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Establishment Subcommittee of the Finance Committee

**Minutes of the 12th meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 27 May 2015, at 8:30 am**

Members present:

Hon Kenneth LEUNG (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP

Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kwong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

Member attending:

Hon Michael TIEN Puk-sun, BBS, JP

Members absent:

Hon SIN Chung-kai, SBS, JP (Deputy Chairman)
Hon CHEUNG Kwok-che

Public Officers attending:

Ms Esther LEUNG, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)1
Mr Eddie MAK Tak-wai, JP	Deputy Secretary for the Civil Service (1)
Mr Joseph LAI, JP	Permanent Secretary for Transport and Housing (Transport)
Mrs Sharon YIP, JP	Deputy Secretary for Transport and Housing (Transport)4
Mr Henry CHU	Assistant Secretary for Transport and Housing (Transport) (Airport Expansion Project Coordination Office)A
Mr YAU Shing-mu, JP	Under Secretary for Transport and Housing
Miss Winnie WONG	Principal Assistant Secretary for Transport and Housing (Transport)3
Mr Peter LAU, JP	Director of Highways

Mr TAM Hon-choi	Government Engineer (Railway Development 2), Highways Department
Mr Stanley YING, JP	Permanent Secretary for Transport and Housing (Housing)
Ms Ada FUNG, JP	Deputy Director of Housing (Development and Construction)

Clerk in attendance:

Ms Connie SZETO	Chief Council Secretary (1)4
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Staff in attendance:

Ms Anita SIT	Assistant Secretary General 1
Mr Jason KONG	Council Secretary (1)4
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Miss Yannes HO	Legislative Assistant (1)6
Ms Clara LO	Legislative Assistant (1)8

Action

1. The Chairman drew members' attention to the information paper ECI(2015-16)3 which set out the latest changes in the directorate establishment approved since 2002. He then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the funding proposals under discussion at the meeting before they spoke on the items. He also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2015-16)1 Proposed creation of three supernumerary posts of one Principal Government Engineer (D3), one Administrative Officer Staff Grade C (D2) and one Chief Engineer (D1) in the Airport Expansion Project Coordination Office (AEPCO), Transport Branch of Transport and Housing Bureau for about three years with immediate effect upon approval of the Finance Committee to 31 March 2018 to head the AEPCO for steering and coordinating the related work in taking forward the Three-Runway System project

2. The Chairman said that discussion on this item, which was carried over from the meeting on 12 May 2015, would be resumed. He remarked that the Administration's proposal was to create three supernumerary posts,

including one Principal Government Engineer, one Administrative Officer Staff Grade C and one Chief Engineer, in the Airport Expansion Project Coordination Office ("AEPCO") under the Transport Branch of the Transport and Housing Bureau ("THB(TB)") for about three years to head AEPCO for steering and coordinating the related work in taking forward the Three-Runway System ("3RS") project at the Hong Kong International Airport ("HKIA").

Justifications for the supernumerary posts and accountability of the Airport Expansion Project Coordination Office

3. Mr LEUNG Kwok-hung said that he was opposed to the 3RS project. Noting that the Executive Council ("ExCo") had reaffirmed the need of 3RS at HKIA in March 2015, he queried if the Government or the Airport Authority Hong Kong ("AAHK") was the principal proponent of the project. As the Administration had considered it operationally infeasible for the existing directorate officers in THB(TB) to absorb the duties of AEPCO and hence proposed to re-create the three supernumerary posts to head AEPCO, he asked whether ExCo had been advised of the manpower situation in AEPCO and whether it had taken the situation into account before giving support for the 3RS project.

4. Permanent Secretary for Transport and Housing (Transport) ("PSTH(T)") responded that AAHK was the proponent of the 3RS project and would be responsible for implementing the project. As 3RS was also a major infrastructure project of concern to the public and Legislative Council ("LegCo"), it was necessary for the Government to maintain a dedicated office to closely monitor AAHK in implementing the project and provide advice to AAHK on related issues. PSTH(T) added that three supernumerary directorate posts in AEPCO were created in July 2012 for an initial period of two years and nine months, and had lapsed on 1 April 2015. As an interim arrangement, Division 4 of THB(TB) was providing directorate support for AEPCO and had absorbed the additional duties. Given that the Division was already heavily loaded with a wide spectrum of responsibilities, including overseeing the aviation policy and house-keeping duties for AAHK and the Civil Aviation Department ("CAD"), the interim arrangement could not be sustained. Moreover, the arrangement was not conducive to the effective monitoring of the 3SR project as the existing directorate officers in Division 4 of THB(TB) were not from the Engineer Grade and did not have relevant experience relating to overseeing large-scale infrastructure projects, which would be critical for accomplishing the tasks of AEPCO.

