高鐵工程合約作出申報。

4. 我們認為何鍾泰議員、林健鋒議員、石禮謙議員在高鐵項目上有明顯的利益衝突，若繼續參高鐵路工程的討論及有關工程的撥款表決，實屬不當。

為此，我們促請立法會議員個人利益監察委員會作出以下行動：

- (1) 鑑於高鐵工程撥款涉及 669 億的公帑運用，實需謹慎處理。故要求政府當局暫緩高鐵路工程的撥款申請，直至立法會就個別議員或涉及利益、角色衝突的問題得以澄清及作出處理；



- (2) 向議員發出注意利益衝突的指引，並就涉及利益、角色衝突的議員就其能否參與高鐵工程的撥款表決及討論作出清晰指示；
- (3) 徹查於高鐵工程中涉及利益、角色衝突的議員於過往立法會會議中有否參與有關高鐵工程的討論、表決及有否就其利益及角色作出申報，並就其行徑向市民解釋有否令公眾利益受損；
- (4) 檢討現行立法會的議員個人利益申報機制是否能充份監察及防止利益衝突的情況出現。

備註：有關上述議員任職董事的薪酬資料請看附件八

香港慢慢發行動組及
人民規劃行動
二零零九年十二月廿八日

中國建築首5月 新簽工程增2成

公司訪問

本港基建業今年轉起從往日的弱勢中轉盛，首5月中國建築(03311)新簽的本港工程合同額達48億元，接近去年全年的額，刺激整體新簽工程額按年增20%至60億元，而手上在建工程共400億元。

行政總裁周勇指出，公司今明兩年的大計是籌備投標廣深港高速鐵路工程。

擬購母公司 公共設施資產

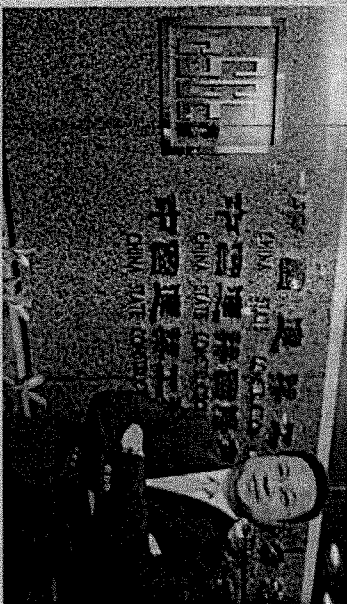
另外，母公司中國建築總公司內地上市計劃正如如火如荼，周勇表示，公司有意在母公司上市後，向其以合理價格收購旗下的公共設施資產，營造基建投資業務板塊，但所有收購計劃和時間表並未落實。他描述投資板塊的藍圖時，表示希望板塊內含BOT項目（興建後獲項目營運權以獲取收入），及一級土地開發項目，有機會在土地拍賣後分享部分利潤，工程內除回報率要達12%才會參與。

本港基建業復甦的機會。周勇指出，今年政府外判的工程大增，60億元的新簽合同中，有8成來自政府，如安達臣道工程（見表）等。周勇表示，政府工程的今年利率較一般工程高，料可助提升公司今年整體毛利率及純利率。

滙豐證券則發表報告，預期中國建築2008年的純利率可按年上升1.3個百分點至5.5%。

建材成本上漲是建築和基建業公司急待解決的問題。周勇指公司並不擔心，因手頭上400億元的在建合同當中，有70%以上屬開放式合同，而餘下工程亦設轉嫁部分物料成本的條款。

他解釋，開放式合同乃由業主負擔上漲的成本金額。他舉例指如政府批出的合約，每月都獲統計署統計成本漲幅，由政府全數支付。正因如此，周勇指公司對投標廣深港鐵路香港段的興趣濃厚，又指公司往年年中標承建馬鐵及九龍南環線等，公司具備優勢，正研究獨資或合組財團投標。 ■本報記者 蔡傳聲



中國建築行政總裁周勇表示，今明兩年的大計是籌備投標廣深港高速鐵路工程。（林宇翔攝）

中國建築首5月新簽合同金額

主要新簽項目	金額(億元)	業主
安達臣道開山造地工程	21	政府
西離孫中山公園工程	5	政府
九倉旗下工貿大廈工程	5	私人財團
手持/在建項目金額(億元)	400	

新簽合同金額(億元)	按年變幅(%)	政府項目比重(%)
60	+20	80

中國建築受惠十大基建上馬



- 中國建築國際 (03311) 今日公布第三季業績，麥格理於10月20日發表研究報告，指集團受惠本港基建項目上馬。該行維持中國建築「跑贏大市」投資評級，目標價3.8元。中國建築昨收3.25元，距離目標價尚有17%上升空間。
- 麥格理表示，香港特區行政長官《施政報告》重申，主要基建項目會如期進行，而中國建築仍須面對的風險，包括廣深港高速鐵路的延期風險，因預期收回土地需時更長，建築成本預期更高，及立法會討論時間加長。該行表示，本港十大基建總支出2,500億元，廣深港高速鐵路約佔16%。
- 麥格理預期，中國建築2010及2011年的新合約金額中，有65%來自本港的項目。該行估計，中國建築來自本港的新合約金額每減少10億元，該行對其2010及2011年每股盈利預測會調低約1.5%。以報告參考股價3.18元計，中國建築明年預測PE為13.2倍，低於區內同業15.8倍。
- 麥格理表示，今年第四季本港有更多項目推出投標，預期承包商會提高投標項目毛利率，相信中國建築來自本港項目的毛利率會擴大。該行表示，中國建築毛利率每上升10點子，該行對其2010及2011年每股盈利預測將增約1.5%。

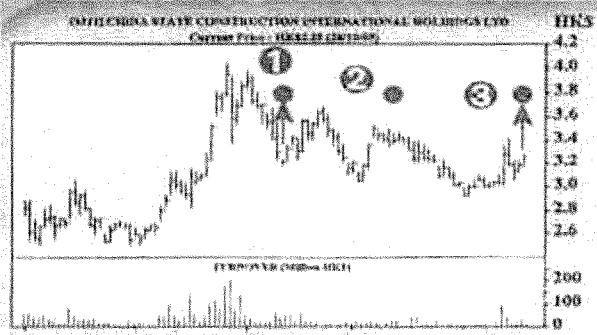
麥格理對中國建築盈利預測

12月年結	2009年度	2010年度	2011年度
盈利 (億港元)	5.71	7.07	8.08
盈利升跌 (%)	+16.77	+23.82	+14.29
每股盈利 (港元)	0.213	0.240	0.275
每股盈利升跌 (%)	+12.11	+12.68	+14.58

麥格理維持中國建築跑贏大市評級

日期	①	②	③
日期	09年8月12日	9月11日	10月20日
評級	跑贏大市	跑贏大市	跑贏大市
目標價 (元)●	3.80	3.80	3.80
當日收市 (元)	3.21	3.40	3.25
上升空間 (%)	+18.38	+11.76	+16.92

麥格理維持中國建築目標3.8元



收市：3.25元

市值：95.7億元

附件三 中國建築國際集團有限公司過往有關本港鐵路工程項目的業務：

年份	工程項目	客戶
2007	大圍維修中心地產發展一期	長江實業 / 港鐵公司
2007	將軍澳夢幻之城第二部份一期	長江實業 / 港鐵公司
2007	將軍澳 86 區中央公園	地鐵有限公司
2005	九鐵南環線佐敦至油麻地隧道	九廣東鐵
2005	九鐵南環線油麻地至南昌站隧道	九廣東鐵
2001	東鐵馬鞍山段 TCC200-磨樁工程	九廣鐵路公司
2000	東鐵馬鞍山-石門至利安	九廣鐵路公司
2000	東鐵馬鞍山-大圍至石門	九廣鐵路公司
1999	西鐵車廠土木工程	九廣鐵路公司
1999	美孚至欽洲街隧道	九廣鐵路公司
1999	將軍澳地鐵站	地鐵公司
1998	機鐵九龍站廣場	地鐵公司

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新昌 Hsin Chong

新昌營造集團有限公司70周年誌慶

特約專稿

闖蕩內地海外市場 創商機

新昌營造集團有限公司（下稱新昌營造）過去七十年的優越成績實業界及社會廣泛肯定。未來，管理層將秉承集團的優良傳統，並以創意思維及魄力，繼續帶領集團迎接建築的復甦，並進一步在中國內地及海外市場尋找商機。

集團管理層主席吳英傑對集團在過去幾十年來，能從新加坡市場中穩步發展，他表示：「內地與香港經濟發展迅速，對基礎及新項目需求量大，加上內地與香港之間的地緣發展連通，為基礎建設帶來不少商機。新昌營造在基本項目之前，亦曾積極拓闊內地市場。」

與此同時，隨著中國在世界各地進行建設，內地不少企業「走出去」拓展海外市場，新昌營造以它的專業及對國際市場的熟識，可擔任內地企業與海外市場間的橋樑。例如新昌營造正與內地一家大型建築公司合作，在澳門開發的澳門新賭場項目中，新昌營造負責為該項目提供建築管理服務，負責新賭場和酒店項目的建築工程，並進行專業建築工程設計及交付相關建築服務。

十大基建開展 為業界注入動力

隨著40項基建工程陸續開展，對本港建築業將帶來新機遇。特約「愛國企業家」吳英傑表示，過去五年香港出現建設發展熱潮，不過，最近政府推出發展價值500億的十大基建工程項目後，為建築業帶來新動力和契機的機會。新昌營造主席吳英傑表示，十大基建項目非常有利，預計將創造就業機會，並吸引更多人才。



▲新昌營造主席吳英傑在「新昌營造七十周年誌慶特約特輯」中接受訪問。

投資菁英 集思廣益

十大基建中，特約記者「吳英傑表示，十大基建開工在即，新昌營造已對開拓各方面知識，他亦曾與海外建築商合作，共同參與各項基建項目。

當十大基建項目展開後，新昌營造將承接各項工程，包括在港、內地及海外市場承接各項工程，以及海外市場承接各項工程。此外，特約記者亦曾與新昌營造的高級管理人員進行訪問，了解新昌營造在過去七十年的發展歷程。吳英傑表示，新昌營造在過去七十年的發展歷程中，一直秉承「誠信、專業、服務」的宗旨，不斷提升服務質素，不斷開拓市場，不斷發展。



▲新昌營造主席吳英傑在「新昌營造七十周年誌慶特約特輯」中接受訪問。

履行企業社會責任 關懷社區

新昌營造一直對社會負責任，積極參與各項社會公益活動，為社會作出貢獻。在過去七十年的發展歷程中，新昌營造一直秉承「誠信、專業、服務」的宗旨，不斷提升服務質素，不斷開拓市場，不斷發展。此外，新昌營造亦積極參與各項社會公益活動，為社會作出貢獻。

關懷員工 服務社會

事實上，獲得社會各界肯定與讚揚，是集團發展的一個重要動力。新昌營造一直秉承「誠信、專業、服務」的宗旨，不斷提升服務質素，不斷開拓市場，不斷發展。此外，新昌營造亦積極參與各項社會公益活動，為社會作出貢獻。

員工服務及活動多元化

今年集團將繼續舉辦各項員工服務活動，包括「愛國企業家」吳英傑表示，過去五年香港出現建設發展熱潮，不過，最近政府推出發展價值500億的十大基建工程項目後，為建築業帶來新動力和契機的機會。新昌營造主席吳英傑表示，十大基建項目非常有利，預計將創造就業機會，並吸引更多人才。

關懷愛心傳內地

今年集團將繼續舉辦各項員工服務活動，包括「愛國企業家」吳英傑表示，過去五年香港出現建設發展熱潮，不過，最近政府推出發展價值500億的十大基建工程項目後，為建築業帶來新動力和契機的機會。新昌營造主席吳英傑表示，十大基建項目非常有利，預計將創造就業機會，並吸引更多人才。



▲新昌營造員工在內地參與服務，參與各項社會公益活動。

7



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- 社保980億「出海」利港股
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- 俊超港上市再添變數
- 皇庭作區繼辦新股

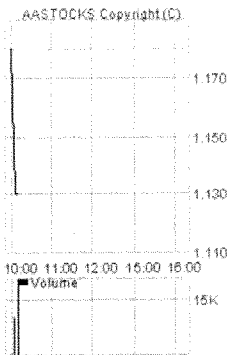
新昌營造 (00404) 新聞

- (異動股) 新昌系重現買盤，新昌營造 <00404.HK> 升10%
- 新昌營造威尼斯人澳門工程或複工
- 新昌營造 <00404.HK> 急升36%，聯會極有機會得啟德公屋項目
- (公司業績) 新昌營造 <00404.HK> 中期純利倒退52%，派息2.5仙
- 新昌營造半年少賺52%
- 新昌營造委任麥貴榮為獨立非執行董事

more

新昌營造 (00404) 報價

現價: 1.130 0.05 (-4.24%)



更新時間: 2009-12-18 10:09 (報價至少15分鐘延遲)

>> 詳情報價 >> 圖表 >> 分析 >> 公司資料

進階圖表

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憧憬基建上馬，香港建設 <00190.HK> 新昌營造...

憧憬基建上馬，香港建設 <00190.HK> 新昌營造 <00404.HK> 急升

2009-02-16 12:37:30

市場憧憬港府大型基建項目短期上馬，相關股逆市受捧，尤其是新昌營造 <00404.HK> 升破100天線，高見\$0.71，創逾3個新高，中午收報\$0.68，急升19%，半日成交增至486萬股，為近年罕見。

香港建設 <00190.HK> 升11%至\$0.6，為1個月高位，半日成交續增至5575萬股，此外，中國建築 <03311.HK>、利基 <00240.HK>、俊和 <00711.HK> 及有利 <00406.HK> 升4%-11%。

本港機場貨運量1月急跌29%至僅21萬公噸，反映金融海嘯對本港實體經濟衝擊已重創進出口業和航空物流業，此外，廣東「兩會」正在舉行，省長黃華華於政府工作報告中，將粵港合作進程提速作為今年工作著力點之一，尤其是加快港珠澳大橋、廣深港客運專線等大型跨境基礎設施建設。(sz/d)

阿思達克財經新聞組

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- A23 -

憧憬基建上馬，香港建設 <00190.HK> 新昌營造 <00404.HK> 急升
 新昌營造異動 早市中段升幅擴大至逾兩成

8

附件六：新昌營造集團有限公司於2009年發出的中期業績報告

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 **新昌**
HSIN CHONG
HSIN CHONG CONSTRUCTION GROUP LTD.
新昌營造集團有限公司*
(於百慕達註冊成立之有限公司)
(股份代號：00404)

截至二零零九年六月三十日止六個月
之未經審核中期業績公佈

Hsin Chong Construction Group Ltd. (新昌營造集團有限公司*) (「本公司」) 董事會 (「董事會」) 欣然公佈本公司及其附屬公司 (統稱為「本集團」) 截至二零零九年六月三十日止六個月之未經審核中期業績。

由截至二零零八年十二月三十一日止財政年度起，財政年度結算日已由三月三十一日更改為十二月三十一日。因此，此中期報告申報期涵蓋二零零九年一月一日至二零零九年六月三十日止六個月期間，與之比較之上一財政期間則為二零零八年四月一日至二零零八年九月三十日止六個月。

A. 業務回顧

營運業績

財務摘要	六個月結算		變動比率
	截至二零零九年 六月三十日止	截至二零零八年 九月三十日止	
收益 (港幣百萬元)	1,400	1,069	+31
本公司權益持有人應佔溢利 (港幣百萬元)	30	62	-52
每股基本盈利 (港幣仙)	4.5	9.3	-52
每股攤薄盈利 (港幣仙)	4.5	9.3	-52
每股中期股息 (港幣仙)	2.5	2.0	+25

本集團期內錄得收益港幣1,399,600,000元及毛利港幣153,700,000元。與去年中期所報告比較，收益上升31.0%及毛利增加13.2%。收益及毛利增加主要來自香港之建造工程及機電安裝工程業務增加，以及於去年八月完成收購後綜合Synergis Holdings Limited (新昌

管理集團有限公司*) (「新昌管理」) 之收益及毛利。此類正面因素已充分緩和由於澳門威尼斯人路氹項目停工引致在澳門經營活動之減少。與此同時，期內之間接開支增加32.2%至港幣93,800,000元，主要由於綜合新昌管理於二零零九年一月一日至二零零九年六月三十日止期間之間接開支港幣32,100,000元。扣除因新昌管理所引致之額外間接開支，則間接開支相對上一個回顧期減少7.1%。期內之其他收入減少75.6%至港幣3,800,000元，主要因利息收入及外匯收益減少引致。期內之其他經營開支共港幣16,400,000元，與去年中期比較上升0.9%，主要為因收購新昌管理而產生之無形資產攤銷、投資物業之公平值虧損，亦無如上年中期所報告對位於中國境內之未出售物業存貨所作出之減值撥備。融資成本由去年中期港幣500,000元增加差不多五倍至港幣3,100,000元，乃由於增加平均銀行貸款所致。期內，合營企業及聯號僅錄得輕微虧損共港幣700,000元。整體而言，本集團期內呈報之盈利為港幣35,200,000元（二零零八年：港幣61,000,000元）。扣除少數股東權益後，本公司權益持有人應佔溢利為港幣29,900,000元（二零零八年：港幣62,200,000元）。

分類分析

(1) 樓宇建造及土木工程

樓宇建造及土木工程分類之收益為港幣 847,500,000 元，較去年中期所報告減少 5.6%。減少乃因暫停威尼斯人路氹地塊五及六之全部建造工程引致來自澳門之工程量降低。此負面影響因應在香港所獲得之新項目而得到抵銷。扣除融資成本後之溢利為港幣 28,200,000 元，較去年中期所報告減少 55.7%。這主要由於香港建造業環境存有更多的競爭，而從澳門的建造管理業務有相對較高的邊際利潤。與此同時，透過共同控制實體參與之樓宇建造工程業務，期內錄得港幣 100,000 元之輕微虧損（二零零八年：溢利為港幣 5,700,000 元）。

在香港，本集團期內繼續取得多項新合約，包括(a)一項土木工程合約由信和集團批出之西九龍填海區海泓道、欣翔道及友翔道交界九龍內地段11073號之挖掘、側向承托、承台及基底構造工程；及(b)兩項翻新及裝修工程合約由領匯管理有限公司批出之小西灣商場第一期之資產提升工程及長發商場擬建第二期之翻新及裝修工程。為維持業務之持續性及尋求發展動力，本集團現時正在透過聘請業內有經驗才俊及專業人士，擴充其土木工程部。憑藉在此方面加強之能力，本集團將更積極尋求參與土木工程項目投標，尤其政府推出的十大主要基建項目。

於期後，本集團多取得兩項土木工程合約及一項樓宇建造工程合約。分別為由土木工程拓展署批出之香港島及九龍斜坡及擋土牆之防治山泥傾瀉工程、屯門小欖第58區青龍路屯門市地段422號擬建住宅項目之地盤平整工程及奇華餅家位於大埔工業邨之新廠房之加建及改建工程。

在澳門，由於暫停建造工程影響本集團於期內之財務表現，因此，本集團已立即重新調整在澳門的項目小組，並與威尼斯人就支付所有團隊開支達成協議，同時運用本身經驗積極尋求其他地區的投資機會。

現時，本集團已成功應用此等技能並擴展至其他地區，包括中東及中國內地。在此期間，本集團與中國鐵道建設（香港）有限公司為沙特阿拉伯之主要地下鐵路項目訂立一項建造管理服務協議。此等協議包括本集團提供系統設計之顧問服務及地下鐵路系統之建造管理服務。展望未來，本集團將繼續與鐵路行業之適當戰略合作夥伴聯盟，以抓緊香港及中國內地即將帶來之商機。

(2) *機電安裝工程*

機電安裝工程分類之收益為港幣277,400,000元，為去年中期業績之三倍。因主要之機電安裝工程項目於期內已進入工程高峯期。扣除融資成本後之溢利為港幣10,100,000元（二零零八年：港幣9,600,000元）。於回顧期六個月內，本集團取得兩項新合約，包括香港賽馬會沙田馬場之空調基礎設施擬升級工程（部分合約已分判予集團內公司）及位於九龍廣播道81號新九龍內地段第5099號擬建住宅項目之電氣及通風空調系統安裝工程。於期後，本集團亦另外取得兩項新合約，包括位於油塘邨重建計劃第四期商場之空調及機電通風安裝工程分判合約及位於赤鱗角新民航處總部之空調系統供應及安裝工程。

(3) *物業管理及設施管理服務*

物業管理及設施管理服務分類之收益及扣除融資成本後之溢利較去年中期所報告顯著增加。此乃因綜合新昌管理由二零零九年一月一日至二零零九年六月三十日之全期中期業績所致。於期內，新昌管理帶來收益港幣259,100,000元及扣除融資成本後之溢利於扣除無形資產攤銷港幣7,000,000元後為港幣9,700,000元（二零零八年：包括由二零零八年九月一日至二零零八年九月三十日止期間之收益為港幣42,700,000元及扣除融資成本後之溢利為3,100,000元）。



本集團期內從業主立案法團取得一份大型租者置其屋計劃屋邨 - 山景邨（包括8,644個單位）之合約。於期後，本集團取得三份由領匯管理有限公司（「領匯」）批出之停車場管理合約。領匯之合約包含116個停車場，遍佈香港島、九龍及新界西總共49,621個泊車位。這些新合約大大提高本集團於香港之市場滲透率，並同時提供更大焦點展示本集團於停車場管理及營運上之能力。除此之外，本集團亦從著名的商業客戶取得多項設施管理合約，包括香港濕地公園及香港鐵路有限公司（「港鐵」）。

於中國，本集團於二零零九年七月獲得歐美匯及都會大廈一份為期兩年之資產管理服務合約，兩項計劃皆位於北京中關村。於二零零九年一月，本集團已開始為位於中央商業區內之綜合發展物業 - 華駿國際中心提供管理服務。本集團自二零零九年五月起為處於上海主要購物區之潮流購物中心調頻壹商場提供管理服務。與此同時，本集團已擴大到其地域範圍包括其他二線城市。在合肥，本集團開始為一個大型商業綜合設施名為西環中心廣場之城市地標提供物業管理顧問服務。

在澳門，本集團與三友發展有限公司（「三友」）之一家有連繫公司建立一個合營企業。此新合營企業將會於二零零九年九月向三友之最新發展項目 - 君悅灣提供管理服務。君悅灣為一個著名混合發展住宅項目包括五幢住宅樓宇、一個服務式公寓、酒店及商場。

處於較穩定之股票市場，新昌管理於二零零九年六月三十日之股價較於二零零八年十二月三十一日之股價港幣0.55元反彈了52.7%至港幣0.84元。展望經濟前景，本公司董事認為於二零零九年六月三十日並無需作進一步之商譽減值。