5. Dr Kenneth CHAN and Mr CHAN Chi-chuen said that the functions of AEPCO including overseeing and supporting AAHK's work in implementing the 3RS project, might give rise to a role conflict. In particular, AEPCO's involvement in the 3RS project could raise doubt on its role and accountability

as an oversight body of AAHK. Given that ExCo had already indicated support for the 3RS project, Dr CHAN did not believe that AEPCO could maintain effective and sufficient checks and balances over AAHK's work and assist LegCo in monitoring the implementation of the project. Dr CHAN further pointed out that there was public expectation for the Government to exercise proper control and oversight of AAHK in implementing the project and environmental mitigation measures, resolving problems relating to airspace congestion in the Pearl River Delta ("PRD") region and the "air wall" issue, and ensuring 3RS would meet its purposes. However, he considered that the subcommittee appointed by the House Committee for monitoring the implementation of the 3RS project ("3RS Subcommittee") was not provided with adequate resources to take forward its work in a timely manner.

6. Referring to reports that the current design of the 3RS project would involve demolition of a substantial portion of Terminal 2 of HKIA for reconfiguration into a new Terminal, Dr KWOK Ka-ki and Mr LEUNG Kwok-hung criticized that this proposal was a serious wastage of resources. Moreover, a recent report of the Audit Commission had revealed deficiencies in the new Air Traffic Management System and delay in commissioning the system. The above incidents had reflected the poor performance of AAHK and CAD in developing HKIA and administering the air traffic control ("ATC") services respectively, as well as failure of the Government in exercising proper control over the work of AAHK and CAD.

7. PSTH(T) responded that the Government would fully co-operate with and facilitate the work of the 3RS Subcommittee. To this end, it was essential to provide AEPCO with sufficient manpower resources, including the three proposed supernumerary directorate posts in particular. He did not agree that there was a role conflict in respect of the functions of AEPCO. In gist, the Office would monitor the work of AAHK in ensuring the design and implementation of the 3RS project were in line with the principles of fit-for-purpose and value-for-money, and would ensure that the 3RS project would meet public expectation and the future needs of the aviation industry. Since the implementation of the 3RS project would straddle various policy areas and involve various technical issues, AEPCO would act as a focal point in coordinating policy matters and resolving interfacing issues between Government Bureaux/Departments and AAHK.

8. Noting that one of the major duties of AEPCO was to assist AAHK in fine-tuning and implementing the financial arrangement proposal for the 3RS project, Mr CHAN Chi-chuen enquired about the details of AEPCO's work in this regard. PSTH(T) explained that ExCo had requested AAHK to review various aspects of the 3RS financial arrangement proposal, including the aeronautical charges payable by airlines, possibility of lowering the proposed level of the Airport Construction Fee ("ACF"), and combinations of debt

vehicles for maximizing AAHK's borrowing capacity. Incumbents of the three supernumerary directorate posts would steer AEPCO to facilitate AAHK's work in this regard.

Stakeholder engagement for the Three-Runway System Project

9. Dr Kenneth CHAN was disappointed that the Government had departed from its standard practice of engaging the public by not conducting a comprehensive public consultation exercise on the 3RS project before giving support for AAHK to take forward the project. He considered that the public consultations conducted by AAHK on the expansion of HKIA some years before and those in connection with the environmental impact assessment ("EIA") of the 3RS project were only piecemeal exercises and had not provided the public with sufficient opportunities to express views on the project. Moreover, the stakeholder engagement exercises related to the statutory procedures under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) ("FS(R)O") and Town Planning Ordinance (Cap. 131) were limited in scope.

10. In response, PSTH(T) pointed out that apart from the large-scale public consultation exercises for the HKIA Master Plan 2030 conducted by AAHK and the statutory public inspection of the 3RS EIA report carried out in accordance with the Environmental Impact Assessment Ordinance (Cap. 499), public views on the project had been sought on various occasions, including during the public hearings jointly held by the LegCo Panel on Economic Development ("EDEV Panel") and Panel on Environmental Affairs in September and October 2014.

Utilization and management of airspace in the Pearl River Delta region

11. Mr WU Chi-wai sought details about AEPCO's work in respect of the utilization and management of the PRD airspace, ATC arrangements and the "air wall" issue in the past years, as well as the qualifications of the professional staff in AEPCO.

12. Dr KWOK Ka-ki was concerned that the design capacity of 102 Air Traffic Movements per hour of 3RS could only be achieved upon optimized utilization of the PRD airspace. He did not believe that negotiations between CAD and the Mainland authorities could resolve the airspace congestion problem. If the problem was not resolved, the 3RS project would be wasted.

13. PSTH(T) responded that CAD, the Civil Aviation Administration of China, and the Civil Aviation Authority of Macao had set up a Tripartite Working Group ("TWG"), which had formulated the "PRD Region Air Traffic Management Planning and Implementation Plan (Version 2.0)" in 2007 ("2007

PRD Airspace Plan"). Over the past years, TWG had held various meetings to follow up on airspace issues. A number of the enhancement measures had already been implemented, including establishment of new peripheral air routes in the PRD region, addition of handover points between ATC units, and the adjustment of the Zhuhai airspace structure. CAD would continue to discuss with its counterparts in the Mainland and Macao on the implementation of other measures on the basis of the 2007 PRD Airspace Plan through TWG.

14. Mr WU Chi-wai requested the Administration to provide supplementary information on its work in relation to TWG in the past few years, including the dates of the meetings held by TWG, details of the issues discussed and decisions made, and follow-up actions taken.

[Post-meeting note: The supplementary information submitted by the Administration was circulated to members on 10 June 2015, vide LC Paper No. ESC90/14-15(01).]

Financial arrangement and cost-effectiveness of the Three-Runway System project

15. Mr WU Chi-wai, Dr KWOK Kai-ki and Mr CHAN Chi-chuen expressed strong disappointment towards the proposed financial arrangement for the 3RS project, which they considered was aimed to bypass LegCo's monitoring and approval. Mr WU and Dr KWOK pointed out that problems of delays and cost overruns in the Hong Kong section ("HKS") of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") project and the Liantang/Heung Yuen Wai Boundary Control Point project had exposed serious loopholes in the Administration's monitoring mechanism for large-scale infrastructure projects. They expressed grave concern that the final cost of the 3RS project might exceed the current estimate of \$141.5 billion. Dr KWOK further remarked that as AAHK was wholly-owned by the Government and funded by public money and the proposed ACF would be charged on users of HKIA, the current financial arrangement for the 3SR project was not in the public interest. He was strongly of the view that the Administration and AAHK must consult LegCo and seek its approval on the proposed financial arrangement for the 3RS project.

16. Mr LEUNG Kwok-hung echoed the concern about the forecast demand and cost-effectiveness of 3RS. He remarked that according to the financial feasibility analysis conducted by the Hong Kong and Shanghai Banking Corporation ("HSBC"), the 3RS project had a high negative net present value ("NPV") of some \$43 billion. As a result, AAHK might face difficulties in raising debts, and the Government might need to meet AAHK's funding shortfall.

17. Mr Albert CHAN remarked that although he agreed with the need to increase the handling capacity of HKIA, the Government and AAHK should consider more cost-effective means to meet the objective. He pointed out that HKIA had been constructed at a much lower cost but with a much larger design capacity. Moreover, during the planning stage of the Airport Core Programme, the Administration had provided detailed financial analyses and the projected returns under various scenarios of HKIA. Mr CHAN, Mr LEUNG Kwok-hung and Ms Cyd HO urged that the Administration should provide detailed information on the financial feasibility assessment of the 3RS project, relevant consultancy reports, and the basis for the economic benefits to be brought about by 3RS.

18. Ms Cyd HO further remarked that the Labour Party ("LP") would not support the establishment proposal and other funding proposals relating to the 3RS project before the Administration disclosed the relevant information. Moreover, she criticized the Administration for not providing LegCo Members with details of all costs associated with the 3RS project in a holistic manner. Given that the commissioning of 3RS was targeted at 2023, it was highly likely that the three supernumerary posts would be further extended. Moreover, the Administration would set up a high-level steering committee to oversee the 3RS project, and various Bureaux/Departments would need to provide inputs and resources to facilitate the implementation of the project. The above involved substantial hidden costs which were not included in the Administration's paper or other information provided to LegCo so far. In addition, Ms HO said that LP was concerned that the majority of jobs to be created by the 3RS project would be in the construction and engineering sectors and might not benefit the general public.

19. In respect of the cost-effectiveness and financial arrangement of the 3RS project, PSTH(T) stressed that the Administration and AAHK had no intention to bypass LegCo's monitoring. He re-iterated that AAHK had a statutory obligation under the Airport Authority Ordinance (Cap. 483) to develop HKIA, and the 3RS project was formulated in fulfilment of this obligation. The financial feasibility assessment conducted by HSBC, which was commissioned by AAHK, was public information and available on AAHK's website. The assessment was based on AAHK's revenue streams at the time of the study and had not taken into account the proposed new charges and revenue streams in financing the 3RS project. In response to the Government's request and concerns expressed by the public and LegCo Members, AAHK was reviewing the financial arrangement of the 3RS project, and would report the updated proposals and analyses to the Government upon completion of the review.