(4) 物業發展及租賃

物業發展及租賃分類之收益為港幣15,700,000元，較去年中期所報告減少56.1%。收益減少乃由於就中國廣州文昌雅居出售住宅單位已於去年完成。租金收入主要來自駱克道3號、以及位於屯門龍門居及廣州文昌雅居之未出售車位。於結算日，駱克道3號已全部租出（出租率達100%）。扣除融資成本後呈報溢利為港幣8,700,000元，較去年中期所報告上升28.8%。溢利增加乃由於並無俱如去年中期因廣州文昌雅居之未出售物業存貨之減值撥備及其所出售之住宅單位收益所致。

(5) 其他業務

其他業務業績微薄，主要反映分佔非活躍聯號之虧損。

財務狀況

於結算日之負債對資本比率為 25.6%（二零零八年十二月三十一日：29.2%）。資本負債比率下降主要由於已償還銀行借貸港幣 30,000,000 元，於二零零九年六月三十日所剩餘之銀行借貸為港幣 190,000,000 元（二零零八年十二月三十一日：港幣 220,000,000 元），其中一年後到期之銀行借貸為 63.2%（二零零八年十二月三十一日：68.2%）。這些借貸乃按銀行同業拆息加息差計算，考慮到利率對沖所訂立交易之影響，為加權平均年利率 3.06%。截至二零零九年八月十五日，本集團獲提供可動用之信貸總額為港幣 503,000,000 元，而當中未提取之結餘為港幣 313,000,000 元。因此，本集團於本財政年度餘下時間之財務需求將以可動用現金及經營業務所得現金以及銀行信貸撥付。

於二零零九年六月三十日，營運資金淨額為港幣 201,600,000 元（二零零八年十二月三十一日：港幣 188,800,000 元），而於結算日之速動比率為 1.0（二零零八年十二月三十一日：1.0）。現金結存及持至到期投資之短期流動部分為港幣 660,800,000 元，較截至二零零八年十二月三十一日止上一個財政期間港幣 685,800,000 元減少 3.6%，而當中現金及現金等值佔 98%（二零零八年十二月三十一日：98%）。

B. 中期股息

董事會議決就截至二零零九年六月三十日止六個月宣派中期現金股息每股港幣2.5仙（二零零八年：每股港幣2.0仙）。上述中期現金股息將於二零零九年十月二十日（星期二）支付予於香港時間二零零九年十月八日（星期四）名列於本公司股東名冊內之本公司股東。

C. 截止過戶日期

為確定股東可享有中期現金股息之權利，本公司將於香港時間二零零九年十月五日（星期一）起至二零零九年十月八日（星期四）止（首尾兩天包括在內）期間暫停辦理股份過戶登記手續。為符合資格獲派中期現金股息，所有股份過戶文件連同有關股票最遲須於香港時間二零零九年十月二日（星期五）下午四時三十分前送達本公司之香港股份過戶登記分處香港中央證券登記有限公司，地址為香港灣仔皇后大道東183號合和中心17樓1712-1716室，辦理股份過戶登記手續。本公司之主要股份過戶登記處為Butterfield Fulcrum Group (Bermuda) Limited，地址為Rosebank Centre, 11 Bermudiana Road, Pembroke, HM08, Bermuda。

D. 展望

整體經濟

隨著去年下半年全球經濟急劇衰退，香港經濟於二零零九年第二季開始靠穩。受惠於中國內地強勁的增長動力，以及其他先進經濟體系逐漸緩和，本地經濟呈現回升的跡象。儘管本地生產總值於第二季按年比較輕微下跌 3.8%，但與二零零九年第一季相比，第二季恢復增長 3.3%。股市較去年底回升近 40%，物業市場顯示出強勁復甦。失業率於二零零九年五月至七月為 5.4%，與二零零九年四月至六月相若。

然而，人類豬流感更在今年年初爆發，影響全球仍然疲弱的營商氣氛，並充滿不明朗因素。本地經濟能否復甦，最終視乎政府救市措施範圍及實施程序，包括大型基建項目推出的步伐。

建造業

香港樓宇建造活動之支出，相比於第一季下跌 10.9%，二零零九年第二季更進一步下跌 5.9%。主要由於私營建造活動縮減所致。除物流業及金融機構外，房地產及建造業之失業情況最為嚴峻。另一方面，來自公共工程之業務機會於第二季有增加跡象。

隨著基建項目逐步推出，價值逾億元之工程正在籌劃中，包括由港鐵率先推出的多個鐵路項目。此外，四川的重建計劃為中國內地帶來大量商機，而香港特區政府正在資助當地的社區設施重建。於澳門，路氹項目的建設工程暫停可能告一段落，而建造工程快將或於可見之將來復工。

本集團

二零零九年標誌著新昌集團 70 週年。今年五月，本集團高層管理人員連同新昌管理高層管理人員為共同之遠景、使命及企業價值達成一致共識。本集團傳統上本著「品質優良、服務至上」為核心價值，核心價值現已擴大至「誠實廉正、創意無限、群策群力及貢獻社會。」

本集團矢志通過以下途徑成為「建造及與物業相關服務行業的領導者」：

- 為客戶創造價值並提供世界級優質服務；及
- 擴大市場佔有率及提升回報，為股東締造更高的價值。

附件七：港鐵於2009年10月發出的 招標及合約公告



字體大小: A A 聯絡我們 網站指南 簡文字版本 English 顧客資訊 搜尋



心繫生活每一程

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- 鐵路發展
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- 新支線及工程項目
- 營運服務
- 顧問服務
- 招標及合約公告
- 拍賣資料
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- 可持續發展資訊
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招標及合約公告



合約公布 (2009年10月)

合約公告

於2009年10月份批出下列合乎世界貿易組織政府採購協定規範的合約，
現公布下列合約詳情：

招標編號	招標種類	名稱或範圍	承包商/承造商 名稱及地址	數量	批出合約總值	批出合約日期
716	選擇性	西港島綫建造合約編號716	華益土力有限公司 香港灣仔告士打道181-185號 中怡大廈11樓	不適用	港幣 39,902,013元	2009年 10月12日
807	選擇性	廣深港高速鐵路建造合約編號807	惠保(香港)有限公司 香港樂善堂安街38號4樓	不適用	港幣 11,136,800元	2009年 10月12日
C2214.B-08C	選擇性	東鐵綫斜坡改善工程第二期	保華建築有限公司 香港九龍觀塘鴻圖道51號保華企業中心31樓	不適用	港幣 58,780,000元	2009年 10月7日
PP080610	選擇性	市區線車輛車門充氣膠邊	法維萊遠東有限公司 香港上環干諾道西3號億利商業大廈5樓A-D室	1 批	港幣 9,413,580元	2009年 10月9日
PP080829	選擇性	復修及提升電力系統的電子控制裝置	威迪科技有限公司 香港新界葵涌葵豐街33-39號 華豐工業中心第1期12樓A-B室	1 批	港幣 3,551,400元	2009年 10月16日
			株洲南車時代電氣股份有限公司 中國湖南省株洲市石峰區時代路 郵編412001	1 批	港幣 1,376,100元	2009年 10月16日
Q006228	選擇性	軌道轉轍器和轍叉組件	Balfour Beatty Rail Track Systems Ltd Osmaston Street, Sandiacre, Nottingham NG10 5AN, United Kingdom.	50 項目	港幣 14,723,506元	2009年 10月16日
			德威工程及顧問有限公司 香港新界葵涌青山道307-311號萬成工業大廈10樓1室	211 項目	港幣 51,253,380元	2009年 10月16日
			VAE GmbH RotentumstraBe 5-9,	18 項目	港幣 2,539,778元	2009年 10月16日

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A-1010 Vienna,
Austria.

Vossloh Cogifer	2 項目	港幣	2009年
BP 56606 F-92566 Rueil- Malmaison, Cedex, France.		2,495,727元	10月16日

Q007697	選擇性	提供資訊科技服 務器、桌面技術 支援及系統管理 服務	惠普香港公司 香港太古城英皇道1111號太 古城中心1座19樓	不適用	港幣	2009年
					12,357,240元	10月30日

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綜合財務報表附註 (續)

截至二零零八年十二月三十一日止年度

12. 董事酬金

已付或應付給十位董事之酬金詳載如下：

截至二零零八年十二月三十一日止年度

	孔慶平	周勇	葉仲南	符合	周漢成	張哲孫	何鍾泰	李民僑	梁海明	李承仕	合計
	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	二零零八年 港幣千元
袍金	1,000	-	-	-	-	-	360	250	250	250	2,110
其他酬金											
薪金	-	2,562	1,957	1,200	1,056	1,697	-	-	-	-	8,472
以股份為基礎 之付款	41	36	26	26	24	15	7	7	7	7	196
退休金計劃供款	-	12	12	12	12	12	-	-	-	-	60
與表現相關之獎金	-	3,500	700	600	600	400	-	-	-	-	5,800
酬金合計	1,041	6,110	2,695	1,838	1,692	2,124	367	257	257	257	16,638

截至二零零七年十二月三十一日止年度

	孔慶平	周勇	葉仲南	符合	周漢成	張哲孫	何鍾泰	李民僑	梁海明	李承仕	合計
	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	二零零七年 港幣千元
袍金	1,000	-	-	-	-	-	360	250	250	250	2,110
其他酬金											
薪金	-	2,160	1,867	961	516	1,617	-	-	-	-	7,121
以股份為基礎 之付款	68	60	42	42	40	26	11	11	11	11	322
退休金計劃供款	-	12	12	12	12	12	-	-	-	-	60
與表現相關之獎金	-	3,500	670	550	1,000	620	-	-	-	-	6,340
酬金合計	1,068	5,732	2,591	1,565	1,568	2,275	371	261	261	261	15,953

於本年及去年，並無董事放棄任何酬金。

附件八：(2) 林健鋒議員及石禮謙議員的董事酬金資料

10. Finance costs

10. 融資成本

		1/4/2008 to 31/12/2008 二零零八年 四月一日至 二零零八年 十二月三十一日 HK\$'000 港幣千元	1/4/2007 to 31/3/2008 二零零七年 四月一日至 二零零八年 三月三十一日 HK\$'000 港幣千元
Interest on bank loans wholly repayable within five years and overdraft	須於五年內悉數償還之銀行貸款及透支利息	1,815	770
Others	其他	—	916
		1,815	1,686

11. Directors' emoluments

The remuneration of the directors for the nine months ended 31 December 2008 is set out below:

11. 董事酬金

各董事於截至二零零八年十二月三十一日止九個月的酬金如下：

Name of directors	董事姓名	Salaries, allowances and benefits		Bonus	Contributions to retirement scheme		Share-based compensation	Total
		Fees	in kind		to retirement scheme	Share-based compensation		
		HK\$'000	HK\$'000	HK\$'000	HK\$'000	HK\$'000	HK\$'000	HK\$'000
		港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元	港幣千元
David CHU Shu-ho	朱樹豪	209	—	—	—	—	—	209
WONG Ying-wai	王英偉	194	1,628	228	4	2,651	4,705	
Edmund LEUNG Kwong-ho (note i)	梁廣灝 (附註i)	151	900	—	3	781	1,835	
Kenneth CHU Ting-kin	朱鼎健	150	—	—	—	766	916	
CHAN Ka-kui (note ii)	陳家駒 (附註ii)	186	4,227	1,731	133	4,584	10,861	
Barry John BUTTIFANT (note iii)	Barry John BUTTIFANT (附註iii)	189	—	—	—	1,267	1,456	
Jeffrey LAM Kin-fung	林健鋒	150	—	—	—	766	916	
Peter LAU Kwok-kuen	劉國權	150	—	—	—	766	916	
Abraham SHEK Lai-him	石禮謙	150	—	—	—	766	916	
		1,529	6,755	1,959	140	12,347	22,730	

Notes:

- (i) Mr. Edmund LEUNG Kwong-ho was re-designated from an independent non-executive director to an executive director with effect from 1 October 2008 and further appointed as the managing director of the Company with effect from 5 January 2009.
- (ii) Mr. CHAN Ka-kui retired from the position of managing director and was re-designated from an executive director to a non-executive director with effect from 5 January 2009.
- (iii) Mr. Barry John BUTTIFANT was re-designated from an executive director to a non-executive director with effect from 19 March 2009.

附註：

- (i) 梁廣灝先生於二零零八年十月一日起由獨立非執行董事調任為執行董事，並另外於二零零九年一月五日起獲委任為本公司董事總經理。
- (ii) 陳家駒先生於二零零九年一月五日起退任董事總經理一職及由執行董事調任為非執行董事。
- (iii) Barry John BUTTIFANT先生於二零零九年三月十九日起由執行董事調任為非執行董事。

18

附件八：(3) 石禮謙議員的董事酬金資料

帳項附註

7 董事局成員及執行總監會成員酬金

A 董事局成員及執行總監會成員酬金

(i) 公司董事局成員及執行總監會成員酬金如下：

百萬港元	袍金	基本薪金、 津貼及 實物收益	退休金 計劃供款	與表現掛鈎 的薪酬	總計
2008					
董事局成員					
— 錢果豐	1.2	-	-	-	1.2
— 張佑欣	0.3	-	-	-	0.3
— 艾爾敦(於2008年5月29日退任)	0.1	-	-	-	0.1
— 方敏生	0.3	-	-	-	0.3
— 何承天	0.4	-	-	-	0.4
— 盧重興(於2008年5月29日退任)	0.2	-	-	-	0.2
— 吳亮星	0.3	-	-	-	0.3
— 石禮謙	0.3	-	-	-	0.3
— 施文信	0.4	-	-	-	0.4
— 陳家強	0.3	-	-	-	0.3
— 鄭汝樺	0.3	-	-	-	0.3
— 黃志光	0.3	-	-	-	0.3
執行總監會成員					
— 周松崗	-	6.7	-*	8.6	15.3
— 柏立恒	-	4.3	0.2	2.7	7.2
— 陳富強	-	4.4	0.2	2.6	7.2
— 何恆光	-	4.4	0.2	2.6	7.2
— 梁國權	-	4.8	0.7	2.7	8.2
— 龍家駒(於2008年12月31日離職)	-	3.6	0.5	1.7	5.8
— 麥國琛	-	4.4	0.2	2.3	6.9
— 杜禮	-	4.2	0.2	2.6	7.0
	4.4	36.8	2.2	25.8	69.2

* 周松崗是公司強制性公積金計劃的一名成員，公司於2007年及2008年每年支付的總供款為12,000港元。

19

13 董事及高級管理層的酬金(續)

支付予每名董事的酬金載列如下：

董事姓名	袍金 百萬港元	基本薪金、 津貼及 其他福利		退休福利	小計 百萬港元	被視為購	2008	2007
		百萬港元	百萬港元	計劃的僱主 供款 百萬港元		股權福利 百萬港元	酬金總額 百萬港元	酬金總額 百萬港元
鄭家純博士	0.28	7.71	0.30	8.29	8.39	16.68	4.51	
杜惠愷先生	0.15	4.20	0.22	4.57	5.60	10.17	3.21	
陳錦靈先生	0.20	6.17	0.43	6.80	5.60	12.40	5.81	
曾蔭培先生	0.20	5.63	0.20	6.03	4.20	10.23	5.11	
黃國堅先生	0.15	5.07	0.31	5.53	4.20	9.73	4.37	
林焯瀚先生	0.20	5.04	0.33	5.57	4.20	9.77	4.39	
張展翔先生	0.15	4.81	0.33	5.29	4.20	9.49	4.34	
杜家駒先生	0.15	3.88	0.16	4.19	4.20	8.39	3.21	
維爾·卡馮伯格先生*	0.15	-	-	0.15	0.84	0.99	10.83	
杜顯俊先生*	0.15	-	-	0.15	0.84	0.99	0.16	
黎慶超先生*	0.20	0.01	-	0.21	0.84	1.05	0.15	
鄺志強先生*	0.27	0.01	-	0.28	1.67	1.95	0.25	
鄭維志先生*	0.25	0.01	-	0.26	1.67	1.93	0.25	
石禮謙先生*	0.25	0.01	-	0.26	1.67	1.93	0.25	
總額	2.75	42.55	2.28	47.58	48.12	95.70	46.84	

(附註c)

* 非執行董事

* 獨立非執行董事

附註：

- (a) 薪酬福利包括基本薪金、津貼及其他福利、退休福利計劃供款及購股權福利，乃根據個人表現、職責及年資釐定，並參考市場情況予以檢討。
- (b) 並無支付任何加盟酬金及失去董事職位的補償金。
- (c) 被視為購股權福利乃按香港財務報告準則第2號「以股份支付開支」規定的要求而計算。本公司董事概無於年內行使獲授予的購股權。



交通事務委員會鐵路事宜小組委員會

2009年9月17日(星期四)下午2時30分舉行的特別會議

相關部分的逐字紀錄本

1
2
3
4
5
6 **何鍾泰議員**：多謝主席。這個廣深港高速鐵路，很少碰到一個香
7 港的基建項目與內地各方面的發展，包括經濟發展和民生發展拉
8 上這樣大的關係。因為中國高速鐵路網的發展，幾年間由7 000公
9 里的目標，變到12 000公里，變到現在16 000公里，現在已經是全
10 世界最多里數，將來更加驚人，很難追到。但是，沒有辦法，因
11 為這要看我們的air space，即航空的空間越來越不夠，因為中國無
12 論是內地也好，或者對外的航班班次增加得很快，很多時我們的
13 航班都有所謂延遲的時間，變成是一個很大的問題。很多國家現
14 在都發展高速鐵路，讓人可以快捷地前往另外一個地方，不受那
15 麼多阻礙，高鐵一定是一個世界大趨勢。

16
17 事實上，我們看到政府的文件，今次比以前的好了少許，但
18 並不完全好了很多，亦有一些地方不大對的。現在我們看到這個
19 高速鐵路網的其中一個樞紐，香港這方面是九龍西。九龍西其實
20 是幾個鐵路線在香港來說都是集中在這一點：機場快線、東涌線、
21 西鐵、九龍南線和高鐵等都是集中於九龍西。那麼，第12段那裏
22 說得很奇怪，就是這個新建的西九總站會成為內地訪客的新交通
23 樞紐，這是很誤導的。這並非只為內地的訪客，事實上，這在香
24 港來說，如果我們不是接駁到全國的高速鐵路網，剛才亦有同事
25 說到會是邊緣化，不只是邊緣化，我們很吃虧，我們無法在將來
26 內地發展得那麼快，我們香港是很難趕得上，或者配合到，或者
27 能令我們各方的行業都可以配合到，這一定是我們也有很大得
28 益。雖然說我們現在比人慢了3、4年，看回頭，局長，其實是你"
29 上手"的問題，我們不是怪你，因為"上手"怎樣說都要用那個共用

17.9.09

—

30 通道，怎樣說也要把那個高速鐵路，說的是300至350公里的鐵路，
31 駁到我們80公里的鐵路網，是沒有可能的，這是全世界都不會這
32 樣做，這根本是不懂鐵路才會這樣做的。但堅持要提出這個計劃，
33 浪費了3年時間。就是因為這樣，最後雖然改回用那個合理的唯一
34 的方法，是用專用通道，26公里的隧道，不是最長，全世界只是
35 第五而已，在工程上是毫無問題。但是，因為浪費了幾年時間，
36 造價亦飆升得很厲害，所以這是政府的責任，為甚麼由395億，現
37 在變到不知幾多億，現在說600幾億也似，700幾億也似，我不知
38 道是多少。所以在這方面，政府很多時候是在那個.....提出的建議
39 如果是不當或者不合理的話，雖然立法會都已經認為不可以這樣
40 做，收回那個建議都好，但是浪費的金錢是相當之多。現在造價
41 來說很明顯是飆升得很快，即例如單是那個隧道鑽挖機TBM，現
42 在內地用得很多很多，上海用得最多，這些機器可說是越來越貴，
43 就算是人手，那些技術員都越來越貴，這方面我們可以看到是吃
44 虧一點，浪費了那麼多資源來說，但現在已經是沒有選擇了。亦
45 可看到很多人不大明白內地的發展，我們現在到廣州，需要搭直
46 通車，都是稍多於兩個小時。打風那天我正在廣州開會，談一些
47 救災的問題，但是很不方便，時間很長，但其實看看別人廣州市
48 的發展，所謂Greater Guangzhou，即大廣州，等於以前倫敦，Greater
49 London、Greater Tokyo一樣，別人的市中心都會變，都會擴大，
50 現在我們接駁了它最重要的一點，但都不是那一點，不只是到廣
51 州的問題，而到全國的接駁問題，令到我們在經濟效益上可以得
52 到益處。

53

54 我想再告訴政府，你現在文件第6段那處，我們不接受這個經
55 濟效益，你這樣提出一個830億的數字，我不知道你怎樣計出來，
56 沒有可能是這個數字的，這個數字毫不合理.....還有50年，如果是
57 這樣說就真的不應該做的.....

58

59

60 **主席**：何議員……

61

62

63 **何鍾泰議員**：……可能因為……我就是想知道政府……

64

65

66 **主席**：何議員，你正在看的文件是立法會秘書處的文件……

67

68

69 **何鍾泰議員**：第(02)號文件……

70

71

72 **主席**：……所提到的第6段是在那份立法會秘書處的文件，政府文
73 件是CB(1)2582/08-09(01)。

74

75

76 **何鍾泰議員**：立法會文件都是跟政府資料，是不是，不會由我們"
77 作"出來的，我們秘書處不會知道政府所有的資料，即主席，你幫
78 政府都不需要……

79

80

81 **主席**：我不是幫政府，我只是提同事閱覽正確的文件，是嗎？

82

83

84 **何鍾泰議員**：我想說我是說資料，我不理會甚麼文件，我現在說
85 的資料，在文件上的資料是不正確，830億是不正確，我是說這點。
86 我想政府解釋實在是幾多呢？其實是很多的，即我們沒有這條鐵
87 路，其實我們損失了很大的經濟效益。我希望我們的數字，將來……

88 即我給時間你慢慢再做，不是今天要答我，我相信都答不到的，
89 是很難計經濟效益。你計甚麼都好，假設甚麼都好，是很難的，
90 是很大很大。如果沒有，根本我們香港將來很吃虧，邊緣化已經
91 說得太輕，我只是提醒政府這一點，你將來再提經濟效益，要很
92 小心處理，不要拿……即4位數字之下我都一定不會接受。我希望
93 大家明白這是我沒有……

94

95

96 **主席：**經濟效益方面，局長遲些會給回我們一份文件？

97

98

99 **運輸及房屋局局長：**主席，或者我到時會解釋我們一般計……

100

101

102 **何鍾泰議員：**我想先說完，主席，請不要打亂我剛才正在說的話，
103 雖然現在剛好夠鐘，不好意思。其實我想政府將來就那個造價向
104 我們說清楚一點，以及就經濟效益說清楚一些給我聽。謝謝主席。

105

106

107 **主席：**局長。

108

109

110 **運輸及房屋局局長：**主席，其實我們計經濟效益的時候，主要是
111 看所節省的時間。我們多數來立法會，所有我們的項目申請撥款
112 時都有這樣東西的。譬如說所引致兩地的互相投資，那些是不計
113 算在內的。可能何議員想的就是有其他的一些效益，譬如說香港
114 人多一些……有很多內地人來香港投資，會不會多用一些我們的專
115 業服務等等，那些已經沒有計算在內。我們主要計市民在節省行
116 車時間方面，轉化為一個金額來計算。那麼，一般來說，我們的

117 項目都有用那個所謂EIRR(Economic Internal Rate of Return),用這
118 樣的方式來計算。我相信這是為甚麼令何議員認為一定是比現在
119 我們所計算的為高的原因。

120

121

122 **何鍾泰議員**：這個數字講清楚屬假設，是嗎？謝謝。

1 **交通事務委員會鐵路事宜小組委員會**
2 **2009年10月22日(星期四)上午8時30分舉行的會議**
3 **相關部分的逐字紀錄本**

4
5
6 **林健鋒議員**：主席，我們有沒有需要邀請其他團體，如果它是有
7 興趣.....

8
9
10 **主席**：你有沒有建議哪一些團體？因為我也不知道.....

11
12
13 **林健鋒議員**：是的，因為今天才提出說有一個團體想上來表達，
14 如果在一個公平、公道.....我們亦看看有沒有其他團體是有興趣上
15 來表達。

16
17 *****

18
19 **何鍾泰議員**：我也不討論是否專業了，其實我們每人都知道，專
20 業人士也知道哪些是專業，哪些並非專業，所以說在邀請團體那
21 方面，我認為當然就是工程師學會、工程界社促會那些真是一直
22 在做的，很長時間的了，又或是工程界社促會和香港工程師學會
23 這些基本上當然要來的.....已經來過我們這個會議很多次的，在這
24 麼多年來。

25
26 在那個日子方面，主席，不好意思，如果是11月9日，工程師
27 學會剛好訪問北京，每年1次的。我是.....如果要.....我是前會長
28 身份，我一定要去的，即一定去的，我也打算都是早返的.....

31 **主席**：再有11月10日，11月10日，是秘書處現在給我的時間。

32

33

34 **何鍾泰議員**：主席，因為……

35

36

37 **主席**：11月10日都不行嗎？

38

39

40 **何鍾泰議員**：理論上應該是10日晚才回來的，這樣是……

41

42

43 **主席**：這即是無辦法了，是工程師學會去的？

44

45

46 **何鍾泰議員**：工程師學會的，是的。

47

48

49 **主席**：它不是所有人都去的，是嗎？

50

51

52 **何鍾泰議員**：最資深的那些會去。

53

54

55 **主席**：我原先有一個是……

56

57

58 **何鍾泰議員**：還有，主席，還有一點，因為那個工務小組，聽說

59 政府想在11月23日那天拿一份文件來作第一次討論……

60

61

62 **主席**：工務小組是11月23日，是嗎？

63

64

65 **何鍾泰議員**：是的，很有可能那天政府拿文件過來、拿項目過來
66 的。

67

68

69 **主席**：OK。

70

71

72 **何鍾泰議員**：我要配合那個時間的，是嗎？

73

74

75 **主席**：不是，它現時是說.....一定是那個時間之前的.....

76

77

78 **何鍾泰議員**：是的。

79

80

81 **主席**：.....沒理由是那個時間之後的，是嗎？

82

83

84 **何鍾泰議員**：是的。如果第二天就.....

85

86

87 **主席**：現時我放在大家檯面的就是11月3日8時半有一個時間，11月
88 9日4時半有一個時間，11月10日4時半有一個時間，大家給我一個
89 意思是哪個時間了。梁國雄議員。

90

91 *****

92

93 **何鍾泰議員**：.....11月3日是哪個時間？4時半嗎？

94

95

96 **主席**：8時半。

97

98

99 **何鍾泰議員**：3日不行，因為是雷曼小組，我是主席，我要處理兩
100 方面大狀的問題。

101

102

103 **梁國雄議員**：我幫你忙。

104

105

106 **何鍾泰議員**：已安排了幾個月，這是不可以改的，不好意思。

107

108 *****

109

110 **林健鋒議員**：主席，我們不要.....現在可以遷就多少人呢？因為如
111 果2日有人提出來，9日亦提出來，10日亦提了出來。那麼，現在3
112 個日子也有人不行，你便再改為6日，如果6日再有人提出不行，
113 你又改為哪一日呢？我覺得.....

114

115

116 **主席**：我現在加上6日這個日期，我有4個日子，我們稍後投票哪
117 日可以，以人多為準，好嗎？因為我真的沒辦法遷就所有人。林
118 健鋒議員，你剛才舉過手，你是否就是說這件事？

119

120

121 **林健鋒議員**：是的。

122

123 *****

124

125 **林健鋒議員**：我剛才舉了手，還未有機會發言。

126

127

128 **主席**：我剛才不是問了你嗎？你不是.....

129

130

131 **林健鋒議員**：我說我未.....剛才那個只是回應.....

132

133

134 **主席**：那個不是啊？

135

136

137 **林健鋒議員**：對，沒錯。

138

139

140 **主席**：OK，好.....因為我以為那個就是了。請你發言。

141

142

143 **林健鋒議員**：主席，我也同意劉江華議員的意見，所以我早前都
144 提出了，就是如果現在再邀請其他團體到來，我們應該邀請其他
145 的專業團體。但是，這個廣深港高速鐵路並不是今天才討論的，
146 以前我們已經討論過，亦都看過不同的方案，即在階段裏.....在過
147 程當中，如果有人提出說要提出意見，我們又再去做，這件事情
148 我們要考慮我們以後如何處理。

149

150 我亦想回應一下，就是邀請國內有關的建築公司或團體來給
151 予意見，我覺得如果這樣做的話，那不如讓中央鐵路局一併負責
152 吧，因為如果你想便宜的，要不你全部聘請上面的人來做，要不

153 全部採用它的方案，我們就不要再說甚麼。如果是這樣不斷擴闊
154 討論範圍的話，我覺得主席你又難做，各方面都是難做的，這是
155 我提出的些少意見。在這方面，我們亦要平衡一下香港的就業和
156 價錢的問題，所以，我覺得我們不應該邀請境外.....即其他的團體
157 來討論。

158

159 **主席**：好。或者我回覆第一方面吧，第二方面何鍾泰議員可能想
160 發言的。關於專業聯盟方面，除了湯家驊議員有一封信是書面給
161 我之外，亦有其他同事都表示，他們想聽聽公共專業聯盟那個建
162 議。我作為主席，既然有要求，我便一定放在檯面。當然，如果
163 大部分議員說不想聽的，那我亦要處理的，對嗎？但現在似乎大
164 家提出來的就是，用一個時間去聽聽他們，聽完其他團體，也沒
165 有人有很大意見的，我便按這個方式去做。我想解釋一下為何會
166 是如此，未必會影響到你個別議員自己的決定，但起碼來說都是
167 聽過，因為傳媒亦有廣泛報道。我覺得為公道起見，既然有議員
168 要求去聽的，我也沒有理由說拒絕別人來向我們作出這個介紹
169 的。OK。何鍾泰議員。

170

171 *****

172

173 **何鍾泰議員**：主席，首先我同意主席你這個處理方法，因為不是
174 說每個團體拿一個方案或說數句話，我們就會聽的，但如果人家
175 是如此.....比較詳細的資料、這麼具體的拿個建議出來、提一個方
176 案出來，我自己個人是很樂意聽的，但一定要找回真是專業的團
177 體來一起聽、一起討論，否則討論便會不知去了哪兒。

178

179 至於關於那個內地有關機構或設計院等，我覺得這是不適合
180 的，因為對香港來說，尤其這牽涉到26公里的隧道是非常複雜，
181 很多時我們請外國的.....所謂的岩土專家來香港，我們從頭教過一

182 段時間，然後他才學到將香港的情況，因為我們香港的地質是非
183 常複雜，比外國複雜很多。我覺得在另一個地方請那些專家來香
184 港給予意見和以那個費用來說，尤其是合約的價錢，他們根本是
185 不懂的。我相信我認為這是不需要的，香港有足夠資料讓我們做
186 我們自己的討論。

187

188

189 **主席**：我現時都是沒有同事提任何或具體建議，我根本都不會考
190 慮的，是嗎？

191

192

193 **何鍾泰議員**：OK。

194

195 *****

196

197 **林健鋒議員**：主席，回歸以來，我們一直都擔心香港會否被邊緣
198 化，因為很多國家的建設都在深圳那兒停了下來。這個高鐵，我
199 們能夠爭取連接到香港，其實對我們的經濟發展有很大幫助。有
200 很多數字今天我們未必看到，即好像當年胡應湘先生興建那條廣
201 深公路時，人們都說他是傻的，花這麼多錢來興建一條沒有車行
202 駛的公路，結果現時是不夠用了，要多建其他的公路。我看這個
203 廣深港鐵路其實將來都會有這個效能的。

204

205 我們如何優化它，即正如之前我都有與政府方面說過，令遊
206 客、工商界人士如何利用這條高鐵很快捷地去到全國各地點。所
207 以，提到一地兩檢那方面，其實是否可以優化至一地兩檢？因為
208 不是每一個地方都有一個所謂出入口站在那兒的，武漢未必有、
209 北京未必有、上海未必有。如果在香港可以做到所有這些工夫，

210 我們是真真正正可以落實一個全國12小時生活圈，便不需要去到
211 一個站那處，然後再做這些清關手續。

212

213 至於選站那方面，我們都看到，剛才政府在提供成本比較的那
214 那個圖片上，都說到英國隧道興建的價錢以及接駁section two那個
215 價錢那方面。這正正反映了當時他們會否是出現了一個錯誤的決
216 定，就是說只是接駁到很"邊皮"的地方，結果都要在2004年多興建
217 一條接駁隧道進入市中心。我相信這些都是他們市民的意見來
218 的，錯了我們就要改，但我們不希望"一落手"就錯。我想問問政府，
219 現時我們選址.....這個站的選址那時候，它有沒有計算過，即由香
220 港四方八面去這個車站那方面.....這是要全港性的，那個方便性，
221 以及那個時間和路程。

222

223 此外，我還再想問問經濟效益那方面，在圖片14那處，說到
224 節省時間那方面，就括着了有870億元的收益，它是如何計算出來
225 的呢？此外，如果那些遊客、工商界人士可以更快捷去到他們要
226 去的地方，例如旅遊點、酒店.....我想謝偉俊議員都會答你的了，
227 旅客是一定要方便的，是嗎？去到一些偏僻的地方，再接駁又會
228 形成一些怎樣的經濟損失，甚至令香港的空氣更差，因為要用更
229 多的接駁工具來接駁它。這些我想政府可否回答一下我這數個問
230 題呢？

231

232 *****

233

234 **主席**：林健鋒議員，有沒有跟進？

235

236

237 **林健鋒議員**：經濟效益那方面，即其他那些經濟效益和經濟損失。

238

239 *****

240

241 **何鍾泰議員**：因為現時人的生活，無論工商業或平日的生活，或
242 是旅遊等也好，活動能力越來越強，跨境的活動越來越多，所以
243 現時世界競爭就.....從這個航空那方面、高速公路之後，現時到了
244 高鐵。對中國來說，為何願意投放幾萬億元下去.....兩三年間，目
245 標由7 000公里變為12 000公里，現時變為16 000公里，一定是有理
246 由的，這亦經過無數專家研究過，無論是技術也好或經濟那方面
247 的專家研究過，才肯投放幾萬億元，這一定是有理由的。

248

249 事實上，我也覺得因為鐵路又環保，也有速度，現時我們那
250 個所謂air space，即空間，在上空的空間是不太夠用的。所以，現
251 時很多時我們航班受到延誤，其實都是那個air space空間不夠，或
252 是有很多方面的原因。所以，距離不是太長的話，坐火車或高速
253 鐵路可能更方便、更快，亦可能更舒服、更環保。

254

255 所以，現時我們不與整個國家的四縱四橫這個網絡來接駁，
256 根本我們沒可能將來會是發展得好的，更不要說生存了，事實上
257 是一定要這樣做。所以，在位置來說，當然大家都說要放在哪兒
258 呢？我覺得其實現時我們很多人批評現時接駁的地方或內地很多
259 地方都不是在市中心，其實很多人或許不明白，內地的規劃有很
260 大的改變，尤其是城市之間或市緣之間的合併，或市中心的改動
261 等，虹橋就是市中心，一個重要的市中心，大家又說不是；廣州
262 市又在移動它的市中心。如果我們不明白內地的發展而又胡亂批
263 評，我覺得這不是很着邊際的，是嗎？

264

265 實際上，我覺得現時我們如果沒有那個鐵路的話，即使我們
266 在70年代時很多人都反對興建地鐵，如果不興建的話會如何呢？
267 英國有很多鐵路的路線根本是虧本虧蝕得很嚴重，如果不興建
268 的話會如何，是否那些都要全部關閉呢？這又不可能的。對經濟活

269 動很重要的，人流活動很重要的。所以，現時如果我們不接駁，
270 尤其是長三角、珠三角、泛珠三角的發展，我們將會很吃虧，尤
271 其是對將來的經濟發展來說。

272

273 我覺得政府在這方面就.....上次我都提及過那個經濟效益，如
274 果現時說那個衍生效益，這個概念我是同意的，但知道政府在這
275 方面有很多因素未曾真正拿出來.....譬如說那個時間節省了或方
276 便了，對我自己來說，日間我盡量不駕車、盡量不駕車，但是，
277 有時我一天可以過.....單程來計，會"過海"8次的。如果沒有地鐵
278 或沒有巴士，是沒辦法可以做到，有司機也不行，自己駕車更不
279 行。所以，我覺得很多東西是計算不到的，我知道是很.....尤其經
280 濟效益是計算不到的，時間上亦都是計算不到，節省了的時間亦
281 都是計算不到的。

282

283 但是，我都希望政府在.....尤其所謂 *intangible benefits*，
284 *intangible benefits*即是無形的效益或衍生效益，希望政府能說多一
285 些給我們聽，我覺得資料是未足夠的，亦都可以說是.....甚至說將
286 來會節省多少、增加多少百億元的。我想知道的是，我希望政府
287 給我們多些資料，能夠在文件上給我們。可惜就是，因為那個建
288 築費是多了，剛才署長回答的是對的，數條鐵路即說.....港島西線
289 或者是其他那些增加了真的有六、七成這麼多。此外，上次我都
290 提過，政府浪費了我們3年時間，那時提出說要把這個高鐵接駁至
291 西鐵，這是很沒有理由的做法，現時事實上已損失了時間。

292

293 我想問問政府，在隧道方面，因為26公里這麼長，事實上可
294 以做到的公司不是這麼多，如何真的令到在競投時，一個很好的
295 競爭、一個真正的競爭走出來呢？因為隧道的價錢是最重要的，
296 尤其現時那個所謂TBM，*tunnel boring machine*，即隧道鑽挖的機
297 器是很多地方都需要用，亦相當貴，如何令它們的競爭真的令我

298 們滿意，得到一個很好的價錢呢？我相信這是非常重要的，希望
299 政府在這兩方面回答。

300

301 第三，或許我也問問，所謂直通車與這個的關係，是否我們
302 short haul的那些路線可以減少一點，令到或許是接駁到那個直通
303 車，大家的經濟效益是做得好一些呢？謝謝。

304

305 *****

306

交通事務委員會鐵路事宜小組委員會

2009年11月6日(星期五)下午5時舉行的特別會議

相關部分的逐字紀錄本

1
2
3
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5
6 **何鍾泰議員**：做鐵路可以說是工程方面.....是比較複雜的一類工
7 程。不只是做鐵路.....除了經驗之外，還要有足夠的岩土經驗，足
8 夠運輸經驗。尤其是鐵路運作，剛才只是聽署長講述部分的資料，
9 已經知道是非常複雜，所以為甚麼我要求署長講述所有資料便是
10 這個原因，因為很多是很難看懂的圖表。所以，我們自從77年開
11 始.....開始做鐵路之後，其實是培訓了相當多人出來的，香港有很
12 多鐵路專才，當然有些範疇多一點，有些少一點。但如果看現時
13 的高速鐵路，如果不是真正放對了位置，不是設置在市區的話，
14 我相信設在新界，便用不到我們原本鐵路樞紐的概念。高速鐵路
15 的樞紐在九龍西區，我們有港島快線、機場快線、東涌鐵路線、
16 九龍南線和西鐵等，這是很重要，接駁全國16 000公里的高速鐵
17 路。屆時其實中國的高速鐵路網是全世界第一的，快別人很多，
18 多別人很多。所以說，如果不是設在市區，而是設在新界一個地
19 方，例如說是錦田，我相信港島、九龍以至新界北的人都不會使
20 用，新界北的人不如跑到福田去乘搭，怎會"無端端"乘搭一小段，
21 再接駁到全國的鐵路線，是不會的。因為其實沒有進行一個使用
22 者的調查.....是不一定設在錦田便會用得着，因為人流一定會少很
23 多。

24
25 現在公共聯盟提出的建議，當然它亦有它的看法，但我們為
26 甚麼願意聆聽呢？本來.....如果一個方案以往沒有提出來，有數個
27 人提出方案我們都去看的話，便肯定我們沒可能做到任何工程，
28 但我亦願意聆聽，但看出來有很多缺點，我不重複了，但有一些
29 我要說的，是甚麼呢？便是香港快線提出的一個建議，牽涉到

30 Rambler Channel，即藍巴勒海峽大橋，我不知道那裏有沒有斷層，
31 現在未曾開始使用的昂船洲大橋，就是因為遇到斷層，以往做探
32 土時找不到，令到工程拖延了年多的時間，我相信這裏亦可能有
33 很嚴重的斷層出現。所以在價錢來說，我相信現在沒辦法計算得
34 到，隨口說便計算出來，是不正確的。剛才亦提到三號幹線是會
35 受影響的，怎樣去與發展商協商呢？我相信可能牽涉很多的.....
36 別人可能不願意被你影響，這是說不定的，又可能賠償很多，這
37 些價錢怎計算呢？不是說政府給430億，我也不相信430億是對，
38 我相信可能比這個數字還大一倍亦有可能，我現在不知道，可是
39 憑一個數字來說是沒有甚麼意思的，在價錢來說，所以說，是否
40 節省300億呢？我是完全不相信的，多謝主席。

41

42

43 **主席**：好，最後是石禮謙議員。

44

45

46 **石禮謙議員**：主席，我很感謝聯盟今天提出這個方案，讓大家都
47 可以瞭解到.....即是從一個好市民的角度去看，是怎樣令到社會節
48 省金錢。可是問題是，錦上路這個計劃.....你們是否真的可以投放
49 很多時間，是否做到現在你們所說能夠節省到300億，這是一個很
50 大的問題。以及為什麼.....現時政府的600億.....做了不只是一年的
51 功夫，是很多年的時間投放了下去，瞭解到整個情況怎可以有這
52 個分別。所以說300億，600億是沒有.....即很難去領略。一個橙，
53 一個蘋果，不可以這樣去說的，主席。

54

55 第二件事，錦上路在九廣鐵路時.....我們那個時候已經研究過
56 錦上路站，可是從錦上路站及現在要下去的西九龍站，我們那時
57 候作決定時，都考慮過很多不同方案，為甚麼要下去西九龍站，
58 有很多理由是從一個.....不是純粹用一個所謂建造價錢的理由，是

59 從經濟，所謂economic cause，經濟理由去做的，主席。整個經濟
60 理由去做，便帶動到整個西北的發展。剛才你說，為甚麼要這麼
61 多個站上去龍華及福田，要有這麼多個站呢？整個珠江三角洲帶
62 回來到香港、九龍，我們珠江三角洲有接近2 000萬人，這條鐵路
63 帶給我們一個生機的時間，一個生機的機會，可以把整個珠江三
64 角洲帶回來九龍、香港這邊去。所以，這亦是一個經濟理由，為
65 甚麼加了這麼多站在這裏，這是相當重要的。

66

67 主席，我覺得大家在這裏說政府、各方面、很多專家大家都
68 從一個engineering project去看，工程去看，大家都是對的，沒有
69 人是錯的。問題是政策要怎樣去選擇，政策怎樣去選擇而帶來香
70 港最大的利益，政府不會"無端白事"使用600億，而不去計算這條
71 數。它計算這條數.....是為甚麼它要計算這條數。如果你純粹建造
72 一條鐵路，是永遠賺不到錢的，可是它帶來整體的經濟，這件事
73 很重要。好像電氣化.....西北方面，你只是看到從羅湖下來，沒有
74 了鐵路便沒可能做得到。所以西鐵.....你看它現在好像剛才黎先生
75 所說，人是不足夠的，可是將來一樣會滿載至好像現在的MTR般，
76 這是要有一個時間要去爭取，令一條鐵路成功。所以我覺得現在
77 只是在選擇西九龍這個站，是一個明決，即是最、最.....

78

79

80 **主席**：OK，時間到了，我想今天的時間是很短，但議員都已經表
81 達到某一些意見。但有一個問題要大家處理，便是剛才有同事提
82 出，我們找一位獨立專家，好像西九般去調查，當然調查範圍現
83 在仍然未清楚，有不同的意見.....嚴先生，你是.....

84

85

86 **嚴先生**：我想回應剛才.....

87

88

89 **主席**：不要回應了，我們現在要處理，對不起，我們時間關係。
90 其實在7時我們有其他團體來見，不好意思。我要取得一個意見，
91 是……石禮謙議員……即我要看看大家的意思是怎樣。

92

93

94 **石禮謙議員**：主席，我先舉手。

95

96

97 **主席**：是，石禮謙議員。

98

99

100 **石禮謙議員**：主席，我反對。我覺得這麼多專家在香港……甚麼專
101 家都是"假"，最好專家便是我們建造出一個很成功的鐵路網，所有
102 政府的工程師都在，這個便是專家，主席。

103

104

105 **主席**：好。葉劉淑儀，反對。劉江華議員，對嗎？

106

107

108 **劉江華議員**：我是不同意的。

109

110

111 **主席**：你不同意，OK。何鍾泰議員。

112

113

114 **何鍾泰議員**：我不同意，因為鐵路不是這麼簡單，幾個人去看看
115 便可以。這是一個團隊的，政府團隊和鐵路公司的團隊應該是最
116 好的，謝謝。

117

118

119 **主席**：舉手決定吧，好嗎？是鐵路事宜小組委員會的同事才可以
120 舉手。

121

122

123 **余若薇議員**：我說清楚，我不是，所以我不舉手，不是代表我棄
124 權，我沒有權利投票。

125

126

127 **主席**：對，對，是鐵路事宜小組委員會的同事才可以舉手，我知
128 道的，我有對着表看的。如果鐵路事宜小組委員會贊成要找獨立
129 專家的請舉手，4位贊成。反對這個建議的請舉手，鐵路事宜小組
130 委員會的，6位反對。對不起，這個建議是不獲鐵路事宜小組委員
131 會接納。

132

133 不好意思，第一個階段的專業團體意見環節，很多謝大家今
134 天出席，我們立即要進行.....大角咀居民有很多意見.....