20. On the economic benefits of the 3RS project, PSTH(T) emphasized that 3RS would strengthen the competitiveness of Hong Kong as a global

aviation hub. According to AAHK's projection, as compared to the existing two-runway system, 3RS would generate additional economic NPV of about \$455 billion over the 50-year period from 2012 to 2061. This figure should not be mixed up with the financial NPV of 3RS, which measured the financial viability of 3RS only and had not taken into account the overall benefits brought about by 3RS to the Hong Kong economy. In fact, many infrastructure projects had marginal or even negative financial returns, but their value was in their contribution to the overall economic growth and development of Hong Kong. As regards employment opportunities, it was expected that 3RS would create direct employment of some 120 000 jobs in total and indirect and induced employment of some 160 000 jobs by 2030. AAHK would be willing to provide LegCo with further information on the economic returns of 3RS.

Motion on adjournment of discussion on EC(2015-16)1

21. Mr Albert CHAN said that there were numerous uncertainties surrounding the 3RS project, including a judicial review against the EIA report and approval on the Environmental Permit for 3RS, and a possible breach of the proposed financial arrangement with the Public Finance Ordinance (Cap. 2). Under such circumstances, he opined that the Establishment Subcommittee ("ESC") should not endorse the establishment proposal. Nonetheless, he was concerned that if ESC voted down the proposal, the Administration might submit it to the Finance Committee ("FC") direct as evidenced by the recent case of submitting the project on the Liantang/Heung Yuen Wai Boundary Control Point to FC after it had been negated by the Public Works Subcommittee. Mr CHAN then moved a motion to adjourn the discussion on the item pursuant to paragraph 32 of the ESC Procedure.

22. The Chairman said that the Subcommittee would proceed to deal with Mr Albert CHAN's motion. He said that each member could speak once on the motion for a maximum of three minutes.

23. Mr Albert CHAN said that, should the establishment proposal been voted down by members, there was no assurance that the Administration would respect members' views to withhold submission of the proposal to FC. Hence, he could only resort to adjourning the discussion on the item in the hope that the Administration would provide further information on the 3RS project.

24. At the invitation of the Chairman, PSTH(T) responded to the motion and re-iterated the pressing need to create the three supernumerary posts to provide AEPCO with the necessary directorate support to handle the tasks relating to the 3RS project. Whilst noting members had diverse views on the 3RS project, he appealed for their support for the establishment proposal.

25. The Chairman put the motion to vote. At the request of Mr WONG Ting-kwong, the Chairman ordered a division. Nineteen members voted for and 12 voted against the motion. The Chairman declared that discussion on EC(2015-16)1 be adjourned. The votes of individual members were as follows –

For

Mr Albert HO
Mr James TO
Ms Emily LAU
Prof Joseph LEE
Mr Alan LEONG
Mr Albert CHAN
Mr Gary FAN
Dr Kenneth CHAN
Dr Fernando CHEUNG
Mr IP Kin-yuen
(19 members)

Mr LEE Cheuk-yan
Mr LEUNG Yiu-chung
Mr Frederick FUNG
Ms Cyd HO
Mr LEUNG Kwok-hung
Mr WU Chi-wai
Mr CHAN Chi-chuen
Dr KWOK Ka-ki
Dr Helena WONG

Against

Mr WONG Ting-kwong
Mrs Regina IP
Mr YIU Si-wing
Mr KWOK Wai-keung
Mr Martin LIAO
Mr TANG Ka-piu
(12 members)

Ms Starry LEE
Mr Steven HO
Mr MA Fung-kwok
Mr Christopher CHEUNG
Mr POON Siu-ping
Mr CHUNG Kwok-pan

EC(2014-15)21 Proposed retention of a supernumerary post of Chief Engineer (D1) for a maximum period of four years and six months from 7 July 2015 or with immediate effect upon approval of the Finance Committee (whichever the later) in the Railway Development Office of Highways Department to continue providing dedicated support to and monitoring the completion of the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project by the MTR Corporation Limited

26. The Chairman said that the Administration's proposal was to retain a supernumerary post of Chief Engineer in the Railway Development Office of the Highways Department ("HyD"), designated as Chief Engineer/Railway Development 2-3 ("CE/RD2-3"), to continue providing dedicated support to and monitoring the completion of HKS of the XRL project by the MTR

Corporation Limited ("MTRCL").

27. The Chairman remarked that the proposal was discussed at the meeting of the Panel on Transport on 16 January 2015. Panel members supported the proposal in general. Some members considered that the delay of HKS of the XRL project had reflected deficiencies in the existing monitoring mechanism and suggested that CE/RD2-3 should formulate measures to improve the mechanism. At the request of Panel members, the Administration had provided supplementary information on the concrete recommendations put forward by CE/RD2-3 and his team in respect of the XRL project in the past seven years, and the estimated total operating cost of Railway Development Division 2-3 ("RDD2-3") in the proposed extension period of four years and six months. The details were included in Enclosure 5 to the Administration's paper.