135

136 *****

137

138 **主席**：首先向現在加入我們會議的團體致歉，因為原先希望前一
139 節可以在7時完成，可是因為討論實在太熱烈，所以沒辦法控制時
140 間。何鍾泰議員。

141

142

143 **何鍾泰議員**：原本是7時正的會議，你加多半個小時，我相信現在
144 將會是準時7時半完成，對嗎？

145

146

147 **主席**：不是，我想也要讓他們說完，我.....

148

149

150 **何鍾泰議員**：因為你預了……突然這樣不停加時，很多人有其他活
151 動的，這亦是不公道，我們議事規則不是這樣的。

152

153

154 **主席**：我加時加到7時半是之前作出的決定，我之前已出了通告，
155 我有權……

156

157

158 **何鍾泰議員**：你看很多議員……

159

160

161 **主席**：……我有權延長會議……

162

163

164 **何鍾泰議員**：……很多同事已經不在席上了，主席，你看得到吧。

165

166

167 **主席**：我明白，我明白，大家都很忙。

168

169

170 **何鍾泰議員**：我相信你應該在7時半完結會議。

171

172

173 **主席**：可是我亦要給予團體時間，讓它們完成陳述，議員亦想表
174 達一些意見，好嗎？我盡量做吧，好嗎？多謝你。

1 **交通事務委員會鐵路事宜小組委員會**

2 **2009年11月13日(星期五)下午3時舉行的特別會議**

3 **相關部分的逐字紀錄本**

4
5
6 **何鍾泰議員**：我都同意要有足夠時間討論這個項目，但剛才主席
7 提出的數個時段，我也同意的，我認為都是足夠的，我也同意葉
8 劉淑儀議員所講的，即是這麼多便這麼多，不要無了期地加會，
9 這樣真的不行，還有很多其他會議的，現在我們兩個、三個會議
10 一齊開了……

11
12
13 **主席**：明白、明白……

14
15
16 **何鍾泰議員**：希望就這樣截止，好嗎？

17
18 *****

19
20 **何鍾泰議員**：主席，你剛才……我想清澄一下，你說稍後如果會議
21 延長一點，明早便不用開會，是嗎？

22
23
24 **主席**：是的，有意見是這樣。

25
26
27 **何鍾泰議員**：即明早一定不會開會，對嗎？

28
29
30 **主席**：如果稍後延長，明天便不開囉。

31

32

33 **何鍾泰議員**：不是的，要弄清楚，因為有時我不知道明天需不需
34 要開會，如果是這樣的話，我要預留時間。

35

36

37 **主席**：我完全尊重大家的意見，所以大家給我意見……

38

39

40 **何鍾泰議員**：即是未定的？

41

42

43 **主席**：我只是建議我們應有一個時段與政府全面去看……即在工務
44 小組的文件之前，全面看一次，就是這樣意思。

45

46

47 **何鍾泰議員**：主席，不，我未講完，不好意思，那不要緊的，我
48 剛才聽到大家講，我沒有問題的。我主要提出一點就是說，當提
49 到團體的名稱時，希望說出全名，譬如香港工程師學會，那便是
50 香港工程師學會，另外，譬如你說專業聯盟，其實它是公共專業
51 聯盟。

52

53

54 **主席**：對不起。

55

56

57 **何鍾泰議員**：是很大分別的，謝謝。

58

59

60 **主席**：是，公共專業聯盟，對不起。

61

62 *****

63

64 **林健鋒議員**：我也贊成現在我們應該集中精神處理結論的問題，
65 與政府商討有關高鐵興建的問題。如果再邀請其他團體到來表達
66 他們的意見，我覺得他們以前已有足夠時間，因為高鐵這個問題
67 不是今天才發生的，我們在立法會已討論了數年，社會上亦討論
68 了數年，再遲一點……若我們再拖下去的話，我們真的與國內的鐵
69 路網脫節了，所以我覺得應該盡快處理高鐵整個與政府溝通的問
70 題。

71

72 *****

73

74 **何鍾泰議員**：我同意若召開接下來的3次會議，應該有足夠的時間
75 令我明白整個計劃，可以上到工務小組委員會的會議，即我認為
76 那麼多次會議，聽取了那麼多團體提出的意見，也不只一次，我
77 相信是很足夠，我相信亦是很負責任的做法，即使是不是似是而
78 非，是不是好的建議，我們也聽取，我們非常開放，我覺得現在
79 應該作一個總結，希望主席也可以總結一下，究竟我們是哪幾次
80 會議、哪個時間，再次告訴大家。

81

82

83 **主席**：好的。我現在……剛才的建議是10……或者麻煩大家寫下，
84 是星期一，即下星期一，11月16日上午10時45分至12時45分。接
85 着是11月17日星期二，2時半至4時半。第三就是星期六，即如果
86 大家傾得妥，便無須再開，星期六便無須前來，但星期六可以有
87 多些時間，所以下星期六是9時至12時。

88

89

90 **何鍾泰議員**：即是21日？

91

92 *****

93

94 **林健鋒議員**：多謝主席。我剛才聽到兩位羅女士、梁女士和莫先
95 生都有提及，關心到鐵路經過他們大廈的底層，在建築期間會否
96 造成結構上的問題，因而影響他們上面居民的安全問題，而花崗
97 岩的結構又會否受到影響，亦有提到將來重建時，因為他們現在
98 失去了地下的使用權，那是否可以重建呢？如果重建的話，是否
99 需要面對很多困難呢？我想兩方面也瞭解一下，即從居民那方面
100 和政府那方面，有哪一方面你們覺得是不可以重建，或者政府未
101 能給你一個"定心丸"，即是說如果真的在底下重建的時候，安全會
102 出現問題。如果真的出現問題，你們有何擔心，他們在補救方面
103 是做不到的？

104

105

106 **主席**：我讓大角咀的居民回答，至於政府方面，我們在稍後的一
107 節會有機會與政府討論，OK？大角咀居民，你們擔心的是甚麼？

108

109

110 **大角咀居民**：港鐵已興建了30年，也不止，數十年了，有哪一幢
111 建築物在那條"龍"上可以重建的呢？我們大角咀的樓宇，全部都是
112 業權分散的，如果沒有一個發展商統一我們的業權，我們又怎能
113 集合重建的計劃而向你們政府索償呢？根本是沒有可能的，任何
114 一個建築商也不會買入地鐵.....那幢建築物下面有一條"龍"，政府
115 亦可以向我們提供資料，這麼多年來，數十年在地鐵的"龍"上，有
116 哪一幢建築物可以真真正正被重建發展的？

117

118

119 **林健鋒議員**：換句話說，你是擔心將來結構出現問題，或老化之
120 後.....

121

122

123 **大角咀居民**：不是，我不擔心結構出現問題.....

124

125

126 **主席**：不能重建.....

127

128

129 **林健鋒議員**：或者老化之後，你要重建，但你們業權分散，個別
130 業主就不可以與他們談妥來重建。

131

132

133 **大角咀居民**：是的，我們業權如此分散，一定要有發展商統一我
134 們的業權，才可以進行重建。

135

136

137 **林健鋒議員**：換句話說，你希.....

138

139

140 **大角咀居民**：我們這些大廈真是"死硬"的了。

141

142

143 **林健鋒議員**：現在華基那裏已重建了，即是說那個方法也是可行
144 的，但你有哪方面希望政府，或者我們督促政府，可以令你在這
145 方面安心一點？

146

147

148 **大角咀居民**：最好就是現在市建局有這麼多市區重建，便當市建
149 局全部收回我們，不要只是拿走我們的地層，連上蓋也取去吧，

150 那便甚麼事也沒有了，對嗎？大家便不用爭拗，你現在明顯是拿
151 走，也不是拿走，是搶啊，"聲都唔聲"。

152

153

154 **主席**：OK，清楚了嗎？

155

156

157 **林健鋒議員**：至於華景山莊，他們說擔心底下的花崗岩結構上.....

158

159

160 **主席**：好了，華景山莊的羅小姐有沒有意見？

1 交通事務委員會鐵路事宜小組委員會

2 2009年11月16日(星期一)上午10時45分舉行的特別會議

3 相關部分的逐字紀錄本

4
5
6 **林健鋒議員**：多謝主席。有關高鐵這個問題，我們已討論了很多
7 年，我也很高興今天我們來到討論有關財政預算的環節，我們亦
8 都看到整個國家的鐵路網亦都發展得及興建得如火如荼，所以我
9 們需要立刻起步。因為我們不能時常說別人議而不決，而我們立
10 法會內經常議而不決。

11
12 剛才在介紹中提到一些非鐵路的建設，當中有50億元是優化
13 工程，有一些是inflation即"通脹"的。那我想問問，該50億元的非
14 鐵路的建設，是根據一些過去數年我們知道的西九發展或其他發
15 展而加上的，那麼，如果未來發展，即未來5年、10年的發展，有
16 沒有將這些預算也計算在內呢？因為我們不希望在建成之後，覺
17 得這些非鐵路的工程，包括總站內的建設不夠用，或需要再加建
18 時，沒有地方或沒有錢。就這一方面，可否請政府方面向我們解
19 釋一下呢？

20
21 *****

22
23 **林健鋒議員**：主席，在造價方面，在數年內上升了一個比較大的
24 數字。那麼，如果我們現在不能決定，要再延遲，在造價方面的
25 影響，你們有否做過一個預算？

26
27 *****

29 **林健鋒議員**：主席，我們看到近期很多大型的基建都"上馬"，在這
30 一方面，我們看到未來的工程費用是會上升的，而且經濟損失
31 —— 因為我們沒有這條線接駁至國家鐵路網，亦都可能會有一些
32 經濟損失。那麼，政府方面有否在這方面做過一些預算呢？

33

34 *****

35

36 **何鍾泰議員**：多謝主席。社會上有很多人士，亦都有很多報道，
37 已經說高鐵一定要興建，而且要盡快興建。我奇怪有同事還在問
38 為甚麼現在還要興建高鐵。因為現在我們其實擔心 —— 我也說
39 過 —— 其中一件最重要的事，就是我們上空的空間有問題，即
40 不太夠用。全世界都開始有這樣的問題，而我們在這方面更加嚴
41 重，因為我們的空間不太足夠讓這一個地區的航空使用，所以將
42 來高鐵的功用，全世界都是這樣看，在500公里內的，盡量都會使
43 用高鐵，時間會快很多，也方便很多，亦都可以.....你在工作上，
44 其實在訊息、溝通方面不會如在上空要關閉手機，而不能接收資
45 訊那樣，是很方便的。

46

47 我亦都說過，事實上，鐵路在工程上是比較複雜的工程類別，
48 不是有經驗，不只是鐵路經驗，而是包括很多有關譬如運輸經驗、
49 鐵路運作經驗或岩土經驗，根本是不懂得鐵路的複雜性。

50

51 今早我也欣賞到署長把如此複雜的問題，以頗為簡單的語言
52 說出來。加上上一次在運作上的解釋，我認為是非常清楚，當然
53 還有很多資料，我們亦希望他會繼續給我們。所以，我們都有需
54 要在明天再開一個會議。但我覺得尤其是在物價上漲方面，在過
55 去3年，事實上是百分之四十以上的，這個與其他的港島西線、屯
56 門公路給我們的資料比較，我覺得在業界上來說，對於超過40%
57 是無異議的，只是怪政府3年前浪費了我們的時間，當時說要將西

58 鐵作為接駁高鐵的方式，這個絕對是錯誤的，在鐵路的運作上，
59 絕對是錯誤的。

60

61 關於設計上，因為現在政府修改了路線的一部分，我也認為
62 隧道的設計時常與岩土方面很有關係，在探土方面一定要足夠。
63 去年我們批了大約27.7億元的設計費及探土費用，在這個階段其實
64 最重要是取得很多設計的參數 —— 這方面文件亦有提
65 到 —— 在隧道來說，如果你沒有做足夠的探土，就可能不知道
66 岩土的實際情況，即香港的土質是較其他地方複雜得多，因過去
67 地殼變動的關係，所以現在提出的設計的複雜性，比過去或許少
68 了，或許多了，我不知道，但事實上，一定是準確的，所以說要
69 在設計階段做多些岩土方面的探測是很重要的。

70

71 有同事再提到要接駁至東鐵、西鐵，我覺得這根本是無需考
72 慮的，因為現在我們的鐵路是1小時行走80公里，而高鐵是行走200
73 至接近400公里的速度，根本完全是兩個不同的系統，所以混為一
74 談根本是無可能的事。市中心肯定 —— 在過去也說得太多 ——
75 一定是在市中心，高鐵無可能建在老遠的地方，如果建在錦上路，
76 我相信很多人都不會因為在新界居住便會走去使用錦上路，港
77 島、九龍居民更加不會使用，即根本不是太適合的地方。

78

79 我想問問關於節省的30億元方面 —— 這個是在表格中，即高
80 鐵香港段鐵路建造工程中，優化鐵路工程 —— 我想問問所節省
81 的30億元，尤其是關於應急費用，為何那方面可以節省，當中有
82 多少百分比是預留作緊急費用呢？

83

84 第二，我想問問關於灌漿，你在斷層灌漿，有否信心做到不
85 會灌極也灌不夠呢？這個在技術上現在有否問題呢？謝謝。

86

87 *****

88

89 **石禮謙議員**：主席，在這裏談了這麼久，開了這麼多次會議，我
90 聽了這麼多……大家都是支持高鐵的，現在只是談錦上路站及西九
91 龍站而已。西九龍站就要……因為興建西九龍站便要加這麼多現在
92 所提到的費用，我們清楚現在政府在這數次會議都提供了很多資
93 料，以往興建這麼多鐵路時，都不曾提交這麼多資料上來。那麼
94 —— 對不起，我正在發言……

95

96

97 **主席**：請繼續，石禮謙議員。

98

99

100 **石禮謙議員**：……在這個問題，這是一個政府……行政主導政府的
101 決定，在此我們作為立法會議員 —— 剛才陳偉業說得對 —— 我
102 們監察政府、如何批准撥款 —— 我們有權力，但如果它說合理的
103 的價錢，而價錢是令到我們可以通過的，那當然通過，如果你不
104 喜歡那個車站，那你便反對。但問題是，現在不是在這個時間來
105 決定興建西九車站，而是現在如何去阻止它的興建，要回到錦上
106 路，這個是與整體興建高鐵的經濟效益，都是不同的。經濟效益
107 是很簡單，為何要興建西九站，西九站帶動了整個高鐵是一個有
108 經濟效益，對整體廣州對下、直接由廣州下至香港這條路，帶動
109 整個珠江三角洲數千萬的居民，可以在這個簡單而且快速的鐵路
110 網，讓他們到香港旅遊好，去西九也好，都是一件有利於香港整
111 體發展的事。

112

113 此外，興建一條鐵路不是如此簡單，我們坐在這裏便是專家，
114 所有做鐵路……鐵路行駛哪條路線，是要研究又研究，因為有些人
115 批評便要更改道路，如果這樣更改，鐵路便不是這樣興建出來，

116 鐵路也無可能興建得到。以前興建港島線，也有很多議員反對，
117 但今時今日如果沒有港島線，你們可以看到經濟效益對香港的影
118 響有多大。所以，現在我們今天所興建的，是為將來、未來的經
119 濟發展，香港在珠江三角洲的地位如何去配合，所以我覺得，如
120 果大家同事有問題，就是問關於那些數字為何這樣做，政府是有
121 責任去解釋，而不是在現時推倒這個西九車站。

122

123 另一方面，既然談到西九，做"一地兩檢"便很容易，即不是在
124 政治上的解決，是如何解決的問題。這現在也不是新事物，我們
125 由廣州至紅磡現在都有一條鐵路直接行駛，是如何解決這些，這
126 方面在兩個地點都可以解決。我覺得這方面，我們不需要在現時
127 阻礙，好像整條鐵路掘出了一個大問題出來。我覺得我們看看數
128 字，我們反問自己，興建一條鐵路是否需要這麼多錢，理由在哪
129 裏？我想，政府今次真的放了很多時間和精神，拿出很多數字，
130 我們也要接受這些數字，因為我們真的不是專家，但那些專家就
131 是從這個角度來看，他們興建鐵路不是今時今日興建，香港所有
132 這麼多公里的鐵路都是這樣興建出來。為甚麼我們要阻止，因為
133 有個西九車站，就好像說到整條鐵路是不可行的。大家應公道地
134 看看這方面。

135

136 *****

137

138 **林健鋒議員**：多謝主席，之前我亦有提出過，在西九進行"一地兩
139 檢"，我亦都很高興有很多委員也認同這個構思。

140

141 今早我亦都問過，在50億元的優化工程中，當中有些美化及
142 增添一些工程，剛才局長亦都回應，說他們亦預留了一些地方，
143 將來如果可以實施"一地兩檢"的話，便可以使用。但在使用方面，

144 是否需要另外再加一些費用，或者他們與入境事務處是如何分擔
145 這些費用，如果將來"一地兩檢"真的落實？

146

147 第二個問題，就是有關接駁外圍區域的道路方面，西九其實
148 將會成為一個海陸空接駁的重點，如果要行到其他鐵路車站，那
149 地底網絡、行人網絡是非常重要的，以及將來這個鐵路站，會否
150 需要加增一些接駁的公路，接駁到高速公路，以及西九將來的發
151 展與這個車站的配合，他們現在與西九發展局有否溝通？將來有
152 哪些是可以共同開發，或共同建設呢？

153

154

155 **主席**：第二個問題可能你在交代交通時，你把資料給.....

156

157

158 **運輸及房屋局局長**：好的，好的，即如何接駁.....

159

160

161 **主席**：.....是的，你回答第一個.....

162

163

164 **運輸及房屋局局長**：.....譬如有西九龍那些高速公路等等。

165

166

167 **主席**：是的，是的，那你第一個問題.....

168

169

170 **運輸及房屋局局長**：第一個我不知道我是否明白林健鋒議員所
171 說，就是我們現在的.....

172

173

174 **主席**：即日後是否需要再撥款，如果你落實在西九站"一地兩
175 檢".....

176

177

178 **運輸及房屋局局長**：如果你說用.....

179

180

181 **主席**：.....還是現在已計算了？

182

183

184 **運輸及房屋局局長**：.....硬件就是說我們預留地方，今次當然是預
185 留了。

186

187

188 **主席**：即硬件預留了。

189

190

191 **運輸及房屋局局長**：但譬如在人手方面，入境處現在是以沒有"一
192 地兩檢"來預計我們的人手配套。

193

194

195 **主席**：嗯，OK。

196

197

198 **林健鋒議員**：即換句話說，現在只是硬件.....

199

200

201 **主席**：只是硬件，是.....

202

203

204 **林健鋒議員**：……軟件日後再看……

205

206

207 **主席**：……軟件，是。

208

209

210 **林健鋒議員**：是，那現在有否與西九發展局溝通？因為日後這個
211 車站是在西九發展區的中心。

212

213

214 **運輸及房屋局局長**：有。

215

216

217 **林健鋒議員**：都有就日後那些行人通道或道路網與它溝通？

218

219

220 **運輸及房屋局局長**：有。

221

222 *****

223

224 **何鍾泰議員**：主席，是否提早了？

225

226

227 **主席**：不是，我現在就是徵詢大家，如果是的話，我就盡量和秘
228 書……

229

230

231 **何鍾泰議員**：因為明早……主席，我有雷曼的公開研訊。

232

233

234 **主席**：那我也沒有辦法了。

235

236

237 **何鍾泰議員**：我即是說我預計開完，見完記者會是1時多。

238

239

240 **主席**：剛剛好，你可以開完那個立即開這個。

241

242

243 **何鍾泰議員**：不要緊，我不吃飯不要緊。我也習慣不吃午飯，不
244 要緊。

245

246

247 **主席**：OK。

248

249

250 **何鍾泰議員**：我習慣不吃午飯，沒所謂。

251

252 *****

253

1 **交通事務委員會鐵路事宜小組委員會**

2 **2009年11月17日(星期二)下午1時30分舉行的特別會議**

3 **相關部分的逐字紀錄本**

4
5 **石禮謙議員**：多謝主席。主席，剛才陳偉業談到有關港鐵那些商
6 用店鋪方面，因為陳偉業的意見並不代表這個委員會的意見，以
7 及政府如何與港鐵商討，都是一份合約，以及大家怎樣商討如何
8 管理這方面。所以，剛才我希望說出來，陳偉業所說是其個人意
9 見，我的意見不同……即你本身去做……

10
11
12 **主席**：每一個委員所說的都是個人意見，除非全部人有一個共識，
13 OK？

14
15
16 **石禮謙議員**：多謝主席，我想……

17
18
19 **主席**：我想澄清，因為各人有各人不同的意見。

20
21
22 **石禮謙議員**：第二點，主席，剛才湯家驊提到IRR及所謂economic
23 return。每一條鐵路的建成或每一個infrastructural project的興建，
24 都是要計算這些數據，以及當時要計算數據時，要視乎你何時計
25 算其準確情況。如果你說，在興建東鐵時……在某段時間，那些所
26 謂forecast是不準確，但當你經過一段長時間，你現在看回這段時
27 間，它是超越了當時所計算的時間。西鐵一樣是這樣，即使這個
28 Express，都是這樣計算，所以要用一個長期20年的時間來計算，
29 怎樣計算方面……剛才湯家驊說，如果你是說西鐵，用所謂那些
30 forecast，現在是不能達到，但問題是要計算數據時，是要如何統

31 計那個人口各方面的情況出來，要用一個所謂economic return對整
32 個香港經濟的角度來推動.....香港經濟角度各方面帶來的利益方
33 面，你這般計算.....所謂數據，即英文所說的"Statistics are lies, lies,
34 lies", 但問題是你如何去運用這些數據，以及你如何決定興建這條
35 鐵路也好，不進行這項基建也好，都有一些數據計算出來，以及
36 這些數據，即使你是興建一條鐵路，它都要計算其IRR如何。所以，
37 我們全部.....所以，在興建九廣鐵路當時也好，即使興建MTR，都
38 要計算數據出來，成本是否能夠做到，政府興建這條路能否做到。
39

40 今次興建這個.....我覺得今次我們議員問這麼多，我們都有一
41 個責任，即通過與否，應不應該花這些錢。但是，如果我們要索
42 取那麼多詳細資料，我們是否真的能夠瞭解這些資料呢？我們瞭
43 解這些資料.....如果我們不是很瞭解這些資料，政府要提供一盤數
44 給我們，那盤數是由它負責任。但是，如果我們要幫助政府談這
45 盤數時，是否立法會要負起這個責任呢，主席？還是我們負起這
46 個責任是.....信任政府提供這盤數的責任，是兩件事情，主席。