Justifications for retaining the post and performance of the incumbent

28. Dr KWOK Ka-ki considered that the delay and cost overruns of the XRL project were evidence of the Administration's ineffective monitoring over the project. He expressed great disappointment towards the failure of MTRCL and the Administration in identifying issues relating to the unforeseen ground conditions at the construction site of the West Kowloon Terminus ("WKT") before commencement of the works concerned, and raised grave concern about the delay in the works of the cross-boundary tunnel. The above problems were among the major causes attributed to the serious delay in HKS of the XRL project. Dr KWOK queried why CE/RD2-3 who possessed the first-hand information on these problems had not made timely reports to his supervisors in HyD and THB, and sought details about the advice given by CE/RD2-3 and his team on the above issues in the past few years.

29. While expressing support for the XRL project, Mr Steven HO concurred that delay of the project had reflected the deficiencies in the Administration's monitoring and the work of CE/RD2-3. Mr HO enquired about the professional capability of the incumbent of the CE/RD2-3 post, the extent he should be held responsible for the present delay, actions he had taken in the past few years and measures he would take in future to recover the delay.

30. Under Secretary for Transport and Housing ("USTH") explained that if the CE/RD2-3 post was retained, the incumbent would continue to oversee the implementation and commissioning of XRL and finalization of the relevant construction contracts. He would be responsible for administering the Entrustment Agreement for the construction of HKS of XRL with MTRCL, resolving claims and disputes relating to the project, and preparing progress reports to LegCo. Director of Highways ("DHy") supplemented that the incumbent of the CE/RD2-3 post was the chairman of the Contract Review Meeting who held monthly meetings attended by representatives of MTRCL.

In addition, he had to attend the monthly Project Supervision Committee ("PSC") meetings chaired by DHy. These meetings served as the formal communication platforms with MTRCL and enabled the Administration to supervise MTRCL for the delivery of the XRL project, in particular monitoring the implementation of the delay recovery measures.

31. USTH and DHy assured members that HyD and CE/RD2-3 had all along been monitoring the progress of the XRL project and were aware of the situation of the delay, as well as mindful of the need to implement recovery measures to avert further postponement in commissioning HKS of XRL. To this end, the Government had been urging MTRCL in the past few years to make the best endeavours to recover the delay through implementing appropriate measures. Regarding the work of CE/RD2-3 in tackling the delay, DHy said that he had reported the relevant details to the Subcommittee on Matters Relating to Railways ("Railways Subcommittee") vide LC Paper No. CB(1)1328/13-14(03) and LegCo's Select Committee to Inquire into the Background of and Reasons for the Delay of the Construction of HKS of XRL ("LegCo Select Committee"). For instance, with a view to tackling the delay in the piling works of the section of WKT under Jordan Road, CE/RD2-3 had worked out with MTRCL mitigation measures including re-sequencing the various works tasks.

32. In response to the enquiry about the ground conditions at WKT, DHy said that MTRCL had conducted proper ground investigations before commencement of the construction works. In fact, contractors had been informed of the presence of large boulders underground and the need to make preparation for the excavation works through the relevant works contracts and tender documents.

33. USTH remarked that the proposal to retain the CE/RD2-3 post and the incumbent's past performance should be considered separately. He stressed that there was public expectation for the Government to continue monitoring various aspects of HKS of the XRL project, including works progress, cost control, safety and technical standards. These were the responsibilities of CE/RD2-3. DHy added that the incumbent was fully acquainted with the progress of the XRL project, highly knowledgeable, had rich experience in taking forward large-scale infrastructure projects, and his professional capability was beyond doubt.

34. Mr LEUNG Kwok-hung was of the view that the incumbent of the CE/RD2-3 post should be held accountable for the delay and cost overruns of the XRL project. The unforeseen problems in the project should not be excuses for poor performance and there should be rewards or punishment for his performance accordingly. Mr LEUNG found it totally unacceptable for the Administration to cover up the incumbent's failure in controlling the progress

and cost of the XRL project.

35. Mr Alan LEONG said that the Civic Party ("CP") had serious reservation about the establishment proposal. Given the present state of the XRL project, CP was not convinced that retention of the CE/RD2-3 post was justified. In particular, the supernumerary post had been created for some seven years since July 2008 and the performance of the incumbent in respect of the major duties listed in Enclosure 2 to EC(2014-15)21 had been mostly unsatisfactory.

36. Mr Gary FAN was disappointed that despite PSC had been holding monthly meetings with MTRCL to review work progress, it had not discovered the delay in a timely manner. Moreover, the mitigation measures implemented by MTRCL had been ineffective so far. The performance of HyD and CE/RD2-3 in monitoring the XRL project was therefore subject to question. He queried if the Administration had conducted any review on the CE/RD2-3 post, including whether the post had achieved the intended purposes and whether there was any dereliction of duty on the part of the incumbent. Furthermore, there had been reports that the Administration was aware of the delay in the XRL project before the meeting of Railways Subcommittee on 21 November 2013. But the Administration and MTRCL had deliberately withheld the information to Railways Subcommittee at that meeting. Mr FAN expressed grave concern about whether government officials and the then Chief Executive Officer ("CEO") of MTRCL had provided false statements and conspired to cover up the delay, and whether CE/RD2-3 and his team had discovered the delay and made prompt report to the Administration.

37. Ms Starry LEE said that notwithstanding that the Democratic Alliance for the Betterment and Progress of Hong Kong was supportive of the XRL project, it considered that there was negligence on the part of the Government in monitoring implementation of the project. She stressed that the public had aspiration for the Government to take up a gatekeeper role and enhance its monitoring mechanism. She sought details on the Administration's work in this regard, and enquired about the impact on its work if the CE/RD2-3 post was not retained.

38. Ms Emily LAU noted that the Administration had set up an Independent Expert Panel ("IEP") to review matters relating to the delay of the XRL project and the relevant report was released on 30 January 2015. According to paragraph 6 of the Administration's paper, IEP's report had put forward recommendations to improve the systems, processes and practices for implementing and monitoring the XRL project benchmarking with internationally recognized best practices. She asked whether the recommendations had implied that the existing practices of MTRCL were impractical, and the implication on the project cost. She also sought details on

the recommendations including the proposal of enhancing progress reporting, and CE/RD2-3's role in taking forward IEP's recommendations.

39. Mr WU Chi-wai pointed out that, according to the report of IEP, HyD and PSC had failed to monitor the XRL project. Despite the monitoring and verification ("M&V") consultant had, through its monthly reports to HyD, alerted the Administration since December 2011 that delays in individual construction contracts were likely to jeopardize the overall project completion date, such information was not disclosed to the public until the announcement by the Secretary for Transport and Housing in April 2014 on the delay of the XRL project. Mr WU queried if the delay in reporting was due to negligence of staff members of HyD, and expressed doubt about their capabilities and experience in monitoring large-scale infrastructure projects such as the XRL project.

40. In response to members' comments and questions above, USTH re-iterated that HyD, CE/RD2-3 and his team had fulfilled their roles and responsibilities in monitoring the delivery of the XRL project. They had been making regular reports to update THB on the progress of the project, including delays in individual construction works and possible causes, and had been urging MTRCL to carry out delay recovery measures. It had been the Government's mission to closely monitor implementation of the project and exercise tight cost control. In view of the delay and cost overruns, the Government had implemented various measures to enhance the monitoring and cost control mechanism. These measures included appointment of new Directors to the MTRCL Board to enhance its corporate governance and provision of professional advice, as well as establishment of IEP to review the weaknesses of the existing monitoring mechanism. IEP's recommendations would not only help enhance the monitoring mechanism of the XRL project, but also improve the institutional arrangements for future rail development projects under the concession approach. THB attached great importance to IEP's observations and recommendations, and was actively exploring with MTRCL the arrangements for implementing the recommendations.

41. DHy supplemented that other recommendations made by IEP, which had been implemented by the Government and MTRCL, included revamping the design of progress reports to enable stakeholders to have clearer and better understanding of the project status, the use of quantified metrics (such as "traffic light indicators") to provide a dashboard summary for the project delivery progress in key performance areas, and participation of the M&V consultant in monthly PSC meetings. CE/RD2-3 would continue to actively participate in implementing IEP's recommendations. As regards internationally recognized best practices for monitoring large-scale railway projects, DHy said that IEP had recommended MTRCL to develop and maintain an integrated master programme for the XRL project showing the progress of all significant

contracts as a baseline for progress monitoring and reporting. While the existing project management systems of MTRCL had been verified by consultants to be suitable for large-scale infrastructure projects, IEP had pointed out in its report that certain practices, including the use of the integrated master programme, should be in line with international best practices.

42. USTH and DHy stressed that the post of CE/RDD2-3 was pivotal in monitoring the implementation of the XRL project, identifying solutions with MTRCL to recover the delay and contain the cost, and reporting the latest progress of the project to the public and LegCo. Given the limited manpower resources of HyD and RDD2-3, the above work would be seriously affected if the post was not retained.

Cost to Complete of the XRL project and expenditure of RDD2-3

43. Members noted that MTRCL had announced in August 2014 that the Cost to Complete ("CTC") of the XRL project would be \$71.5 billion, against the original funding of some \$66.9 billion approved by FC in 2010. Dr KWOK Ka-ki pointed out that according to recent media reports, CTC would be further revised upwards to as much as \$90 billion. He expressed grave concern about the substantial growth in the project cost. Ms Emily LAU further expressed disappointment that the construction of the West Kowloon Cultural District had been affected by the delay of the XRL project.

44. Noting that MTRCL was reviewing CTC and the Programme to Complete ("PTC") of the XRL project, Mrs Regina IP enquired when the Administration could report to LegCo the updated cost and commissioning date of XRL.