47
48 所以，我是很小心.....在此有權要有責。如果將來這些數據全
49 部是錯的話，政府要負起這個責任。但是，如果我們自己由頭到
50 尾為它看過所有這些數據，立法會要負起這個責任。因為我覺得
51 這方面很清晰，但我們要瞭解，因為我們不是這方面的專家，專
52 家是他們自己，政府提供出來，它有很多顧問、有很多自己的工
53 程師、有自己的人員如何計算那些數據，即使它今天提供給我們
54 看，在西九站方面，我們說得那麼詳細，以及今次它提出這條高
55 鐵，它談到興建那些道路，以往興建一條鐵路，我們只計算鐵路的
56 的IRR，但它今次乾脆提供整個路線網，看似很龐大，但這個整
57 體.....對香港整體的.....西九各方面，都是一個發展，即使興建鐵
58 路站在此也好，不興建鐵路站也好，這些都要興建。以往我們計
59 算一條鐵路並不是這樣計算的，我們純粹以鐵路的角度來看而

60 已。但是，今次你以整個發展的角度，做到很闊般出來，數據必
61 定很大了。但是，今次就好，政府真的提供很多資料出來，對於
62 這些資料，希望大家同事不單從鐵路角度來看，而是以整體西九
63 發展來看。我覺得這方面要說出來，主席。

64

65

66 **主席**：好，多謝你的意見。你不需要政府回應，是嗎？

67

68

69 **石禮謙議員**：不需要，主席。

70

71 *****

72

73 **何鍾泰議員**：多謝主席，很多謝主席。以我們的立場而言，即有
74 一個大型項目，提交給我們作出決定、撥款，如果我們認為有需
75 要索取文件，是應該索取的。但是，當然今次這個高鐵，我認為
76 我們已經 —— 即議員來說 —— 盡了責任，即使有些業界都認
77 為不是真正一個成立的建議，都看過，也討論過，用了很多時間
78 來討論。我們都覺得今次提供的文件也不少，政府官員在解釋文
79 件方面，我覺得非常清楚。當然，如果有議員認為有哪些文件是
80 重要的，我認為都……當然，有合理的要求，當然要索取了，對嗎？
81 但是，我想問局長，在以往的那些項目，例如剛才石禮謙議員所
82 說的，都是就該項目來說的經濟效益或是否物有所值，今次來說，
83 範圍已經擴闊了很多，我認為這個因為估的範圍廣，以及是跨境
84 的，這是一個比較特別的項目，我都覺得多些資料是對的，但我
85 擔心有很多看法，或者不單看鐵路，是否真正有足夠的客流、人
86 流，或真正的回本是否做足工夫，是否認為配合到我們的經濟估
87 算等。但是，如果看闊一點的話，這個區域性的一條鐵路，這樣
88 的看法就很危險，認為我們以往……譬如興建一條西鐵或機鐵這

89 般，好像計錯數啊，我也同意，那時的交通估算是全部錯的，我
90 甚至認為錯得很厲害，但不可以說，過往那個學生做錯過，該學
91 生……你怎知他一定好像那位學生般做錯呢？不可以這樣看的，一
92 件事歸一件事。但是，如果你是那個……這個應該是比較闊一些
93 的話，是不可以單看這個跨境有多少人流。但是，如果你不理會那
94 個經濟效益所牽涉到我們香港，無論在文化、社會、經濟等，與
95 內地交往、將來的發展是長遠的發展，是不會真的看到實際的經
96 濟效益。我就擔心 —— 我不知道局長如何看了 —— 你提出多
97 少資料也好，都可能不準確，都可能全部錯的。但我們相信，
98 如果不興建這條鐵的話……以前我所說的，如何接駁到整個國家
99 16 000公里的高鐵呢？我都說過，將來 —— 別說將來 —— 現在
100 的高空的空間已不太足夠，其實早前兩天都有傳媒報道……報章亦
101 寫了，是很適合的地方，因為那個空間不足夠，現時航空方面亦
102 常常有……即使飛機去到跑道也好，亦沒法升起，而要延遲一兩個
103 小時，有甚麼理由？這樣的話，將來你不再在中短距離的旅遊或
104 工作乘坐飛機，而轉為乘搭高鐵的話，對經濟的影響是相當大的。
105

106 所以，我覺得經濟效益是無法把實際情況反映出來，亦很難
107 估計將來會發展到甚麼情況，我覺得我們的眼光可以看遠些。但
108 是，局長如何說服大家呢？我就想問問局長了。謝謝主席。

109

110

111 **主席**：你想叫局長如何說服大家呢？她已說了很多。

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114 **何鍾泰議員**：其實我已替你回答了很多，局長。

115

116

117 **主席**：是啊，其實你與她……我剛剛在此想到，你應該坐在這邊，
118 對嗎？

119

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121 *****

122

123 **何鍾泰議員**：主席，多謝主席，是。局長說要提供多些關於成本
124 計算方面的資料，我是同意的。但是，如果再要求政府提供……
125 政府的建議與其他那些，而建議是未提交來的，始終都不提交來
126 的——不知道是甚麼——來比較，其實是浪費政府很多資源，
127 這是納稅人的金錢，作一個比較不是那麼容易的，可能整組人工
128 作幾個月的時間才得出一個真正的比較。局長很客氣，你說是橙
129 與蘋果的比較，這不是橙與蘋果的比較，是一個橙或蘋果與不知
130 道是甚麼的東西比較，我不知道你如何做，你亦沒可能只計算出1
131 公里多少錢，那麼簡單，這亦是不可思議地比較。興建鐵路不是
132 這樣子比較，尤其跨境鐵路更不是這般比較，這是毫無意義，如
133 此做只是誤導。我希望政府不要進行這個比較，因為你是浪費納
134 稅人的錢。

135

136

137 **主席**：它說了不進行的，說了不進行。

138

139

140 **何鍾泰議員**：我希望將來別再有類似這樣的建議提出。我要說清
141 楚我的看法，我覺得是一個頗奇怪的建議。我認為如果你要進行
142 任何比較，除非你是有能力……政府有能力，把我剛才所說的幾個
143 區域性的、將來的……不知道經濟效益會擴至多少倍的寫出來，沒
144 那樣的能力的話，你作任何比較均是毫無意義的。謝謝主席。

145

146 *****

147

148 **何鍾泰議員**：主席，是否星期六不用開會？

149

150

151 **主席**：今天都沒有同事有問題，星期六便不會開會，今天我們多
152 開一個小時……

153

154

155 **何鍾泰議員**：即已問完所有問題了……

156

157

158 **主席**：……是因為希望可以完成有關討論。

159

160

161 **何鍾泰議員**：OK，即下一步是工務小組？

162

163

164 **主席**：下一步是工務小組，另外亦會接收政府就其他方面提供給
165 我們的資料。

166

167

168 **何鍾泰議員**：謝謝。

169

170

171 **主席**：OK，我們的會議到此為止。謝謝各位。



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

香港中環昃臣道 8 號
立法會大樓
立法會秘書處
議員個人利益監察委員會秘書
梁紹基先生台啟

密 件
CONFIDENTIAL

梁先生:

1 月 20 日來函收悉。現就 貴委員會所提出的問題回覆如下:

- (一) 本人自 2005 年 6 月 1 日起擔任中國建築國際集團有限公司 (以下簡稱“該公司”) 的獨立非執行董事一職至現在, 除該職外, 本人並沒有擔任該公司的其他受薪或非受薪的職位。
- (二) 本人擔任該公司的獨立非執行董事一職的袍金為每年港幣 36 萬元, 此金額不受該公司的業績所影響。袍金如何釐定本人是不知道的。至於來函附錄 1 中的附件八, 有關該公司於 2008 年年報內所顯示本人的酬金合計為港幣 367,000 (2008 年) 及港幣 371,000 (2007 年), 當中的一項“以股份為基礎之付款”, 該費用實是按照香港財務報告準則第 2 條規定, 參考於購股權授出日, 以獨立專業評估師按公允價值評估的公平值, 於歸屬期間於損益表中列支, 並相應增加公司之權益 (增加公司的儲備), 此數值並非本人之金錢收益, 而本人亦從未行使該公司之購股權。
- (三) 本人沒有參與該公司的日常營運。
- (四) 本人從不知悉更加沒有參與該公司籌備競投高鐵項目合約的計劃和工作 (倘若該公司真的有意競投)。



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

- (五) 本人從來沒有把立法會及其轄下委員會商議高鐵項目的詳情，包括其他議員在此事上的取態，告知該公司的管理層或其職員，更加沒有把立法會及其轄下委員會取得關於高鐵項目的資料轉交他們。
- (六) 由於本人從不知悉該公司參與競投高鐵項目合約的工作（倘若該公司真的有意競投），因此本人從沒有給予該公司的管理層或其職員任何忠告或意見。
- (七) 必須指出該投訴信簡直是雞蛋裏挑骨頭，現本人對該投訴信作出以下回應：-
- (1) 本人自擔任該公司的獨立非執行董事一職起，已向立法會申報，立法會的網頁也上載有關資料，市民大眾也可得知，這是公開的資料，本人從沒隱瞞。
 - (2) 按聯交所規定，每間上市公司必須包括至少有三位獨立非執行董事，及其中至少一位獨立非執行董事必須具備適當的專業資格，或具備適當的會計或相關的財務管理專長，責任是監察上市公司的運作，其實是一種公職，出發點是服務社會，收取定額的袍金，猶如車馬費。該等袍金與上市公司業績無直接關係，故此本人在此事上沒有利益（倘若該公司真的有意競投的話）。
 - (3) 有關投訴是指本人在2009年9月至11月的鐵路事宜小組委員會的會議上就「高鐵項目發言」，投訴人聲稱 (i) 該公司籌備投標廣深港高速鐵路工程 和 (ii) 該公司受惠十大基建上馬而被評為「跑贏大市」，投訴人依賴其附件一和附件二作為支持。



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

香港經濟日報在 08 年 6 月 25 日之報導 (“08 年報導”)

- (4) 根據處理投訴程序第 7 段(ii), 受“初步考慮”的有關資料不得包括傳播媒介的報導、不具名人士所提供的資料、個別人士的猜測、推論或判斷。
- (5) 08 年報導的內容真確性存疑，特別是本人曾查詢該公司之「公司秘書」(Company Secretary) 有否發出公告稱該公司會投標廣深港高速鐵路工程，得悉的是沒有。
- (6) 基於香港經濟日報是傳播媒介，08 年報導是轉述某會談，而某會談論及一事件，該事件不是法定公告，故該事件不能當事實看待，故 08 年報導亦不能受 貴委員會考慮。

香港經濟日報 09 年 10 月 21 日之報導 (“09 年報導”)

- (7) 09 年報導是香港經濟日報轉載有關麥格理 (一投資基金公司) 在 09 年 10 月 20 日發表研究報告，聲稱該公司受惠十大基建上馬而被評為「跑贏大市」。
- (8) 該研究報告純粹是一個不知名的評論員個人的猜測、推論或判斷，經傳播媒介的轉載，其報導內容更加不能當事實看待。
- (9) 基於上述理由，08 年和 09 年之報章報導皆不符合 貴委員會在“初步考慮”中之有關資料。
- (10) 再者，香港經濟日報只是坊間數十份刊物其中的一份，本人日常閱讀的是明報、星島日報、大公報。故此沒有可能



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期望本人閱讀坊間所有報章，包括香港經濟日報在內，更沒有可能期望本人從香港經濟日報得悉該公司是否籌備投標 (倘若 08 年和 09 年報導之內容是真確的話)。

- (11) 既然本人沒有得悉該公司之投標計劃 (倘若 08 年和 09 年報導之內容是真確的話)，本人根本不可能根據《議事規則》第 83A 條申報該利益，因為本人必須「具體述明議員利益的性質」和「包括足夠的資料」。
- (12) 故投訴人依賴報章的報導作為對本人之指控，肆意提出毫無事實根據的指控，令人氣憤。

總括來說，因投訴人提供之資料不符合投訴程序第 7 段 (ii) 所需要考慮的有關資料，希望 貴委員會根據 (程序第 12 段) 決定該項投訴不成立，兼決定不進一步採取調查行動。

如對本人之回覆有任何查詢，歡迎致電 2901-0888 與本人聯絡。

順頌
安祺!



何鍾泰謹啟
2010 年 1 月 25 日



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

香港中環昃臣道 8 號
立法會大樓
立法會秘書處
議員個人利益監察委員會秘書
梁紹基先生台啟

梁先生:

6 月 9 日來函收悉。現就 貴委員會所提出的問題回覆如下:

- (一) 本人重申本人只是中國建築國際集團有限公司 (下稱"中國建築") 的獨立非執行董事, 目的是符合聯交所規定, 沒有參與該公司的日常營運 (詳情見本年 1 月 25 日本人之回覆信)。
- (二) 故在有關關鍵時刻, 本人沒有 貴委員會所要求的資料可以提供, 即本人沒有中國建築在 2009 年 11 月 17 日或之前, 有否競投高鐵項目下的任何合約的資料。

如對本人之回覆有任何查詢, 歡迎致電 2901-0888 與本人聯絡。

順頌
安祺!



何鍾泰謹啟
2010 年 6 月 14 日



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

17 June 2010

Mr Arthur LEUNG
Ch Council Secy (3) 1
Council Business Division 3
Legislative Council
8 Jackson Road
Central
Hong Kong

密 件
CONFIDENTIAL

BY FAX & MAIL

Dear Mr Leung

With reference to the information as requested in your letter of 14 June 2010, China State Construction International Holdings Limited requires me to make a request in writing for its consideration.

Yours sincerely

Dr Raymond HO Chung Tai



立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界) 博士、工程師、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) MBE, JP

7 July 2010

Mr Arthur LEUNG
Ch Council Secy (3) 1
Council Business Division 3
Legislative Council
8 Jackson Road
Central
Hong Kong

密 件
CONFIDENTIAL

Dear Mr Leung

I refer to your letter of 28 June 2010 requesting me to obtain the information from China State Construction International Holdings Limited ("the Company").

I regret to inform you that no information is provided by the Company and I was given to understand that the required information is confidential and will not be disclosed.

Thank you for your kind attention.

Yours sincerely

Dr Raymond HO Chung Tai





立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界)博士、工程師、銀紫荊星章、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) SBS, MBE, SBSStJ, JP

香港中環昃臣道 8 號
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立法會秘書處
議員個人利益監察委員會秘書
蘇美利小姐台啟

密 件
CONFIDENTIAL

蘇小姐:

5 月 20 日來函連「監察委員會」就針對本人的投訴向立法會提交的草擬報告(“該報告”)經已收悉，頃閱該報告，本人感到非常驚訝，在此必須提出最強烈的反對，並對委員會的處理方式表示非常不滿。

本人曾在 2010 年 1 月 25 日指出投訴人是依賴其附件一和附件二作為支持對我的投訴，我亦指出附件一和附件二是香港經濟日報在 08 年 6 月 25 日及 09 年 10 月 21 日之報導。

本人亦強烈指出這兩份報導皆是傳播媒介的報導，故不屬於處理投訴程序第 7 段(ii)之“初步考慮”的有關資料。故此監察委員會需要從投訴人的投訴剔除該報導，因沒有其他支持，該投訴亦不能成立，故應無需再作進一步調查。

不幸地，監察委員會在該報告沒有處理本人指出「有關附件皆不附合投訴程序第 7 段(ii)之“初步考慮”」一事，反之，監察委員會現時處理手法，是等於接受建基於「傳播媒介報導」的投訴，然後採取途徑蒐集與投訴有關資料(見該報告第 1.15 和 1.16 段)，這做法是完全違反處理投訴程序第 7 段(ii)，亦浪費立法會的資源。

- A86 -

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立法會 LEGISLATIVE COUNCIL

何鍾泰議員(工程界)博士、工程師、銀紫荊星章、太平紳士

Ir Dr the Hon Raymond HO Chung-tai (Engineering Functional Constituency) SBS, MBE, SBSIJ, JP

故此本人強烈要求監察委員會在其報告必須審慎處理是否會接受「建基於傳播媒介報導的投訴」，有否違反投訴程序第7段(ii)所列出的“初步考慮”的資料。但監察委員會並沒有嚴肅地處理有關程序，實在令人失望!

如監察委員會對此處理不當，可見將來，將會有很多「建基於傳播媒介報導的投訴」的情況，到時監察委員會就絕不能厚此薄彼而不作處理，亦有違委員會作適當調查的公平公正方針。

順頌
安祺!

何鍾泰謹啟
2011年6月2日



Abraham SHEK Lai Him

Mr. Arthur Leung
Clerk to the Committee on Members' Interests
Legislative Council
Hong Kong

26th January 2010

Dear Mr. Leung,

I refer to your letter dated 20th January 2010.

At the outset I must indicate that I have declared my directorships in the MTRCL, Hsin Chong Construction Group Limited and NWS Holdings Limited in my general declaration of interests and on several occasion in panel meetings, and in particular the Railway Subcommittee. It is therefore well known that I am so involved.

In respect of the specific questions raised, I respond as follows:-

- (a) I was appointed a director of the above 3 companies on the following respective dates:
- MTRCL : 18 December 2007
 - Hsin Chong Construction Group Limited : 23 January 2008
 - NWS Holdings Limited : 28 September 2004

In all instances I serve on an independent non-executive basis and do not hold any other remunerated or non-remunerated positions in the companies. As part of my role as an independent non executive director I serve on various remuneration, nomination and audit committees. None of these relate to the day to day operations of any of the companies.

- (b) The remuneration I received from each of the three companies is not based on the performance of the companies whatsoever. I received the following remuneration.

MTRC : HKD300,000.00 per annum.

Hsin Chong Construction : HKD200,000.00 per annum.

NWS Holdings : HKD250,000.00 per annum

Over the course of my service as Independent non-executive director, I had been offered stock options in Hsin Chong Construction and NWS Holdings in common with other Independent Non-Executive Directors. I have not exercised any such options up to now.

- (c) I have not participated in the daily operation of the three companies. The award of contracts relating to the XRL Project by the MTRCL was only raised at the MTRCL Board level for decision on 8 December 2009 and I was not aware of any involvement of the relevant companies until after that meeting, as I was not present at the MTRCL Board meeting on 8 December 2009. Only after the award of the contracts did I learn of the identity of the contractors who were awarded from documents provided by MTRCL to me.
- (d) At all relevant times I was not aware of, nor did I participate in any of the planning or work of Hsin Chong Construction Group Limited in its bidding for contracts under the XRL Project.
- (e) At all relevant times I was not aware that Vibro (HK) Limited had been awarded any construction contract for the XRL Project.
- (f) At all relevant times, I have not relayed to the management of any of the three companies any deliberations on the XRL Project, or passed on any information whatsoever.
- (g) I have neither tendered any advice nor given any view to the management of any of the three companies in relation to the XRL Project.
- (h) In earlier meetings of the Railway Subcommittee and the Transport Panel I had declared my interest as a director in MTRCL. I refer you in particular to the panel meeting on

26 June 2009, and the Railway Subcommittee meeting on 4 June 2009. After these meetings the same was done. Minutes of all these meetings are available to members of the public on the LegCo website and therefore, other members are well aware of my interests having been declared. At the November meeting of the Railway Sub-committee at which I spoke on the XRL Project, I had overlooked the need to declare my interests afresh. Given that the XRL Project was always treated as a government project with the MTRC being only an implementation agent, it did not then occur to me that I should have declared my interests afresh.

I shall be happy to assist further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A Shek', with a stylized flourish at the end.

Abraham Shek Lai Him

附錄 VI(b)
Appendix VI(b)

Reply Slip

(Please return on or before 21 October 2010)

Ref: CB(3)/C/CON7 (08-12)

To: Mr Arthur LEUNG
Clerk to Committee on Members' Interests
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Fax No: 2537 1204, 2810 1691)

Attendance at a meeting of the Committee on Members' Interests ("CMI")

I wish/do not wish* to attend a closed meeting of CMI to give explanations and/or provide information in relation to the complaint against me.

I attach a written submission in relation to the complaint against me for CMI's consideration.

- already submitted.

Signature: _____

Name: _____

Date: _____

* Please delete as appropriate
If appropriate, please put a tick in the box

CONFIDENTIAL

Reply Slip

(Please return on or before Friday, 12 November 2010)

Ref: CB(3)/C/CON/7 (08-12)

To: Mary SO
Clerk to Committee on Members' Interests
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Fax No: 2537 1204, 2810 1691)

Committee on Members' Interests
Closed meeting on 24 November 2010
from 8:30 am to 9:15 am in Conference Room B
of the Legislative Council Building

I confirm that I will be accompanied by the following person(s):

Name in English	Name in Chinese	Relationship with me (if he/she is your legal adviser, please specify)

I confirm that I will NOT be accompanied by any person.

Signature:



Name:

Hon Abraham SHEK

Date:

11 NOVEMBER 2010

* Please tick the appropriate box.



立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

密 件
CONFIDENTIAL

23 February, 2011

Ms Mary So
Clerk to Committee
on Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms So,

I refer to your letter to me dated 1 February 2011, and the report of the Committee on Members' Interests ("CMI") enclosed with it.

As to the allegations of complaint that the Committee make against me, you do not appear to have recorded my position that I did speak at the meetings of the Subcommittee on Matters Relating to Railways of the Panel on Transport in relation to the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (the "XRL Project") on 6, 16 and 17 November 2009 without first declaring my interest as a director of MTR Corporation Limited. Indeed, in relation to this complaint, I have fully stated my position that:

1. I had declared this position in my declaration of interests and on several other occasions in panel meetings. In particular I did so at the Railway Subcommittee.
2. When I spoke at the above meetings, I had overlooked the need to declare my interests afresh. This is because I always treated the MTR Corporation Limited as an implementation agent, and that the XRL Project was a government project.
3. In any event, I have not personally made any gain whatsoever in this matter, and my submissions should be fully taken into account by the Committee in its deliberations of this complaint.

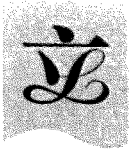


立法會 LEGISLATIVE COUNCIL

石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

In relation to the other complaints and allegations, I do not admit any wrongdoing whatsoever and invite the CMI to note the following:

1. I am a director of Hsin Chong Construction Group Limited (“HCCG”) of which Hsin Chong Construction Co. Ltd. (“HCCC”) is only a subsidiary. I am not a director of HCCC.
2. Likewise, I am a director of NWS Holdings Limited (“NWS”) of which Vibro (HK) Limited (“Vibro”) is only a subsidiary. I am not a director of Vibro.
3. Both HCCC and Vibro have their own boards of directors and I am not in any way involved in the day to day operation or affairs of either of these companies. As I am not a director of HCCC or Vibro, I have no access to any information pertaining to these companies. I must add that I do not have any fiduciary duties in HCCC or Vibro as I am not a director.
4. In my capacity as a director of HCCG and NWS respectively, I keep abreast of the business activities and development of these companies. I have no corresponding capacity or duty with regard to HCCC or Vibro.
5. The Directors of HCCC and Vibro have a duty of confidentiality with regard to these companies’ matters and given that I am neither a director nor a shareholder of either of these companies, I have no capacity or ability to look into the business or operations of HCCC or Vibro.
6. At no time before I spoke at the meetings of the Railway Subcommittee on 6, 16 and 17 November 2009 on the XRL Project, was any information relating to the plans of HCCC or Vibro to bid for contracts in the XRL Project made available to the directors of HCCG or NWS. I had no reasonable cause to believe that HCCG or HCCC, or NWS or Vibro would directly or indirectly become interested in the XRL Project.