45. USTH said that the cost figure quoted by Dr KWOK Ka-ki was not confirmed. MTRCL was currently conducting a review on CTC and PTC of the XRL project. After completing the review and with the results confirmed by the Board of Directors, MTRCL would report to the Government the updated estimate and the latest progress of the project which was envisaged in the second quarter of 2015. CE/RDD2-3 would have to verify the information to be provided by MTRCL.

46. Apart from CTC of the XRL project, Ms Emily LAU expressed worry about further increase in other associated costs, including the operating costs of RDD2-3 under HyD. She noted that according to Enclosure 5 to EC(2014-15)21, the estimated total expenditure on the salary and office expenses for RDD2-3 was around \$113 million during the proposed extension period of four years and six months of the supernumerary post. DHy confirmed that the annual staff cost of about \$2.2 million of the CE/RDD2-3 post had been included in the estimated total expenditure of RDD2-3.

Duration of the supernumerary post and involvement of the external consultant

47. Noting that the Administration's proposal was to extend the CE/RD2-3 post to 31 December 2019, Mrs Regina IP asked if it was the Administration's estimation that HKS of XRL could be completed and commissioned in 2019. She further enquired about the Administration's contingency measure in the event that FC did not approve retaining the post, and in such case whether the Administration would consider engaging an external consultant in lieu of CE/RD2-3 to steer the work of RDD2-3.

48. Dr KWOK Ka-ki enquired if the Administration would consider employing external experts to monitor the implementation of the XRL project. He was worried that fast-tracking construction works to recover the delay might lead to safety problems.

49. Noting that one of the major duties of CE/RD2-3 was to monitor the cost and programming aspects of the XRL project, but both CTC and PTC of the project were subject to revision, Mr WU Chi-wai enquired how the Administration would measure the performance of CE/RD2-3 in the coming four and a half years.

50. USTH explained that according to PTC proposed by MTRCL in May 2014, HKS of XRL would be commissioned by the end of 2017. Based on PTC and the Administration's experience drawn from past large-scale infrastructure projects, it was anticipated that the majority of claims assessment would be completed in two years' time after commissioning of HKS of XRL. As CE/RD2-3 would be responsible for monitoring and reviewing the claims assessment by MTRCL for the XRL construction contracts, it was proposed that the post be retained until the end of 2019.

51. USTH re-iterated that the Administration and CE/RD2-3 had fulfilled their roles in monitoring the work of MTRCL. For example, staff members of HyD had examined the validity of PTC submitted by MTRCL. They had identified delays of works in certain contracts and the conditions which must be satisfied in order to attain the target commissioning date. HyD had expressed its concerns to MTRCL, which was conducting a review and would submit the revised PTC to the Government in the second quarter of 2015.

52. Responding to enquiries about external consultant/experts, USTH advised that an independent M&V consultant had been involved in the monitoring and auditing work of the XRL project. To provide further support to staff members in RDD2-3, the M&V consultant's participation in the relevant aspects had been strengthened through new arrangements, including the consultant's attendance at the monthly PSC meetings. DHy further explained

that the existing monitoring system was developed on the basis of a consultancy study conducted in 2008, which advised that the project implementation should be entrusted to MTRCL taking into account the latter's rich experience in the execution of large-scale railway projects, an M&V consultant should be engaged to assist in the monitoring work, and the Administration should maintain a dedicated division to monitor the work of MTRCL and the M&V consultant. As claims arising from the XRL project would involve public money, it was therefore important for the dedicated division led by CE/RD2-3 to review the validity of the claims in order to safeguard the interests of the Government and the public.

Liability for the cost overruns

53. Noting that MTRCL had entered into supplementary agreements with contractors for delay recovery measures, Mr WU Chi-wai and Mr Martin LIAO queried whether the Government had signed a new Entrustment Agreement with MTRCL which might imply additional financial commitment by the Government. They asked whether the Government or MTRCL would bear the cost overruns.

54. Mr Michael TIEN echoed the same concern. He pointed out that MTRCL had stated in its 2014 Annual Report that its total liability to the Government in connection with the XRL Entrustment Agreement was capped at the Project Management Cost. However, according to the views of legal experts known to him, there would not be an upper limit on MTRCL's liability if it could be established that the delay of the XRL project was due to negligence on the part of MTRCL. He queried whether CE/RD2-3 would be required to examine all claims and form an opinion on which party should bear the cost overruns. Mr TIEN pointed out that the arrangement for co-location of boundary control facilities ("co-location arrangement") in WKT, delay of the commissioning of XRL and cost overruns were the three major problems of the XRL project. He opined that while CE/RD2-3 might have limited role in the co-location arrangements and final commissioning date of HKS of XRL, the incumbent should vigorously monitor the claims and liability issues to protect the interests of the Government.