立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

7. I can only make declarations of interests in respect of companies in which I am a director and which are based on facts known to me. It is not reasonable for me to, nor can I properly, speculate whether a subsidiary of a company in which I am a director is or is not interested in making a bid for a contract. This is too remote and I cannot be expected to probe endlessly for information which I am not in law entitled to.
8. As a fact, I was not aware of, and had no reason to believe that either HCCC or Vibro had made bids for contracts in the XRL Project. I also had no reason to believe that HCCC or Vibro would do so.
9. In the circumstances, the CMI cannot reasonably find that I spoke on those days without declaring an interest as alleged or at all.

I respect the guidelines that apply to declaration of interests, but these guidelines have to be applied fairly. To the extent that there is any uncertainty in the Guidelines, members should not be questioned retrospectively. If the guidelines are hazy, and retrospectively given an interpretation that runs counter to given practice, and express requirements, such is tantamount to moving the goal posts.

Please place this before the CMI.

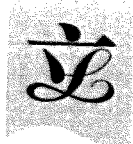
Yours faithfully

Abraham Shek Lai Him





密 件
CONFIDENTIAL



立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

Miss Mary So
Clerk to Committee
on Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

3 June 2011

Dear Miss So,

In your letter to me dated 20 May 2011 you enclosed a redacted copy of the draft report (LC Paper No. CMI/98/10-11) of the Committee on Members' Interests ("CMI" or "Committee") and invited me to comment on this. I now do so.

I take the view that members of the Committee are misguided. The role of an independent non-executive director ("INED") is to ensure that the interests of minority shareholders of the company in which he serves as a director are properly protected. His dealings are with the management and staff of the company, and he does not usually have any dealings with the directors, management or staff of the subsidiaries of the company. Nor is he responsible for securing business or developing opportunities. The outlook of an INED in a company in respect of pecuniary interests is therefore different from that of other directors. It is not reasonable or proper for an INED to take a hands-on approach in the affairs of a subsidiary and probe for potential interests to be declared. An INED of a parent company usually come to know of a subsidiary's plans only when he is presented with reports and financial statements of the subsidiary.

Therefore, the CMI would be imposing too onerous a duty on Members by requiring them "to find out the nature of business of the subsidiaries of the company of which he is an INED for the purpose of considering whether a disclosure under Rule 83A of RoP should be made because what is required of the Member is only to disclose the nature of the pecuniary interest".

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立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

I object to the CMI's interpretation of the RoP that a Member who serves as an INED of a parent company must have a duty to look for information from a subsidiary to consider a disclosure of a pecuniary interest. From a practical standpoint this places Members in an impossible position in that they must constantly ask for information from subsidiaries. There are many situations which are simply too remote to have to make a declaration of interest.

When one considers the CMI's proposal to assess whether a failure to disclose a supposed pecuniary interest amounts to a breach based on information that is subsequently collated, the unfairness is even more apparent. The Member's actions should be judged in the context of what is known to the Member at the relevant time, namely when the pecuniary interest should be declared. Facts discovered after this time paint a different picture. In my instance, the fact that a subsidiary of a company in which I serve as a director was interested to bid for work in the XRL Project was only made public and known to me after the relevant time. A member who has no knowledge of a relevant pecuniary interest at the relevant time should not be admonished based on the information that comes to him afterwards. That Member should only be judged based on what he actually knows at the relevant time.

I admit that I had not disclosed the nature of an interest in the XRL Project when I spoke at a Railway Subcommittee meeting given that I am a director of the MTRCL. I note what the CMI records in paragraph 4.6 of the report but add that I did not vote on anything at the Finance Committee meeting on this, and I felt at the time that the subject matter, namely where the station for the XRL Project should be, was not a matter for the MTRC, but rather a policy decision of the Administration. The breaches in the past of some other Members were much more serious and they were admonished. In my case, I submit that given the absence of any detriment to the public or LegCo and in all the circumstances, my breach should be looked at as technical in nature and that I should not be admonished.

When one considers the Rules of Procedure ("RoP") and the Guidelines on Registration of Interests, we do not see any express stipulation that Members must to look into indirect pecuniary interests outside of the company in which they serve as a



立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

director, or to disclose such interests. Even so, the CMI now concludes that I had breached Rule 83A. This smacks of setting the goal posts after the ball is kicked. I do not see any basis for arriving at this conclusion in the complaints against me and I deny any breaches whatsoever.

In Chapter 5 the CMI issues recommendations which will set a new standard of reporting pecuniary interests. These new standards, even if accepted as necessary and proper, will impose an added burden on Members in future, but should not be imposed on me retrospectively. I do not accept the Committee's findings that there is no "backtracking". To impose such a standard on me now and to find I have been in breach runs contrary to the rules of natural justice. This is most unfair to me.

I categorically reject the CMI's finding that I had breached Rule 83A of the RoP and if the findings are unchanged I must reserve all rights.

Yours faithfully,

Abraham Shek





立法會 LEGISLATIVE COUNCIL

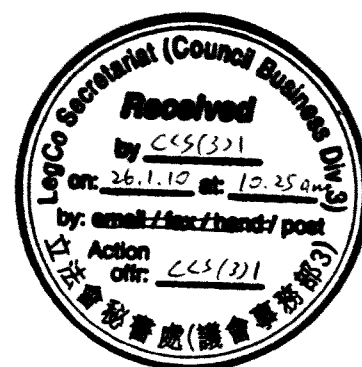
林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

Confidential

25th January 2010

Mr. Arthur Leung
Clerk to the Committee on Members' Interests
Legislative Council
Hong Kong

Dear Mr. Leung,



I refer to your letter dated 20th January 2010.

At the outset I must indicate that I have declared my directorships in Hsin Chong Construction Group Limited in my general declaration of interests to LegCo. It is therefore well known that I am so involved.

In respect of the specific questions raised, I respond as follows:-

- (a) I was appointed as an independent non-executive director of Hsin Chong Construction Group Limited on 24 August 2002.

Incidental to my service in Hsin Chong as an independent non-executive director, I serve on the remuneration and audit committees. Neither of these relate to the day to day operations of the company and I do not hold any other remunerated or non-remunerated positions.



立法會 LEGISLATIVE COUNCIL

林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

- (b) The remuneration I received from the company is not based on the performance of the company whatsoever. I received HK\$200,000.00 per annum by way of remuneration.
- Over the course of my service as Independent Non-Executive Director, I had been offered stock options in Hsin Chong Construction in common with other Independent Non-Executive Directors. I have not exercised any such options up to now.
- (c) I have not participated in the daily operation of Hsin Chong Construction.
- (d) At all relevant times I was not aware of, nor did I participate in any of the work of Hsin Chong Construction Group Limited in its plans or bids for contracts under the XRL Project.
- (e) At the relevant time, I have not relayed to the management of the company any deliberations on the XRL Project, or passed on any information whatsoever.
- (f) I have neither tendered any advice nor given any view to the management of the company in relation to the XRL Project.
- (g) I have nothing to add at this time.

Yours sincerely,

Jeffrey LAM Kin Fung

Reply Slip

(Please return on or before 21 October 2010)

Ref: CB(3)/C/CON/7 (08-12)

To: Mr Arthur LEUNG
Clerk to Committee on Members' Interests
Legislative Council Building
8 Jackson Road
Central
Hong Kong

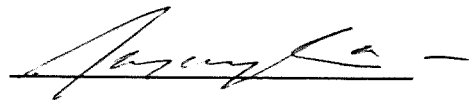
(Fax No: 2537 1204, 2810 1691)

Attendance at a meeting of the Committee on Members' Interests ("CMI")

I ~~wish~~/do not wish* to attend a closed meeting of CMI to give explanations and/or provide information in relation to the complaint against me.

I attach a written submission in relation to the complaint against me for CMI's consideration.

Signature:



Name:

LAM KIN FUNG, JEFFREY

Date:

20-10-2010

* Please delete as appropriate

If appropriate, please put a tick in the box



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會 LEGISLATIVE COUNCIL

林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

CONFIDENTIAL

October 20, 2010

Mr Arthur Leung
Clerk to the Committee
On Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Leung,

Thank you for your letter of 7 October 2010.

As I have already set out my response to the complaint raised against me in earlier correspondence, I have nothing further to add at this time. I have therefore decided not to attend the meeting of the Committee on Members' Interests and return the Reply Slip accordingly.

Yours faithfully,


Jeffrey Lam Kin Fung



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立法會 LEGISLATIVE COUNCIL

林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

8 November 2010

Confidential

Mr Arthur Leung
Clerk to the Committee
On Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Leung

I write in response to your letter of 7 October 2010 again, to supplement further information that the Committee on Members' Interests should consider.

I refer to paragraph 3 of Appendix III enclosed with your said letter. In respect of Hsin Chong Construction Co. Ltd. (the "Company") the Committee should note that:-

1. The Company is a wholly owned subsidiary of Hsin Chong Construction Group Limited (of which I am a director).
2. The Company has its own board of directors and I am neither a director nor in any way involved in the day to day operations of the Company.
3. At all relevant times, I was not aware of, nor did I participate in, any of the work of the Company in any of its contracts under the XRL Project.

Please place this letter before the Committee.

Yours faithfully

Jeffrey Lam Kin Fung





立法會 LEGISLATIVE COUNCIL
林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

CONFIDENTIAL

16 February 2011

Ms Mary So
Clerk to Committee
on Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms So,

I refer to your letter to me dated 1 February 2011, and the report of the Committee on Members' Interests ("CMI") enclosed with it.

In the letter you set out allegations in a complaint against me. I do not admit any wrongdoing whatsoever and request the CMI to note the following:

1. I am a director of Hsin Chong Construction Group Limited ("HCCG") of which Hsin Chong Construction Co. Ltd. ("HCCC") is a subsidiary.
2. In my capacity as a director of HCCG I keep abreast of the business activities and development of HCCG. I have no corresponding capacity or duty with regard to HCCC.
3. HCCC has its own board of directors and the directors of HCCC have a duty of confidentiality with regard to business matters pertaining to that company. I am not in any way involved in the day to day operation or affairs of this company. As I am not a director of HCCC, I have no access to any information pertaining to this company. I must add that I do not have any fiduciary duties in HCCC as I am not a director.



立法會 LEGISLATIVE COUNCIL

林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

4. Given that I am neither a director nor a shareholder of HCCC, I have no capacity to look into the business or operations of HCCC.
5. At no time before I spoke at the meetings of the Subcommittee on Matters Relating to Railways of the Panel on Transport held on 22 October, 13 and 16 November 2009, was any information relating to HCCC's plan to bid for a contract in the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (the "XRL Project") made available to the directors of HCCG. I had no reasonable reason to believe that HCCG or HCCC would directly or indirectly become interested in the XRL Project.
6. I can only make declarations of interests in respect of companies in which I am a director and which are based on facts known to me. It is not reasonable for me to, nor can I properly, speculate whether a subsidiary of a company in which I am a director is or is not interested in making a bid for a contract. This is too remote and I am not aware that I am obliged to declare any interest in respect of a company of which I am not a director. Besides, I cannot be expected to probe endlessly for information which I am not in law entitled to.
7. As a fact, I was not aware of, and had no reason to believe that HCCC had made a bid for contracts in the XRL Project. I also had no reason to believe that HCCC would do so.
8. In the circumstances, the CMI cannot reasonably find that I spoke on those days without declaring an interest as alleged or at all.

I therefore do not admit the complaint as set out by the CMI.

Yours faithfully

Jeffrey Lam Kin Fung

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立法會 LEGISLATIVE COUNCIL

林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

密 件
CONFIDENTIAL

Miss Mary So
Clerk to Committee
on Members' Interests
Legislative Council Building
8 Jackson Road
Central, Hong Kong

3 June 2011

Dear Miss So,

I refer to your letter to me dated 20 May 2011 to me, in which you enclosed extracts of the draft report (LC Paper No. CMI/98/10-11). I now set out my response to this.

With all due respect, the Committee on Member's Interests ("CMI" or "Committee") is wrong. The members of the Committee fail to understand the proper role of an independent non-executive director ("INED") and how such a director relates to subsidiaries of which he is not a director.

An INED's primary role is to protect the interests of minority shareholders of the Company which he serves as a director. He does not have day to day dealings with the management and staff of the Company, far less any dealings with the directors, management or staff of the subsidiaries of the Company. Nor is he responsible for securing business or developing opportunities. The pecuniary interest of INED's in a Company is therefore different from that of other directors. As such it is not reasonable or proper for an INED to take a hands-on approach in the affairs of a subsidiary. Such subsidiaries have their own directors who have duties of confidentiality that must be respected. INED's of a parent company usually only know of a subsidiary's plans when they are presented with reports and financial statements of the subsidiary.

Therefore, the report of the CMI is wrong when it states in paragraph 3.15 that a Member would not encounter "undue difficulty to find out the nature of business of the subsidiaries of the company of which he is an INED for the purpose of considering whether a disclosure under Rule 83A of RoP should be made because what is required of the Member is only to



disclose the nature of the pecuniary interest". This is too onerous on Members.

I do not accept that a Member who serves as an INED must have a duty to look for information from a subsidiary to consider a disclosure of a pecuniary interest. From a practical standpoint this places the Member in an impossible position in that he must constantly ask for information from the subsidiary with or without any basis.

This onus is even more unfair and unreasonable when considered together with the CMI's proposal to judge whether a non-disclosure of a supposed pecuniary interest is tantamount to a breach is to be considered with the benefit of hind-sight, after all relevant information is gathered. This takes the Member's actions out of the context known to the Member at the relevant time, namely the time of the alleged failure to declare the pecuniary interest. Knowledge and facts developed after the relevant time will often lead to a finding that the Member could have done better, but this is unfair. A member who has no knowledge of a relevant pecuniary interest at the relevant time should not be censured based on information developed afterwards. The Member can only properly be judged on what he knows at the relevant time, and in the context then existing.

In earlier submissions I made it clear that I was not aware of the interest of Hsin Chong Construction Co. Ltd. in the XRL Project when I spoke at the meetings of the Railway Sub-Committee. Neither the Rules of Procedure ("RoP") nor the Guidelines on Registration of Interests contain any express stipulation that Members are required to look into indirect pecuniary interests outside of those of the Company in which they serve as directors, nor to disclose such interests. Even though I had complied with what is required at the relevant time the CMI now concludes that I had breached Rule 83A. The Committee well knows that I had no knowledge of any interest of a subsidiary of the company in which I served as director that should be declared at the relevant time. This is beyond what was required in the RoP and there is no basis for arriving at this conclusion. I deny any breach whatsoever.

The CMI's recommendations as set out in Chapter 5 introduce a new standard of reporting pecuniary interests. It is not proper or reasonable to judge my previous conduct according to such new standard. Imposing such a standard retrospectively is in breach of the rules of natural justice and most unfair to me.



立法會 LEGISLATIVE COUNCIL
林健鋒 議員 Hon. Jeffrey Kin-fung Lam, SBS, JP

I therefore reject the CMI's finding that I had breached Rule 83A of the RoP and reserve all rights.

Yours faithfully,

Jeffrey Kin Fung Lam



立法會

Legislative Council

多路圖文傳真

立法會CB(3)69/08-09號文件

檔 號：CB(3)/M/MM
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發文者：立法會秘書

受文者：立法會全體議員

議員披露金錢利益事宜

因應部分議員就2008年10月22日立法會會議上，議員參與“協助雷曼兄弟苦主”議案的辯論及表決所提出的詢問，本通告詳載《議事規則》及《內務守則》中與議員在立法會會議上披露金錢利益有關的規則。

2. 《議事規則》第83A條訂明，議員不得就其有直接或間接金錢利益的事宜動議任何議案或修正案，或就該事宜發言，除非該議員披露有關利益的性質。議員的某項利益如會合理地被理解為可能會影響有關議員在立法會會議上的行為、言論或表決取向，則應予以披露。

3. 《議事規則》第84(1)條訂明，議員不得就其有直接金錢利益的任何議題表決，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。由於議員只要在會議進行表決時在席，便可能影響表決結果，《議事規則》第84(1A)條進一步訂明，就表決的議題有直接金錢利益的議員須在該議題進行表決時退席。若某議員沒有退席，任何議員均可在立法會主席提出原議案的待決議題後，及在議員進行表決前，根據《議事規則》第84(3A)條無經預告動議著該議員退席的議案。若某議員須退席的議案獲得通過，該議員在原議案表決時便須退席。此外，根據《議事規則》第84(4)條，任何議員可在表決結果未宣布前，無經預告動議將某議員的表決作廢的議案。若將某議員的表決作廢的議案獲得通過，有關的表決結果將會按此更改。有關以議員有直接金錢利益為理由動議著其退席或將其表決作廢的議案的程序載於《內務守則》第3條及附錄II。

4. 有關《議事規則》第84(1)條中“某部分市民”此一用語的詮釋問題，議員個人利益監察委員會於2000-2001年度曾就此進行研究。委員會商議後所得結論是，要清晰明確界定“某部分市民”此一用語的涵義，在技術上並不可能。個別議員應根據本身的具體情況，決定其金錢利益是否屬“某部分香港市民”同樣享有。關於就“協助雷曼兄弟苦主”所提的議案，個別議員應決定其有否直接金錢利益，若有的話，則應考慮該等利益是否屬於《議事規則》第84(1)條所訂明的例外情況。

5. 為方便議員參考，《議事規則》第83A及84條和《內務守則》第3條與議員披露金錢利益有關的條文，以及《內務守則》附錄II所載動議上述議員退席的議案或將議員的表決作廢的議案的程序，現轉載於**附錄**。

立法會秘書

(林鄭寶玲女士代行)

連附件

立法會
《議事規則》及《內務守則》節錄

《議事規則》

83A. 個人金錢利益的披露

在立法會或任何委員會或小組委員會會議上，議員不得就其有直接或間接金錢利益的事宜動議任何議案或修正案，或就該事宜發言，除非該議員披露有關利益的性質。

84. 在有直接金錢利益的情況下表決或退席

(1) 在立法會或任何委員會或小組委員會會議上，議員不得就其有直接金錢利益的任何議題表決，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。
(2002年第126號法律公告)

(1A) 在立法會或全體委員會會議上，就表決的議題有直接金錢利益的議員須在該議題進行表決時退席，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。
(2002年第126號法律公告)

(2) (由2002年第126號法律公告廢除)

(3) (由2002年第126號法律公告廢除)

(3A) 以某議員不按照第(1A)款的規定退席為理由而著其退席的議案，可無經預告由任何議員在立法會主席或全體委員會主席提出原議案的待決議題後，及在議員進行表決前動議。
(1999年第107號法律公告；2002年第126號法律公告)

(4) 以某議員有第(1)款所述的直接金錢利益為理由將其表決作廢的議案，可無經預告由任何議員在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議案是否獲得所需的過半數票後，立即動議；如有命令進行點名表決，有關議案可在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的有關議員數目後，立即動議。
(1999年第107號法律公告)

(5) 立法會主席、全體委員會主席、委員會主席或小組委員會主席有權酌情決定是否就根據第(3A)或(4)款提出的議案提出待議議題；運用該酌情權時，須考慮所表決事宜的性質，以及因其在席或表決受質疑的議員在該事宜上的利益是否屬於直接的金錢利益，而非屬香港全體或某部分市民同樣享有的利益，並須考慮所表決的事宜是否政府政策。 (1999年第107號法律公告)

(5A) 某議員須退席的待議議題提出後，該議員可在立法會或全體委員會會議上在其席位發言解釋，但隨後須於就該議題進行表決時退席。如議案獲得通過，則在立法會或全體委員會將原議題提出待決及進行表決時，該議員須退席或繼續退席。
(1999年第107號法律公告)

(6) 將某議員的表決作廢的待議議題提出後，該議員可在立法會、全體委員會、委員會或小組委員會會議上在其原位發言解釋，但隨後須於就該議題進行表決時退席。如議案獲得通過，立法會主席、全體委員會主席、委員會主席或小組委員會主席須重新說出按其判斷原議題是否獲得所需的過半數票；如為點名表決，立法會主席、全體委員會主席、委員會主席或小組委員會主席須指示立法會秘書、委員會秘書或小組委員會秘書據此將原來的點名表決贊成者及反對者數目更改；如屬立法會或全體委員會的會議，亦一併更改有關議員在席的影響。 (1999年第107號法律公告)

(7) (由1999年第107號法律公告廢除)

3. 以議員有直接金錢利益為理由著其退席或將其表決作廢

- (a) 以某議員有直接金錢利益為理由而著其退席的議案，可無經預告由任何議員在立法會主席或全體委員會主席提出原議案的待決議題後，及在議員進行表決前動議。動議議員退席的議案的程序載於附錄II。
- (b) 以某議員有直接金錢利益為理由將其表決作廢的議案，可無經預告由任何議員在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議案是否獲得所需的過半數票後，立即動議；如有命令進行點名表決，有關議案可在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的有關議員數目後，立即動議。動議將議員的表決作廢的議案的程序亦載於附錄II。

**以議員有直接金錢利益為理由動議
著其退席或將其表決作廢的議案的程序**

動議議員退席的議案

1. 議員如擬根據《議事規則》第84(3A)條，以另一位議員有直接金錢利益為理由動議著其退席的議案，可在辯論進行期間而原議案的待決議題未付諸表決時，向立法會主席或全體委員會主席遞交字條，表明其有意動議此項議案。他應寫明他將在議案中提議著其退席的議員的姓名，以及說明動議有關議案的理由。
2. 擬動議另一位議員退席的議案的議員，亦可同時通知有關議員，說明動議該議案的理由。後者若打算澄清有關事項，可藉此機會作出澄清。有意動議該議案的議員如在有關事項獲澄清後決定不動議議案，應告知立法會主席或全體委員會主席其決定。
3. 議員如擬動議某議員須退席的議案，應在立法會主席或全體委員會主席提出原議案的待決議題後，立即示意發言。
4. 立法會主席或全體委員會主席繼而須叫喚該議員動議另一位議員退席的議案。
5. 立法會主席或全體委員會主席須根據《議事規則》第84(5)條，決定是否就議員退席的議案提出待議議題。
6. 某議員須退席的待議議題提出後，該議員可根據《議事規則》第84(5A)條，在立法會或全體委員會會議上在其席位發言解釋，但隨後須於該議題進行表決時退席。
7. 某議員須退席的議案如被否決，該議員可回來參加會議。
8. 某議員須退席的議案如獲通過，在立法會或全體委員會將原議題提出待決及進行表決時，該議員須退席。

動議將議員的表決作廢的議案

9. 在原議案進行表決後而表決結果未宣布時，議員可根據《議事規則》第84(4)條無經預告而動議議案，以某議員有直接金錢利益為理由將其表決作廢。該議員應在切實可行範圍內盡早向立法會主席、全體委員會主席、委員會主席或小組委員會主席遞交字條，表明其有意動議此項議案，並盡可能通知有關議員。

10. (a) **如沒有命令就原議案進行點名表決**，議員如擬動議將另一位議員的表決作廢的議案，應在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議題是否獲得所需的過半數票後，立即示意發言。
- (b) **如有命令就原議案進行點名表決**，議員如擬動議將另一位議員的表決作廢的議案，應在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的議員數目後，立即示意發言。
11. 立法會主席、全體委員會主席、委員會主席或小組委員會主席繼而須叫喚該議員動議將另一位議員的表決作廢的議案。
12. 立法會主席、全體委員會主席、委員會主席或小組委員會主席須根據《議事規則》第84(5)條，決定是否就將某議員的表決作廢的議案提出待議議題。
13. 將某議員的表決作廢的待議議題提出後，該議員可根據《議事規則》第84(6)條，在立法會、全體委員會、委員會或小組委員會會議上在其原位發言解釋，但隨後須於該議題進行表決時退席。
14. 將某議員的表決作廢的議案如被否決，該議員可回來參加會議。立法會主席、全體委員會主席、委員會主席或小組委員會主席繼而須宣布就原議案作出的決定。
15. 將某議員的表決作廢的議案如獲通過，
 - (a) **如沒有命令就原議案進行點名表決**，立法會主席、全體委員會主席、委員會主席或小組委員會主席須重新說出按其判斷原議題是否獲得所需的過半數票；或
 - (b) **如有命令就原議案進行點名表決**，立法會主席、全體委員會主席、委員會主席或小組委員會主席須指示立法會秘書、委員會秘書或小組委員會秘書據此將原來的點名表決贊成者及反對者數目更改；如屬立法會或全體委員會的會議，亦一併更改有關議員在席的影響。

立法會
Legislative Council

By multi-fax

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Tel : 2869 9205

Date : 20 October 2008

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Disclosure of pecuniary interest by Members

In response to enquiries from some Members regarding Members' participation in the debate and voting on the motion on "Assisting the victims of the Lehman Brothers incident" at the Council meeting on 22 October 2008, this circular details the rules in the Rules of Procedure (RoP) and the House Rules (HR) which relate to the disclosure of pecuniary interest by Members in the Council.

2. RoP 83A provides that a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest. A Member's pecuniary interest ought to be declared if it might reasonably be thought by others to influence the Member's actions, speeches or votes in the Council.

3. RoP 84(1) provides that a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. As the mere presence of a Member may affect the voting result, RoP 84(1A) further provides that a Member shall withdraw when a vote is taken on a question in which he has such a direct pecuniary interest. If a Member has failed to withdraw, under RoP 84(3A), any Member may move without notice a motion for the withdrawal of the Member after the President has put the question on the original motion but before the vote is taken. If the withdrawal motion is passed, the Member shall withdraw when the original motion is voted on. Also, under RoP 84(4), any Member may move

without notice a motion to disallow the vote of a Member before the result of the voting is declared. If the motion to disallow a vote is agreed to, the result will be altered accordingly. The procedure on the moving of a motion for the withdrawal of a member or disallowance of vote on grounds of direct pecuniary interest is set out in HR 3 and Appendix II of HR.

4. Regarding the interpretation of “a sector thereof” in RoP 84(1), the subject was studied by the Committee on Members’ Interests in the 2000-2001 session. After deliberation, the Committee concluded that it was technically impossible to give a clear and clean definition of the phrase “a sector thereof”, and individual Members should decide whether their pecuniary interests were common to “a sector of the population of Hong Kong”, in the light of their own particular circumstances. For the motion on “Assisting the victims of the Lehman Brothers incident”, individual Members are advised to decide whether they have any direct pecuniary interest and, if yes, whether the interests are within any of the excepted situations provided in RoP 84(1).

5. For Members’ ease of reference, RoP 83A and 84 and HR 3 relating to disclosure of pecuniary interest by Members, as well as the procedure in Appendix II of HR for moving a withdrawal motion or disallowance motion referred to above, are reproduced in the **Appendix**.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

**Extract from the Rules of Procedure and House Rules
of the Legislative Council**

Rules of Procedure

83A. Personal Pecuniary Interest to be Disclosed

In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.

84. Voting or Withdrawal in case of Direct Pecuniary Interest

(1) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
(L.N. 126 of 2002)

(1A) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
(L.N. 126 of 2002)

(2) *(Repealed L.N. 126 of 2002)*

(3) *(Repealed L.N. 126 of 2002)*

(3A) A motion for the withdrawal of a Member on the ground of his failure to withdraw as required by subrule (1A) may be moved without notice by any Member after the President or Chairman has put the question on the original motion but before the vote is taken.
(L.N. 107 of 1999; L.N. 126 of 2002)

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division.
(L.N. 107 of 1999)

(5) The President, Chairman of a committee of the whole Council or chairman shall have the discretion whether or not to propose the question upon a motion under subrule (3A) or (4); and in exercising such discretion he shall have regard to the nature of the question upon which the vote is taken and to the consideration whether the interest therein of the Member whose presence or vote is challenged is direct and pecuniary and not an interest in common with the rest of the population of Hong Kong or a sector thereof and whether the vote is on a matter of Government policy. *(L.N. 107 of 1999)*

(5A) If the question for the withdrawal of a Member is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council or a committee of the whole Council for the duration of any vote on the question. If the motion is agreed to, the Member shall withdraw or continue to withdraw from the Council or the committee of the whole Council when the original question is put and voted upon. *(L.N. 107 of 1999)*

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question. If the motion is agreed to, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgment on whether there is a required majority in the original question or, in the case of a division, direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly. *(L.N. 107 of 1999)*

(7) *(Repealed L.N. 107 of 1999)*

House Rules

3. Withdrawal of Member or Disallowance of Vote on Grounds of Direct Pecuniary Interest

- (a) A motion for the withdrawal of a Member on grounds of his direct pecuniary interest may be moved without notice by any Member after the President or Chairman of a committee of the whole Council has put the question on the original motion but before the vote is taken. The procedure on the moving of a motion for the withdrawal of a Member is in Appendix II.
- (b) A motion to disallow a Member's vote on grounds of his direct pecuniary interest may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. The procedure on the moving of a motion to disallow a Member's vote is also in Appendix II.

**Procedure on the Moving of Motion
for the Withdrawal of Member or Disallowance of Vote
on Grounds of Direct Pecuniary Interest**

Moving of motion for the withdrawal of Member

1. A Member who wishes to move a motion under Rule 84(3A) of the Rules of Procedure for the withdrawal of another Member on grounds of the latter's direct pecuniary interest may pass a note to the President or Chairman of a committee of the whole Council indicating his intention to do so during the debate but before the question on the original motion is put. He should give the name of the Member whose withdrawal is proposed in the motion and the reasons for moving the motion.
2. The Member wishing to move the withdrawal motion may also notify the Member concerned at the same time, giving the reasons for moving the motion. This gives the latter the opportunity, if he so wishes, to clarify matters. Should the Member intending to move the motion decide not to proceed with the motion in the light of the clarification given, he should inform the President or Chairman of a committee of the whole Council of his decision.
3. If the withdrawal motion is to be moved, the Member wishing to move the motion should indicate his intention to speak immediately after the President or Chairman of a committee of the whole Council has put the question on the original motion.
4. The President or Chairman of a committee of the whole Council shall then call upon the Member to move the motion for the withdrawal of the other Member.
5. The President or Chairman of a committee of the whole Council shall decide whether or not to propose the question upon the withdrawal motion having regard to Rule 84(5) of the Rules of Procedure.
6. If the question for the withdrawal of a Member is proposed, the Member concerned may, in accordance with Rule 84(5A) of the Rules of Procedure, be heard in his place but he shall then withdraw from the Council or the committee of the whole Council for the duration of any vote on the question.
7. If the withdrawal motion is negatived, the Member may return to the meeting.

8. If the withdrawal motion is agreed to, the Member concerned shall withdraw from the Council or a committee of the whole Council when the original question is put and voted upon.

Moving of motion for the disallowance of vote

9. A Member may move a motion without notice under Rule 84(4) of the Rules of Procedure to disallow a Member's vote on grounds of the latter's direct pecuniary interest after a vote on the original motion has been taken but before the result of the voting is declared. The Member should as early as practicable pass a note to the President, Chairman of a committee of the whole Council or chairman indicating his intention to do so, and notify the Member concerned as far as possible.
10. (a) *Where a division has not been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgement on whether there is a required majority in the original question.

(b) *Where a division has been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of the committee of the whole Council or chairman of the numbers of Members recorded in the division.
11. The President, Chairman of a committee of the whole Council or chairman shall then call upon the Member to move the motion for the disallowance of the other Member's vote.
12. The President, Chairman of a committee of the whole Council or chairman shall decide whether or not to propose the question upon the disallowance motion having regard to Rule 84(5) of the Rules of Procedure.
13. If the question for the disallowance of a Member's vote is proposed, the Member concerned may, in accordance with Rule 84(6) of the Rules of Procedure, be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question.
14. If the disallowance motion is negated, the Member may return to the meeting. The President, Chairman of the committee of the whole Council or chairman shall then declare the decision on the original motion.

15. If the disallowance motion is agreed to,
- (a) *where a division has not been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgement on whether there is a required majority in the original question; or
 - (b) *where a division has been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly.

立法會

Legislative Council

立法會CMI 17/09-10號文件

檔 號：CB(3)/C/1 VI

議員個人利益監察委員會 2009年12月16日第4次會議的文件

根據《議事規則》第83A條披露金錢利益

目的

本文件旨在提供資料，說明立法會議員遵照《議事規則》第83A條披露金錢利益的相關事宜。

背景

2. 《議事規則》第83A條規定，在立法會或任何委員會或小組委員會會議上，議員不得就其有直接或間接金錢利益的事宜動議任何議案或修正案，或就該事宜發言，除非該議員披露有關利益的性質。作出該等披露的主要目的，是要確保議員在參與立法會或其委員會的會議程序時，其他議員及公眾得悉該議員有任何可合理地被認為與該等會議程序有關的金錢利益。

3. 在某個委員會近期的會議¹上，部分議員關注到，該委員會的主席應否在委員會商議某項工程計劃的撥款申請時主持會議，因為他擔任獨立非執行董事的一家公司已表明有意競投該工程計劃下的合約。就此，議員個人利益監察委員會(下稱"監察委員會")部分委員認為，監察委員會應討論有關在《議事規則》第83A條下披露金錢利益的下列事宜：

- (a) 當議員身為某團體的非執行董事，而委員會就所審議的事宜作出的決定可能會影響該團體的利益，則該名議員應否被視為在該事宜中有金錢利益；

¹ 2009年12月2日的工務小組委員會會議。

- (b) 議員就其有金錢利益的事宜發言時，應否在發言的開始時披露有關利益；及
- (c) 委員會主席如在該委員會所審議的事宜中有金錢利益，應否在委員會商議該事宜時主持會議。

在《議事規則》第83A條下須予披露的直接或間接金錢利益

直接或間接金錢利益

4. 法律事務部過往為監察委員會擬備的文件²曾告知委員，"直接金錢利益"一詞是用以表達其自然涵義，而在香港，普遍的看法是要成為直接金錢利益，該利益應屬切身性質而並非僅屬遙遠或與公眾共享的性質。此外，該利益必須屬議員個人所有，而並非與市民大眾共同享有。至於"間接金錢利益"，則是議員並非切身且不屬其個人所有的利益，但又確實與議員有某些關係，致使合理的人會認為該利益可能對議員的言行有某些影響。

5. 為協助委員瞭解"金錢利益"及"間接金錢利益"的涵義，可參考設有與香港相若的個人利益申報制度的普通法司法管轄區在其法規中就此二詞所下的定義。與監察委員會考慮的事宜有關的法規的例子，包括規定地方機關的議員須在地方議會或委員會會議上披露金錢利益的法規(下稱"有關法規")。

6. 在此等法規中，部分把"金錢利益"界定為某人會因合理地可能或期望獲得可觀的財務收益或蒙受可觀的損失而在某事宜中擁有的個人利益³。至於"間接金錢利益"，有些法定條文規定，倘若議會議員或地方委員會成員或其代名人為某公司的股東、董事或人員，而該公司在涉及該議會或委員會的任何事宜中有直接金錢利益；或該議員或委員會成員是某人或團體的合夥人或僱員，而該人或團體在涉及該事宜中有直接金錢利益，則該議員或委員會成員可被視為在該事宜中有間接金錢利益⁴。某些司法管轄區曾就相關的法規發出關乎地方機關成員金錢利益的指引⁵。

² 就2003年4月8日的監察委員會會議發出的'有關《立法會議事規則》第83A條中"間接金錢利益"涵義的註解'(立法會LS12/02-03號文件)。

³ 可參看例如澳洲新南威爾士州《1993年地方政府法令》(Local Government Act 1993)第442條。

⁴ 可參看例如加拿大安大略省《市政府利益衝突法令》(Municipal Conflict of Interest Act of Ontario, Canada, R.S.O. 1990, c. M. 50)第2條。

⁵ 可參看例如新西蘭於2007年6月根據《1968年地方機關(議員利益)法令》(Local Authorities (Members' Interests) Act 1968)發出的《關於利益衝突法的地方機關成員指引》(Guidance for members of local authorities about the law on conflicts of interest)。

非執行董事職位

7. 關於委員對非執行董事職位應否被視為須予披露的金錢利益⁶ 一事的關注，謹請委員察悉，在法律上，執行董事與非執行董事並無分別，他們均為公司的董事局成員，而且職責相同。非執行董事與執行董事的差別在於後者亦擔任公司的行政經理。

8. 議員應否在立法會或其委員會會議上把其非執行董事職位作為金錢利益予以披露，須視乎該會議所審議的事宜而定。各議員須自行判斷他們在有關會議所審議的事宜中是否有直接或間接的金錢利益。在衡量應否披露某項金錢利益時，基本原則是須考慮他人會否合理地認為該利益會影響有關議員就所審議的事宜作出的言行。議員即使已登記關乎其董事職位的個人利益，仍有責任在有關的會議上披露董事職位所引起的金錢利益⁷。

9. 謹請委員察悉，英國國會議員同樣須申報本身已擁有、可能會擁有或預計可能會擁有的任何性質的相關直接或間接金錢利益或實惠⁸。議員有責任自行判斷某項金錢利益是否充分相關，致使須作出申報。倘若他人會合理地認為某項金錢利益會影響議員的發言，該名議員便應申報該利益。利益申報應當簡潔，但應具體述明議員利益的性質。任何利益申報均應包含足夠的資料，令聽取申報的人可瞭解議員的金錢利益屬何性質，而無須翻查登記冊或其他刊物⁹。

披露金錢利益的時間

10. 關於披露金錢利益的時間，《議事規則》第83A條並無指明議員應在發言中的哪個時刻披露他在有關事宜中的金錢利益。議員有責任自行決定在發言中的哪個時間，披露他在所審議的事宜中的利益最為合適，而能夠令他人得以判斷他就有關事宜提出的意見有否受到其利益所影響。

⁶ 就議員登記關乎受薪董事職位的個人利益而言，執行董事與非執行董事的職位亦無分別，正如《議事規則》第83(5)(a)條所載：

"(5) 在本條中，"須予登記的個人利益"指 ——

(a) 公共或私營公司的受薪董事職位，以及如有關公司屬《公司條例》(第32章)第2(4)條所指的另一間公司的附屬公司，亦指該另一間公司的名稱；"

⁷ 《個人利益登記指引》第III(3)段訂明："《議事規則》第83A條規定議員須透露的金錢利益……登記個人利益是上述《議事規則》以外的附加規定，絕不能取代上述規定。"

⁸ 厄斯金梅(Erskine May) (2004)，第487頁。

⁹ 同上，第488頁。

11. 英國國會議員均獲告知，如申報其金錢利益至為相關，一般應在開始發言時作出申報¹⁰。

主持會議

12. 目前，《議事規則》並無任何規則禁止委員會主席在他於會議所審議的事宜中有金錢利益或角色衝突的情況下主持會議。不過，議員之間已有共識，凡出任與事務委員會的職權範圍相關的政府諮詢團體的主席或副主席的議員，不得成為該事務委員會的正副主席。這項共識載於《內務守則》第22(h)條。

13. 過往曾有議員感到自己在會議所審議的事宜中有角色或利益衝突，又或認為他人可能有此觀感，因而主動選擇不主持會議。委員如認為應在這方面給予議員更多指引，監察委員會可考慮向議員發出勸喻性質的指引，或建議在立法會的相關規則及程序中訂明有關安排。

徵詢意見

14. 謹請委員察悉上述資料。

立法會秘書處
議會事務部3
2009年12月14日

¹⁰ 同上。

立法會
Legislative Council

LC Paper No. CMI 17/09-10

Ref: CB(3)/C/1 VI

Committee on Members' Interests
Paper for the fourth meeting on 16 December 2009

Disclosure of pecuniary interests under Rule 83A of the Rules of Procedure

Purpose

This paper provides information on issues relating to compliance with Rule 83A of the Rules of Procedure ("RoP") on disclosure of pecuniary interests by Members of the Legislative Council.

Background

2. Rule 83A of the RoP provides that in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter which he has a pecuniary interest, whether direct or indirect, or speak on such matter, except where he discloses the nature of that interest. The main purpose of such disclosure is to ensure that other Members and the public are made aware, when a Member is participating in the proceedings of the Council or its committees, of any pecuniary interest which might reasonably be thought to be relevant to those proceedings.

3. As concerns have been raised recently by some Members at a committee meeting¹ on whether the committee chairman should preside over the deliberation of the funding applications for a project, given that he is an independent non-executive director of a company which has indicated intention to bid for contracts under the project, some members of the Committee on Members' Interests ("CMI") consider that CMI should discuss the following issues regarding the disclosure of pecuniary interests under Rule 83A of the RoP:

- (a) whether a Member should be regarded to be having a pecuniary interest in a matter being considered by a committee when he is a non-executive director of a body whose interest might be affected by the committee's decision on the matter ;

¹ Public Works Subcommittee meeting on 2 December 2009

- (b) whether a Member who speaks on a matter in which he has a pecuniary interest should disclose such interest at the beginning of his speech; and
- (c) whether the chairman of a committee who has a pecuniary interest in a matter being considered by the committee should preside over the deliberation of that matter.

Direct and indirect pecuniary interests to be disclosed under Rule 83A of the RoP

Direct and indirect pecuniary interests

4. In a previous paper prepared by the Legal Service Division for CMI², members have been advised that the term "direct pecuniary interest" is intended to carry its natural meaning, and that in Hong Kong it has been generally accepted that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. In addition, the interest must be personal to the Member and not merely one which is shared with the general public. As regards "indirect pecuniary interest", it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member.

5. To assist members in understanding the meaning of "pecuniary interest" and "indirect pecuniary interest", it may be useful to refer to the definitions of these terms in statutes in some common law jurisdictions which have in place a declaration of interest scheme similar to that in Hong Kong. Examples of such statutes which may be relevant to the issues under consideration by CMI are those which require councillors of local authorities to disclose pecuniary interest at meetings of local councils or boards ("the relevant statutes").

6. In some of these statutes, "pecuniary interest" is defined to mean an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person³. As regards "indirect pecuniary interest", there are statutory provisions providing to the effect that a member of the council or local board has an indirect pecuniary interest in any matter in which the council or local board is concerned, if the member or his nominee is a shareholder in, or a director or officer of, a company that has a direct pecuniary interest in the matter; or the member is a partner, or is in the employment, of a person or body that has a direct pecuniary interest in the matter⁴. In some jurisdictions, guidelines relating to pecuniary interests of local authority members have been issued on the relevant statutes⁵.

² 'A Note on the Meaning of "Indirect Pecuniary Interest" in Rule 83A of the Rules of Procedure of the Legislative Council' (LC Paper No. LS12/02-03) issued for the CMI meeting on 8 April 2003

³ See, for example, section 442 of the Local Government Act 1993 of New South Wales, Australia.

⁴ See, for example, section 2 of the Municipal Conflict of Interest Act of Ontario, Canada, R.S.O. 1990, c. M.50

⁵ See, for example, "Guidance for members of local authorities about the law on conflicts of interest" on the Local Authorities (Members' Interests) Act 1968 of New Zealand issued in June 2007.

Non-executive directorship

7. Regarding the concern whether non-executive directorship should be regarded as a pecuniary interest required to be disclosed⁶, members may wish to note that there is no distinction between executive and non-executive directors in law. Both are members of the board of directors of a company and have the same responsibilities. Non-executive directors are different from executive directors in that the latter also serve as executive managers of the company.

8. Whether a Member should disclose his non-executive directorship as a pecuniary interest at a meeting of the Council or its committees depends on what the matter being considered by the meeting is. It is a matter for individual Members to judge whether they have a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting. The basic principle in determining whether a pecuniary interest should be disclosed is whether the interest might reasonably be thought by others to influence the Member's actions or speech in the matter being considered. The fact that a Member has registered the interest of a directorship does not obviate his obligation to disclose at the relevant meeting a pecuniary interest arising from the directorship⁷.

9. Members may wish to note that Members of the United Kingdom ("UK") Parliament are similarly required to declare any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have⁸. It is the responsibility of the Member to judge whether a pecuniary interest is sufficiently relevant to require declaration. A pecuniary interest should be declared if it might reasonably be thought by others to influence the Member's speech. A declaration should be brief, but should make specific reference to the nature of the Members' interest. Any declaration should be sufficiently informative to enable a listener to understand the nature of the Member's pecuniary interest without recourse to the Register or other publications⁹.

⁶ There is also no such distinction made between executive and non-executive directorship as far as registration of Members' interests on "remunerated directorship" is concerned, as set out in Rule 83(5)(a) of the RoP:

"(5) In this Rule, "registrable interests" means –

- (a) remunerated directorships of companies, public or private, and if the company concerned is a subsidiary of another company within the meaning of section 2(4) of the Companies Ordinance (Cap. 32), also the name of that other company;"

⁷ Paragraph III(3) of the Guidelines on Registration of Interests states that "The registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interest under Rule 83A."

⁸ Erskine May (2004), page 487

⁹ ditto, page 488

Timing of disclosure of pecuniary interest

10. Regarding the timing of disclosure of pecuniary interest, Rule 83A of the RoP does not specify at which juncture of a Member's speech should the Member disclose the pecuniary interest he has in the matter. It is the responsibility of a Member to decide the most appropriate time in his speech to disclose his interest in a matter being considered, which will enable other people to judge if his views on the matter has been influenced by his interest.