55. USTH clarified that the Government had neither modified the terms of the XRL Entrustment Agreement nor entered into a new agreement with MTRCL. The estimated CTC of \$71.5 billion and PTC proposed by MTRCL in 2014 only formed a baseline for HyD's assessment of the final cost and its on-going monitoring work for the project implementation. However, the actual CTC was to be confirmed and the current estimate should not be taken as the final financial commitment by the Government. If the actual CTC exceeded the original Entrustment Cost, the Government would need to seek additional resources to bridge the funding gap. This matter should be considered

independently of the liability issue which would be followed up separately.

56. USTH re-iterated that HyD, with the assistance of the M&V consultant, had carefully reviewed CTC and PTC provided by MTRCL in 2014. It had identified certain items which had not been included in CTC and the conditions which must be satisfied in order to meet the target commissioning date. DHy confirmed that CE/RD2-3 would be responsible for reviewing the claims arising from all XRL-related contracts. He and his team would also resolve claims and disputes in connection with the XRL Entrustment Agreement.

Arrangement for co-location of boundary control facilities

57. Mr Alan LEONG said that CP was opposed to the funding proposal for the XRL project in 2010 due to two major reasons. Firstly, CP considered that the terminus of HKS of XRL should be located at Kam Sheung Road instead of West Kowloon, which could significantly reduce the construction cost of the project. Secondly, CP had pointed out that the co-location arrangement would not be feasible within the constitutional framework of Hong Kong. Without the co-location arrangement, passengers would need to alight at the border for immigration clearance and the anticipated efficiency and cost-effectiveness of XRL would be under serious question. Mr LEONG noted that the Department of Justice was exploring ways to enable Mainland officers to carry out inspection duties under the Mainland law in the Hong Kong territory. He and Ms Emily LAU strongly urged that the Administration should exercise the utmost caution in formulating and implementing the co-location arrangement and should ensure that the arrangement was in strict conformity with the Basic Law and the "one country, two systems" principle.

Economic viability and cost-effectiveness of the XRL project

58. Mrs Regina IP conveyed the New People Party's support for the XRL project. Without HKS of XRL, Hong Kong might lose out to other Mainland cities. She pointed out that the XRL project was facing enormous challenges on various fronts, including engineering difficulties and the legal problem pertaining to the co-location arrangement. She urged that the Administration should work out appropriate solutions to meet such challenges.

59. Mr LEUNG Kwok-hung disagreed that Hong Kong would be marginalized if it did not have direct connection to the national high-speed rail network. He also considered it unreasonable to implement the HKIA expansion project and the XRL project in Hong Kong concurrently.

60. Dr KWOK Ka-ki opined that the establishment of high-speed rail system in major Mainland cities did not amount to sufficient justification for the

construction of HKS of XRL. Moreover, construction of high-speed rail in the Mainland had exposed many problems including corruption . In view of the exorbitant cost of the XRL project and the questionable demand for HKS of XRL, he expressed doubt on the cost-effectiveness of the project.

61. USTH affirmed the importance of HKS of XRL to both Hong Kong and the Mainland. In particular, the project would play a crucial role in sustaining Hong Kong's position as a leading city of the Mainland and benefit the Hong Kong economy. It had been the Administration's objective to strive for the timely implementation of the XRL project, ensure the safety of the infrastructure, and exercise proper cost control. Recognizing that there were shortcomings in the original monitoring mechanism for the XRL project, the Administration had been striving to implement improvement measures and enhance its work in collaboration with various stakeholders, including LegCo Members. Moreover, both the investigations conducted by the Independent Board Committee of MTRCL and IEP had put forward concrete recommendations for improving MTRCL's project management system and enhancing transparency of its internal communication.

Staff morale in MTRCL and HyD

62. Mrs Regina IP asked whether the resignation of the former CEO and Projects Director of MTRCL and constant criticism from LegCo had affected the staff morale in MTRCL's projects team and in HyD.

63. DHy said that MTRCL had swiftly identified successors for the two posts, and the new Projects Director was highly experienced in the engineering field. According to his observation, staff members of MTRCL were striving to recover the delay of the XRL project. The Administration had been urging MTRCL to make its best endeavours to recover the delay in parallel. As regards staff members of HyD, USTH said that although the delay and cost overruns of the XRL project had frustrated staff members, they remained committed and endeavoured to expedite completion of the project. They also stayed open to criticism and suggestions from LegCo Members and had been co-operative in the investigations conducted by different parties, including LegCo Select Committee.

(At 10:17 am, the Chairman announced that the meeting be extended for not more than 15 minutes. Members agreed.)

64. The Chairman advised that the discussion on this item would continue at the next meeting to be held on 10 June 2015, at 8:30 am.

65. There being no other business, the meeting ended at 10:45 am.

Council Business Division 1
Legislative Council Secretariat
23 July 2015