11. In the UK Parliament, their Members have been advised to declare their pecuniary interest when it is most relevant to do so, normally at the beginning of his or her remarks¹⁰.

Chairing of meetings

12. At present, there is no rule in RoP which prohibits the chairman of a committee from chairing a meeting on grounds that he has a pecuniary interest or role conflict in the matter under consideration by the meeting. However, there is consensus among Members that a Member who is the chairman or deputy chairman of a government advisory body in respect of matters related to the terms of reference of a Panel should not be the chairman or deputy chairman of the Panel. This is provided in rule 22(h) of the House Rules.

13. In the past, Members had on their own volition chosen not to chair a meeting when they felt that there was a conflict in role or interests in the matter being considered by the meeting, or when they considered they might be perceived that way by others. If members consider that Members should be given more guidance in this respect, CMI may consider issuing advisory guidelines to Members or recommending that the arrangements be stipulated in the relevant rules and procedure of the Council.

Advice sought

14. Members are invited to note the information above.

Council Business Division 3
Legislative Council Secretariat
14 December 2009

¹⁰ ditto

立法會
Legislative Council

多路傳真急件

立法會FC27/09-10號文件

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受文者：財務委員會各位委員

財務委員會

金錢利益對在委員會內
就某事宜發言及表決的程序所造成的影響

本通告提供有關以下事宜的資料：委員披露金錢利益，以及在財務委員會會議上審議某項建議時委員在有直接金錢利益的情況下表決。

委員披露金錢利益

2. 正如《財務委員會會議程序》第40段所反映，《議事規則》第83A條及第84條適用於委員會的會議程序。《議事規則》第83A條訂明，議員不得就其有**直接或間接**金錢利益的事宜動議任何議案或修正案，或就該事宜發言，除非該議員披露有關利益的性質。

披露金錢利益的時間

3. 在委員會席前披露在有關事宜中的直接或間接金錢利益的性質，是議員就該事宜發言的條件。原則上，議員有責任披露他在所審議的事宜中的金錢利益，而能夠令他人得以判斷他就有

關事宜提出的意見有否受到其利益所影響；根據此原則，議員須在他就有關事宜開始發言時披露其金錢利益。

4. 在財務委員會會議上，委員就委員會審議的建議開始發言時披露其利益，已是慣常做法。

委員在有直接金錢利益的情況下表決

5. 《議事規則》第84(1)、84(4)、84(5)及84(6)條適用於財務委員會的會議程序。《議事規則》第84(1)條訂明，議員不得就其有**直接**金錢利益的任何議題表決，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。此外，根據第84(4)條，任何議員可在表決結果未宣布前，無經預告動議將某議員的表決作廢的議案。若將某議員的表決作廢的議案獲得通過，有關的表決結果將會按此更改。有關以**直接**金錢利益為理由而動議將表決作廢的議案的程序，載於《議事規則》第84(5)及84(6)條，並於《內務守則》附錄II第3條予以進一步補充。

執行董事及非執行董事職位

6. 關於對非執行董事職位應否被視為須予披露的金錢利益及／或影響議員的表決資格¹的關注，謹請委員察悉，在法律上，執行董事與非執行董事並無分別。他們均為公司的董事局成員，而且責任相同。非執行董事與執行董事的差別在於後者亦擔任公司的行政管理人員。

7. 議員應否在立法會或其委員會會議上把其非執行董事職位作為金錢利益予以披露，須視乎該會議所審議的事宜而定。各議員有責任自行判斷他們在有關會議所審議的事宜中是否有直接或間接的金錢利益。在衡量應否披露某項金錢利益時，基本原則是須考慮他人會否合理地認為該利益會影響有關議員就所審議的事宜作出的言行，而該項披露應在他於有關會議上就該事宜開始發言時作出。議員即使已登記關乎其董事職位的個人利益，仍有

¹ 就議員登記關乎受薪董事職位的個人利益而言，執行董事與非執行董事的職位亦無分別，正如《議事規則》第83(5)(a)條所載：

"(5) 在本條中，"須予登記的個人利益"指 ——

(a) 公共或私營公司的受薪董事職位，以及如有關公司屬《公司條例》(第32章)第2(4)條所指的另一間公司的附屬公司，亦指該另一間公司的名稱；"

責任在有關的會議上披露董事職位所引起的金錢利益²。就此，議員可參閱《議事規則》第83(3)條所訂有關更新其須予登記的個人利益的規定。

8. 同樣地，議員的非執行董事職位會否影響其在立法會或其委員會會議上表決的資格，須視乎該會議所審議的事宜而定。各議員有責任自行判斷他們在有關會議所審議的事宜中是否有**直接**金錢利益。

9. 《議事規則》並無條文訂明如何決定議員是否對在委員會討論的事宜中有直接或間接金錢利益。香港以外若干普通法司法管轄區所界定的一些法定定義，可為議員提供有用的參考。該等定義在CMI 17/09-10號文件中有所提述，而涵蓋公司董事的情況的定義，其理念是"倘若議員身為公司董事，而該公司在涉及該議會的任何事宜中有直接金錢利益，則該議員在該事宜中有間接金錢利益"。

10. 倘若委員不肯定他們應否在財務委員會會議上就一項建議申報某項利益或表決，可向財務委員會秘書尋求意見，如有需要，秘書會就涉及的法律事宜諮詢法律顧問。

主持會議

11. 目前，《議事規則》並無任何規則禁止委員會主席在他於會議所審議的事宜中有金錢利益或角色衝突的情況下主持會議。《財務委員會會議程序》亦沒有就此事宜訂立條文。過往曾有議員感到自己在會議所審議的事宜中有角色或利益衝突，又或認為他人可能有此觀感，因而主動選擇不主持會議。《財務委員會會議程序》及其轄下小組委員會的會議程序已訂明，如主席決定其本人未能在討論某一事項時主持會議，或委員會(或小組委員會)決定他不能負責這項工作，則副主席須就該事項主持會議。如上述兩人均決定未能主持會議，或委員會(或小組委員會)決定他們不能負責該項工作，則與會的委員須互選一人，在討論該事項時主持會議。

² 《個人利益登記指引》第III(3)段訂明："《議事規則》第83A條規定議員須透露的金錢利益.....登記個人利益是上述《議事規則》以外的附加規定，絕不能取代上述規定。"

相關規則

12. 為方便議員參考，《議事規則》第83A及84條、《財務委員會會議程序》第40段及《內務守則》第3條與議員披露金錢利益及以有直接金錢利益為理由將表決作廢有關的條文，以及《內務守則》附錄II所載動議將議員的表決作廢的議案的相關程序，均轉載於**附件**。

助理秘書長1

(李蔡若蓮女士)

連附件

立法會《議事規則》、《財務委員會會議程序》及
《內務守則》的節錄

《議事規則》

83A. 個人金錢利益的披露

在立法會或任何委員會或小組委員會會議上，議員不得就其有直接或間接金錢利益的事宜動議任何議案或修正案，或就該事宜發言，除非該議員披露有關利益的性質。

84. 在有直接金錢利益的情況下表決或退席

(1) 在立法會或任何委員會或小組委員會會議上，議員不得就其有直接金錢利益的任何議題表決，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。

(2002年第126號法律公告)

(1A) 在立法會或全體委員會會議上，就表決的議題有直接金錢利益的議員須在該議題進行表決時退席，除非該議員的利益屬香港全體或某部分市民同樣享有，又或議員所表決的事宜是政府政策。

(2002年第126號法律公告)

(2) (由2002年第126號法律公告廢除)

(3) (由2002年第126號法律公告廢除)

(3A) 以某議員不按照第(1A)款的規定退席為理由而著其退席的議案，可無經預告由任何議員在立法會主席或全體委員會主席提出原議案的待決議題後，及在議員進行表決前動議。

(1999年第107號法律公告；2002年第126號法律公告)

(4) 以某議員有第(1)款所述的直接金錢利益為理由將其表決作廢的議案，可無經預告由任何議員在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議案是否獲得所需的過半數票後，立即動議；如有命令進行點名表決，

有關議案可在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的有關議員數目後，立即動議。
(1999年第107號法律公告)

(5) 立法會主席、全體委員會主席、委員會主席或小組委員會主席有權酌情決定是否就根據第(3A)或(4)款提出的議案提出待議議題；運用該酌情權時，須考慮所表決事宜的性質，以及因其在席或表決受質疑的議員在該事宜上的利益是否屬於直接的金錢利益，而非屬香港全體或某部分市民同樣享有的利益，並須考慮所表決的事宜是否政府政策。 (1999年第107號法律公告)

(5A) 某議員須退席的待議議題提出後，該議員可在立法會或全體委員會會議上在其席位發言解釋，但隨後須於就該議題進行表決時退席。如議案獲得通過，則在立法會或全體委員會將原議題提出待決及進行表決時，該議員須退席或繼續退席。
(1999年第107號法律公告)

(6) 將某議員的表決作廢的待議議題提出後，該議員可在立法會、全體委員會、委員會或小組委員會會議上在其原位發言解釋，但隨後須於就該議題進行表決時退席。如議案獲得通過，立法會主席、全體委員會主席、委員會主席或小組委員會主席須重新說出按其判斷原議題是否獲得所需的過半數票；如為點名表決，立法會主席、全體委員會主席、委員會主席或小組委員會主席須指示立法會秘書、委員會秘書或小組委員會秘書據此將原來的點名表決贊成者及反對者數目更改；如屬立法會或全體委員會的會議，亦一併更改有關議員在席的影響。 (1999年第107號法律公告)

(7) (由1999年第107號法律公告廢除)

註：《議事規則》第83A、84(1)、84(4)、84(5)及84(6)條適用於財務委員會的會議程序。

《財務委員會會議程序》

金錢利益的披露

40. 議事規則第83A條及第84條將適用於委員會的會議程序。
41. 有關金錢利益的一般規則對某些情況並不適用，例如在文件內提出的建議是關於更改委員因擔任立法會議員而獲發的薪酬及津貼，有關規則即不適用。在這種情況下，委員無需申報個人利益。主席會宣布所有委員在有關議題上有相同的金錢利益，而秘書會把有關宣布記錄在案。委員可繼而發言及表決。

3. 以議員有直接金錢利益為理由著其退席或將其表決作廢

- (a) 以某議員有直接金錢利益為理由而著其退席的議案，可無經預告由任何議員在立法會主席或全體委員會主席提出原議案的待決議題後，及在議員進行表決前動議。動議議員退席的議案的程序載於附錄II。
- (b) 以某議員有直接金錢利益為理由將其表決作廢的議案，可無經預告由任何議員在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議案是否獲得所需的過半數票後，立即動議；如有命令進行點名表決，有關議案可在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的有關議員數目後，立即動議。動議將議員的表決作廢的議案的程序亦載於附錄II。

(節錄自《內務守則》附錄II)

**以議員有直接金錢利益為理由動議
著其退席或將其表決作廢的議案的程序**

* * * * *

動議將議員的表決作廢的議案

9. 在原議案進行表決後而表決結果未宣布時，議員可根據《議事規則》第84(4)條無經預告而動議議案，以某議員有直接金錢利益為理由將其表決作廢。該議員應在切實可行範圍內盡早向立法會主席、全體委員會主席、委員會主席或小組委員會主席遞交字條，表明其有意動議此項議案，並盡可能通知有關議員。
10. (a) **如沒有命令就原議案進行點名表決**，議員如擬動議將另一位議員的表決作廢的議案，應在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出按其判斷原議題是否獲得所需的過半數票後，立即示意發言。
(b) **如有命令就原議案進行點名表決**，議員如擬動議將另一位議員的表決作廢的議案，應在立法會主席、全體委員會主席、委員會主席或小組委員會主席說出點名表決所記錄的議員數目後，立即示意發言。
11. 立法會主席、全體委員會主席、委員會主席或小組委員會主席繼而須叫喚該議員動議將另一位議員的表決作廢的議案。
12. 立法會主席、全體委員會主席、委員會主席或小組委員會主席須根據《議事規則》第84(5)條，決定是否就將某議員的表決作廢的議案提出待議議題。
13. 將某議員的表決作廢的待議議題提出後，該議員可根據《議事規則》第84(6)條，在立法會、全體委員會、委員會或小組委員會會議上在其原位發言解釋，但隨後須於該議題進行表決時退席。

14. 將某議員的表決作廢的議案如被否決，該議員可回來參加會議。立法會主席、全體委員會主席、委員會主席或小組委員會主席繼而須宣布就原議案作出的決定。
15. 將某議員的表決作廢的議案如獲通過，
 - (a) **如沒有命令就原議案進行點名表決**，立法會主席、全體委員會主席、委員會主席或小組委員會主席須重新說出按其判斷原議題是否獲得所需的過半數票；或
 - (b) **如有命令就原議案進行點名表決**，立法會主席、全體委員會主席、委員會主席或小組委員會主席須指示立法會秘書、委員會秘書或小組委員會秘書據此將原來的點名表決贊成者及反對者數目更改；如屬立法會或全體委員會的會議，亦一併更改有關議員在席的影響。

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From : Assistant Secretary General 1
To : Members of the Finance Committee

Finance Committee

**Procedural implications of pecuniary interest on
Speaking and Voting on a matter before the Committee**

This circular provides information on issues relating to the disclosure of a pecuniary interest by members and voting in case of a member having a direct pecuniary interest in a proposal being considered at meetings of the Finance Committee.

Disclosure of pecuniary interest by members

2. As reflected by paragraph 40 of the Finance Committee Procedure, Rule 83A and Rule 84 of the Rules of Procedure (RoP) apply to the proceedings of the Committee. RoP 83A provides that a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether *direct or indirect*, or speak on any such matter, except where he discloses the nature of that interest.

Timing of disclosure of pecuniary interest

3. The disclosure of the nature of the direct or indirect pecuniary interest in the matter before a committee is a condition to a Member's speaking on the matter. Based on the principle that it is a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to

judge if his views on the matter have been influenced by his interest, a Member should disclose his pecuniary interest at the beginning of his speech on the matter.

4. For Finance Committee meetings, it has been the practice for a member to disclose his interest at the beginning of his speech on a proposal being considered by the Committee.

Voting in case of a member having direct pecuniary interest

5. RoP 84(1), 84(4), 84(5) and 84(6) apply to Finance Committee proceedings. RoP 84(1) provides that a Member shall not vote upon any question in which he has a *direct* pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. Also, under RoP 84(4), any Member may move without notice a motion to disallow the vote of a Member before the result of the voting is declared. If the motion to disallow a vote is agreed to, the result will be altered accordingly. The procedure on the moving of a motion for the disallowance of vote on grounds of *direct* pecuniary interest is set out in RoP 84(5) and RoP 84(6) and further supplemented by House Rule 3 and Appendix II of the House Rules.

Executive and non-executive directorships

6. Regarding the concerns whether non-executive directorship should be regarded as a pecuniary interest required to be disclosed and/or affect a Member's eligibility to vote¹, members may wish to note that there is no distinction between executive and non-executive directors in law. Both are members of the board of directors of a company and have the same responsibilities. Non-executive directors are different from executive directors in that the latter also serve as executive managers of the company.

7. Whether a Member should disclose his non-executive directorship as a pecuniary interest at a meeting of the Council or its committees depends on what the matter being considered by the meeting is. It is the responsibility of individual Members to judge whether they have a direct or indirect pecuniary

¹ There is also no such distinction made between executive and non-executive directorship as far as registration of Members' interests on "remunerated directorship" is concerned, as set out in Rule 83(5)(a) of the RoP:

"(5) In this Rule, "registrable interests" means –

- (a) remunerated directorships of companies, public or private, and if the company concerned is a subsidiary of another company within the meaning of section 2(4) of the Companies Ordinance (Cap. 32), also the name of that other company;"

interest in the matter under consideration at the relevant meeting. The basic principle in determining whether a pecuniary interest should be disclosed is whether the interest might reasonably be thought by others to influence the Member's actions or speech in the matter being considered, and the disclosure should be made when he starts speaking on the matter at the relevant meeting. The fact that a Member has registered the interest of a directorship does not obviate his obligation to disclose at the relevant meeting a pecuniary interest arising from the directorship². In this connection, Members are invited to refer to the requirement to update their registrable interests as stipulated in RoP 83(3).

8. Similarly, whether a Member's non-executive directorship would affect a Member's eligibility to vote at a meeting of the Council or its committees depends on what the matter being considered by the meeting is. It is the responsibility for individual Members to judge whether they have a *direct* pecuniary interest in the matter under consideration at the relevant meeting.

9. The RoP has no provision on how to determine whether a Member has a direct or indirect pecuniary interest in a matter before a committee. It may be useful for Members to have reference to some statutory definitions found in some common law jurisdictions outside Hong Kong. These definitions are referred to in Paper No. CMI 17/09-10, and the one that covers the situation of directors of a company provides along the line that "a member has an indirect pecuniary interest in any matter in which the council is concerned if the member is a director of a company that has a direct pecuniary interest in the matter".

10. Members who are uncertain whether they should declare a particular interest or vote on a proposal at a Finance Committee meeting may seek advice from the clerk of the Finance Committee who would consult the Legal Adviser on the legal issues involved, if necessary.

Chairing of meetings

11. At present, there is no rule in RoP which prohibits the chairman of a committee from chairing a meeting on grounds that he has a pecuniary interest or role conflict in the matter under consideration by the meeting. There is also no provision on this matter in the Finance Committee Procedure. In the past, Members had on their own volition chosen not to chair a meeting when they felt that there was a conflict in role or interests in the matter being considered by the meeting, or when they considered they might be perceived that way by others. It has been provided in the Procedures of the Finance Committee and its subcommittees that if the Chairman decides that he is unable to act for a particular item, or if so decided by the Committee (or the Subcommittee), the

² Paragraph III(3) of the Guidelines on Registration of Interests states that "The registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interest under Rule 83A."

Deputy Chairman shall chair the meeting for that particular item. If both of them decide that they are unable to act, or if so decided by the Committee (or the Subcommittee), the members present shall elect one from among themselves to chair the meeting for that item.

Relevant rules

12. For Members' ease of reference, RoP 83A and 84, paragraph 40 of the Finance Committee Procedure and House Rule 3 relating to disclosure of pecuniary interest by Members and disallowance of vote on grounds of direct pecuniary interest, as well as the relevant procedure in Appendix II of House Rule for moving a disallowance motion referred to above, are reproduced in the **Annex**.

(Mrs Constance LI)
Assistant Secretary General 1

Encl.

**Extract from the Rules of Procedure, Finance Committee Procedure and
House Rules of the Legislative Council**

Rules of Procedure

83A. Personal Pecuniary Interest to be Disclosed

In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.

84. Voting or Withdrawal in case of Direct Pecuniary Interest

(1) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
(L.N. 126 of 2002)

(1A) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
(L.N. 126 of 2002)

(2) *(Repealed L.N. 126 of 2002)*

(3) *(Repealed L.N. 126 of 2002)*

(3A) A motion for the withdrawal of a Member on the ground of his failure to withdraw as required by subrule (1A) may be moved without notice by any Member after the President or Chairman has put the question on the original motion but before the vote is taken.
(L.N. 107 of 1999; L.N. 126 of 2002)

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is

a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. *(L.N. 107 of 1999)*

(5) The President, Chairman of a committee of the whole Council or chairman shall have the discretion whether or not to propose the question upon a motion under subrule (3A) or (4); and in exercising such discretion he shall have regard to the nature of the question upon which the vote is taken and to the consideration whether the interest therein of the Member whose presence or vote is challenged is direct and pecuniary and not an interest in common with the rest of the population of Hong Kong or a sector thereof and whether the vote is on a matter of Government policy. *(L.N. 107 of 1999)*

(5A) If the question for the withdrawal of a Member is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council or a committee of the whole Council for the duration of any vote on the question. If the motion is agreed to, the Member shall withdraw or continue to withdraw from the Council or the committee of the whole Council when the original question is put and voted upon. *(L.N. 107 of 1999)*

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question. If the motion is agreed to, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgment on whether there is a required majority in the original question or, in the case of a division, direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly. *(L.N. 107 of 1999)*

(7) *(Repealed L.N. 107 of 1999)*

Note: RoP 83A, 84(1), 84(4), 84(5) and 84(6) apply to Finance Committee proceedings.

Finance Committee Procedure

Pecuniary Interest to be Disclosed

40. Rule 83A and Rule 84 of the Rules of Procedure shall apply to the proceedings of the Committee.
41. There are situations in which the usual rules regarding pecuniary interests do not apply, such as when an item proposes changes to Members' salaries and allowances as Members of the Council. In these cases, there is no need for members to declare their individual interests. The Chairman shall declare that all members have the same pecuniary interest in the question and the Clerk records the statement. Members may then speak and vote.

House Rules

3. Withdrawal of Member or Disallowance of Vote on Grounds of Direct Pecuniary Interest

- (a) A motion for the withdrawal of a Member on grounds of his direct pecuniary interest may be moved without notice by any Member after the President or Chairman of a committee of the whole Council has put the question on the original motion but before the vote is taken. The procedure on the moving of a motion for the withdrawal of a Member is in Appendix II.
- (b) A motion to disallow a Member's vote on grounds of his direct pecuniary interest may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. The procedure on the moving of a motion to disallow a Member's vote is also in Appendix II.

(Extract from Appendix II of House Rules)

**Procedure on the Moving of Motion
for the Withdrawal of Member or Disallowance of Vote
on Grounds of Direct Pecuniary Interest**

* * * * *

Moving of motion for the disallowance of vote

9. A Member may move a motion without notice under Rule 84(4) of the Rules of Procedure to disallow a Member's vote on grounds of the latter's direct pecuniary interest after a vote on the original motion has been taken but before the result of the voting is declared. The Member should as early as practicable pass a note to the President, Chairman of a committee of the whole Council or chairman indicating his intention to do so, and notify the Member concerned as far as possible.
10. (a) *Where a division has not been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgement on whether there is a required majority in the original question.

(b) *Where a division has been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of the committee of the whole Council or chairman of the numbers of Members recorded in the division.
11. The President, Chairman of a committee of the whole Council or chairman shall then call upon the Member to move the motion for the disallowance of the other Member's vote.
12. The President, Chairman of a committee of the whole Council or chairman shall decide whether or not to propose the question upon the disallowance motion having regard to Rule 84(5) of the Rules of Procedure.
13. If the question for the disallowance of a Member's vote is proposed, the Member concerned may, in accordance with Rule 84(6) of the Rules of Procedure, be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question.

14. If the disallowance motion is negatived, the Member may return to the meeting. The President, Chairman of the committee of the whole Council or chairman shall then declare the decision on the original motion.
15. If the disallowance motion is agreed to,
 - (a) *where a division has not been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgement on whether there is a required majority in the original question; or
 - (b) *where a division has been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly.